Civil Justice Subcommittee

Wednesday, January 22, 2020
8:30 AM – 11:30 AM
404 HOB

Meeting Packet

Jose Oliva
Speaker

Bob Rommel
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time:	Wednesday, January 22, 2020 08:30 am
End Date and Time:	Wednesday, January 22, 2020 11:30 am
Location:	Sumner Hall (404 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

CS/HB 623 Community Associations by Business & Professions Subcommittee, Shoaf
HB 733 Marketable Record Title Act by Smith, D.
HB 783 Uniform Commercial Real Estate Receivership Act by Beltran
HB 811 Transfers in Divorce by Geller
HB 843 Dissolution of Marriage by Andrade
HB 967 Clerks of the Court by Gregory
HB 6507 Relief/Clifford Williams/State of Florida by Daniels

Consideration of the following proposed committee bill(s):

PCB CJS 20-01 -- Litigation Financing Consumer Protection

Workshop on Public Nuisance and Other Matters of Statewide Concern

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Tuesday, January 21, 2020.

By request of the Chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, January 21, 2020.

NOTICE FINALIZED on 01/17/2020 4:07PM by Ellerkamp.Donna

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 623 Community Associations
SPONSOR(S): Business & Professions Subcommittee, Shoaf
TIED BILLS: **IDEN./SIM. BILLS:** SB 1154

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Brackett	Anstead
2) Civil Justice Subcommittee		Mawn	Luczynski
3) Commerce Committee			

SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes, within the Department of Business and Professional Regulation, broadly regulates condominium and cooperative associations and has limited regulatory authority over homeowner's associations (HOA).

The bill:

- Exempts a pool within an HOA with 32 parcels or less from the Department of Health's regulation of public pools.
- Requires associations to maintain bids for work or materials for one year, instead of seven.
- Requires an HOA to maintain ballots and all records relating to elections in the HOA's official records.
- Prohibits associations from requiring owners to state a reason for requesting to inspect official records.
- Provides that a condominium association required to make association documents available on a website may instead make them available on a mobile application.
- Allows an HOA to give notice of a meeting on a website.
- Provides that condominium board term limits do not apply retroactively to service prior to 2018.
- Prohibits condominium owners' insurance policies from providing rights of subrogation against the association under certain circumstances.
- Allows condominiums to charge a buyer or renter the actual cost of a background check.
- Provides that certain notice requirements apply to all unit owner meetings, not just the annual meetings.
- Amends the due date for paying a fine levied by an association.
- Provides that an interest in a cooperative unit is an interest in real property, instead of an interest in personal property.
- Deletes the provision prohibiting a condominium association from contracting with a company in which a board member has a financial interest.
- Allows the office of the Condominium Ombudsman to be located outside of Leon County.
- Permits a unit owner in a condominium to install, at the owner's expense, an alternative fuel vehicle fueling station within the boundaries of the owner's limited common element or exclusive parking area.
- Restates that any provision in a community association's declaration, bylaws, or rules that violates any right under the 14th Amendment of the U.S. Constitution or article I, section 2 of the Florida Constitution is unenforceable, and no action is required by an association to remove or amend such provisions.
- Provides that a community association may record a notice in the county in which it is located indicating that it does not intend to enforce any regulation in its declaration, bylaws, or rules that infringes upon the 14th Amendment of the U.S. Constitution or article I, section 2 of the Florida Constitution.

The bill is not expected to have a fiscal impact on local government. The bill may have a fiscal impact on state government. *See* Fiscal Comments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Community Associations

The Florida Division of Condominiums, Timeshares and Mobile Homes (Division), within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (limited to arbitration of election and recall disputes).

Condominiums

A condominium is a form of real property ownership created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.[1] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[2] A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association, an entity responsible for common elements operation and maintenance. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The board enacts bylaws which govern the association administration.

Cooperatives

A cooperative is a form of property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association, and individual units are leased to residents owning shares in the cooperative association.[3] The lease payment amount is the pro-rata share of the cooperative's operational expenses. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical to those regulating condominiums.

Homeowners' Associations

A homeowners' association (HOA) is a residential property owners association in which voting membership is made up of parcel owners, membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.[4] Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in ch. 720, F.S., and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents. Florida law sets procedures and minimum requirements for HOA operation and provides for a mandatory binding arbitration program, administered by the Division, for certain election and recall disputes, but no state agency has direct HOA oversight.

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[1] S. 718.103(11), F.S.
[2] S. 718.104(2), F.S.
[3] S. 719.103(2)(26), F.S.
[4] S. 720.301(9), F.S.

Cooperatives as Personal and Real Property Interest

Current Situation

The real property of a cooperative association is owned by a corporation, not the individual unit owners. A person who purchases a cooperative unit does not receive title to the unit or any portion of the cooperative's real property. Instead, the purchaser receives shares of the cooperative association and leases a unit from the association. An interest in a corporation or cooperative is represented by the ownership of stock in the corporation.

An ownership interest in a corporation or cooperative is an interest in personal property, not real property.[5] Generally, personal property is any object or right that is not real property, such as automobiles, clothing, or stocks.[6]

Real property is anything that is permanent, fixed, and immovable, such as land or a building. At common law, a leasehold, even for as long as 99 years, was not considered an interest in real property. However, a long-term leasehold interest is taxed in the same manner as a fee interest, so courts generally regard long-term leaseholds to be an interest in real property for taxation purposes.[7]

In Florida, a cooperative is treated as real property for some homestead purposes. Even though the legal definition of homestead follows the common law and requires an interest in real property to qualify for the homestead exemption, the Florida Constitution specifically extends the exemption to a cooperative unit.[8] Florida's homestead laws govern the cooperative for purposes of exemption from forced sale by creditors[9] and for purposes of the ad valorem taxation exemption. However, a cooperative is not subject to Florida's homestead protections and is not considered real property for purposes of devise and descent, meaning the transfer or conveyance of property by will or inheritance.[10]

In contrast, the Condominium Act specifically provides that "[a] condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created on a leasehold." Thus, an ownership interest in a condominium is expressly converted by statute into an interest in real property. There is no corresponding statute in the Cooperative Act,[11] and Florida courts have recognized that there is some confusion as to whether a cooperative ownership interest is an interest in real property or personal property.[12]

Effect of the Bill

The bill provides that an interest in a cooperative unit is an interest in real property for all purposes including devise and descent. This puts an interest in a cooperative unit on the same footing as an interest in a condominium unit.

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[5] *Downey v. Surf Club Apartments, Inc.*, 667 So.2d 414 (Fla. 1st DCA 1996).
[6] Am. Jur. 2d Property § 18.
[7] *Williams v. Jones*, 326 So.2d 425, 433 (Fla. 1975); *See generally* The Florida Bar, *Practice Under Florida Probate Code* Chapter 19 (9th ed. 2017).
[8] Art. VII, s. 6(a), Fla. Const. ("The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.").
[9] Ss. 222.01and 222.05, F.S.
[10] *Southern Walls, Inc. v. Stilwell Corp.*, 810 So. 2d 566, 572 (Fla. 2nd DCA 2002); *Phillips v. Hirshon*, 958 So. 2d 425, 430 (Fla. 3rd DCA 2007); *In re Estate of Wartels*, 357 So.2d 708 (Fla. 1978); Black's Law Dictionary (11th ed. 2019).
[11] S. 718.106(1), F.S; *See generally* ch. 719, F.S.
[12] *Phillips*, 958 So.2d 425; *Levine v. Hirshon*, 980 So.2d 1053 (Fla. 2008).

Official Records

Current Situation

Condominiums, cooperatives, and HOAs are required to maintain official records for at least seven years. The official records must include:

- A copy of the articles of incorporation, declaration, bylaws, and association rules;
- Meeting minutes;
- A roster of all owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;
- A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
- The association's accounting records;
- All contracts for work to be performed, including bids for work, materials, and equipment. Cooperatives and HOAs are only required to maintain bids for one year;
- A copy of the plans, permits, warranties, and other items provided by the developer; and
- All other written records which are related to the association's operation.[13]

The official records for condominiums and cooperatives, but not HOAs, must also include all ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners.[14]

Owners may request to inspect an association's official records, and the association must make the records available for inspection within ten business days of receiving an inspection request.[15] A condominium and cooperative may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections. An HOA may also adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections, but an HOA may not require an owner to state the reason for the inspection.[16]

Effect of the Bill

The bill:

- Provides that all records relating to a condominium association and an HOA are official records;
- Mirrors condominium law to cooperative and HOA law by requiring that condominiums maintain bids for work, materials, and equipment for one year instead of seven years;
- Mirrors condominium and cooperative law to HOA law by prohibiting a condominium or cooperative from requiring a unit owner to state a reason for official records inspection; and
- Mirrors HOA law to condominium and cooperative law by including all ballots, sign-in sheets, voting proxies, and all other papers relating to voting in the HOA's official records.

Condominium Unit Owner Insurance and Subrogation

Current Situation

A condominium association must use its best efforts to maintain insurance for the association, the association property, and the common elements. If a condominium maintains insurance for the association, it must have coverage for the condominium property as originally installed and all alterations or additions made to the condominium property.[17]

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[13] Ss. 718.111(12)(a), 719.104(2), and 720.303(4)-(5), F.S.
[14] *Id.*
[15] *Id.*
[16] S. 720.303(5), F.S.
[17] S. 718.111, F.S.

Condominium association insurance coverage does not include personal property within a unit or a unit's limited common elements, floor, walls, ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments. Insurance coverage for such property is the responsibility of the unit owner.[18]

Often, a condominium association's declaration may contain a clause requiring a unit owner's insurance policy to prohibit subrogation against the condominium association.[19] Subrogation is "the substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or securities that would otherwise belong to the debtor."[20] In the condominium setting, subrogation allows a unit owner's insurer to stand in the place of the unit owner whose unit has been damaged by a negligent party. The unit owner's insurer pays the unit owner for the damage and stands in the place of the unit owner to seek relief from the party that caused the damage, which may be the condominium association.

Prior to 2010, Florida law prohibited a condominium unit owner's insurance policy from providing rights of subrogation against the association. That statutory prohibition was repealed in 2010, and subrogation against a condominium association has been permitted since that time.[21]

Effect of the Bill

The bill provides that if a condominium association's insurance policy does not provide rights of subrogation against the unit owners, then a unit owner's insurance policy may not provide rights of subrogation against the association.

Condominium Websites

Current Situation

Condominium associations with 150 or more units that do not manage timeshare units must post certain documents to a website accessible only to unit owners and condominium association employees. The condominium association's website must include:

- The recorded declaration of condominium of each condominium operated by the condominium association and each amendment to each declaration;
- The recorded condominium association bylaws and each bylaws amendment;
- The condominium association's articles of incorporation, or other documents creating the condominium association, and each amendment thereto, which copy must be a copy of the articles of incorporation filed with the Department of State;
- The condominium association rules;
- Any management agreement, lease, or other contract to which the condominium association is a party or under which the condominium association or the unit owners have an obligation or responsibility;
- Summaries or complete copies of bids for materials, equipment, or services, which must be maintained on the website for one year;
- The annual budget and any proposed budget to be considered at the annual meeting;
- The financial report and any proposed financial report to be considered at a meeting;
- Each director's certification;
- All contracts or transactions between the condominium association and any director, corporation, firm, or condominium association that is not an affiliated condominium association

[18] *Id.*
[19] Gary L. Wickert & Kelsey Burazin, *Subrogating Condominium Damage*, Claims Journal June 4, 2015, https://www.claimsjournal.com/news/national/2015/06/04/263728.htm (last visited Jan. 10, 2020).
[20] *Aurora Loan Services LLC v. Senchuk*, 36 So. 3d 716, 717 (Fla. 1st DCA 2010).
[21] S. 718.111(11), F.S. (2009); *See also* Senate Analysis of 2010 Senate Bill 1196 & 1222 (April 9, 2010).

or any other entity in which a condominium association director is also a director or officer and financially interested;
- Any contract or document regarding the conflict of interest or possible conflict of interest of a community association manager or a board member;
- The notice of any unit owner meeting and the meeting's agenda, posted at least 14 days before the meeting in plain view on the front page of the website or on a separate subpage of the website labeled "Notices" which is conspicuously visible and linked on the front page; and
- Any documents to be considered during a meeting or listed on the meeting's agenda, which must be posted at least seven days before the meeting where the document will be considered.[22]

Effect of the Bill

The bill allows a condominium association to post the required documents on a mobile application downloadable to a mobile device or to a website.

Condominium Term Limits

Current Situation

Condominium association board members serve one-year terms, but a board member may serve a two-year term if allowed by association's bylaws or articles of incorporation.[23]

In 2017, the Legislature passed a law prohibiting a condominium association board member from serving more than four consecutive two-year terms unless two-thirds of the total voting interests approve his or her continued service or there are not enough eligible candidates to fill board vacancies.[24]

In 2018, the Legislature amended the term limit provision for condominium board members to clarify that a board member could not serve more than eight consecutive years instead of four consecutive two-year terms.[25] Questions from the public remain about whether time served on a board prior to the enactment of the term limit provision counts toward the eight-year maximum.[26]

Effect of the Bill

The bill provides that only board service occurring after July 1, 2018, counts towards a board member's eight-year maximum.

Condominium Transfer Costs

Current Situation

A condominium association may not charge a potential buyer or renter costs or fees in connection with the sale, lease, sublease, or other unit transfer type unless:
- The fee is limited to $100 or less;
- The fee is provided for in the association's governing documents; and
- The association approves the sale, lease, sublease, or transfer.[27]

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[22] S. 718.111(12)(g), F.S.
[23] S. 718.112(2)(d), F.S.
[24] *See* House Analysis of 2017 House Bill 1237 (July 5, 2017).
[25] *See* House Analysis of 2018 House Bill 841 (Mar. 27, 2018).
[26] David G. Muller, *Is new term limit restriction retroactive*, Naples Daily News (Sept. 15, 2018) https://www.naplesnews.com/story/money/real-estate/2018/09/15/new-term-limit-restriction-retroactive/1259991002/ (last visited Jan. 10, 2020).
[27] S. 718.112(2)(i), F.S.

A condominium association may require a potential renter to provide the association a security deposit equivalent to one month of rent. The association must place the security deposit in an escrow account maintained by the association.[28]

Effect of the Bill

The bill provides that, in addition to a $100 administrative fee, a condominium association may charge a potential buyer or renter the actual cost to perform any background check or screening required in connection with the sale, mortgage, lease, sublease, or other unit transfer type.

Condominium Service Providers Conflicts of Interest

Current Situation

Prior to 2017, a condominium association could sign a contract for maintenance or management services with an entity in which a member of the association's board of directors had a financial interest. The contract had to disclose the board member's financial interest, and a discussion of the financial interest had to be in the minutes of the meeting at which the vote to authorize the contract was held. Any contract that failed to disclose such interest was unenforceable.[29] The contract also had to be affirmed by a two-thirds vote of the members of the board of directors present. The board member with a financial interest in the entity could not participate in the vote.[30]

In 2017, the Legislature passed a law prohibiting a condominium association from employing or contracting with any service provider in which a board member, or a relative of a board member within the third degree of consanguinity by blood or marriage, has a financial interest. This restriction does not apply if the board member or relative owns less than one percent of the equity shares of the service provider or to timeshare condominiums.[31]

Effect of the Bill

The bill repeals the provision prohibiting a condominium association from employing or contracting with any service provider in which a board member or a relative of a board member has a financial relationship. However, the bill maintains the provision requiring a board member's financial interest be disclosed in the contract with the association and in the minutes of the meeting at which the board votes on the contract. Any contract that fails to disclose such interest is unenforceable. The contract also requires an affirmative vote of two-thirds of the board of directors present and prohibits a board member with a financial interest from participating in the vote. This restores the law applicable to board member conflicts of interest to its pre-2017 state.

Condominium Electric Car Charging Stations and Alternative Fuels

Condominium Electronic Car Charging Stations – Current Situation

In 2018, the Legislature passed a law prohibiting a condominium association from preventing a unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area. The electricity charges for the station must be separately metered by the unit owner.[32]

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28 *Id.*
29 S. 718.3026(3), F.S.
30 *Id.*
31 *See* House Analysis, *supra* note 24.
32 *See* House Analysis, *supra* note 25.

The installation may not cause irreparable damage to the condominium property, and the association may require the unit owner to:[33]

- Comply with bona fide safety requirements, consistent with applicable building code or recognized safety standards;
- Comply with reasonable architectural standards adopted by the association so long as such standards do not prohibit the installation of such station or substantially increase the cost;
- Engage the services of a duly licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an electric vehicle charging station;
- Provide a certificate of insurance naming the association as an additional insured on the policy; and
- Reimburse the association for the actual cost of any increased insurance premium amount attributable to the electric vehicle charging station.

The costs of installation, operation, maintenance, repair, and removal are the responsibility of the unit owner or the owner's successor and the association may use their assessment powers to enforce the payment of such costs.[34]

The association must grant an implied easement across the common elements to the unit owner for the installation of the electric vehicle charging station and any necessary equipment for the furnishing of electrical power to the electric vehicle charging station.[35]

Alternative Fuel – Current Situation

The Florida Clean Fuel act provides that alternative fuels include:

- Electricity;
- Biodiesel;
- Natural gas;
- Propane; and
- Any other fuel that may be deemed appropriate in the future by the Department of Environmental Protection[36] with guidance from the Clean Fuel Florida Advisory Board.[37]

Condominium Electric Car Charging Stations and Alternative Fuels – Effect of the Bill

The bill provides that a condominium is prohibited from preventing a unit owner from installing an alternative fuel station or an electric vehicle charging station within the boundaries of the unit owner's limited common element or exclusively designated parking area.

The bill gives "alternative fuel" the same meaning as s. 403.42, F.S., and defines alternative fuel vehicle to mean a motor vehicle powered by an alternative fuel or a combination of alternative fuels.

A unit owner installing an alternative fuel station is subject to the same requirements as an owner installing an electric vehicle charging station. The unit owner is also responsible for the supply and storage of the alternative fuel.

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[33] S. 718.113(8), F.S.
[34] *Id.*
[35] *Id.*
[36] Currently, the Department of Environmental Protection has not approved any additional alternative fuels. Email from Alex Bickley, Director of External Affairs, Clean Fuel Act, (Dec. 13, 2019).
[37] S. 403.42, F.S.; The Clean Fuel Advisory Board in a 22-member board made up of government officials and members in the alternative fuel, motor vehicle, and transportation industry that dissolved in 2006. In its 2003 report, the board stated that in addition to natural gas, propane, electricity, and bio-diesel, alternative fuels can also include methanol, ethanol, hydrogen, synthetic fuels, and vehicles with drivetrain technologies such as fuel cells. Clean Fuel Florida Advisory Board, *Cornerstone Report*, (January 2003) https://www.cutr.usf.edu/wp-content/uploads/2012/08/CFFAB-Cornerstone-Report-Final-Jan-2003.pdf (last visited Jan. 10, 2020).

The bill allows a unit owner to use an embedded meter to meter the electricity used by an electric vehicle charging station or alternative fuel station or to have the station separately metered.

The bill also provides that the unit owner is responsible for complying with all federal, state, or local laws or regulations applicable to the installation, maintenance, or removal of electric vehicle charging stations or alternative fuel stations.

Condominium and HOA Fines and Suspensions

Current Situation

Condominium associations and HOAs may levy fines against or suspend the right of an owner, occupant, or an owner or occupant's guest, to use the common elements for failing to comply with any provision in the association's declaration, bylaws, or rules.[38]

A board may not impose a fine or suspension without giving at least 14 days' written notice of the fine or suspension and the opportunity for a hearing. The hearing must be held before a committee of unit or parcel owners who are not board members or residing in a board member's household. The role of the committee is to determine whether to confirm or reject the fine or suspension.[39]

A fine approved by the committee must be paid to the association five days after the committee meeting. The condominium or HOA must provide written notice of any fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or guest of the unit owner.[40]

Effect of the Bill

The bill provides that if a fine is approved by the committee, it must be paid to the association five days after notice of the approved fine is sent to the unit or parcel owner and, if applicable, to any tenant, licensee, or invitee of the owner, instead of five days after the meeting approving the fine.

Notice of Elections for Condominium Associations

Current Situation

Condominium Associations must mail, deliver, or electronically transmit notice of an election to unit owners at least 60 days before the election. Condominium associations must also mail, deliver, or electronically transmit a second notice of election to the unit owners along with a ballot listing all the candidates. However, no exact time is currently specified for the provision of the second notice.[41]

Effect of the Bill

The bill provides that the second election notice must be mailed, delivered, or electronically transmitted to unit owners not less than 14 days or more than 34 days prior to the election.

Notice of Meetings for Condominium Associations

Current Situation

A condominium association must provide written notice of the association's annual meeting. The notice must include an agenda, and must be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting. The notice must also be posted in a conspicuous place on

[38] Ss. 718.303(3) and 720.305(2)(a), F.S.
[39] *Id.*
[40] *Id.*
[41] S. 718.112(2)(d), F.S.

condominium property for at least 14 continuous days before the annual meeting or repeatedly broadcast with the agenda on a closed-circuit cable television system serving the association.[42]

Effect of the Bill

The bill applies the requirements to provide written notice to each owner and conspicuously post such notice to all unit owner meetings, not just the annual meeting.

The bill also provides that except for the annual meeting, the time-period that a condominium association must serve notice of meetings to the owners and conspicuously post such notice is determined by the association's bylaws. If the bylaws are silent, the notice must be sent to the unit owners and conspicuously posted at least 14 days before the meeting.

Notice of Meetings for HOAs

Current Situation

HOAs must notice all board meetings by posting notice in a conspicuous place on the HOA's property for at least 48 hours. Notice must be posted 14 days before meetings where a nonemergency special assessment or an amendment to the rules regarding parcel use is considered.[43]

HOAs are required to notice all member meetings by mailing, hand delivering, or electronically transmitting notice before the meeting and posting the notice in a conspicuous place before the meeting. If an HOA opts to broadcast notice in lieu of posting notice, it must do so at least four times during every broadcast hour of each day.[44] Additionally, when notice of an HOA meeting is mailed or delivered to an owner's address it must be sent to the address identified as the parcel owner's mailing address on the property appraiser's website for the county in which the owner's parcel is located.[45]

In 2018, the Legislature passed a law allowing condominium and cooperatives to adopt rules for noticing all board and owner meetings on a website if the time requirements for physically posting the board meetings are met. Any rule adopted for website notice must require the association to send an electronic notice providing a hyperlink to the website where the notice is posted to all unit owners whose email addresses are part of the official records in the same manner as notice for a member meeting. Notice by website does not remove the requirement to comply with the other notice requirements.[46]

Effect of the Bill

The bill amends HOA law to mirror condominium and cooperative law by allowing HOAs to adopt rules for noticing all board and owner meetings on a website if the time requirements for physically posting the notices are met. Any rule adopted for website notice must include a requirement that the association send an electronic notice providing a hyperlink to the website where the notice is posted to all parcel owners whose email addresses are part of the official records in the same manner as notice for a member meeting. Notice by website must be in addition to the other notice requirements.

The bill also provides that when notice of a meeting is mailed or delivered to an owner's address it must be sent to the address identified as the parcel owner's mailing address in the HOA's official records, instead of the address identified as the parcel's owner's mailing address on the property appraiser's website.

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[42] S. 718.112(d), F.S.
[43] Ss. 718.112(2), 719.106(1), & 720.303(2)(c), F.S.
[44] *Id.*
[45] S. 720.306(1)(g), F.S.
[46] *See* House Analysis, *supra* note 25.

Cooperative Associations Video Conferencing

Current Situation

Cooperative association board members and committee members may attend meetings by telephone. If a board or committee member attends a meeting by telephone, a speaker must be used so the member may be heard by the rest of the board or committee and by any unit owners in attendance.[47]

Effect of the Bill

The bill provides that cooperative association board members and committee members may attend meetings by telephone, real time video conferencing, or by using a similar real-time electronic or video communication. If a board or committee member attends a meeting by telephone, video, or electronic or video communication, a speaker must be used so the member may be heard by the rest of the board or committee and by any unit owners in attendance.

HOA Swimming Pools

Current Situation

The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of public swimming pools in Florida under ch. 514, F.S. Inspections and permitting for swimming pools are conducted by the county health departments. In order to operate or continue to operate a public swimming pool, a valid operating permit from DOH must be obtained. If DOH determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and rules, DOH will issue a permit. However, if it is determined that the pool is not in compliance with state laws and rules, the application for a permit will be denied.[48]

Pools that are used by condominiums or cooperatives with 32 units or less and which are not being operated as public lodging establishments are exempt from DOH's public pools requirements.[49] HOA pools are not exempt from DOH regulation even where the HOA has 32 homes or less.

Effect of the Bill

The bill provides that pools for HOAs and other property associations with 32 parcels or less and not operating as public lodging establishments are also exempt from DOH's public pools requirements.

Condominium Ombudsman

Current Situation

Within the Division is housed the Office of the Condominium Ombudsman (Ombudsman). The Ombudsman is an attorney appointed by the Governor to serve as a neutral resource for unit owners and condominium associations. The Ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the Division, and the Legislature on any matter or subject within the jurisdiction of the Division. In addition, the Ombudsman may make recommendations to the Division for changes in rules and procedures for the filing, investigation, and resolution of complaints.[50]

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[47] S. 719.106(1)(b), F.S.
[48] S. 514.031(1), F.S.
[49] S. 514.0115(2), F.S.
[50] Ss. 718.5011 & 718.5012, F.S.

The Ombudsman also acts as a liaison between the Division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.[51]

The Ombudsman is required to keep his or her principal office in Leon County, Florida, on Division premises or, if suitable space cannot be provided on such premises, in a place convenient to the Division. However, the Ombudsman may establish branch offices elsewhere in the state with the Governor's approval.

Effect of the Bill

The bill deletes the requirement that the Ombudsman keep his or her principal office in Leon County, Florida, but maintains the requirement that the Ombudsman's office be in a place convenient to the Division.

The Fourteenth Amendment of the U.S. Constitution and Article II of the Florida Constitution

Current Situation

Section 1 of the Fourteenth Amendment of the U.S. Constitution provides that:[52]

- Every person born or naturalized in the U.S. is a citizen of the U.S. and the state where they live;
- Every person has equal protection of the laws;
- No state may curtail the privileges or immunities of citizens; and
- No state may deprive any person of life, liberty, or property without due process.

The Fourteenth Amendment only applies to the states, not private parties. However, the United States Supreme Court ruled that a racially restrictive private covenant in a land deed violates the Fourteenth Amendment. The Supreme Court determined that even though a restrictive covenant is between private parties, because a state court was the entity that had to enforce the covenant, the covenant violated the Fourteenth Amendment.[53]

According to news articles, residents in Florida and across the country have discovered old restrictions and covenants in deeds and community association governing documents prohibiting minorities from owning or renting property in the neighborhood. These restrictions cannot be enforced because they violate the Fourteenth Amendment as well as the Federal Fair Housing Act and the Florida Fair Housing Act, which applies if the property is in Florida.[54] However, these restrictions and covenants can be difficult to remove.[55]

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[51] *Id.*
[52] U.S. Const. amend. XIV, §1.
[53] *Shelley v. Kramer*, 68 S.Ct. 836 (U.S. 1948).
[54] The Federal Fair Housing Act and the Florida Fair Housing Act prohibit discrimination in home sales, financing, and rentals based on race, color, sex, pregnancy, disability, nationality, religion, and familial status. *See* 42 U.S.C. § 3601-189; *See* Ch. 760, part II, F.S.
[55] TaMaryn Waters, *Attorney Wants outdated, racist covenant language in Betton Hills stripped*, Tallahassee Democrat (July 1, 2019), https://www.tallahassee.com/story/news/money/2019/07/01/attorney-wants-outdated-racist-covenant-language-betton-hills-stripped-tallahassee/1546406001/ (last visited Jan. 10, 2020); *Judy L. Thomas, 'Curse of covenant' persists — restrictive rules, while unenforceable, have lingering legacy*, The Kansas City Star (July 27, 2016), https://www.kansascity.com/news/local/article92156112.html (last visited Jan. 10, 2020); Rachel Spacek, *'No persons other than persons of the White race': Racist language remains in older Idaho homes' documents*, Idaho Press (Nov. 5, 2019), https://www.idahopress.com/news/local/no-persons-other-than-persons-of-the-white-race-racist/article_167d13e1-59ce-5f03-b1e1-771709da5e4b.html (last visited Jan. 10, 2020).

Article I, section 2, of the Florida Constitution is similar to the Fourteenth Amendment in the U.S. Constitution, establishing the basic rights of all natural persons in Florida and providing that all such persons:[56]

- Are equal before the law;
- Have inalienable rights, including the right to:
  - Enjoy and defend life and liberty;
  - Pursue happiness;
  - Be rewarded for industry; and
  - To acquire, possess, and protect property; and
- May not be deprived of any right because of race, religion, national origin, or physical disability.

Effect of the Bill

The bill restates that any provision in a community association's declaration, bylaws, or rules that violates any right under the Fourteenth Amendment of the U.S. Constitution or article I, section 2 of the Florida Constitution is void and unenforceable, and no action is required by an association to remove or amend such provisions because they cannot be enforced.

The bill also provides that a community association may record a notice in the county in which it is located indicating that it does not intend to enforce any regulation in its declaration, bylaws, or rules that violates the Fourteenth Amendment of the U.S. Constitution or article I, section 2 of the Florida Constitution. However, the bill specifies that an association's failure to record such notice may not be the basis for liability or evidence of discrimination or an intent to discriminate.

B. SECTION DIRECTORY:

Section 1: Amends s. 514.0015, F.S., relating to exemptions from supervision or regulation; variances.

Section 2: Amends s. 627.714, F.S., relating to residential condominium unit owner coverage; loss assessment coverage required.

Section 3: Amends s. 718.111, F.S., relating to the association.

Section 4: Amends s. 718.112, F.S, relating to bylaws.

Section 5: Amends s. 718.113, F.S., relating to maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.

Section 6: Amends s. 718.303, F.S., relating to obligations of owners and occupants; remedies.

Section 7: Amends s. 718.5014, F.S., relating to ombudsman location.

Section 8: Amends s. 719.103, F.S., relating to definitions.

Section 9: Amends s. 719.104, F.S., cooperatives; access to units; records; financial reports; assessments; purchase of leases.

Section 10: Amends s. 719.106, F.S., relating to bylaws; cooperative ownership.

Section 11: Amends s. 720.303, F.S., relating to association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.

Section 12: Amends s. 720.305, F.S., relating to obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.

Section 13: Amends s. 720.306, F.S., relating to meetings of members; voting and election procedures; amendments.

Section 14: Amends s. 720.3075, F.S, relating to prohibited clauses in association documents.

Section 15: Provides an effective date of July 1, 2020.

[56] Art. I, s. 2, Fla. Const.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is unknown if prohibiting condominium owners' insurance policies from providing rights of subrogation against the association will increase or decrease the cost of condominium unit owners' insurance policies.

D. FISCAL COMMENTS:

It is unknown whether the change in classification of cooperatives from personal to real property for the purpose of estate taxes or laws related to devise and descent will have an impact on state revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to effect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 11, 2019, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Corrects a scrivener's error by correcting a reference to the Florida Constitution, from article II, to article I, section 2.
- Permits a unit owner in a condominium association to install an alternative fuel station for an alternative fuel motor vehicle within the boundaries of the owner's limited common element or exclusively designated parking area.

1 A bill to be entitled
2 An act relating to community associations; amending s.
3 514.0115, F.S.; exempting certain property association
4 pools from Department of Health regulations; amending
5 s. 627.714, F.S.; prohibiting subrogation rights
6 against a condominium association under certain
7 circumstances; amending s. 718.111, F.S.; requiring
8 certain records to be maintained for a specified time;
9 prohibiting an association from requiring certain
10 actions related to the inspection of records; revising
11 requirements relating to certain condominium
12 associations posting digital copies of certain
13 documents; amending s. 718.112, F.S.; prohibiting
14 certain provisions in governing documents; authorizing
15 the association to record certain notice in the public
16 record; limiting liability; specifying that only board
17 service that occurs on or after a specified date may
18 be used for calculating a board member's term limit;
19 providing requirements for certain notices;
20 prohibiting an association from charging certain fees;
21 providing an exception; deleting a prohibition against
22 employing or contracting with certain service
23 providers; amending s. 718.113, F.S.; revising
24 regulations for electric vehicles; providing
25 definitions; providing that an association may not

26 prohibit a unit owner from installing an alternate
27 fuel station; providing requirements for installing
28 such fuel station; amending s. 718.303, F.S.; revising
29 requirements for certain actions for failure to comply
30 with specified provisions; revising requirements for
31 certain fines; amending s. 718.5014, F.S.; revising
32 the location of the principal office of the Office of
33 the Condominium Ombudsman; amending s. 719.103, F.S.;
34 revising the definition of the term "unit" to specify
35 that an interest in a cooperative unit is an interest
36 in real property; amending s. 719.104, F.S.;
37 prohibiting an association from requiring certain
38 actions related to the inspection of records; amending
39 s. 719.106, F.S.; revising provisions related to a
40 quorum and voting rights for members remotely
41 participating in meetings; prohibiting certain
42 provisions in governing documents; authorizing the
43 association to record certain notice in the public
44 record; limiting liability; amending s. 720.303, F.S.;
45 authorizing an association to adopt procedures for
46 electronic meeting notices; revising the documents
47 that constitute the official records of an
48 association; amending s. 720.305, F.S.; providing
49 requirements for certain fines; amending s. 720.306,
50 F.S.; revising requirements for providing certain

51 notices; amending s. 720.3075, F.S.; prohibiting
52 certain provisions in governing documents; authorizing
53 the association to record certain notice in the public
54 record; limiting liability; providing an effective
55 date.
56
57 Be It Enacted by the Legislature of the State of Florida:
58
59 Section 1. Paragraph (a) of subsection (2) of section
60 514.0115, Florida Statutes, is amended to read:
61 514.0115 Exemptions from supervision or regulation;
62 variances.—
63 (2)(a) Pools serving condominium, cooperative, and
64 homeowners' associations, as well as other property
65 associations, which have no more than 32 ~~condominium or~~
66 ~~cooperative~~ units or parcels and which are not operated as ~~a~~
67 public lodging establishments are ~~establishment shall be~~ exempt
68 from supervision under this chapter, except for water quality.
69 Section 2. Subsection (4) of section 627.714, Florida
70 Statutes, is amended to read:
71 627.714 Residential condominium unit owner coverage; loss
72 assessment coverage required.—
73 (4) Every individual unit owner's residential property
74 policy must contain a provision stating that the coverage
75 afforded by such policy is excess coverage over the amount

76 recoverable under any other policy covering the same property.
77 If a condominium association's insurance policy does not provide
78 rights for subrogation against the unit owners in the
79 association, an insurance policy issued to an individual unit
80 owner located in the association may not provide rights of
81 subrogation against the condominium association.
82 Section 3. Paragraphs (a), (b), (c), and (g) of subsection
83 (12) of section 718.111, Florida Statutes, are amended to read:
84 718.111 The association.—
85 (12) OFFICIAL RECORDS.—
86 (a) From the inception of the association, the association
87 shall maintain each of the following items, if applicable, which
88 constitutes the official records of the association:
89 1. A copy of the plans, permits, warranties, and other
90 items provided by the developer pursuant to s. 718.301(4).
91 2. A photocopy of the recorded declaration of condominium
92 of each condominium operated by the association and each
93 amendment to each declaration.
94 3. A photocopy of the recorded bylaws of the association
95 and each amendment to the bylaws.
96 4. A certified copy of the articles of incorporation of
97 the association, or other documents creating the association,
98 and each amendment thereto.
99 5. A copy of the current rules of the association.
100 6. A book or books that contain the minutes of all

101 meetings of the association, the board of administration, and
102 the unit owners.
103 7. A current roster of all unit owners and their mailing
104 addresses, unit identifications, voting certifications, and, if
105 known, telephone numbers. The association shall also maintain
106 the e-mail addresses and facsimile numbers of unit owners
107 consenting to receive notice by electronic transmission. The e-
108 mail addresses and facsimile numbers are not accessible to unit
109 owners if consent to receive notice by electronic transmission
110 is not provided in accordance with sub-subparagraph (c)3.e.
111 However, the association is not liable for an inadvertent
112 disclosure of the e-mail address or facsimile number for
113 receiving electronic transmission of notices.
114 8. All current insurance policies of the association and
115 condominiums operated by the association.
116 9. A current copy of any management agreement, lease, or
117 other contract to which the association is a party or under
118 which the association or the unit owners have an obligation or
119 responsibility.
120 10. Bills of sale or transfer for all property owned by
121 the association.
122 11. Accounting records for the association and separate
123 accounting records for each condominium that the association
124 operates. Any person who knowingly or intentionally defaces or
125 destroys such records, or who knowingly or intentionally fails

126 to create or maintain such records, with the intent of causing
127 harm to the association or one or more of its members, is
128 personally subject to a civil penalty pursuant to s.
129 718.501(1)(d). The accounting records must include, but are not
130 limited to:
131 a. Accurate, itemized, and detailed records of all
132 receipts and expenditures.
133 b. A current account and a monthly, bimonthly, or
134 quarterly statement of the account for each unit designating the
135 name of the unit owner, the due date and amount of each
136 assessment, the amount paid on the account, and the balance due.
137 c. All audits, reviews, accounting statements, and
138 financial reports of the association or condominium.
139 d. All contracts for work to be performed. Bids for work
140 to be performed are also considered official records and must be
141 maintained by the association <u>for at least 1 year after receipt</u>
142 <u>of the bid</u>.
143 12. Ballots, sign-in sheets, voting proxies, and all other
144 papers and electronic records relating to voting by unit owners,
145 which must be maintained for 1 year from the date of the
146 election, vote, or meeting to which the document relates,
147 notwithstanding paragraph (b).
148 13. All rental records if the association is acting as
149 agent for the rental of condominium units.
150 14. A copy of the current question and answer sheet as

151 described in s. 718.504.
152 ~~15. All other written records of the association not~~
153 ~~specifically included in the foregoing which are related to the~~
154 ~~operation of the association.~~
155 15.~~16.~~ A copy of the inspection report as described in s.
156 718.301(4)(p).
157 16.~~17.~~ Bids for materials, equipment, or services.
158 17. All other records of the association not specifically
159 included in subparagraphs 1.-16. which are related to the
160 operation of the association.
161 (b) The official records specified in subparagraphs (a)1.-
162 6. must be permanently maintained from the inception of the
163 association. Bids for work to be performed or for materials,
164 equipment, or services must be maintained for at least 1 year
165 after receipt of the bid. All other official records must be
166 maintained within the state for at least 7 years, unless
167 otherwise provided by general law. The records of the
168 association shall be made available to a unit owner within 45
169 miles of the condominium property or within the county in which
170 the condominium property is located within 10 working days after
171 receipt of a written request by the board or its designee.
172 However, such distance requirement does not apply to an
173 association governing a timeshare condominium. This paragraph
174 may be complied with by having a copy of the official records of
175 the association available for inspection or copying on the

176 condominium property or association property, or the association
177 may offer the option of making the records available to a unit
178 owner electronically via the Internet or by allowing the records
179 to be viewed in electronic format on a computer screen and
180 printed upon request. The association is not responsible for the
181 use or misuse of the information provided to an association
182 member or his or her authorized representative in ~~pursuant to~~
183 ~~the~~ compliance with ~~requirements of~~ this chapter unless the
184 association has an affirmative duty not to disclose such
185 information under ~~pursuant to~~ this chapter.
186 (c)1. The official records of the association are open to
187 inspection by any association member or the authorized
188 representative of such member at all reasonable times. The right
189 to inspect the records includes the right to make or obtain
190 copies, at the reasonable expense, if any, of the member or
191 authorized representative of such member. A renter of a unit has
192 a right to inspect and copy the association's bylaws and rules.
193 The association may adopt reasonable rules regarding the
194 frequency, time, location, notice, and manner of record
195 inspections and copying, but may not require a member to
196 demonstrate any purpose or state any reason for the inspection.
197 The failure of an association to provide the records within 10
198 working days after receipt of a written request creates a
199 rebuttable presumption that the association willfully failed to
200 comply with this paragraph. A unit owner who is denied access to

201 official records is entitled to the actual damages or minimum
202 damages for the association's willful failure to comply. Minimum
203 damages are $50 per calendar day for up to 10 days, beginning on
204 the 11th working day after receipt of the written request. The
205 failure to permit inspection entitles any person prevailing in
206 an enforcement action to recover reasonable attorney fees from
207 the person in control of the records who, directly or
208 indirectly, knowingly denied access to the records.
209 2. Any person who knowingly or intentionally defaces or
210 destroys accounting records that are required by this chapter to
211 be maintained during the period for which such records are
212 required to be maintained, or who knowingly or intentionally
213 fails to create or maintain accounting records that are required
214 to be created or maintained, with the intent of causing harm to
215 the association or one or more of its members, is personally
216 subject to a civil penalty under ~~pursuant to~~ s. 718.501(1)(d).
217 3. The association shall maintain an adequate number of
218 copies of the declaration, articles of incorporation, bylaws,
219 and rules, and all amendments to each of the foregoing, as well
220 as the question and answer sheet as described in s. 718.504 and
221 year-end financial information required under this section, on
222 the condominium property to ensure their availability to unit
223 owners and prospective purchasers, and may charge its actual
224 costs for preparing and furnishing these documents to those
225 requesting the documents. An association shall allow a member or

226 his or her authorized representative to use a portable device,
227 including a smartphone, tablet, portable scanner, or any other
228 technology capable of scanning or taking photographs, to make an
229 electronic copy of the official records in lieu of the
230 association's providing the member or his or her authorized
231 representative with a copy of such records. The association may
232 not charge a member or his or her authorized representative for
233 the use of a portable device. Notwithstanding this paragraph,
234 the following records are not accessible to unit owners:
235 a. Any record protected by the lawyer-client privilege as
236 described in s. 90.502 and any record protected by the work-
237 product privilege, including a record prepared by an association
238 attorney or prepared at the attorney's express direction, which
239 reflects a mental impression, conclusion, litigation strategy,
240 or legal theory of the attorney or the association, and which
241 was prepared exclusively for civil or criminal litigation or for
242 adversarial administrative proceedings, or which was prepared in
243 anticipation of such litigation or proceedings until the
244 conclusion of the litigation or proceedings.
245 b. Information obtained by an association in connection
246 with the approval of the lease, sale, or other transfer of a
247 unit.
248 c. Personnel records of association or management company
249 employees, including, but not limited to, disciplinary, payroll,
250 health, and insurance records. For purposes of this sub-

251 subparagraph, the term "personnel records" does not include
252 written employment agreements with an association employee or
253 management company, or budgetary or financial records that
254 indicate the compensation paid to an association employee.
255 d. Medical records of unit owners.
256 e. Social security numbers, driver license numbers, credit
257 card numbers, e-mail addresses, telephone numbers, facsimile
258 numbers, emergency contact information, addresses of a unit
259 owner other than as provided to fulfill the association's notice
260 requirements, and other personal identifying information of any
261 person, excluding the person's name, unit designation, mailing
262 address, property address, and any address, e-mail address, or
263 facsimile number provided to the association to fulfill the
264 association's notice requirements. Notwithstanding the
265 restrictions in this sub-subparagraph, an association may print
266 and distribute to unit ~~parcel~~ owners a directory containing the
267 name, unit ~~parcel~~ address, and all telephone numbers of each
268 unit ~~parcel~~ owner. However, an owner may exclude his or her
269 telephone numbers from the directory by so requesting in writing
270 to the association. An owner may consent in writing to the
271 disclosure of other contact information described in this sub-
272 subparagraph. The association is not liable for the inadvertent
273 disclosure of information that is protected under this sub-
274 subparagraph if the information is included in an official
275 record of the association and is voluntarily provided by an

276 owner and not requested by the association.
277 f. Electronic security measures that are used by the
278 association to safeguard data, including passwords.
279 g. The software and operating system used by the
280 association which allow the manipulation of data, even if the
281 owner owns a copy of the same software used by the association.
282 The data is part of the official records of the association.
283 (g)1. By January 1, 2019, an association managing a
284 condominium with 150 or more units which does not contain
285 timeshare units shall post digital copies of the documents
286 specified in subparagraph 2. on its website or make such
287 documents available through an application that can be
288 downloaded on a mobile device.
289 a. The association's website or application must be:
290 (I) An independent website, application, or web portal
291 wholly owned and operated by the association; or
292 (II) A website, application, or web portal operated by a
293 third-party provider with whom the association owns, leases,
294 rents, or otherwise obtains the right to operate a web page,
295 subpage, web portal, ~~or~~ collection of subpages or web portals,
296 or application which is dedicated to the association's
297 activities and on which required notices, records, and documents
298 may be posted or made available by the association.
299 b. The association's website or application must be
300 accessible through the Internet and must contain a subpage, web

301 portal, or other protected electronic location that is
302 inaccessible to the general public and accessible only to unit
303 owners and employees of the association.
304 c. Upon a unit owner's written request, the association
305 must provide the unit owner with a username and password and
306 access to the protected sections of the association's website or
307 application that contain any notices, records, or documents that
308 must be electronically provided.
309 2. A current copy of the following documents must be
310 posted in digital format on the association's website or
311 application:
312 a. The recorded declaration of condominium of each
313 condominium operated by the association and each amendment to
314 each declaration.
315 b. The recorded bylaws of the association and each
316 amendment to the bylaws.
317 c. The articles of incorporation of the association, or
318 other documents creating the association, and each amendment to
319 the articles of incorporation or other documents ~~thereto~~. The
320 copy posted pursuant to this sub-subparagraph must be a copy of
321 the articles of incorporation filed with the Department of
322 State.
323 d. The rules of the association.
324 e. A list of all executory contracts or documents to which
325 the association is a party or under which the association or the

326 unit owners have an obligation or responsibility and, after
327 bidding for the related materials, equipment, or services has
328 closed, a list of bids received by the association within the
329 past year. Summaries of bids for materials, equipment, or
330 services which exceed $500 must be maintained on the website or
331 application for 1 year. In lieu of summaries, complete copies of
332 the bids may be posted.
333 f. The annual budget required by s. 718.112(2)(f) and any
334 proposed budget to be considered at the annual meeting.
335 g. The financial report required by subsection (13) and
336 any monthly income or expense statement to be considered at a
337 meeting.
338 h. The certification of each director required by s.
339 718.112(2)(d)4.b.
340 i. All contracts or transactions between the association
341 and any director, officer, corporation, firm, or association
342 that is not an affiliated condominium association or any other
343 entity in which an association director is also a director or
344 officer and financially interested.
345 j. Any contract or document regarding a conflict of
346 interest or possible conflict of interest as provided in ss.
347 468.436(2)(b)6. and 718.3027(3).
348 k. The notice of any unit owner meeting and the agenda for
349 the meeting, as required by s. 718.112(2)(d)3., no later than 14
350 days before the meeting. The notice must be posted in plain view

351 on the front page of the website or application, or on a
352 separate subpage of the website or application labeled "Notices"
353 which is conspicuously visible and linked from the front page.
354 The association must also post on its website or application any
355 document to be considered and voted on by the owners during the
356 meeting or any document listed on the agenda at least 7 days
357 before the meeting at which the document or the information
358 within the document will be considered.
359 1. Notice of any board meeting, the agenda, and any other
360 document required for the meeting as required by s.
361 718.112(2)(c), which must be posted no later than the date
362 required for notice under ~~pursuant to~~ s. 718.112(2)(c).
363 3. The association shall ensure that the information and
364 records described in paragraph (c), which are not allowed to be
365 accessible to unit owners, are not posted on the association's
366 website or application. If protected information or information
367 restricted from being accessible to unit owners is included in
368 documents that are required to be posted on the association's
369 website or application, the association shall ensure the
370 information is redacted before posting the documents ~~online~~.
371 Notwithstanding the foregoing, the association or its agent is
372 not liable for disclosing information that is protected or
373 restricted under ~~pursuant to~~ this paragraph unless such
374 disclosure was made with a knowing or intentional disregard of
375 the protected or restricted nature of such information.

376 4. The failure of the association to post information
377 required under subparagraph 2. is not in and of itself
378 sufficient to invalidate any action or decision of the
379 association's board or its committees.
380 Section 4. Paragraphs (d), (i), and (p) of subsection (2)
381 of section 718.112, Florida Statutes, are amended, and paragraph
382 (c) of subsection (1) is added to that section, to read:
383 718.112 Bylaws.—
384 (1) GENERALLY.—
385 (c) Any provision of the declaration, the association
386 bylaws, or reasonable rules or regulations of the association
387 which diminish or infringe upon any right protected under the
388 Fourteenth Amendment to the United States Constitution or s. 2,
389 Art. I of the State Constitution is void and unenforceable
390 without further action of the association. The association may
391 record a notice in the public records of the county in which the
392 condominium is located evidencing its intention to not enforce
393 such provision. The failure of the association to record a
394 notice in the public record may not be the basis for liability
395 or evidence of discrimination or a discriminatory intention.
396 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
397 following and, if they do not do so, shall be deemed to include
398 the following:
399 (d) Unit owner meetings.—
400 1. An annual meeting of the unit owners must be held at

401 the location provided in the association bylaws and, if the
402 bylaws are silent as to the location, the meeting must be held
403 within 45 miles of the condominium property. However, such
404 distance requirement does not apply to an association governing
405 a timeshare condominium.
406 2. Unless the bylaws provide otherwise, a vacancy on the
407 board caused by the expiration of a director's term must be
408 filled by electing a new board member, and the election must be
409 by secret ballot. An election is not required if the number of
410 vacancies equals or exceeds the number of candidates. For
411 purposes of this paragraph, the term "candidate" means an
412 eligible person who has timely submitted the written notice, as
413 described in sub-subparagraph 4.a., of his or her intention to
414 become a candidate. Except in a timeshare or nonresidential
415 condominium, or if the staggered term of a board member does not
416 expire until a later annual meeting, or if all members' terms
417 would otherwise expire but there are no candidates, the terms of
418 all board members expire at the annual meeting, and such members
419 may stand for reelection unless prohibited by the bylaws. Board
420 members may serve terms longer than 1 year if permitted by the
421 bylaws or articles of incorporation. A board member may not
422 serve more than 8 consecutive years unless approved by an
423 affirmative vote of unit owners representing two-thirds of all
424 votes cast in the election or unless there are not enough
425 eligible candidates to fill the vacancies on the board at the

426 time of the vacancy. Only board service that occurs on or after
427 July 1, 2018, may be used when calculating a board member's term
428 limit. If the number of board members whose terms expire at the
429 annual meeting equals or exceeds the number of candidates, the
430 candidates become members of the board effective upon the
431 adjournment of the annual meeting. Unless the bylaws provide
432 otherwise, any remaining vacancies shall be filled by the
433 affirmative vote of the majority of the directors making up the
434 newly constituted board even if the directors constitute less
435 than a quorum or there is only one director. In a residential
436 condominium association of more than 10 units or in a
437 residential condominium association that does not include
438 timeshare units or timeshare interests, co-owners of a unit may
439 not serve as members of the board of directors at the same time
440 unless they own more than one unit or unless there are not
441 enough eligible candidates to fill the vacancies on the board at
442 the time of the vacancy. A unit owner in a residential
443 condominium desiring to be a candidate for board membership must
444 comply with sub-subparagraph 4.a. and must be eligible to be a
445 candidate to serve on the board of directors at the time of the
446 deadline for submitting a notice of intent to run in order to
447 have his or her name listed as a proper candidate on the ballot
448 or to serve on the board. A person who has been suspended or
449 removed by the division under this chapter, or who is delinquent
450 in the payment of any monetary obligation due to the

451 association, is not eligible to be a candidate for board
452 membership and may not be listed on the ballot. A person who has
453 been convicted of any felony in this state or in a United States
454 District or Territorial Court, or who has been convicted of any
455 offense in another jurisdiction which would be considered a
456 felony if committed in this state, is not eligible for board
457 membership unless such felon's civil rights have been restored
458 for at least 5 years as of the date such person seeks election
459 to the board. The validity of an action by the board is not
460 affected if it is later determined that a board member is
461 ineligible for board membership due to having been convicted of
462 a felony. This subparagraph does not limit the term of a member
463 of the board of a nonresidential or timeshare condominium.
464 3. The bylaws must provide the method of calling meetings
465 of unit owners, including annual meetings. Written notice of an
466 annual meeting must include an agenda;~~, must~~ be mailed, hand
467 delivered, or electronically transmitted to each unit owner at
468 least 14 days before the annual meeting;~~,~~ and ~~must~~ be posted in
469 a conspicuous place on the condominium property at least 14
470 continuous days before the annual meeting. Written notice of a
471 meeting other than an annual meeting must include an agenda; be
472 mailed, hand delivered, or electronically transmitted to each
473 unit owner; and be posted in a conspicuous place on the
474 condominium property in accordance with the minimum period of
475 time for posting a notice as set forth in the bylaws, and if the

476 bylaws do not provide such notice requirements, then at least 14
477 continuous days before the meeting. Upon notice to the unit
478 owners, the board shall, by duly adopted rule, designate a
479 specific location on the condominium property where all notices
480 of unit owner meetings must be posted. This requirement does not
481 apply if there is no condominium property for posting notices.
482 In lieu of, or in addition to, the physical posting of meeting
483 notices, the association may, by reasonable rule, adopt a
484 procedure for conspicuously posting and repeatedly broadcasting
485 the notice and the agenda on a closed-circuit cable television
486 system serving the condominium association. However, if
487 broadcast notice is used in lieu of a notice posted physically
488 on the condominium property, the notice and agenda must be
489 broadcast at least four times every broadcast hour of each day
490 that a posted notice is otherwise required under this section.
491 If broadcast notice is provided, the notice and agenda must be
492 broadcast in a manner and for a sufficient continuous length of
493 time so as to allow an average reader to observe the notice and
494 read and comprehend the entire content of the notice and the
495 agenda. In addition to any of the authorized means of providing
496 notice of a meeting of the board, the association may, by rule,
497 adopt a procedure for conspicuously posting the meeting notice
498 and the agenda on a website serving the condominium association
499 for at least the minimum period of time for which a notice of a
500 meeting is also required to be physically posted on the

501 condominium property. Any rule adopted shall, in addition to
502 other matters, include a requirement that the association send
503 an electronic notice in the same manner as a notice for a
504 meeting of the members, which must include a hyperlink to the
505 website where the notice is posted, to unit owners whose e-mail
506 addresses are included in the association's official records.
507 Unless a unit owner waives in writing the right to receive
508 notice of the annual meeting, such notice must be hand
509 delivered, mailed, or electronically transmitted to each unit
510 owner. Notice for meetings and notice for all other purposes
511 must be mailed to each unit owner at the address last furnished
512 to the association by the unit owner, or hand delivered to each
513 unit owner. However, if a unit is owned by more than one person,
514 the association must provide notice to the address that the
515 developer identifies for that purpose and thereafter as one or
516 more of the owners of the unit advise the association in
517 writing, or if no address is given or the owners of the unit do
518 not agree, to the address provided on the deed of record. An
519 officer of the association, or the manager or other person
520 providing notice of the association meeting, must provide an
521 affidavit or United States Postal Service certificate of
522 mailing, to be included in the official records of the
523 association affirming that the notice was mailed or hand
524 delivered in accordance with this provision.
525 4. The members of the board of a residential condominium

526 shall be elected by written ballot or voting machine. Proxies
527 may not be used in electing the board in general elections or
528 elections to fill vacancies caused by recall, resignation, or
529 otherwise, unless otherwise provided in this chapter. This
530 subparagraph does not apply to an association governing a
531 timeshare condominium.
532 a. At least 60 days before a scheduled election, the
533 association shall mail, deliver, or electronically transmit, by
534 separate association mailing or included in another association
535 mailing, delivery, or transmission, including regularly
536 published newsletters, to each unit owner entitled to a vote, a
537 first notice of the date of the election. A unit owner or other
538 eligible person desiring to be a candidate for the board must
539 give written notice of his or her intent to be a candidate to
540 the association at least 40 days before a scheduled election.
541 Together with the written notice and agenda as set forth in
542 subparagraph 3., the association shall mail, deliver, or
543 electronically transmit a second notice of the election to all
544 unit owners entitled to vote, together with a ballot that lists
545 all candidates <u>not less than 14 days or more than 34 days before</u>
546 <u>the date of the election</u>. Upon request of a candidate, an
547 information sheet, no larger than 8 1/2 inches by 11 inches,
548 which must be furnished by the candidate at least 35 days before
549 the election, must be included with the mailing, delivery, or
550 transmission of the ballot, with the costs of mailing, delivery,

551 or electronic transmission and copying to be borne by the
552 association. The association is not liable for the contents of
553 the information sheets prepared by the candidates. In order to
554 reduce costs, the association may print or duplicate the
555 information sheets on both sides of the paper. The division
556 shall by rule establish voting procedures consistent with this
557 sub-subparagraph, including rules establishing procedures for
558 giving notice by electronic transmission and rules providing for
559 the secrecy of ballots. Elections shall be decided by a
560 plurality of ballots cast. There is no quorum requirement;
561 however, at least 20 percent of the eligible voters must cast a
562 ballot in order to have a valid election. A unit owner may not
563 authorize any other person to vote his or her ballot, and any
564 ballots improperly cast are invalid. A unit owner who violates
565 this provision may be fined by the association in accordance
566 with s. 718.303. A unit owner who needs assistance in casting
567 the ballot for the reasons stated in s. 101.051 may obtain such
568 assistance. The regular election must occur on the date of the
569 annual meeting. Notwithstanding this sub-subparagraph, an
570 election is not required unless more candidates file notices of
571 intent to run or are nominated than board vacancies exist.
572 b. Within 90 days after being elected or appointed to the
573 board of an association of a residential condominium, each newly
574 elected or appointed director shall certify in writing to the
575 secretary of the association that he or she has read the

576 association's declaration of condominium, articles of
577 incorporation, bylaws, and current written policies; that he or
578 she will work to uphold such documents and policies to the best
579 of his or her ability; and that he or she will faithfully
580 discharge his or her fiduciary responsibility to the
581 association's members. In lieu of this written certification,
582 within 90 days after being elected or appointed to the board,
583 the newly elected or appointed director may submit a certificate
584 of having satisfactorily completed the educational curriculum
585 administered by a division-approved condominium education
586 provider within 1 year before or 90 days after the date of
587 election or appointment. The written certification or
588 educational certificate is valid and does not have to be
589 resubmitted as long as the director serves on the board without
590 interruption. A director of an association of a residential
591 condominium who fails to timely file the written certification
592 or educational certificate is suspended from service on the
593 board until he or she complies with this sub-subparagraph. The
594 board may temporarily fill the vacancy during the period of
595 suspension. The secretary shall cause the association to retain
596 a director's written certification or educational certificate
597 for inspection by the members for 5 years after a director's
598 election or the duration of the director's uninterrupted tenure,
599 whichever is longer. Failure to have such written certification
600 or educational certificate on file does not affect the validity

601 of any board action.
602 c. Any challenge to the election process must be commenced
603 within 60 days after the election results are announced.
604 5. Any approval by unit owners called for by this chapter
605 or the applicable declaration or bylaws, including, but not
606 limited to, the approval requirement in s. 718.111(8), must be
607 made at a duly noticed meeting of unit owners and is subject to
608 all requirements of this chapter or the applicable condominium
609 documents relating to unit owner decisionmaking, except that
610 unit owners may take action by written agreement, without
611 meetings, on matters for which action by written agreement
612 without meetings is expressly allowed by the applicable bylaws
613 or declaration or any law that provides for such action.
614 6. Unit owners may waive notice of specific meetings if
615 allowed by the applicable bylaws or declaration or any law.
616 Notice of meetings of the board of administration, unit owner
617 meetings, except unit owner meetings called to recall board
618 members under paragraph (j), and committee meetings may be given
619 by electronic transmission to unit owners who consent to receive
620 notice by electronic transmission. A unit owner who consents to
621 receiving notices by electronic transmission is solely
622 responsible for removing or bypassing filters that block receipt
623 of mass e-mails ~~emails~~ sent to members on behalf of the
624 association in the course of giving electronic notices.
625 7. Unit owners have the right to participate in meetings

626 of unit owners with reference to all designated agenda items.
627 However, the association may adopt reasonable rules governing
628 the frequency, duration, and manner of unit owner participation.
629 8. A unit owner may tape record or videotape a meeting of
630 the unit owners subject to reasonable rules adopted by the
631 division.
632 9. Unless otherwise provided in the bylaws, any vacancy
633 occurring on the board before the expiration of a term may be
634 filled by the affirmative vote of the majority of the remaining
635 directors, even if the remaining directors constitute less than
636 a quorum, or by the sole remaining director. In the alternative,
637 a board may hold an election to fill the vacancy, in which case
638 the election procedures must conform to sub-subparagraph 4.a.
639 unless the association governs 10 units or fewer and has opted
640 out of the statutory election process, in which case the bylaws
641 of the association control. Unless otherwise provided in the
642 bylaws, a board member appointed or elected under this section
643 shall fill the vacancy for the unexpired term of the seat being
644 filled. Filling vacancies created by recall is governed by
645 paragraph (j) and rules adopted by the division.
646 10. This chapter does not limit the use of general or
647 limited proxies, require the use of general or limited proxies,
648 or require the use of a written ballot or voting machine for any
649 agenda item or election at any meeting of a timeshare
650 condominium association or nonresidential condominium

651 association.
652
653 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
654 association of 10 or fewer units may, by affirmative vote of a
655 majority of the total voting interests, provide for different
656 voting and election procedures in its bylaws, which may be by a
657 proxy specifically delineating the different voting and election
658 procedures. The different voting and election procedures may
659 provide for elections to be conducted by limited or general
660 proxy.
661 (i) Transfer fees.—An association may not ~~no~~ charge an
662 applicant any fees, except the actual costs of any background
663 check or screening performed ~~shall be made~~ by the association,
664 ~~or any body thereof~~ in connection with the sale, mortgage,
665 lease, sublease, or other transfer of a unit unless the
666 association is required to approve such transfer and a fee for
667 such approval is provided for in the declaration, articles, or
668 bylaws. Except for the actual costs of any background check or
669 screening performed by the association, any such fee may be
670 preset, but may not ~~in no event may such fee~~ exceed $100 per
671 applicant other than spouses or parent and dependent child, who
672 ~~husband/wife or parent/dependent child, which~~ are considered one
673 applicant. However, if the lease or sublease is a renewal of a
674 lease or sublease with the same lessee or sublessee, a charge
675 may not ~~no charge shall~~ be made. The foregoing notwithstanding,

676 an association may, if the authority to do so appears in the
677 declaration, articles, or bylaws, require that a prospective
678 lessee place a security deposit, in an amount not to exceed the
679 equivalent of 1 month's rent, into an escrow account maintained
680 by the association. The security deposit shall protect against
681 damages to the common elements or association property. Payment
682 of interest, claims against the deposit, refunds, and disputes
683 under this paragraph shall be handled in the same fashion as
684 provided in part II of chapter 83.
685 ~~(p) Service providers; conflicts of interest.—An~~
686 ~~association, which is not a timeshare condominium association,~~
687 ~~may not employ or contract with any service provider that is~~
688 ~~owned or operated by a board member or with any person who has a~~
689 ~~financial relationship with a board member or officer, or a~~
690 ~~relative within the third degree of consanguinity by blood or~~
691 ~~marriage of a board member or officer. This paragraph does not~~
692 ~~apply to a service provider in which a board member or officer,~~
693 ~~or a relative within the third degree of consanguinity by blood~~
694 ~~or marriage of a board member or officer, owns less than 1~~
695 ~~percent of the equity shares.~~
696 Section 5. Subsection (8) of section 718.113, Florida
697 Statutes, is amended to read:
698 718.113 Maintenance; limitation upon improvement; display
699 of flag; hurricane shutters and protection; display of religious
700 decorations.—

701 (8) The Legislature finds that the use of electric
702 vehicles or alternative fuel vehicles conserves and protects the
703 state's environmental resources, provides significant economic
704 savings to drivers, and serves an important public interest. The
705 participation of condominium associations is essential to the
706 state's efforts to conserve and protect the state's
707 environmental resources and provide economic savings to drivers.
708 For purposes of this subsection, the term "alternative fuel" has
709 the same meaning as in s. 403.42, and the term "alternative fuel
710 vehicle" means any motor vehicle, as defined in s. 320.01, that
711 is powered by an alternative fuel or a combination of
712 alternative fuels. Therefore, the installation of an electric
713 vehicle charging station or alternative fuel station shall be
714 governed as follows:
715 (a) A declaration of condominium or restrictive covenant
716 may not prohibit or be enforced so as to prohibit any unit owner
717 from installing an electric vehicle charging station or
718 alternative fuel station within the boundaries of the unit
719 owner's limited common element or exclusively designated parking
720 area. The board of administration of a condominium association
721 may not prohibit a unit owner from installing an electric
722 vehicle charging station for an electric vehicle, as defined in
723 s. 320.01, or an alternative fuel station for an alternative
724 fuel vehicle within the boundaries of his or her limited common
725 element or exclusively designated parking area. The installation

726 of such charging or fuel stations are subject to the provisions
727 of this subsection.
728 (b) The installation may not cause irreparable damage to
729 the condominium property.
730 (c) The electricity for the electric vehicle charging
731 station or alternative fuel station must be separately metered
732 or must use an embedded meter and be payable by the unit owner
733 installing such charging station.
734 (d) The supply and storage of the alternative fuel must be
735 paid by the unit owner installing the alternative fuel station.
736 (e) ~~(d)~~ The unit owner who is installing an electric
737 vehicle charging station or an alternative fuel station is
738 responsible for the costs of installation, operation,
739 maintenance, and repair, including, but not limited to, hazard
740 and liability insurance. The association may enforce payment of
741 such costs under ~~pursuant to~~ s. 718.116.
742 (f) ~~(e)~~ If the unit owner or his or her successor decides
743 there is no longer a need for the electronic vehicle charging
744 station or alternative fuel station, such person is responsible
745 for the cost of removal of the electronic vehicle charging
746 station or alternative fuel station. The association may enforce
747 payment of such costs under ~~pursuant to~~ s. 718.116.
748 (g) The unit owner, or his or her successor, installing
749 the electronic vehicle charging station or alternative fuel
750 station is responsible for complying with all federal, state, or

751 local laws and regulations that apply to the installation,
752 maintenance, or removal of such charging or fuel stations.
753 (h) ~~(f)~~ The association may require the unit owner to:
754 1. Comply with bona fide safety requirements, consistent
755 with applicable building codes or recognized safety standards,
756 for the protection of persons and property.
757 2. Comply with reasonable architectural standards adopted
758 by the association that govern the dimensions, placement, or
759 external appearance of the electric vehicle charging station or
760 alternative fuel station, provided that such standards may not
761 prohibit the installation of such charging or fuel station or
762 substantially increase the cost thereof.
763 3. Engage the services of a licensed and registered
764 electrical contractor or engineer familiar with the installation
765 and core requirements of an electric vehicle charging station or
766 alternative fuel station.
767 4. Provide a certificate of insurance naming the
768 association as an additional insured on the owner's insurance
769 policy for any claim related to the installation, maintenance,
770 or use of the electric vehicle charging station or alternative
771 fuel station within 14 days after receiving the association's
772 approval to install such charging or fuel station.
773 5. Reimburse the association for the actual cost of any
774 increased insurance premium amount attributable to the electric
775 vehicle charging station or alternative fuel station within 14

776 days after receiving the association's insurance premium
777 invoice.
778 (i) ~~(g)~~ The association provides an implied easement across
779 the common elements of the condominium property to the unit
780 owner for purposes of the installation of the electric vehicle
781 charging station or alternative fuel station, and the furnishing
782 of electrical power or the storage of any alternative fuel,
783 including any necessary equipment, to such charging or fuel
784 station, subject to the requirements of this subsection.
785 Section 6. Subsection (1) and paragraph (b) of subsection
786 (3) of section 718.303, Florida Statutes, are amended to read:
787 718.303 Obligations of owners and occupants; remedies.—
788 (1) Each unit owner, ~~each~~ tenant and other invitee, and
789 ~~each~~ association is governed by, and must comply with the
790 provisions of, this chapter, the declaration, the documents
791 creating the association, and the association bylaws which are
792 ~~shall be deemed~~ expressly incorporated into any lease of a unit.
793 Actions at law or in equity ~~for damages or for injunctive~~
794 ~~relief~~, or both, for failure to comply with these provisions may
795 be brought by the association or by a unit owner against:
796 (a) The association.
797 (b) A unit owner.
798 (c) Directors designated by the developer, for actions
799 taken by them before control of the association is assumed by
800 unit owners other than the developer.

801 (d) Any director who willfully and knowingly fails to
802 comply with these provisions.
803 (e) Any tenant leasing a unit, and any other invitee
804 occupying a unit.
805
806 The prevailing party in any such action or in any action in
807 which the purchaser claims a right of voidability based upon
808 contractual provisions as required in s. 718.503(1)(a) is
809 entitled to recover reasonable attorney ~~attorney's~~ fees. A unit
810 owner prevailing in an action between the association and the
811 unit owner under this subsection ~~section~~, in addition to
812 recovering his or her reasonable attorney ~~attorney's~~ fees, may
813 recover additional amounts as determined by the court to be
814 necessary to reimburse the unit owner for his or her share of
815 assessments levied by the association to fund its expenses of
816 the litigation. This relief does not exclude other remedies
817 provided by law. Actions arising under this subsection are not
818 considered ~~may not be deemed to be~~ actions for specific
819 performance.
820 (3) The association may levy reasonable fines for the
821 failure of the owner of the unit or its occupant, licensee, or
822 invitee to comply with any provision of the declaration, the
823 association bylaws, or reasonable rules of the association. A
824 fine may not become a lien against a unit. A fine may be levied
825 by the board on the basis of each day of a continuing violation,

826 with a single notice and opportunity for hearing before a
827 committee as provided in paragraph (b). However, the fine may
828 not exceed $100 per violation, or $1,000 in the aggregate.
829 (b) A fine or suspension levied by the board of
830 administration may not be imposed unless the board first
831 provides at least 14 days' written notice to the unit owner and,
832 if applicable, any tenant ~~occupant~~, licensee, or invitee of the
833 unit owner sought to be fined or suspended, and an opportunity
834 for a hearing before a committee of at least three members
835 appointed by the board who are not officers, directors, or
836 employees of the association, or the spouse, parent, child,
837 brother, or sister of an officer, director, or employee. The
838 role of the committee is limited to determining whether to
839 confirm or reject the fine or suspension levied by the board. If
840 the committee does not approve the proposed fine or suspension
841 by majority vote, the fine or suspension may not be imposed. If
842 the proposed fine or suspension is approved by the committee,
843 the fine payment is due 5 days after notice of the approved fine
844 is provided to the unit owner and, if applicable, to any tenant,
845 licensee, or invitee of the unit owner ~~the date of the committee~~
846 ~~meeting at which the fine is approved~~. The association must
847 provide written notice of such fine or suspension by mail or
848 hand delivery to the unit owner and, if applicable, to any
849 tenant, licensee, or invitee of the unit owner.
850 Section 7. Section 718.5014, Florida Statutes, is amended

851 to read:
852 718.5014 Ombudsman location.—The ombudsman shall maintain
853 his or her principal office in a ~~Leon County on the premises of~~
854 ~~the division or, if suitable space cannot be provided there, at~~
855 ~~another~~ place convenient to the offices of the division which
856 will enable the ombudsman to expeditiously carry out the duties
857 and functions of his or her office. The ombudsman may establish
858 branch offices elsewhere in the state upon the concurrence of
859 the Governor.
860 Section 8. Subsection (25) of section 719.103, Florida
861 Statutes, is amended to read:
862 719.103 Definitions.—As used in this chapter:
863 (25) "Unit" means a part of the cooperative property which
864 is subject to exclusive use and possession. A unit may be
865 improvements, land, or land and improvements together, as
866 specified in the cooperative documents. An interest in a unit is
867 an interest in real property.
868 Section 9. Paragraph (c) of subsection (2) of section
869 719.104, Florida Statutes, is amended to read:
870 719.104 Cooperatives; access to units; records; financial
871 reports; assessments; purchase of leases.—
872 (2) OFFICIAL RECORDS.—
873 (c) The official records of the association are open to
874 inspection by any association member or the authorized
875 representative of such member at all reasonable times. The right

876 to inspect the records includes the right to make or obtain
877 copies, at the reasonable expense, if any, of the association
878 member. The association may adopt reasonable rules regarding the
879 frequency, time, location, notice, and manner of record
880 inspections and copying, but may not require a member to
881 demonstrate any purpose or state any reason for the inspection.
882 The failure of an association to provide the records within 10
883 working days after receipt of a written request creates a
884 rebuttable presumption that the association willfully failed to
885 comply with this paragraph. A member ~~unit owner~~ who is denied
886 access to official records is entitled to the actual damages or
887 minimum damages for the association's willful failure to comply.
888 The minimum damages are $50 per calendar day for up to 10 days,
889 beginning on the 11th working day after receipt of the written
890 request. The failure to permit inspection entitles any person
891 prevailing in an enforcement action to recover reasonable
892 attorney fees from the person in control of the records who,
893 directly or indirectly, knowingly denied access to the records.
894 Any person who knowingly or intentionally defaces or destroys
895 accounting records that are required by this chapter to be
896 maintained during the period for which such records are required
897 to be maintained, or who knowingly or intentionally fails to
898 create or maintain accounting records that are required to be
899 created or maintained, with the intent of causing harm to the
900 association or one or more of its members, is personally subject

901 to a civil penalty under ~~pursuant to~~ s. 719.501(1)(d). The
902 association shall maintain an adequate number of copies of the
903 declaration, articles of incorporation, bylaws, and rules, and
904 all amendments to each of the foregoing, as well as the question
905 and answer sheet as described in s. 719.504 and year-end
906 financial information required by the department, on the
907 cooperative property to ensure their availability to members
908 ~~unit owners~~ and prospective purchasers, and may charge its
909 actual costs for preparing and furnishing these documents to
910 those requesting the same. An association shall allow a member
911 or his or her authorized representative to use a portable
912 device, including a smartphone, tablet, portable scanner, or any
913 other technology capable of scanning or taking photographs, to
914 make an electronic copy of the official records in lieu of the
915 association providing the member or his or her authorized
916 representative with a copy of such records. The association may
917 not charge a member or his or her authorized representative for
918 the use of a portable device. Notwithstanding this paragraph,
919 the following records shall not be accessible to members ~~unit~~
920 ~~owners~~:
921 1. Any record protected by the lawyer-client privilege as
922 described in s. 90.502 and any record protected by the work-
923 product privilege, including any record prepared by an
924 association attorney or prepared at the attorney's express
925 direction which reflects a mental impression, conclusion,

926 litigation strategy, or legal theory of the attorney or the
927 association, and which was prepared exclusively for civil or
928 criminal litigation or for adversarial administrative
929 proceedings, or which was prepared in anticipation of such
930 litigation or proceedings until the conclusion of the litigation
931 or proceedings.
932 2. Information obtained by an association in connection
933 with the approval of the lease, sale, or other transfer of a
934 unit.
935 3. Personnel records of association or management company
936 employees, including, but not limited to, disciplinary, payroll,
937 health, and insurance records. For purposes of this
938 subparagraph, the term "personnel records" does not include
939 written employment agreements with an association employee or
940 management company, or budgetary or financial records that
941 indicate the compensation paid to an association employee.
942 4. Medical records of unit owners.
943 5. Social security numbers, driver license numbers, credit
944 card numbers, e-mail addresses, telephone numbers, facsimile
945 numbers, emergency contact information, addresses of a unit
946 owner other than as provided to fulfill the association's notice
947 requirements, and other personal identifying information of any
948 person, excluding the person's name, unit designation, mailing
949 address, property address, and any address, e-mail address, or
950 facsimile number provided to the association to fulfill the

951 association's notice requirements. Notwithstanding the
952 restrictions in this subparagraph, an association may print and
953 distribute to unit ~~parcel~~ owners a directory containing the
954 name, unit ~~parcel~~ address, and all telephone numbers of each
955 unit ~~parcel~~ owner. However, an owner may exclude his or her
956 telephone numbers from the directory by so requesting in writing
957 to the association. An owner may consent in writing to the
958 disclosure of other contact information described in this
959 subparagraph. The association is not liable for the inadvertent
960 disclosure of information that is protected under this
961 subparagraph if the information is included in an official
962 record of the association and is voluntarily provided by an
963 owner and not requested by the association.
964 6. Electronic security measures that are used by the
965 association to safeguard data, including passwords.
966 7. The software and operating system used by the
967 association which allow the manipulation of data, even if the
968 owner owns a copy of the same software used by the association.
969 The data is part of the official records of the association.
970 Section 10. Paragraph (b) of subsection (1) of section
971 719.106, Florida Statutes, is amended, and subsection (3) is
972 added to that section, to read:
973 719.106 Bylaws; cooperative ownership.—
974 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
975 documents shall provide for the following, and if they do not,

976 they shall be deemed to include the following:
977 (b) Quorum; voting requirements; proxies.—
978 1. Unless otherwise provided in the bylaws, the percentage
979 of voting interests required to constitute a quorum at a meeting
980 of the members shall be a majority of voting interests, and
981 decisions shall be made by owners of a majority of the voting
982 interests. Unless otherwise provided in this chapter, or in the
983 articles of incorporation, bylaws, or other cooperative
984 documents, and except as provided in subparagraph (d)1.,
985 decisions shall be made by owners of a majority of the voting
986 interests represented at a meeting at which a quorum is present.
987 2. Except as specifically otherwise provided herein, after
988 January 1, 1992, unit owners may not vote by general proxy, but
989 may vote by limited proxies substantially conforming to a
990 limited proxy form adopted by the division. Limited proxies and
991 general proxies may be used to establish a quorum. Limited
992 proxies shall be used for votes taken to waive or reduce
993 reserves in accordance with subparagraph (j)2., for votes taken
994 to waive the financial reporting requirements of s.
995 719.104(4)(b), for votes taken to amend the articles of
996 incorporation or bylaws pursuant to this section, and for any
997 other matter for which this chapter requires or permits a vote
998 of the unit owners. Except as provided in paragraph (d), after
999 January 1, 1992, no proxy, limited or general, shall be used in
1000 the election of board members. General proxies may be used for

1001 other matters for which limited proxies are not required, and
1002 may also be used in voting for nonsubstantive changes to items
1003 for which a limited proxy is required and given. Notwithstanding
1004 the provisions of this section, unit owners may vote in person
1005 at unit owner meetings. Nothing contained herein shall limit the
1006 use of general proxies or require the use of limited proxies or
1007 require the use of limited proxies for any agenda item or
1008 election at any meeting of a timeshare cooperative.
1009 3. Any proxy given shall be effective only for the
1010 specific meeting for which originally given and any lawfully
1011 adjourned meetings thereof. In no event shall any proxy be valid
1012 for a period longer than 90 days after the date of the first
1013 meeting for which it was given. Every proxy shall be revocable
1014 at any time at the pleasure of the unit owner executing it.
1015 4. A member of the board of administration or a committee
1016 may submit in writing his or her agreement or disagreement with
1017 any action taken at a meeting that the member did not attend.
1018 This agreement or disagreement may not be used as a vote for or
1019 against the action taken and may not be used for the purposes of
1020 creating a quorum.
1021 5. A board or committee member participating in a meeting
1022 via telephone, real-time video conferencing, or similar real-
1023 time electronic or video communication counts toward a quorum,
1024 and such member may vote as if physically present ~~When some or~~
1025 ~~all of the board or committee members meet by telephone~~

1026 ~~conference, those board or committee members attending by~~
1027 ~~telephone conference may be counted toward obtaining a quorum~~
1028 ~~and may vote by telephone~~. A ~~telephone~~ speaker must ~~shall~~ be
1029 used ~~utilized~~ so that the conversation of such ~~those board or~~
1030 ~~committee~~ members ~~attending by telephone~~ may be heard by the
1031 board or committee members attending in person, as well as by
1032 any unit owners present at a meeting.
1033 (3) GENERALLY.—Any provision of the declaration, the
1034 association bylaws, or reasonable rules or regulations of the
1035 association which diminish or infringe upon any right protected
1036 under the Fourteenth Amendment to the United States Constitution
1037 or s. 2, Art. I of the State Constitution is void and
1038 unenforceable without further action of the association. The
1039 association may record a notice in the public records of the
1040 county in which the cooperative is located evidencing its
1041 intention to not enforce such provision. The failure of the
1042 association to record a notice in the public record may not be
1043 the basis for liability or evidence of discrimination or a
1044 discriminatory intention.
1045 Section 11. Paragraph (l) of subsection (4) of section
1046 720.303, Florida Statutes, is redesignated as paragraph (m),
1047 paragraph (c) of subsection (2) is amended, and a new paragraph
1048 (l) is added to subsection (4) of that section, to read:
1049 720.303 Association powers and duties; meetings of board;
1050 official records; budgets; financial reporting; association

1051 funds; recalls.—
1052 (2) BOARD MEETINGS.—
1053 (c) The bylaws shall provide the following for giving
1054 notice to parcel owners and members of all board meetings and,
1055 if they do not do so, shall be deemed to include the following:
1056 1. Notices of all board meetings must be posted in a
1057 conspicuous place in the community at least 48 hours in advance
1058 of a meeting, except in an emergency. In the alternative, if
1059 notice is not posted in a conspicuous place in the community,
1060 notice of each board meeting must be mailed or delivered to each
1061 member at least 7 days before the meeting, except in an
1062 emergency. Notwithstanding this general notice requirement, for
1063 communities with more than 100 members, the association bylaws
1064 may provide for a reasonable alternative to posting or mailing
1065 of notice for each board meeting, including publication of
1066 notice, provision of a schedule of board meetings, or the
1067 conspicuous posting and repeated broadcasting of the notice on a
1068 closed-circuit cable television system serving the homeowners'
1069 association. However, if broadcast notice is used in lieu of a
1070 notice posted physically in the community, the notice must be
1071 broadcast at least four times every broadcast hour of each day
1072 that a posted notice is otherwise required. When broadcast
1073 notice is provided, the notice and agenda must be broadcast in a
1074 manner and for a sufficient continuous length of time so as to
1075 allow an average reader to observe the notice and read and

1076 comprehend the entire content of the notice and the agenda. In
1077 addition to any of the authorized means of providing notice of a
1078 meeting of the board, the association may, by rule, adopt a
1079 procedure for conspicuously posting the meeting notice and the
1080 agenda on the association's website for at least the minimum
1081 period of time for which a notice of a meeting is also required
1082 to be physically posted on the association property. Any rule
1083 adopted shall, in addition to other matters, include a
1084 requirement that the association send an electronic notice in
1085 the same manner as is required for a notice of a meeting of the
1086 members, which must include a hyperlink to the website where the
1087 notice is posted, to members whose e-mail addresses are included
1088 in the association's official records. The association may
1089 provide notice by electronic transmission in a manner authorized
1090 by law for meetings of the board of directors, committee
1091 meetings requiring notice under this section, and annual and
1092 special meetings of the members to any member who has provided a
1093 facsimile number or e-mail address to the association to be used
1094 for such purposes; however, a member must consent in writing to
1095 receiving notice by electronic transmission.
1096 2. An assessment may not be levied at a board meeting
1097 unless the notice of the meeting includes a statement that
1098 assessments will be considered and the nature of the
1099 assessments. Written notice of any meeting at which special
1100 assessments will be considered or at which amendments to rules

1101 regarding parcel use will be considered must be mailed,
1102 delivered, or electronically transmitted to the members and
1103 parcel owners and posted conspicuously on the property or
1104 broadcast on closed-circuit cable television not less than 14
1105 days before the meeting.
1106 3. Directors may not vote by proxy or by secret ballot at
1107 board meetings, except that secret ballots may be used in the
1108 election of officers. This subsection also applies to the
1109 meetings of any committee or other similar body, when a final
1110 decision will be made regarding the expenditure of association
1111 funds, and to any body vested with the power to approve or
1112 disapprove architectural decisions with respect to a specific
1113 parcel of residential property owned by a member of the
1114 community.
1115 (4) OFFICIAL RECORDS.—The association shall maintain each
1116 of the following items, when applicable, which constitute the
1117 official records of the association:
1118 (l) Ballots, sign-in sheets, voting proxies, and all other
1119 papers and electronic records relating to voting by parcel
1120 owners, which must be maintained for at least 1 year after the
1121 date of the election, vote, or meeting.
1122 (m) ~~(l)~~ All other ~~written~~ records of the association not
1123 specifically included in this subsection ~~the foregoing~~ which are
1124 related to the operation of the association.
1125 Section 12. Subsections (1) and (2) of section 720.305,

1126 Florida Statutes, are amended to read:
1127 720.305 Obligations of members; remedies at law or in
1128 equity; levy of fines and suspension of use rights.—
1129 (1) Each member and the member's tenants, guests, and
1130 invitees, and each association, are governed by, and must comply
1131 with, this chapter and~~,~~ the governing documents of the
1132 community~~, and the rules of the association~~. Actions at law or
1133 in equity, or both, to redress alleged failure or refusal to
1134 comply with these provisions may be brought by the association
1135 or by any member against:
1136 (a) The association;
1137 (b) A member;
1138 (c) Any director or officer of an association who
1139 willfully and knowingly fails to comply with these provisions;
1140 and
1141 (d) Any tenants, guests, or invitees occupying a parcel or
1142 using the common areas.
1143
1144 The prevailing party in any such litigation is entitled to
1145 recover reasonable attorney fees and costs. A member prevailing
1146 in an action between the association and the member under this
1147 section, in addition to recovering his or her reasonable
1148 attorney fees, may recover additional amounts as determined by
1149 the court to be necessary to reimburse the member for his or her
1150 share of assessments levied by the association to fund its

1151 expenses of the litigation. This relief does not exclude other
1152 remedies provided by law. This section does not deprive any
1153 person of any other available right or remedy.
1154 (2) An ~~The~~ association may levy reasonable fines. A fine
1155 may not exceed $100 per violation against any member or any
1156 member's tenant, guest, or invitee for the failure of the owner
1157 of the parcel or its occupant, licensee, or invitee to comply
1158 with any provision of the declaration, the association bylaws,
1159 or reasonable rules of the association unless otherwise provided
1160 in the governing documents. A fine may be levied by the board
1161 for each day of a continuing violation, with a single notice and
1162 opportunity for hearing, except that the fine may not exceed
1163 $1,000 in the aggregate unless otherwise provided in the
1164 governing documents. A fine of less than $1,000 may not become a
1165 lien against a parcel. In any action to recover a fine, the
1166 prevailing party is entitled to reasonable attorney fees and
1167 costs from the nonprevailing party as determined by the court.
1168 (a) An association may suspend, for a reasonable period of
1169 time, the right of a member, or a member's tenant, guest, or
1170 invitee, to use common areas and facilities for the failure of
1171 the owner of the parcel or its occupant, licensee, or invitee to
1172 comply with any provision of the declaration, the association
1173 bylaws, or reasonable rules of the association. This paragraph
1174 does not apply to that portion of common areas used to provide
1175 access or utility services to the parcel. A suspension may not

1176 prohibit an owner or tenant of a parcel from having vehicular
1177 and pedestrian ingress to and egress from the parcel, including,
1178 but not limited to, the right to park.
1179 (b) A fine or suspension levied by the board of
1180 administration may not be imposed unless the board first
1181 provides at least 14 days' notice to the parcel owner and, if
1182 applicable, any occupant, licensee, or invitee of the parcel
1183 owner, sought to be fined or suspended and an opportunity for a
1184 hearing before a committee of at least three members appointed
1185 by the board who are not officers, directors, or employees of
1186 the association, or the spouse, parent, child, brother, or
1187 sister of an officer, director, or employee. If the committee,
1188 by majority vote, does not approve a proposed fine or
1189 suspension, the proposed fine or suspension may not be imposed.
1190 The role of the committee is limited to determining whether to
1191 confirm or reject the fine or suspension levied by the board. If
1192 the proposed fine or suspension levied by the board is approved
1193 by the committee, the fine payment is due 5 days after notice of
1194 the approved fine is provided to the parcel owner and, if
1195 applicable, to any occupant, licensee, or invitee of the parcel
1196 owner ~~the date of the committee meeting at which the fine is~~
1197 ~~approved~~. The association must provide written notice of such
1198 fine or suspension by mail or hand delivery to the parcel owner
1199 and, if applicable, to any occupant ~~tenant~~, licensee, or invitee
1200 of the parcel owner.

1201 Section 13. Paragraph (g) of subsection (1) of section
1202 720.306, Florida Statutes, is amended to read:
1203 720.306 Meetings of members; voting and election
1204 procedures; amendments.—
1205 (1) QUORUM; AMENDMENTS.—
1206 (g) A notice required under this section must be mailed or
1207 delivered to the address identified as the parcel owner's
1208 mailing address in the official records of the association as
1209 required under s. 720.303(4) ~~on the property appraiser's website~~
1210 ~~for the county in which the parcel is located~~, or electronically
1211 transmitted in a manner authorized by the association if the
1212 parcel owner has consented, in writing, to receive notice by
1213 electronic transmission.
1214 Section 14. Subsection (6) is added to section 720.3075,
1215 Florida Statutes, to read:
1216 720.3075 Prohibited clauses in association documents.—
1217 (6) Any provision of the declaration, the association
1218 bylaws, or reasonable rules or regulations of the association
1219 which diminish or infringe upon any right protected under the
1220 Fourteenth Amendment to the United States Constitution or s. 2,
1221 Art. I of the State Constitution is void and unenforceable
1222 without further action of the association. The association may
1223 record a notice in the public records of the county in which the
1224 community is located evidencing its intention to not enforce
1225 such provision. The failure of the association to record a

1226 notice in the public record may not be the basis for liability
1227 or evidence of discrimination or a discriminatory intention.
1228 Section 15. This act shall take effect July 1, 2020.

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	____	

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Shoaf offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Paragraph (a) of subsection (2) of section
7 514.0115, Florida Statutes, is amended to read:
8 514.0115 Exemptions from supervision or regulation;
9 variances.—
10 (2)(a) Pools serving condominium, cooperative, and
11 homeowners' associations, as well as other property
12 associations, which have no more than 32 ~~condominium or~~
13 ~~cooperative~~ units or parcels and which are not operated as ~~a~~
14 public lodging establishments are ~~establishment shall be~~ exempt
15 from supervision under this chapter, except for water quality.
16 Section 2. Subsection (4) of section 627.714, Florida

17 Statutes, is amended to read:
18 627.714 Residential condominium unit owner coverage; loss
19 assessment coverage required.—
20 (4) Every individual unit owner's residential property
21 policy must contain a provision stating that the coverage
22 afforded by such policy is excess coverage over the amount
23 recoverable under any other policy covering the same property.
24 If a condominium association's insurance policy does not provide
25 rights for subrogation against the unit owners in the
26 association, an insurance policy issued to an individual unit
27 owner located in the association may not provide rights of
28 subrogation against the condominium association.
29 Section 3. Paragraphs (a), (b), (c), and (g) of subsection
30 (12) of section 718.111, Florida Statutes, are amended to read:
31 718.111 The association.—
32 (12) OFFICIAL RECORDS.—
33 (a) From the inception of the association, the association
34 shall maintain each of the following items, if applicable, which
35 constitutes the official records of the association:
36 1. A copy of the plans, permits, warranties, and other
37 items provided by the developer pursuant to s. 718.301(4).
38 2. A photocopy of the recorded declaration of condominium
39 of each condominium operated by the association and each
40 amendment to each declaration.
41 3. A photocopy of the recorded bylaws of the association

42 and each amendment to the bylaws.
43 4. A certified copy of the articles of incorporation of
44 the association, or other documents creating the association,
45 and each amendment thereto.
46 5. A copy of the current rules of the association.
47 6. A book or books that contain the minutes of all
48 meetings of the association, the board of administration, and
49 the unit owners.
50 7. A current roster of all unit owners and their mailing
51 addresses, unit identifications, voting certifications, and, if
52 known, telephone numbers. The association shall also maintain
53 the e-mail addresses and facsimile numbers of unit owners
54 consenting to receive notice by electronic transmission. The e-
55 mail addresses and facsimile numbers are not accessible to unit
56 owners if consent to receive notice by electronic transmission
57 is not provided in accordance with sub-subparagraph (c)3.e.
58 However, the association is not liable for an inadvertent
59 disclosure of the e-mail address or facsimile number for
60 receiving electronic transmission of notices.
61 8. All current insurance policies of the association and
62 condominiums operated by the association.
63 9. A current copy of any management agreement, lease, or
64 other contract to which the association is a party or under
65 which the association or the unit owners have an obligation or
66 responsibility.

67 10. Bills of sale or transfer for all property owned by
68 the association.
69 11. Accounting records for the association and separate
70 accounting records for each condominium that the association
71 operates. Any person who knowingly or intentionally defaces or
72 destroys such records, or who knowingly or intentionally fails
73 to create or maintain such records, with the intent of causing
74 harm to the association or one or more of its members, is
75 personally subject to a civil penalty pursuant to s.
76 718.501(1)(d). The accounting records must include, but are not
77 limited to:
78 a. Accurate, itemized, and detailed records of all
79 receipts and expenditures.
80 b. A current account and a monthly, bimonthly, or
81 quarterly statement of the account for each unit designating the
82 name of the unit owner, the due date and amount of each
83 assessment, the amount paid on the account, and the balance due.
84 c. All audits, reviews, accounting statements, and
85 financial reports of the association or condominium.
86 d. All contracts for work to be performed. Bids for work
87 to be performed are also considered official records and must be
88 maintained by the association <u>for at least 1 year after receipt</u>
89 <u>of the bid</u>.
90 12. Ballots, sign-in sheets, voting proxies, and all other
91 papers and electronic records relating to voting by unit owners,

92 which must be maintained for 1 year from the date of the
93 election, vote, or meeting to which the document relates,
94 notwithstanding paragraph (b).
95 13. All rental records if the association is acting as
96 agent for the rental of condominium units.
97 14. A copy of the current question and answer sheet as
98 described in s. 718.504.
99 ~~15. All other written records of the association not~~
100 ~~specifically included in the foregoing which are related to the~~
101 ~~operation of the association.~~
102 15.~~16.~~ A copy of the inspection report as described in s.
103 718.301(4)(p).
104 16.~~17.~~ Bids for materials, equipment, or services.
105 17. All other written records of the association not
106 specifically included in subparagraphs 1.-16. which are related
107 to the operation of the association.
108 (b) The official records specified in subparagraphs (a)1.-
109 6. must be permanently maintained from the inception of the
110 association. Bids for work to be performed or for materials,
111 equipment, or services must be maintained for at least 1 year
112 after receipt of the bid. All other official records must be
113 maintained within the state for at least 7 years, unless
114 otherwise provided by general law. The records of the
115 association shall be made available to a unit owner within 45
116 miles of the condominium property or within the county in which

117 the condominium property is located within 10 working days after
118 receipt of a written request by the board or its designee.
119 However, such distance requirement does not apply to an
120 association governing a timeshare condominium. This paragraph
121 may be complied with by having a copy of the official records of
122 the association available for inspection or copying on the
123 condominium property or association property, or the association
124 may offer the option of making the records available to a unit
125 owner electronically via the Internet or by allowing the records
126 to be viewed in electronic format on a computer screen and
127 printed upon request. The association is not responsible for the
128 use or misuse of the information provided to an association
129 member or his or her authorized representative in ~~pursuant to~~
130 ~~the~~ compliance with ~~requirements of~~ this chapter unless the
131 association has an affirmative duty not to disclose such
132 information under ~~pursuant to~~ this chapter.
133 (c)1. The official records of the association are open to
134 inspection by any association member or the authorized
135 representative of such member at all reasonable times. The right
136 to inspect the records includes the right to make or obtain
137 copies, at the reasonable expense, if any, of the member or
138 authorized representative of such member. A renter of a unit has
139 a right to inspect and copy the association's bylaws and rules.
140 The association may adopt reasonable rules regarding the
141 frequency, time, location, notice, and manner of record

142 inspections and copying, but may not require a member to
143 demonstrate any purpose or state any reason for the inspection.
144 The failure of an association to provide the records within 10
145 working days after receipt of a written request creates a
146 rebuttable presumption that the association willfully failed to
147 comply with this paragraph. A unit owner who is denied access to
148 official records is entitled to the actual damages or minimum
149 damages for the association's willful failure to comply. Minimum
150 damages are $50 per calendar day for up to 10 days, beginning on
151 the 11th working day after receipt of the written request. The
152 failure to permit inspection entitles any person prevailing in
153 an enforcement action to recover reasonable attorney fees from
154 the person in control of the records who, directly or
155 indirectly, knowingly denied access to the records.
156 2. Any person who knowingly or intentionally defaces or
157 destroys accounting records that are required by this chapter to
158 be maintained during the period for which such records are
159 required to be maintained, or who knowingly or intentionally
160 fails to create or maintain accounting records that are required
161 to be created or maintained, with the intent of causing harm to
162 the association or one or more of its members, is personally
163 subject to a civil penalty under ~~pursuant to~~ s. 718.501(1)(d).
164 3. The association shall maintain an adequate number of
165 copies of the declaration, articles of incorporation, bylaws,
166 and rules, and all amendments to each of the foregoing, as well

167 as the question and answer sheet as described in s. 718.504 and
168 year-end financial information required under this section, on
169 the condominium property to ensure their availability to unit
170 owners and prospective purchasers, and may charge its actual
171 costs for preparing and furnishing these documents to those
172 requesting the documents. An association shall allow a member or
173 his or her authorized representative to use a portable device,
174 including a smartphone, tablet, portable scanner, or any other
175 technology capable of scanning or taking photographs, to make an
176 electronic copy of the official records in lieu of the
177 association's providing the member or his or her authorized
178 representative with a copy of such records. The association may
179 not charge a member or his or her authorized representative for
180 the use of a portable device. Notwithstanding this paragraph,
181 the following records are not accessible to unit owners:
182 a. Any record protected by the lawyer-client privilege as
183 described in s. 90.502 and any record protected by the work-
184 product privilege, including a record prepared by an association
185 attorney or prepared at the attorney's express direction, which
186 reflects a mental impression, conclusion, litigation strategy,
187 or legal theory of the attorney or the association, and which
188 was prepared exclusively for civil or criminal litigation or for
189 adversarial administrative proceedings, or which was prepared in
190 anticipation of such litigation or proceedings until the
191 conclusion of the litigation or proceedings.

192 b. Information obtained by an association in connection
193 with the approval of the lease, sale, or other transfer of a
194 unit.
195 c. Personnel records of association or management company
196 employees, including, but not limited to, disciplinary, payroll,
197 health, and insurance records. For purposes of this sub-
198 subparagraph, the term "personnel records" does not include
199 written employment agreements with an association employee or
200 management company, or budgetary or financial records that
201 indicate the compensation paid to an association employee.
202 d. Medical records of unit owners.
203 e. Social security numbers, driver license numbers, credit
204 card numbers, e-mail addresses, telephone numbers, facsimile
205 numbers, emergency contact information, addresses of a unit
206 owner other than as provided to fulfill the association's notice
207 requirements, and other personal identifying information of any
208 person, excluding the person's name, unit designation, mailing
209 address, property address, and any address, e-mail address, or
210 facsimile number provided to the association to fulfill the
211 association's notice requirements. Notwithstanding the
212 restrictions in this sub-subparagraph, an association may print
213 and distribute to unit ~~parcel~~ owners a directory containing the
214 name, unit ~~parcel~~ address, and all telephone numbers of each
215 unit ~~parcel~~ owner. However, an owner may exclude his or her
216 telephone numbers from the directory by so requesting in writing

217 to the association. An owner may consent in writing to the
218 disclosure of other contact information described in this sub-
219 subparagraph. The association is not liable for the inadvertent
220 disclosure of information that is protected under this sub-
221 subparagraph if the information is included in an official
222 record of the association and is voluntarily provided by an
223 owner and not requested by the association.
224 f. Electronic security measures that are used by the
225 association to safeguard data, including passwords.
226 g. The software and operating system used by the
227 association which allow the manipulation of data, even if the
228 owner owns a copy of the same software used by the association.
229 The data is part of the official records of the association.
230 (g)1. By January 1, 2019, an association managing a
231 condominium with 150 or more units which does not contain
232 timeshare units shall post digital copies of the documents
233 specified in subparagraph 2. on its website <u>or make such</u>
234 <u>documents available through an application that can be</u>
235 <u>downloaded on a mobile device</u>.
236 a. The association's website <u>or application</u> must be:
237 (I) An independent website<u>, application,</u> or web portal
238 wholly owned and operated by the association; or
239 (II) A website<u>, application,</u> or web portal operated by a
240 third-party provider with whom the association owns, leases,
241 rents, or otherwise obtains the right to operate a web page,

242 subpage, web portal, ~~or~~ collection of subpages or web portals,
243 or application which is dedicated to the association's
244 activities and on which required notices, records, and documents
245 may be posted or made available by the association.
246 b. The association's website or application must be
247 accessible through the Internet and must contain a subpage, web
248 portal, or other protected electronic location that is
249 inaccessible to the general public and accessible only to unit
250 owners and employees of the association.
251 c. Upon a unit owner's written request, the association
252 must provide the unit owner with a username and password and
253 access to the protected sections of the association's website or
254 application that contain any notices, records, or documents that
255 must be electronically provided.
256 2. A current copy of the following documents must be
257 posted in digital format on the association's website or
258 application:
259 a. The recorded declaration of condominium of each
260 condominium operated by the association and each amendment to
261 each declaration.
262 b. The recorded bylaws of the association and each
263 amendment to the bylaws.
264 c. The articles of incorporation of the association, or
265 other documents creating the association, and each amendment to
266 the articles of incorporation or other documents ~~thereto~~. The

267 copy posted pursuant to this sub-subparagraph must be a copy of
268 the articles of incorporation filed with the Department of
269 State.
270 d. The rules of the association.
271 e. A list of all executory contracts or documents to which
272 the association is a party or under which the association or the
273 unit owners have an obligation or responsibility and, after
274 bidding for the related materials, equipment, or services has
275 closed, a list of bids received by the association within the
276 past year. Summaries of bids for materials, equipment, or
277 services which exceed $500 must be maintained on the website or
278 application for 1 year. In lieu of summaries, complete copies of
279 the bids may be posted.
280 f. The annual budget required by s. 718.112(2)(f) and any
281 proposed budget to be considered at the annual meeting.
282 g. The financial report required by subsection (13) and
283 any monthly income or expense statement to be considered at a
284 meeting.
285 h. The certification of each director required by s.
286 718.112(2)(d)4.b.
287 i. All contracts or transactions between the association
288 and any director, officer, corporation, firm, or association
289 that is not an affiliated condominium association or any other
290 entity in which an association director is also a director or
291 officer and financially interested.

292 j. Any contract or document regarding a conflict of
293 interest or possible conflict of interest as provided in ss.
294 468.436(2)(b)6. and 718.3027(3).
295 k. The notice of any unit owner meeting and the agenda for
296 the meeting, as required by s. 718.112(2)(d)3., no later than 14
297 days before the meeting. The notice must be posted in plain view
298 on the front page of the website or application, or on a
299 separate subpage of the website or application labeled "Notices"
300 which is conspicuously visible and linked from the front page.
301 The association must also post on its website or application any
302 document to be considered and voted on by the owners during the
303 meeting or any document listed on the agenda at least 7 days
304 before the meeting at which the document or the information
305 within the document will be considered.
306 l. Notice of any board meeting, the agenda, and any other
307 document required for the meeting as required by s.
308 718.112(2)(c), which must be posted no later than the date
309 required for notice under ~~pursuant to~~ s. 718.112(2)(c).
310 3. The association shall ensure that the information and
311 records described in paragraph (c), which are not allowed to be
312 accessible to unit owners, are not posted on the association's
313 website or application. If protected information or information
314 restricted from being accessible to unit owners is included in
315 documents that are required to be posted on the association's
316 website or application, the association shall ensure the

317 information is redacted before posting the documents ~~online~~.
318 Notwithstanding the foregoing, the association or its agent is
319 not liable for disclosing information that is protected or
320 restricted under ~~pursuant to~~ this paragraph unless such
321 disclosure was made with a knowing or intentional disregard of
322 the protected or restricted nature of such information.
323 4. The failure of the association to post information
324 required under subparagraph 2. is not in and of itself
325 sufficient to invalidate any action or decision of the
326 association's board or its committees.
327 Section 4. Paragraphs (d), (i), (k), and (p) of subsection
328 (2) of section 718.112, Florida Statutes, are amended, and
329 paragraph (c) of subsection (1) is added to that section, to
330 read:
331 718.112 Bylaws.—
332 (1) GENERALLY.—
333 (c) Any provision of the declaration, the association
334 bylaws, or reasonable rules or regulations of the association
335 which diminish or infringe upon any right protected under the
336 Fourteenth Amendment to the United States Constitution or s. 2,
337 Art. I of the State Constitution is void and unenforceable
338 without further action of the association. The association may
339 record a notice in the public records of the county in which the
340 condominium is located evidencing its intention to not enforce
341 such provision. The failure of the association to record a

342 notice in the public record may not be the basis for liability
343 or evidence of discrimination or a discriminatory intention.
344 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
345 following and, if they do not do so, shall be deemed to include
346 the following:
347 (d) Unit owner meetings.—
348 1. An annual meeting of the unit owners must be held at
349 the location provided in the association bylaws and, if the
350 bylaws are silent as to the location, the meeting must be held
351 within 45 miles of the condominium property. However, such
352 distance requirement does not apply to an association governing
353 a timeshare condominium.
354 2. Unless the bylaws provide otherwise, a vacancy on the
355 board caused by the expiration of a director's term must be
356 filled by electing a new board member, and the election must be
357 by secret ballot. An election is not required if the number of
358 vacancies equals or exceeds the number of candidates. For
359 purposes of this paragraph, the term "candidate" means an
360 eligible person who has timely submitted the written notice, as
361 described in sub-subparagraph 4.a., of his or her intention to
362 become a candidate. Except in a timeshare or nonresidential
363 condominium, or if the staggered term of a board member does not
364 expire until a later annual meeting, or if all members' terms
365 would otherwise expire but there are no candidates, the terms of
366 all board members expire at the annual meeting, and such members

367 may stand for reelection unless prohibited by the bylaws. Board
368 members may serve terms longer than 1 year if permitted by the
369 bylaws or articles of incorporation. A board member may not
370 serve more than 8 consecutive years unless approved by an
371 affirmative vote of unit owners representing two-thirds of all
372 votes cast in the election or unless there are not enough
373 eligible candidates to fill the vacancies on the board at the
374 time of the vacancy. Only board service that occurs on or after
375 July 1, 2018, may be used when calculating a board member's term
376 limit. If the number of board members whose terms expire at the
377 annual meeting equals or exceeds the number of candidates, the
378 candidates become members of the board effective upon the
379 adjournment of the annual meeting. Unless the bylaws provide
380 otherwise, any remaining vacancies shall be filled by the
381 affirmative vote of the majority of the directors making up the
382 newly constituted board even if the directors constitute less
383 than a quorum or there is only one director. In a residential
384 condominium association of more than 10 units or in a
385 residential condominium association that does not include
386 timeshare units or timeshare interests, co-owners of a unit may
387 not serve as members of the board of directors at the same time
388 unless they own more than one unit or unless there are not
389 enough eligible candidates to fill the vacancies on the board at
390 the time of the vacancy. A unit owner in a residential
391 condominium desiring to be a candidate for board membership must

392 comply with sub-subparagraph 4.a. and must be eligible to be a
393 candidate to serve on the board of directors at the time of the
394 deadline for submitting a notice of intent to run in order to
395 have his or her name listed as a proper candidate on the ballot
396 or to serve on the board. A person who has been suspended or
397 removed by the division under this chapter, or who is delinquent
398 in the payment of any monetary obligation due to the
399 association, is not eligible to be a candidate for board
400 membership and may not be listed on the ballot. A person who has
401 been convicted of any felony in this state or in a United States
402 District or Territorial Court, or who has been convicted of any
403 offense in another jurisdiction which would be considered a
404 felony if committed in this state, is not eligible for board
405 membership unless such felon's civil rights have been restored
406 for at least 5 years as of the date such person seeks election
407 to the board. The validity of an action by the board is not
408 affected if it is later determined that a board member is
409 ineligible for board membership due to having been convicted of
410 a felony. This subparagraph does not limit the term of a member
411 of the board of a nonresidential or timeshare condominium.
412 3. The bylaws must provide the method of calling meetings
413 of unit owners, including annual meetings. Written notice of an
414 annual meeting must include an agenda; ~~, must~~ be mailed, hand
415 delivered, or electronically transmitted to each unit owner at
416 least 14 days before the annual meeting; ~~,~~ and ~~must~~ be posted in

417 a conspicuous place on the condominium property at least 14
418 continuous days before the annual meeting. Written notice of a
419 meeting other than an annual meeting must include an agenda; be
420 mailed, hand delivered, or electronically transmitted to each
421 unit owner; and be posted in a conspicuous place on the
422 condominium property in accordance with the minimum period of
423 time for posting a notice as set forth in the bylaws, and if the
424 bylaws do not provide such notice requirements, then at least 14
425 continuous days before the meeting. Upon notice to the unit
426 owners, the board shall, by duly adopted rule, designate a
427 specific location on the condominium property where all notices
428 of unit owner meetings must be posted. This requirement does not
429 apply if there is no condominium property for posting notices.
430 In lieu of, or in addition to, the physical posting of meeting
431 notices, the association may, by reasonable rule, adopt a
432 procedure for conspicuously posting and repeatedly broadcasting
433 the notice and the agenda on a closed-circuit cable television
434 system serving the condominium association. However, if
435 broadcast notice is used in lieu of a notice posted physically
436 on the condominium property, the notice and agenda must be
437 broadcast at least four times every broadcast hour of each day
438 that a posted notice is otherwise required under this section.
439 If broadcast notice is provided, the notice and agenda must be
440 broadcast in a manner and for a sufficient continuous length of
441 time so as to allow an average reader to observe the notice and

442 read and comprehend the entire content of the notice and the
443 agenda. In addition to any of the authorized means of providing
444 notice of a meeting of the board, the association may, by rule,
445 adopt a procedure for conspicuously posting the meeting notice
446 and the agenda on a website serving the condominium association
447 for at least the minimum period of time for which a notice of a
448 meeting is also required to be physically posted on the
449 condominium property. Any rule adopted shall, in addition to
450 other matters, include a requirement that the association send
451 an electronic notice in the same manner as a notice for a
452 meeting of the members, which must include a hyperlink to the
453 website where the notice is posted, to unit owners whose e-mail
454 addresses are included in the association's official records.
455 Unless a unit owner waives in writing the right to receive
456 notice of the annual meeting, such notice must be hand
457 delivered, mailed, or electronically transmitted to each unit
458 owner. Notice for meetings and notice for all other purposes
459 must be mailed to each unit owner at the address last furnished
460 to the association by the unit owner, or hand delivered to each
461 unit owner. However, if a unit is owned by more than one person,
462 the association must provide notice to the address that the
463 developer identifies for that purpose and thereafter as one or
464 more of the owners of the unit advise the association in
465 writing, or if no address is given or the owners of the unit do
466 not agree, to the address provided on the deed of record. An

467 officer of the association, or the manager or other person
468 providing notice of the association meeting, must provide an
469 affidavit or United States Postal Service certificate of
470 mailing, to be included in the official records of the
471 association affirming that the notice was mailed or hand
472 delivered in accordance with this provision.
473 4. The members of the board of a residential condominium
474 shall be elected by written ballot or voting machine. Proxies
475 may not be used in electing the board in general elections or
476 elections to fill vacancies caused by recall, resignation, or
477 otherwise, unless otherwise provided in this chapter. This
478 subparagraph does not apply to an association governing a
479 timeshare condominium.
480 a. At least 60 days before a scheduled election, the
481 association shall mail, deliver, or electronically transmit, by
482 separate association mailing or included in another association
483 mailing, delivery, or transmission, including regularly
484 published newsletters, to each unit owner entitled to a vote, a
485 first notice of the date of the election. A unit owner or other
486 eligible person desiring to be a candidate for the board must
487 give written notice of his or her intent to be a candidate to
488 the association at least 40 days before a scheduled election.
489 Together with the written notice and agenda as set forth in
490 subparagraph 3., the association shall mail, deliver, or
491 electronically transmit a second notice of the election to all

492 unit owners entitled to vote, together with a ballot that lists
493 all candidates not less than 14 days or more than 34 days before
494 the date of the election. Upon request of a candidate, an
495 information sheet, no larger than 8 1/2 inches by 11 inches,
496 which must be furnished by the candidate at least 35 days before
497 the election, must be included with the mailing, delivery, or
498 transmission of the ballot, with the costs of mailing, delivery,
499 or electronic transmission and copying to be borne by the
500 association. The association is not liable for the contents of
501 the information sheets prepared by the candidates. In order to
502 reduce costs, the association may print or duplicate the
503 information sheets on both sides of the paper. The division
504 shall by rule establish voting procedures consistent with this
505 sub-subparagraph, including rules establishing procedures for
506 giving notice by electronic transmission and rules providing for
507 the secrecy of ballots. Elections shall be decided by a
508 plurality of ballots cast. There is no quorum requirement;
509 however, at least 20 percent of the eligible voters must cast a
510 ballot in order to have a valid election. A unit owner may not
511 authorize any other person to vote his or her ballot, and any
512 ballots improperly cast are invalid. A unit owner who violates
513 this provision may be fined by the association in accordance
514 with s. 718.303. A unit owner who needs assistance in casting
515 the ballot for the reasons stated in s. 101.051 may obtain such
516 assistance. The regular election must occur on the date of the

517 annual meeting. Notwithstanding this sub-subparagraph, an
518 election is not required unless more candidates file notices of
519 intent to run or are nominated than board vacancies exist.
520 b. Within 90 days after being elected or appointed to the
521 board of an association of a residential condominium, each newly
522 elected or appointed director shall certify in writing to the
523 secretary of the association that he or she has read the
524 association's declaration of condominium, articles of
525 incorporation, bylaws, and current written policies; that he or
526 she will work to uphold such documents and policies to the best
527 of his or her ability; and that he or she will faithfully
528 discharge his or her fiduciary responsibility to the
529 association's members. In lieu of this written certification,
530 within 90 days after being elected or appointed to the board,
531 the newly elected or appointed director may submit a certificate
532 of having satisfactorily completed the educational curriculum
533 administered by a division-approved condominium education
534 provider within 1 year before or 90 days after the date of
535 election or appointment. The written certification or
536 educational certificate is valid and does not have to be
537 resubmitted as long as the director serves on the board without
538 interruption. A director of an association of a residential
539 condominium who fails to timely file the written certification
540 or educational certificate is suspended from service on the
541 board until he or she complies with this sub-subparagraph. The

542 board may temporarily fill the vacancy during the period of
543 suspension. The secretary shall cause the association to retain
544 a director's written certification or educational certificate
545 for inspection by the members for 5 years after a director's
546 election or the duration of the director's uninterrupted tenure,
547 whichever is longer. Failure to have such written certification
548 or educational certificate on file does not affect the validity
549 of any board action.
550 c. Any challenge to the election process must be commenced
551 within 60 days after the election results are announced.
552 5. Any approval by unit owners called for by this chapter
553 or the applicable declaration or bylaws, including, but not
554 limited to, the approval requirement in s. 718.111(8), must be
555 made at a duly noticed meeting of unit owners and is subject to
556 all requirements of this chapter or the applicable condominium
557 documents relating to unit owner decisionmaking, except that
558 unit owners may take action by written agreement, without
559 meetings, on matters for which action by written agreement
560 without meetings is expressly allowed by the applicable bylaws
561 or declaration or any law that provides for such action.
562 6. Unit owners may waive notice of specific meetings if
563 allowed by the applicable bylaws or declaration or any law.
564 Notice of meetings of the board of administration, unit owner
565 meetings, except unit owner meetings called to recall board
566 members under paragraph (j), and committee meetings may be given

567 by electronic transmission to unit owners who consent to receive
568 notice by electronic transmission. A unit owner who consents to
569 receiving notices by electronic transmission is solely
570 responsible for removing or bypassing filters that block receipt
571 of mass e-mails ~~emails~~ sent to members on behalf of the
572 association in the course of giving electronic notices.
573 7. Unit owners have the right to participate in meetings
574 of unit owners with reference to all designated agenda items.
575 However, the association may adopt reasonable rules governing
576 the frequency, duration, and manner of unit owner participation.
577 8. A unit owner may tape record or videotape a meeting of
578 the unit owners subject to reasonable rules adopted by the
579 division.
580 9. Unless otherwise provided in the bylaws, any vacancy
581 occurring on the board before the expiration of a term may be
582 filled by the affirmative vote of the majority of the remaining
583 directors, even if the remaining directors constitute less than
584 a quorum, or by the sole remaining director. In the alternative,
585 a board may hold an election to fill the vacancy, in which case
586 the election procedures must conform to sub-subparagraph 4.a.
587 unless the association governs 10 units or fewer and has opted
588 out of the statutory election process, in which case the bylaws
589 of the association control. Unless otherwise provided in the
590 bylaws, a board member appointed or elected under this section
591 shall fill the vacancy for the unexpired term of the seat being

592 filled. Filling vacancies created by recall is governed by
593 paragraph (j) and rules adopted by the division.
594 10. This chapter does not limit the use of general or
595 limited proxies, require the use of general or limited proxies,
596 or require the use of a written ballot or voting machine for any
597 agenda item or election at any meeting of a timeshare
598 condominium association or nonresidential condominium
599 association.
600
601 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
602 association of 10 or fewer units may, by affirmative vote of a
603 majority of the total voting interests, provide for different
604 voting and election procedures in its bylaws, which may be by a
605 proxy specifically delineating the different voting and election
606 procedures. The different voting and election procedures may
607 provide for elections to be conducted by limited or general
608 proxy.
609 (i) Transfer fees.—An association may not ~~no~~ charge an
610 applicant any fees, except the actual costs of any background
611 check or screening performed ~~shall be made~~ by the association,
612 ~~or any body thereof~~ in connection with the sale, mortgage,
613 lease, sublease, or other transfer of a unit unless the
614 association is required to approve such transfer and a fee for
615 such approval is provided for in the declaration, articles, or
616 bylaws. Except for the actual costs of any background check or

617 screening performed by the association, any such fee may be
618 preset, but may not ~~in no event may such fee~~ exceed $100 per
619 applicant other than spouses or parent and dependent child, who
620 ~~husband/wife or parent/dependent child, which~~ are considered one
621 applicant. However, if the lease or sublease is a renewal of a
622 lease or sublease with the same lessee or sublessee, a charge
623 may not ~~no charge shall~~ be made. The foregoing notwithstanding,
624 an association may, if the authority to do so appears in the
625 declaration, articles, or bylaws, require that a prospective
626 lessee place a security deposit, in an amount not to exceed the
627 equivalent of 1 month's rent, into an escrow account maintained
628 by the association. The security deposit shall protect against
629 damages to the common elements or association property. Payment
630 of interest, claims against the deposit, refunds, and disputes
631 under this paragraph shall be handled in the same fashion as
632 provided in part II of chapter 83.
633 (k) Alternative Dispute Resolution ~~Arbitration.~~— There
634 must ~~shall~~ be a provision for mandatory alternative dispute
635 resolution ~~nonbinding arbitration~~ as provided for in s. 718.1255
636 for any residential condominium.
637 ~~(p) Service providers; conflicts of interest.—An~~
638 ~~association, which is not a timeshare condominium association,~~
639 ~~may not employ or contract with any service provider that is~~
640 ~~owned or operated by a board member or with any person who has a~~
641 ~~financial relationship with a board member or officer, or a~~

642 ~~relative within the third degree of consanguinity by blood or~~
643 ~~marriage of a board member or officer. This paragraph does not~~
644 ~~apply to a service provider in which a board member or officer,~~
645 ~~or a relative within the third degree of consanguinity by blood~~
646 ~~or marriage of a board member or officer, owns less than 1~~
647 ~~percent of the equity shares.~~
648 Section 5. Subsection (8) of section 718.113, Florida
649 Statutes, is amended to read:
650 718.113 Maintenance; limitation upon improvement; display
651 of flag; hurricane shutters and protection; display of religious
652 decorations.—
653 (8) The Legislature finds that the use of electric and
654 natural gas fuel vehicles conserves and protects the state's
655 environmental resources, provides significant economic savings
656 to drivers, and serves an important public interest. The
657 participation of condominium associations is essential to the
658 state's efforts to conserve and protect the state's
659 environmental resources and provide economic savings to drivers.
660 For purposes of this subsection, the term "natural gas fuel" has
661 the same meaning as in s. 206.9951(2), and the term "natural gas
662 fuel vehicle" means any motor vehicle, as defined in s. 320.01,
663 powered by natural gas fuel. Therefore, the installation of an
664 electric vehicle charging or natural gas fuel station shall be
665 governed as follows:
666 (a) A declaration of condominium or restrictive covenant

667 may not prohibit or be enforced so as to prohibit any unit owner
668 from installing an electric vehicle charging or natural gas fuel
669 station within the boundaries of the unit owner's limited common
670 element or exclusively designated parking area. The board of
671 administration of a condominium association may not prohibit a
672 unit owner from installing an electric vehicle charging station
673 for an electric vehicle, as defined in s. 320.01, or a natural
674 gas fuel station for a natural gas fuel vehicle within the
675 boundaries of his or her limited common element or exclusively
676 designated parking area. The installation of such charging or
677 fuel stations are subject to the provisions of this subsection.
678 (b) The installation may not cause irreparable damage to
679 the condominium property.
680 (c) The electricity for the electric vehicle charging or
681 natural gas fuel station must be separately metered or metered
682 by an embedded meter and payable by the unit owner installing
683 such charging or fuel station or by his or her successor.
684 (d) The cost for supply and storage of the natural gas
685 fuel must be paid by the unit owner installing the natural gas
686 fuel station or by his or her successor.
687 (e) ~~(d)~~ The unit owner who is installing an electric
688 vehicle charging or natural gas fuel station is responsible for
689 the costs of installation, operation, maintenance, and repair,
690 including, but not limited to, hazard and liability insurance.
691 The association may enforce payment of such costs under ~~pursuant~~

692 ~~to~~ s. 718.116.
693 (f) ~~(e)~~ If the unit owner or his or her successor decides
694 there is no longer a need for the electronic vehicle charging or
695 natural gas fuel station, such person is responsible for the
696 cost of removal of such ~~the electronic vehicle~~ charging or fuel
697 station. The association may enforce payment of such costs under
698 ~~pursuant to~~ s. 718.116.
699 (g) The unit owner installing, maintaining, or removing
700 the electric vehicle charging or natural gas fuel station is
701 responsible for complying with all federal, state, or local laws
702 and regulations applicable to such installation, maintenance, or
703 removal.
704 (h) ~~(f)~~ The association may require the unit owner to:
705 1. Comply with bona fide safety requirements, consistent
706 with applicable building codes or recognized safety standards,
707 for the protection of persons and property.
708 2. Comply with reasonable architectural standards adopted
709 by the association that govern the dimensions, placement, or
710 external appearance of the electric vehicle charging or natural
711 gas fuel station, provided that such standards may not prohibit
712 the installation of such charging or fuel station or
713 substantially increase the cost thereof.
714 3. Engage the services of a licensed and registered
715 ~~electrical contractor or engineer~~ firm familiar with the
716 installation or removal and core requirements of an electric

717 vehicle charging or natural gas fuel station.
718 4. Provide a certificate of insurance naming the
719 association as an additional insured on the owner's insurance
720 policy for any claim related to the installation, maintenance,
721 or use of the electric vehicle charging or natural gas fuel
722 station within 14 days after receiving the association's
723 approval to install such charging or fuel station or notice to
724 provide such a certificate.
725 5. Reimburse the association for the actual cost of any
726 increased insurance premium amount attributable to the electric
727 vehicle charging or natural gas fuel station within 14 days
728 after receiving the association's insurance premium invoice.
729 (i) ~~(g)~~ The association provides an implied easement across
730 the common elements of the condominium property to the unit
731 owner for purposes of ~~the installation of the~~ electric vehicle
732 charging or natural gas fuel station installation, and the
733 furnishing of electrical power or natural gas fuel supply,
734 including any necessary equipment, to such charging or fuel
735 station, subject to the requirements of this subsection.
736 Section 6. Paragraph (a) of subsection (4) of section
737 718.1255, Florida Statutes, is amended, new subsection (5) of
738 that section is created, and subsections (5) and (6) of that
739 section are renumbered as subsections (6) and (7) to read:

740 718.1255 Alternative dispute resolution; ~~voluntary~~
741 mediation; ~~mandatory~~ nonbinding arbitration; legislative
742 findings.—
743 (4) ~~MANDATORY~~ NONBINDING ARBITRATION AND MEDIATION OF
744 DISPUTES.—The Division of Florida Condominiums, Timeshares, and
745 Mobile Homes of the Department of Business and Professional
746 Regulation may employ full-time attorneys to act as arbitrators
747 to conduct the arbitration hearings provided by this chapter.
748 The division may also certify attorneys who are not employed by
749 the division to act as arbitrators to conduct the arbitration
750 hearings provided by this chapter. No person may be employed by
751 the department as a full-time arbitrator unless he or she is a
752 member in good standing of The Florida Bar. A person may only be
753 certified by the division to act as an arbitrator if he or she
754 has been a member in good standing of The Florida Bar for at
755 least 5 years and has mediated or arbitrated at least 10
756 disputes involving condominiums in this state during the 3 years
757 immediately preceding the date of application, mediated or
758 arbitrated at least 30 disputes in any subject area in this
759 state during the 3 years immediately preceding the date of
760 application, or attained board certification in real estate law
761 or condominium and planned development law from The Florida Bar.
762 Arbitrator certification is valid for 1 year. An arbitrator who
763 does not maintain the minimum qualifications for initial
764 certification may not have his or her certification renewed. The

765 department may not enter into a legal services contract for an
766 arbitration hearing under this chapter with an attorney who is
767 not a certified arbitrator unless a certified arbitrator is not
768 available within 50 miles of the dispute. The department shall
769 adopt rules of procedure to govern such arbitration hearings
770 including mediation incident thereto. The decision of an
771 arbitrator shall be final; however, a decision shall not be
772 deemed final agency action. Nothing in this provision shall be
773 construed to foreclose parties from proceeding in a trial de
774 novo unless the parties have agreed that the arbitration is
775 binding. If judicial proceedings are initiated, the final
776 decision of the arbitrator shall be admissible in evidence in
777 the trial de novo.
778 (a) Prior to the institution of court litigation, a party
779 to a dispute shall either petition the division for nonbinding
780 arbitration or initiate presuit mediation as provided in
781 subsection (5). Arbitration shall be binding on the parties if
782 all parties in arbitration agree to be bound in a writing filed
783 in arbitration. The petition must be accompanied by a filing fee
784 in the amount of $50. Filing fees collected under this section
785 must be used to defray the expenses of the alternative dispute
786 resolution program.
787 (5) PRESUIT MEDIATION.- In lieu of the initiation of
788 mandatory nonbinding arbitration set forth in subsections (1)-
789 (4), a party may submit a dispute to presuit mediation in

790 accordance with the provisions of s. 720.311. Neither election
791 nor recall disputes are eligible for mediation; these disputes
792 must be arbitrated by the division or filed with a court of
793 competent jurisdiction.
794 Section 7. Subsection (1) and paragraph (b) of subsection
795 (3) of section 718.303, Florida Statutes, are amended to read:
796 718.303 Obligations of owners and occupants; remedies.—
797 (1) Each unit owner, ~~each~~ tenant and other invitee, and
798 ~~each~~ association is governed by, and must comply with the
799 provisions of, this chapter, the declaration, the documents
800 creating the association, and the association bylaws which are
801 ~~shall be deemed~~ expressly incorporated into any lease of a unit.
802 Actions at law or in equity ~~for damages or for injunctive~~
803 ~~relief~~, or both, for failure to comply with these provisions may
804 be brought by the association or by a unit owner against:
805 (a) The association.
806 (b) A unit owner.
807 (c) Directors designated by the developer, for actions
808 taken by them before control of the association is assumed by
809 unit owners other than the developer.
810 (d) Any director who willfully and knowingly fails to
811 comply with these provisions.
812 (e) Any tenant leasing a unit, and any other invitee
813 occupying a unit.
814

815 The prevailing party in any such action or in any action in
816 which the purchaser claims a right of voidability based upon
817 contractual provisions as required in s. 718.503(1)(a) is
818 entitled to recover reasonable attorney ~~attorney's~~ fees. A unit
819 owner prevailing in an action between the association and the
820 unit owner under this subsection ~~section~~, in addition to
821 recovering his or her reasonable attorney ~~attorney's~~ fees, may
822 recover additional amounts as determined by the court to be
823 necessary to reimburse the unit owner for his or her share of
824 assessments levied by the association to fund its expenses of
825 the litigation. This relief does not exclude other remedies
826 provided by law. Actions arising under this subsection are not
827 considered ~~may not be deemed to be~~ actions for specific
828 performance.
829 (3) The association may levy reasonable fines for the
830 failure of the owner of the unit or its occupant, licensee, or
831 invitee to comply with any provision of the declaration, the
832 association bylaws, or reasonable rules of the association. A
833 fine may not become a lien against a unit. A fine may be levied
834 by the board on the basis of each day of a continuing violation,
835 with a single notice and opportunity for hearing before a
836 committee as provided in paragraph (b). However, the fine may
837 not exceed $100 per violation, or $1,000 in the aggregate.
838 (b) A fine or suspension levied by the board of
839 administration may not be imposed unless the board first

840 provides at least 14 days' written notice to the unit owner and,
841 if applicable, any tenant ~~occupant~~, licensee, or invitee of the
842 unit owner sought to be fined or suspended, and an opportunity
843 for a hearing before a committee of at least three members
844 appointed by the board who are not officers, directors, or
845 employees of the association, or the spouse, parent, child,
846 brother, or sister of an officer, director, or employee. The
847 role of the committee is limited to determining whether to
848 confirm or reject the fine or suspension levied by the board. If
849 the committee does not approve the proposed fine or suspension
850 by majority vote, the fine or suspension may not be imposed. If
851 the proposed fine or suspension is approved by the committee,
852 the fine payment is due 5 days after notice of the approved fine
853 is provided to the unit owner and, if applicable, to any tenant,
854 licensee, or invitee of the unit owner ~~the date of the committee~~
855 ~~meeting at which the fine is approved~~. The association must
856 provide written notice of such fine or suspension by mail or
857 hand delivery to the unit owner and, if applicable, to any
858 tenant, licensee, or invitee of the unit owner.
859 Section 8. Section 718.5014, Florida Statutes, is amended
860 to read:
861 718.5014 Ombudsman location.—The ombudsman shall maintain
862 his or her principal office in a ~~Leon County on the premises of~~
863 ~~the division or, if suitable space cannot be provided there, at~~
864 ~~another~~ place convenient to the offices of the division which

865 will enable the ombudsman to expeditiously carry out the duties
866 and functions of his or her office. The ombudsman may establish
867 branch offices elsewhere in the state upon the concurrence of
868 the Governor.
869 Section 9. Subsection (25) of section 719.103, Florida
870 Statutes, is amended to read:
871 719.103 Definitions.—As used in this chapter:
872 (25) "Unit" means a part of the cooperative property which
873 is subject to exclusive use and possession. A unit may be
874 improvements, land, or land and improvements together, as
875 specified in the cooperative documents. An interest in a unit is
876 an interest in real property.
877 Section 10. Paragraph (c) of subsection (2) of section
878 719.104, Florida Statutes, is amended to read:
879 719.104 Cooperatives; access to units; records; financial
880 reports; assessments; purchase of leases.—
881 (2) OFFICIAL RECORDS.—
882 (c) The official records of the association are open to
883 inspection by any association member or the authorized
884 representative of such member at all reasonable times. The right
885 to inspect the records includes the right to make or obtain
886 copies, at the reasonable expense, if any, of the association
887 member. The association may adopt reasonable rules regarding the
888 frequency, time, location, notice, and manner of record
889 inspections and copying, but may not require a member to

890 demonstrate any purpose or state any reason for the inspection.
891 The failure of an association to provide the records within 10
892 working days after receipt of a written request creates a
893 rebuttable presumption that the association willfully failed to
894 comply with this paragraph. A member ~~unit owner~~ who is denied
895 access to official records is entitled to the actual damages or
896 minimum damages for the association's willful failure to comply.
897 The minimum damages are $50 per calendar day for up to 10 days,
898 beginning on the 11th working day after receipt of the written
899 request. The failure to permit inspection entitles any person
900 prevailing in an enforcement action to recover reasonable
901 attorney fees from the person in control of the records who,
902 directly or indirectly, knowingly denied access to the records.
903 Any person who knowingly or intentionally defaces or destroys
904 accounting records that are required by this chapter to be
905 maintained during the period for which such records are required
906 to be maintained, or who knowingly or intentionally fails to
907 create or maintain accounting records that are required to be
908 created or maintained, with the intent of causing harm to the
909 association or one or more of its members, is personally subject
910 to a civil penalty under ~~pursuant to~~ s. 719.501(1)(d). The
911 association shall maintain an adequate number of copies of the
912 declaration, articles of incorporation, bylaws, and rules, and
913 all amendments to each of the foregoing, as well as the question
914 and answer sheet as described in s. 719.504 and year-end

915 financial information required by the department, on the
916 cooperative property to ensure their availability to members
917 ~~unit owners~~ and prospective purchasers, and may charge its
918 actual costs for preparing and furnishing these documents to
919 those requesting the same. An association shall allow a member
920 or his or her authorized representative to use a portable
921 device, including a smartphone, tablet, portable scanner, or any
922 other technology capable of scanning or taking photographs, to
923 make an electronic copy of the official records in lieu of the
924 association providing the member or his or her authorized
925 representative with a copy of such records. The association may
926 not charge a member or his or her authorized representative for
927 the use of a portable device. Notwithstanding this paragraph,
928 the following records shall not be accessible to members ~~unit~~
929 ~~owners~~:
930 1. Any record protected by the lawyer-client privilege as
931 described in s. 90.502 and any record protected by the work-
932 product privilege, including any record prepared by an
933 association attorney or prepared at the attorney's express
934 direction which reflects a mental impression, conclusion,
935 litigation strategy, or legal theory of the attorney or the
936 association, and which was prepared exclusively for civil or
937 criminal litigation or for adversarial administrative
938 proceedings, or which was prepared in anticipation of such
939 litigation or proceedings until the conclusion of the litigation

940 or proceedings.
941 2. Information obtained by an association in connection
942 with the approval of the lease, sale, or other transfer of a
943 unit.
944 3. Personnel records of association or management company
945 employees, including, but not limited to, disciplinary, payroll,
946 health, and insurance records. For purposes of this
947 subparagraph, the term "personnel records" does not include
948 written employment agreements with an association employee or
949 management company, or budgetary or financial records that
950 indicate the compensation paid to an association employee.
951 4. Medical records of unit owners.
952 5. Social security numbers, driver license numbers, credit
953 card numbers, e-mail addresses, telephone numbers, facsimile
954 numbers, emergency contact information, addresses of a unit
955 owner other than as provided to fulfill the association's notice
956 requirements, and other personal identifying information of any
957 person, excluding the person's name, unit designation, mailing
958 address, property address, and any address, e-mail address, or
959 facsimile number provided to the association to fulfill the
960 association's notice requirements. Notwithstanding the
961 restrictions in this subparagraph, an association may print and
962 distribute to unit ~~parcel~~ owners a directory containing the
963 name, unit ~~parcel~~ address, and all telephone numbers of each
964 unit ~~parcel~~ owner. However, an owner may exclude his or her

965 telephone numbers from the directory by so requesting in writing
966 to the association. An owner may consent in writing to the
967 disclosure of other contact information described in this
968 subparagraph. The association is not liable for the inadvertent
969 disclosure of information that is protected under this
970 subparagraph if the information is included in an official
971 record of the association and is voluntarily provided by an
972 owner and not requested by the association.
973 6. Electronic security measures that are used by the
974 association to safeguard data, including passwords.
975 7. The software and operating system used by the
976 association which allow the manipulation of data, even if the
977 owner owns a copy of the same software used by the association.
978 The data is part of the official records of the association.
979 Section 11. Paragraph (b) of subsection (1) of section
980 719.106, Florida Statutes, is amended, and subsection (3) is
981 added to that section, to read:
982 719.106 Bylaws; cooperative ownership.—
983 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
984 documents shall provide for the following, and if they do not,
985 they shall be deemed to include the following:
986 (b) Quorum; voting requirements; proxies.—
987 1. Unless otherwise provided in the bylaws, the percentage
988 of voting interests required to constitute a quorum at a meeting
989 of the members shall be a majority of voting interests, and

990 decisions shall be made by owners of a majority of the voting
991 interests. Unless otherwise provided in this chapter, or in the
992 articles of incorporation, bylaws, or other cooperative
993 documents, and except as provided in subparagraph (d)1.,
994 decisions shall be made by owners of a majority of the voting
995 interests represented at a meeting at which a quorum is present.
996 2. Except as specifically otherwise provided herein, after
997 January 1, 1992, unit owners may not vote by general proxy, but
998 may vote by limited proxies substantially conforming to a
999 limited proxy form adopted by the division. Limited proxies and
1000 general proxies may be used to establish a quorum. Limited
1001 proxies shall be used for votes taken to waive or reduce
1002 reserves in accordance with subparagraph (j)2., for votes taken
1003 to waive the financial reporting requirements of s.
1004 719.104(4)(b), for votes taken to amend the articles of
1005 incorporation or bylaws pursuant to this section, and for any
1006 other matter for which this chapter requires or permits a vote
1007 of the unit owners. Except as provided in paragraph (d), after
1008 January 1, 1992, no proxy, limited or general, shall be used in
1009 the election of board members. General proxies may be used for
1010 other matters for which limited proxies are not required, and
1011 may also be used in voting for nonsubstantive changes to items
1012 for which a limited proxy is required and given. Notwithstanding
1013 the provisions of this section, unit owners may vote in person
1014 at unit owner meetings. Nothing contained herein shall limit the

1015 use of general proxies or require the use of limited proxies or
1016 require the use of limited proxies for any agenda item or
1017 election at any meeting of a timeshare cooperative.
1018 3. Any proxy given shall be effective only for the
1019 specific meeting for which originally given and any lawfully
1020 adjourned meetings thereof. In no event shall any proxy be valid
1021 for a period longer than 90 days after the date of the first
1022 meeting for which it was given. Every proxy shall be revocable
1023 at any time at the pleasure of the unit owner executing it.
1024 4. A member of the board of administration or a committee
1025 may submit in writing his or her agreement or disagreement with
1026 any action taken at a meeting that the member did not attend.
1027 This agreement or disagreement may not be used as a vote for or
1028 against the action taken and may not be used for the purposes of
1029 creating a quorum.
1030 5. A board or committee member participating in a meeting
1031 via telephone, real-time video conferencing, or similar real-
1032 time electronic or video communication counts toward a quorum,
1033 and such member may vote as if physically present ~~When some or~~
1034 ~~all of the board or committee members meet by telephone~~
1035 ~~conference, those board or committee members attending by~~
1036 ~~telephone conference may be counted toward obtaining a quorum~~
1037 ~~and may vote by telephone~~. A ~~telephone~~ speaker must ~~shall~~ be
1038 used ~~utilized~~ so that the conversation of such ~~those board or~~
1039 ~~committee~~ members ~~attending by telephone~~ may be heard by the

1040 board or committee members attending in person, as well as by
1041 any unit owners present at a meeting.
1042 (3) GENERALLY.—Any provision of the declaration, the
1043 association bylaws, or reasonable rules or regulations of the
1044 association which diminish or infringe upon any right protected
1045 under the Fourteenth Amendment to the United States Constitution
1046 or s. 2, Art. I of the State Constitution is void and
1047 unenforceable without further action of the association. The
1048 association may record a notice in the public records of the
1049 county in which the cooperative is located evidencing its
1050 intention to not enforce such provision. The failure of the
1051 association to record a notice in the public record may not be
1052 the basis for liability or evidence of discrimination or a
1053 discriminatory intention.
1054 Section 12. Paragraph (l) of subsection (4) of section
1055 720.303, Florida Statutes, is redesignated as paragraph (m),
1056 paragraph (c) of subsection (2) is amended, and a new paragraph
1057 (l) is added to subsection (4) of that section, to read:
1058 720.303 Association powers and duties; meetings of board;
1059 official records; budgets; financial reporting; association
1060 funds; recalls.—
1061 (2) BOARD MEETINGS.—
1062 (c) The bylaws shall provide the following for giving
1063 notice to parcel owners and members of all board meetings and,
1064 if they do not do so, shall be deemed to include the following:

1065 1. Notices of all board meetings must be posted in a
1066 conspicuous place in the community at least 48 hours in advance
1067 of a meeting, except in an emergency. In the alternative, if
1068 notice is not posted in a conspicuous place in the community,
1069 notice of each board meeting must be mailed or delivered to each
1070 member at least 7 days before the meeting, except in an
1071 emergency. Notwithstanding this general notice requirement, for
1072 communities with more than 100 members, the association bylaws
1073 may provide for a reasonable alternative to posting or mailing
1074 of notice for each board meeting, including publication of
1075 notice, provision of a schedule of board meetings, or the
1076 conspicuous posting and repeated broadcasting of the notice on a
1077 closed-circuit cable television system serving the homeowners'
1078 association. However, if broadcast notice is used in lieu of a
1079 notice posted physically in the community, the notice must be
1080 broadcast at least four times every broadcast hour of each day
1081 that a posted notice is otherwise required. When broadcast
1082 notice is provided, the notice and agenda must be broadcast in a
1083 manner and for a sufficient continuous length of time so as to
1084 allow an average reader to observe the notice and read and
1085 comprehend the entire content of the notice and the agenda. <u>In</u>
1086 <u>addition to any of the authorized means of providing notice of a</u>
1087 <u>meeting of the board, the association may, by rule, adopt a</u>
1088 <u>procedure for conspicuously posting the meeting notice and the</u>
1089 <u>agenda on the association's website for at least the minimum</u>

1090 period of time for which a notice of a meeting is also required
1091 to be physically posted on the association property. Any rule
1092 adopted shall, in addition to other matters, include a
1093 requirement that the association send an electronic notice in
1094 the same manner as is required for a notice of a meeting of the
1095 members, which must include a hyperlink to the website where the
1096 notice is posted, to members whose e-mail addresses are included
1097 in the association's official records. The association may
1098 provide notice by electronic transmission in a manner authorized
1099 by law for meetings of the board of directors, committee
1100 meetings requiring notice under this section, and annual and
1101 special meetings of the members to any member who has provided a
1102 facsimile number or e-mail address to the association to be used
1103 for such purposes; however, a member must consent in writing to
1104 receiving notice by electronic transmission.
1105 2. An assessment may not be levied at a board meeting
1106 unless the notice of the meeting includes a statement that
1107 assessments will be considered and the nature of the
1108 assessments. Written notice of any meeting at which special
1109 assessments will be considered or at which amendments to rules
1110 regarding parcel use will be considered must be mailed,
1111 delivered, or electronically transmitted to the members and
1112 parcel owners and posted conspicuously on the property or
1113 broadcast on closed-circuit cable television not less than 14
1114 days before the meeting.

1115 3. Directors may not vote by proxy or by secret ballot at
1116 board meetings, except that secret ballots may be used in the
1117 election of officers. This subsection also applies to the
1118 meetings of any committee or other similar body, when a final
1119 decision will be made regarding the expenditure of association
1120 funds, and to any body vested with the power to approve or
1121 disapprove architectural decisions with respect to a specific
1122 parcel of residential property owned by a member of the
1123 community.
1124 (4) OFFICIAL RECORDS.—The association shall maintain each
1125 of the following items, when applicable, which constitute the
1126 official records of the association:
1127 (l) Ballots, sign-in sheets, voting proxies, and all other
1128 papers and electronic records relating to voting by parcel
1129 owners, which must be maintained for at least 1 year after the
1130 date of the election, vote, or meeting.
1131 (m) ~~(l)~~ All other ~~written~~ records of the association not
1132 specifically included in this subsection ~~the foregoing~~ which are
1133 related to the operation of the association.
1134 Section 13. Subsections (1) and (2) of section 720.305,
1135 Florida Statutes, are amended to read:
1136 720.305 Obligations of members; remedies at law or in
1137 equity; levy of fines and suspension of use rights.—
1138 (1) Each member and the member's tenants, guests, and
1139 invitees, and each association, are governed by, and must comply

1140 with, this chapter and~~,~~ the governing documents of the
1141 community~~, and the rules of the association~~. Actions at law or
1142 in equity, or both, to redress alleged failure or refusal to
1143 comply with these provisions may be brought by the association
1144 or by any member against:
1145 (a) The association;
1146 (b) A member;
1147 (c) Any director or officer of an association who
1148 willfully and knowingly fails to comply with these provisions;
1149 and
1150 (d) Any tenants, guests, or invitees occupying a parcel or
1151 using the common areas.
1152
1153 The prevailing party in any such litigation is entitled to
1154 recover reasonable attorney fees and costs. A member prevailing
1155 in an action between the association and the member under this
1156 section, in addition to recovering his or her reasonable
1157 attorney fees, may recover additional amounts as determined by
1158 the court to be necessary to reimburse the member for his or her
1159 share of assessments levied by the association to fund its
1160 expenses of the litigation. This relief does not exclude other
1161 remedies provided by law. This section does not deprive any
1162 person of any other available right or remedy.
1163 (2) An ~~The~~ association may levy reasonable fines. A fine
1164 may not exceed $100 per violation against any member or any

1165 member's tenant, guest, or invitee for the failure of the owner
1166 of the parcel or its occupant, licensee, or invitee to comply
1167 with any provision of the declaration, the association bylaws,
1168 or reasonable rules of the association unless otherwise provided
1169 in the governing documents. A fine may be levied by the board
1170 for each day of a continuing violation, with a single notice and
1171 opportunity for hearing, except that the fine may not exceed
1172 $1,000 in the aggregate unless otherwise provided in the
1173 governing documents. A fine of less than $1,000 may not become a
1174 lien against a parcel. In any action to recover a fine, the
1175 prevailing party is entitled to reasonable attorney fees and
1176 costs from the nonprevailing party as determined by the court.
1177 (a) An association may suspend, for a reasonable period of
1178 time, the right of a member, or a member's tenant, guest, or
1179 invitee, to use common areas and facilities for the failure of
1180 the owner of the parcel or its occupant, licensee, or invitee to
1181 comply with any provision of the declaration, the association
1182 bylaws, or reasonable rules of the association. This paragraph
1183 does not apply to that portion of common areas used to provide
1184 access or utility services to the parcel. A suspension may not
1185 prohibit an owner or tenant of a parcel from having vehicular
1186 and pedestrian ingress to and egress from the parcel, including,
1187 but not limited to, the right to park.
1188 (b) A fine or suspension levied by the board of
1189 administration may not be imposed unless the board first

1190 provides at least 14 days' notice to the parcel owner and, if
1191 applicable, any occupant, licensee, or invitee of the parcel
1192 owner, sought to be fined or suspended and an opportunity for a
1193 hearing before a committee of at least three members appointed
1194 by the board who are not officers, directors, or employees of
1195 the association, or the spouse, parent, child, brother, or
1196 sister of an officer, director, or employee. If the committee,
1197 by majority vote, does not approve a proposed fine or
1198 suspension, the proposed fine or suspension may not be imposed.
1199 The role of the committee is limited to determining whether to
1200 confirm or reject the fine or suspension levied by the board. If
1201 the proposed fine or suspension levied by the board is approved
1202 by the committee, the fine payment is due 5 days after notice of
1203 the approved fine is provided to the parcel owner and, if
1204 applicable, to any occupant, licensee, or invitee of the parcel
1205 owner ~~the date of the committee meeting at which the fine is~~
1206 ~~approved~~. The association must provide written notice of such
1207 fine or suspension by mail or hand delivery to the parcel owner
1208 and, if applicable, to any occupant ~~tenant~~, licensee, or invitee
1209 of the parcel owner.
1210 Section 14. Paragraph (g) of subsection (1) of section
1211 720.306, Florida Statutes, is amended to read:
1212 720.306 Meetings of members; voting and election
1213 procedures; amendments.—
1214 (1) QUORUM; AMENDMENTS.—

1215 (g) A notice required under this section must be mailed or
1216 delivered to the address identified as the parcel owner's
1217 mailing address in the official records of the association as
1218 required under s. 720.303(4) ~~on the property appraiser's website~~
1219 ~~for the county in which the parcel is located~~, or electronically
1220 transmitted in a manner authorized by the association if the
1221 parcel owner has consented, in writing, to receive notice by
1222 electronic transmission.
1223 Section 15. Subsection (6) is added to section 720.3075,
1224 Florida Statutes, to read:
1225 720.3075 Prohibited clauses in association documents.—
1226 (6) Any provision of the declaration, the association
1227 bylaws, or reasonable rules or regulations of the association
1228 which diminish or infringe upon any right protected under the
1229 Fourteenth Amendment to the United States Constitution or s. 2,
1230 Art. I of the State Constitution is void and unenforceable
1231 without further action of the association. The association may
1232 record a notice in the public records of the county in which the
1233 community is located evidencing its intention to not enforce
1234 such provision. The failure of the association to record a
1235 notice in the public record may not be the basis for liability
1236 or evidence of discrimination or a discriminatory intention.
1237 Section 16. This act shall take effect July 1, 2020.
1238
1239 ----------

1240 **T I T L E A M E N D M E N T**

1241 Remove everything before the enacting clause and insert:
1242 An act relating to community associations; amending s. 514.0115,
1243 F.S.; exempting certain property association pools from
1244 Department of Health regulations; amending s. 627.714, F.S.;
1245 prohibiting subrogation rights against a condominium association
1246 under certain circumstances; amending s. 718.111, F.S.;
1247 requiring certain records to be maintained for a specified time;
1248 prohibiting an association from requiring certain actions
1249 related to the inspection of records; revising requirements
1250 relating to certain condominium associations posting digital
1251 copies of certain documents; amending s. 718.112, F.S.;
1252 prohibiting certain provisions in governing documents;
1253 authorizing the association to record certain notice in the
1254 public record; limiting liability; specifying that only board
1255 service that occurs on or after a specified date may be used for
1256 calculating a board member's term limit; providing requirements
1257 for certain notices; prohibiting an association from charging
1258 certain fees; providing an exception; requiring a residential
1259 condominium’s governing documents to provide for mandatory
1260 alternative dispute resolution; deleting a prohibition against
1261 employing or contracting with certain service providers;
1262 amending s. 718.113, F.S.; revising regulations for electric
1263 vehicles; providing definitions; providing that an association
1264 may not prohibit a unit owner from installing a natural gas fuel

1265 station; providing requirements for installing such fuel
1266 station; amending s. 718.1255, F.S.; revising alternative
1267 dispute resolution requirements; amending s. 718.303, F.S.;
1268 revising requirements for certain actions for failure to comply
1269 with specified provisions; revising requirements for certain
1270 fines; amending s. 718.5014, F.S.; revising the location of the
1271 principal office of the Office of the Condominium Ombudsman;
1272 amending s. 719.103, F.S.; revising the definition of the term
1273 "unit" to specify that an interest in a cooperative unit is an
1274 interest in real property; amending s. 719.104, F.S.;
1275 prohibiting an association from requiring certain actions
1276 related to the inspection of records; amending s. 719.106, F.S.;
1277 revising provisions related to a quorum and voting rights for
1278 members remotely participating in meetings; prohibiting certain
1279 provisions in governing documents; authorizing the association
1280 to record certain notice in the public record; limiting
1281 liability; amending s. 720.303, F.S.; authorizing an association
1282 to adopt procedures for electronic meeting notices; revising the
1283 documents that constitute the official records of an
1284 association; amending s. 720.305, F.S.; providing requirements
1285 for certain fines; amending s. 720.306, F.S.; revising
1286 requirements for providing certain notices; amending s.
1287 720.3075, F.S.; prohibiting certain provisions in governing
1288 documents; authorizing the association to record certain notice

1289 in the public record; limiting liability; providing an effective
1290 date.

HB 733

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 733 Marketable Record Title Act
SPONSOR(S): Smith, D. and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 802

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Mawn	Luczynski
2) Transportation & Tourism Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The Marketable Record Title Act ("MRTA") automatically extinguishes all estates, interests, claims, or charges, existing due to any act, title transaction, event, or omission occurring before the effective date of the root of title and not statutorily excepted or otherwise preserved from extinguishment. In other words, MRTA simplifies the title examination process by confirming real property's marketability based on a 30-year marketable record period and a consideration of the statutory exceptions.

Restrictive covenants govern the use of real property. Some restrictive covenants restrict a person's ownership, occupancy, or use of real property based on such person's membership in a class protected under the Fourteenth Amendment of the United States Constitution and section 2, article I of the Florida Constitution, including race, religion, color, national origin, familial status, and physical disability ("discriminatory restriction"). Such discriminatory restrictions violate the federal and state Fair Housing Acts and are thus unenforceable. However, restrictive covenants can be difficult to remove from the official records as they run with the land. A prospective homebuyer discovering a discriminatory restriction in the home's deed may be discouraged from buying the home, believing that he or she may be unwelcome in the neighborhood.

HB 733:

- Clarifies that a property conveyance subject to existing encumbrances identified in a muniments of title does not restart MRTA's 30-year marketability period on such encumbrances without an affirmative statement of the parties' intent to do so or a specific reference to the identified encumbrance's official records book and page number.
- Adds covenants, restrictions, zoning requirements, and building or developmental permits to the list of encumbrances extinguished by MRTA.
- Excepts from extinguishment by MRTA zoning ordinances, land development regulations, building codes, and other regulations operating independently in the official record.
- Provides that a discriminatory restriction is unenforceable and extinguished under MRTA.
- Creates a simplified process for a property owners' association to amend its Declaration of Covenants to remove a discriminatory restriction, allowing such an amendment by a majority vote of the board.
- Allows a homeowner with a discriminatory restriction in his or her deed to obtain a written declaration from the Department of Economic Opportunity ("DEO") that such restriction is extinguished under MRTA and to file such declaration in the official records of the county in which the home is located.

The bill is intended to be remedial in nature and to apply retroactively.

The bill does not appear to have a fiscal impact local governments but may have an impact on state government as it requires DEO to review discriminatory restrictions and issue written declarations.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:
Background

Marketable Record Title Act

Background

Prior to passage of the Marketable Record Title Act ("MRTA") in 1963, a title examination involved reviewing all documents relating to the real property recorded in the public records of the county in which the property lies from the oldest public records[1] to the most recent.[2] This usually required the purchase of a title abstract and a review and analysis of every document and title transaction[3] listed in the abstract.[4] However, MRTA created a new title concept, i.e., the marketable record title, by eliminating ancient defects or stale claims to real property.[5] In other words, MRTA simplifies the title examination process by confirming a piece of real property's marketability based on a 30-year marketable record period and a consideration of certain statutory exceptions rather than on a perfect record from the oldest public records to the most recent. Specifically, MRTA provides that any person with the legal capacity to own land who, alone or with a predecessor in title, has been vested with any estate in land of record for 30 years or more, has marketable record title to such land free and clear of all claims other than those excepted in statute.[6]

After 30 years, MRTA automatically extinguishes all estates, interests, claims, or charges, existing due to any act, title transaction, event, or omission occurring before the effective date of the root of title and not statutorily excepted from extinguishment.[7] All extinguished estates, interest, claims, or charges become null and void.[8] However, MRTA also sets out rights and interests not extinguished by its terms, including:

- Estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title[9] on which the estate is based beginning with the root of title.[10]
- Estates, interests, claims, or charges, or any covenant or restriction[11] preserved by the filing of a proper notice in accordance with MRTA.[12]
- Rights of any person possessing the land so long as the person is in such possession.[13]
- Estates, interests, claims, or charges arising out of a title transaction recorded after the root of title effective date.[14]

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[1] These records could date as far back as a land grant from the King of Spain when Florida was a Spanish colony. *See* The Florida Bar, *Florida Real Property Title Examination and Insurance* chapter 2, (8th ed. 2016).
[2] Gregory M. Cook, *The Marketable Record Title Act Made Easy*, 66 Fl. Bar J. 55 (Oct. 1992), https://www.floridabar.org/the-florida-bar-journal/the-marketable-record-title-act-made-easy/ (last visited Jan. 16, 2020).
[3] "Title transaction" means any recorded instrument or court proceeding affecting title to any estate or interest in land and describing the land sufficiently to identify its location and boundaries. S. 712.01(7), F.S.
[4] *Id.*
[5] *Id.*
[6] S. 712.02(1), F.S.
[7] "Root of title" means any title transaction purporting to create or transfer the estate claimed by any person which is the last title transaction to have been recorded at least 30 years before the time when marketability is being determined. The effective date of the root of title is the date it was recorded. Ss. 712.01(6) and 712.04, F.S.
[8] S. 712.04, F.S.
[9] "Muniments of title" are written instruments or evidence which the owner of lands, possessions, or inheritances has entitling said owner to defend the title. Muniments of title need not be recorded to be valid, except that recording statutes do give good-faith purchasers certain rights over other persons. 42 Fla. Jur. 2d § 16.
[10] S. 712.03(1), F.S.
[11] "Covenant or restriction" means any agreement or limitation contained in a document recorded in the public records of the county in which the parcel is located which subjects the parcel to any use or other restriction or obligation. S. 712.01(2), F.S.
[12] S. 712.03(2), F.S.
[13] S. 712.03(3), F.S.

- Recorded or unrecorded easements in the nature of easements, rights-of-way, and terminal facilities.[15]
- Rights of a person in whose name the land is assessed on the county tax rolls under specified circumstances.[16]
- State title to lands beneath navigable waters acquired by virtue of sovereignty.[17]
- Any right, title, or interest held by the Board of Trustees of the Internal Improvement Trust Fund,[18] specified water management districts, or the United States.[19]

MRTA also provides a mechanism for an interested party to preserve from extinguishment a right or interest the party holds. Specifically, a person with an interest in land or some other right subject to extinguishment by MRTA may preserve such interest or right by filing a written notice at any time during marketability period immediately after the effective date of the root of title.[20] Additionally, a property owners' association ("POA")[21] may preserve and protect a community covenant or restriction[22] by filing either a:

- Written notice in the form required by MRTA;[23]
- Summary notice complying with the specifications of s. 720.3032(2);[24] or
- Community covenant or restriction amendment indexed under the association's legal name and referencing the information to be preserved.[25]

Such an action creates a new marketable record period, preventing extinguishment of the interests and rights contained in the notice or community covenant or restriction amendment for 30 years from the date of filing.[26]

Recent Complications

Real estate practitioners in Florida commonly except from a seller's warranty of title in a deed matters identified as outstanding encumbrances or restrictions by making the deed subject to all matters of record and instruments identified by official book and page numbers.[27] Though the parties rarely intend to restart MRTA's 30-year marketability period on a prior existing encumbrance or restriction by such an action, it could be argued that identifying the official book and page number of such encumbrance or restriction in a muniments of title could do just that.[28]

Additionally, in 2016, a court, in *Save Calusa Trust v. St. Andrews Holdings, Ltd.* ("*Calusa*"), found that a restrictive covenant recorded in compliance with a government-imposed land-use restriction is not a title interest extinguished under MRTA, acknowledging established Florida law recognizing that

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[14] S. 712.03(4), F.S.
[15] S. 712.03(5), F.S.
[16] S. 712.03(6), F.S.
[17] S. 712.03(7), F.S.
[18] The Board of Trustees of the Internal Improvement Trust Fund is comprised of the Governor and the Cabinet. *See* Florida Department of Environmental Protection, *Division of State Lands*, https://floridadep.gov/lands (last visited Jan. 16, 2020).
[19] S. 712.03(8), F.S.
[20] S. 712.05, F.S.
[21] A POA is a homeowners' association, a corporation or other entity responsible for the operation of property in which voting membership is made up of the property owners and their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, or an association of parcel owners authorized to enforce a community covenant or restriction imposed on the parcels. S. 712.01(5), F.S.
[22] "Community covenant or restriction" means any agreement or limitation contained in a document recorded in the public records of the county where the property lies which subjects the parcel to any use restriction enforceable by a property owners' association or authorizes a property owners' association to impose a charge or assessment against the parcel or parcel owner. S. 712.01, F.S.
[23] S. 712.05(2)(a), F.S.
[24] S. 712.05(2)(b), F.S.
[25] *Id.*
[26] S. 712.05(3), F.S.
[27] *See* Real Property, Probate & Trust Law Section of the Florida Bar ("RPPTL"), *White Paper: Revisions to Chapter 712*, (July 28, 2018).
[28] *Id.*

government-imposed property restrictions do not affect marketability of title.[29] The court also acknowledged that no language in MRTA reaches zoning regulations, finding that a restrictive zoning ordinance is not a hidden property interest of the kind MRTA seeks to extinguish.[30] However, in some cases, there is no way to facially determine whether a restrictive covenant recorded in the official records was recorded in compliance with a government-imposed land-use,[31] and thus whether the restrictive covenant is extinguished by MRTA or preserved under the judicially-created exception.

Discriminatory Restrictive Covenants

Taken together, the Fourteenth Amendment of the United States Constitution and section 2, article I of the Florida Constitution protect persons from discrimination on the basis of certain characteristics, including race, color, national origin, religion, gender, pregnancy, familial status, and physical disability ("protected class"). However, some title transactions recorded in the state restrict a person's ownership, occupancy, or use of real property based on such person's membership in a protected class ("discriminatory restriction"), vestiges of a time when property value was determined in part by the people living in the neighborhood.[32]

In the early 20th century, cities used zoning ordinances to segregate people into neighborhoods by race and ethnicity, but in 1917, the U.S. Supreme Court declared the practice unconstitutional.[33] After this ruling, restrictive covenants became the preferred method of segregation based on membership in a protected class. As private contracts, restrictive covenants did not fall under existing laws prohibiting discrimination by the federal government or the state, and in 1926, the U.S. Supreme Court declared discriminatory restrictions enforceable.[34] Discriminatory restrictions were so successful in segregating neighborhoods that in 1934, the Federal Housing Administration ("FHA") recommended that all FHA-insured homes include such restrictions in their deeds, finding that, "if a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes."[35]

However, in 1948, the U.S. Supreme Court found racially restrictive covenants unenforceable under the Fourteenth Amendment of the United States Constitution.[36] In 1949, the FHA stopped rejecting new mortgage insurance applications simply because the home's purchase or occupancy might violate a discriminatory restrictive covenant,[37] and in 1968, Congress passed the Fair Housing Act, explicitly prohibiting racial discrimination in housing sale, rental, or financing.[38] Florida's Fair Housing Act also generally prohibits discrimination in the sale or rental of real property based on membership in a protected class,[39] and prohibits the making, printing, or publishing of "any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on [such membership]."[40]

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[29] *See Save Calusa Trust v. St. Andrews Holdings, Ltd*., 193 So. 3d 910 (Fla. 3d DCA 2016), citing *Wheeler v. Sullivan*, 106 So. 876 (Fla. 1925).
[30] *See Calusa*, 193 So. 3d 910, citing *Blanton v. City of Pinellas Park*, 887 So. 2d 1224 (Fla. 2004).
[31] *See* RPPTL, *supra* note 27.
[32] In 1931, a common appraisal text included the language: "we must recognize the customs, habits, and characteristics of various strata of society and races of people." National Association of Realtors ("NAR"), You Can't Live Here: The Enduring Impacts of Restrictive Covenants (Feb. 2018), https://www.nar.realtor/sites/default/files/documents/2018-February-Fair-Housing-Story.pdf (last visited Jan. 16, 2020).
[33] *Buchanan v. Warley*, 245 U.S. 60 (1917).
[34] *Corrigan v. Buckley*, 271 U.S. 323 (1926).
[35] NAR, *supra* note 32.
[36] *Shelley v. Kraemer*, 334 U.S. 1 (1948).
[37] NAR, *supra* note 32.
[38] Title VIII of the Civil Rights Act of 1968.
[39] The prohibition does not apply to the sale or rental of a single-family home by a private individual owner, housing for older persons if the discrimination is against familial status, or to a religious organization giving preference to members of such religion for any dwelling operated or owned for something other than a commercial purpose under specified circumstances. S. 760.29(1), (2), and (4), F.S.
[40] S. 760.23(1)-(3), F.S.

Though unenforceable, discriminatory restrictions can be difficult to remove from the public record as they run with the land, passing from owner to owner. Where a restrictive covenant governs the use of property in a homeowners' association[41] ("HOA"), the Declaration of Covenants may be amended to remove the restriction by an affirmative vote of the HOA's members, which vote must be two-thirds of all voting interests unless the HOA's governing documents[42] specify otherwise.[43] However, voter apathy is a common problem in HOAs, making restrictive covenant amendments challenging,[44] and no similar process exists for homeowners living in a neighborhood with a voluntary neighborhood association.[45]

However, a homeowner with a discriminatory restriction in his or her deed may seek a declaratory judgment[46] from the circuit court for the judicial circuit in which the property is located to determine his or her rights under the deed.[47] This process can be costly and time-consuming, as well as intimidating for homeowners unfamiliar with the court system. Additionally, a declaratory judgment would only state that a discriminatory restriction is void and unenforceable against the homeowner; it would not remove the offending language from the official record.

Many who encounter a discriminatory restriction suffer pain, reminded of segregation and other forms of discrimination from the not-so-distant past. Additionally, a prospective homebuyer may be discouraged from buying a home with a discriminatory restriction in the deed, believing that he or she may not be welcome in the neighborhood.[48] Understanding this, California and Washington State have in recent years created a simplified process for HOAs to remove discriminatory restrictive covenants from their respective Declarations of Covenant.[49] California also allows a homeowner with a discriminatory restriction in his or her deed to file in the official records of the county in which his or her property lies a modification document along with a copy of the deed with the offending restriction stricken through.[50] If the county attorney agrees that the stricken restriction is illegal and unenforceable, the modification document is recorded in the county's official records.[51]

Effect of Proposed Changes

HB 733 clarifies that real property conveyances subject to a prior existing encumbrance or restriction identified in a muniments of title does not restart MRTA's 30-year marketability period on such encumbrance or restriction unless the parties to the instrument include an affirmative statement of their intent to do so or there is specific reference made to the official records book and page number of the identified encumbrance or restriction.

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[41] HOA means a Florida corporation responsible for a community's operation in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. S. 720.301(9), F.S.
[42] An HOA's governing documents include the Declaration of Covenants, Articles of Incorporation, Bylaws, and Rules and Regulations.
[43] S. 720.306(1)(b), F.S.
[44] *See* Joseph Adams, *Voter Apathy Plagues Florida Community Associations*, Florida Condo & HOA Law Blog (Feb. 16, 2017), https://www.floridacondohoalawblog.com/2017/02/16/voter-apathy-plagues-florida-community-associations/ (last visited Jan. 16, 2020).
[45] A voluntary association is, as the name suggests, voluntary. Members must pay dues and follow the association's rules, but the association has no lien rights or other authority over the homeowner except to exclude the homeowner from membership.
[46] An interested person in doubt about his or her rights under a deed, will, contract, or other article or instrument may have determined by a court any question of construction or validity arising under such article or instrument. When such relief if sought, all interested persons whose interest may be affected by the declaration may be made parties. The court's declaration may be either affirmative or negative in form and has the force and effect of a final judgment. Ss. 86.011, 86.021, and 86.091, F.S.
[47] S. 86.021, F.S.
[48] For example, in 2019, an attorney buying a home in the Betton Hills neighborhood of Tallahassee, Florida discovered a racially discriminative restrictive covenant in the home's deed prohibiting a person "of other than the Caucasian race" to own, use, or occupy property in the neighborhood except as "domestic servants." The attorney, upset by language that would have excluded her minor son if enforceable, decided not to buy the home. *See* TaMaryn Waters, *Attorney Wants Outdated, Racist Covenant Language in Betton Hills Stripped*, Tallahassee Democrat, Oct. 13, 2019, https://www.tallahassee.com/story/news/money/2019/07/01/attorney-wants-outdated-racist-covenant-language-betton-hills-stripped-tallahassee/1546406001/ (last visited Jan. 16, 2020).
[49] *See* Wash. Rev. Code § 49.60.227; *see also* Cal. Civ. Code § 6606.
[50] See Cal. Gov't Code § 12956.1.
[51] See Cal. Gov't Code § 12956.2.

The bill also provides that covenants, restrictions, zoning requirements, and building or developmental permits are extinguished by MRTA but conforms MRTA to the *Calusa* court's holding by excepting from extinguishment zoning ordinances, land development regulation, building codes, and other laws or regulations operating independently of matters recorded in the official record.

Additionally, the bill defines "discriminatory restriction," providing that such a restriction is unlawful and unenforceable. Under the bill, a discriminatory restriction is extinguished from any recorded title transaction under MRTA, and filing a notice to preserve such a restriction has no effect. The bill also simplifies the process to remove a discriminatory restriction in a covenant affecting parcels in a POA by allowing such removal through a Declaration of Covenants amendment approved by a majority vote of the POA's board of directors, instead of a vote by two-thirds of the POA's members or some other number of members specified in the POA's governing documents. Further, the bill allows a homeowner with a discriminatory restriction in his or her deed to obtain from the Department of Economic Opportunity ("DEO") a written determination that such restriction is extinguished by the newly-created MRTA provision, which determination may be recorded in the official records of the county where the property is located. Such a determination would not remove the discriminatory restriction from a deed or prevent it from appearing in a title search, but it would make a statement about the restriction's repugnant nature to anyone discovering it.

Finally, the bill provides that the MRTA changes are intended to be remedial in nature and to apply retroactively. However, the bill creates a one-year grace period for a person whose interest might be extinguished by such changes to file a notice to preserve the interest.

The bill provides an effective date of upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 712.03, F.S., relating to exceptions to marketability.
Section 2: Amends s. 712.04, F.S., relating to interests extinguished by marketable record title.
Section 3: Creates s. 712.065, F.S., relating to extinguishment of discriminatory restrictions.
Section 4: Amends s. 712.12, F.S., relating to covenant or restriction realization by parcel owners not subject a homeowners' association.
Section 5: Provides that the amendments to ss. 712.03, 712.04, and 712.12, F.S., are intended to be remedial in nature and to apply retroactively.
Section 6: Provides a one-year grace period for a person whose interest may be extinguished by the act to file a notice to preserve the interest.
Section 7: Directs the Division of Law Review to replace the phrase "the effective date of this act" wherever it occurs in the act with the date the act becomes a law.
Section 8: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have a fiscal impact on state government as it requires DEO to review discriminatory restrictions and issue written declarations, which may require additional staff and training. The extent of the potential fiscal impact is unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does appear to effect counties or municipalities.

2. Other:

The bill includes three sections expressly intended to be remedial in nature and to apply retroactively. The Florida Supreme Court has developed a two-prong test for determining whether a statute may be applied retroactively.[52] First, there must be "clear evidence of legislative intent to apply the statute retroactively."[53] Second, the court must determine "whether retroactive application is constitutionally permissible."[54] Retroactive application of a statute is unconstitutional if it deprives a person of due process by impairing vested rights or imposing new obligations to previous conduct,[55] and the Legislature's labeling of a statue as remedial does not necessarily make it so.[56] However, a truly remedial statute may be applied retroactively, as it does not create or destroy rights or obligations.[57] Instead, such a statute "operates to further a remedy or confirm rights that already exist."[58]

The bill deals expressly with rights and interests in real property. However, the bill attempts to avoid impairing vested rights by providing a one-year grace period for a person whose right or interest may be affected by the bill to file a notice preserving such right or interest.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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[52] *See Metropolitan Dade County v. Chase Federal Housing Corp.,* 737 So. 3d 494 (Fla. 1999), citing *McCord v. Smith*, 43 So. 2d 704 (Fla. 1949).
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *See State Farm Mut. Auto Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).
[57] *Id.*
[58] *See Maronda Homes, Inc. of Fla. V. Lakeview Reserve Homeowners' Ass'n, Inc.*, 127 So. 3d 1258 (Fla. 2013).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to the Marketable Record Title Act;
3 amending s. 712.03, F.S.; revising rights that are not
4 affected or extinguished by marketable record titles;
5 amending s. 712.04, F.S.; revising what types of
6 interests are extinguished by a marketable record
7 title; providing construction; creating s. 712.065,
8 F.S.; defining the term "discriminatory restriction";
9 providing that discriminatory restrictions are
10 unlawful, unenforceable, and declared null and void;
11 providing that certain discriminatory restrictions are
12 extinguished and severed from recorded title
13 transactions; specifying that the recording of certain
14 notices does not reimpose or preserve a discriminatory
15 restriction; providing requirements for a parcel owner
16 to remove a discriminatory restriction from a covenant
17 or restriction; authorizing a property owner to apply
18 to the Department of Economic Opportunity for a
19 written determination relating to certain
20 discriminatory restrictions; specifying that recording
21 such determination does not constitute a title
22 transaction occurring after the root of title;
23 amending s. 712.12, F.S.; revising the definition of
24 the term "covenant or restriction"; providing
25 applicability; requiring persons with certain

interests in land which may be extinguished by this act to file a specified notice to preserve such interests; providing a directive to the Division of Law Revision; providing an effective date.

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

Section 1. Subsection (1) of section 712.03, Florida Statutes, is amended to read:

712.03 Exceptions to marketability.—Such marketable record title shall not affect or extinguish the following rights:

(1) Estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based beginning with the root of title,~~;~~ provided~~, however,~~ that in the muniments of title those estates, interests, easements, or use restrictions created before the root of title are preserved by identification in the legal description of the property by specific reference to the official records book and page number, instrument number, or plat name or there is otherwise an affirmative statement in a muniment of title to preserve such estates, interests, easements, or use restrictions created before the root of title as identified by the official records book and page or instrument number ~~a general reference in any of such muniments to easements, use restrictions or other interests created prior~~

51 ~~to the root of title shall not be sufficient to preserve them~~
52 ~~unless specific identification by reference to book and page of~~
53 ~~record or by name of recorded plat be made therein to a recorded~~
54 ~~title transaction which imposed, transferred or continued such~~
55 ~~easement, use restrictions or other interests~~; subject, however,
56 to the provisions of subsection (5).
57 Section 2. Section 712.04, Florida Statutes, is amended to
58 read:
59 712.04 Interests extinguished by marketable record title.—
60 Subject to s. 712.03, a marketable record title is free and
61 clear of all estates, interests, claims, covenants,
62 restrictions, or charges, the existence of which depends upon
63 any act, title transaction, event, zoning requirement, building
64 or development permit, or omission that occurred before the
65 effective date of the root of title. Except as provided in s.
66 712.03, all such estates, interests, claims, covenants,
67 restrictions, or charges, however denominated, whether they are
68 or appear to be held or asserted by a person sui juris or under
69 a disability, whether such person is within or without the
70 state, natural or corporate, or private or governmental, are
71 declared to be null and void. However, this chapter does not
72 affect any right, title, or interest of the United States,
73 Florida, or any of its officers, boards, commissions, or other
74 agencies reserved in the patent or deed by which the United
75 States, Florida, or any of its agencies parted with title. This

76 section may not be construed to alter or invalidate a zoning
77 ordinance, land development regulation, building code, or other
78 law or regulation to the extent it operates independently of
79 matters recorded in the official records.
80 Section 3. Section 712.065, Florida Statutes, is created
81 to read:
82 712.065 Extinguishment of discriminatory restrictions.—
83 (1) As used in this section, the term "discriminatory
84 restriction" means a provision in a title transaction recorded
85 in this state which restricts the ownership, occupancy, or use
86 of any real property in this state by any natural person on the
87 basis of a characteristic that has been held, or is held after
88 the effective date of this act, by the United States Supreme
89 Court or the Florida Supreme Court to be protected against
90 discrimination under the Fourteenth Amendment to the United
91 States Constitution or under s. 2, Art. I of the State
92 Constitution, including race, color, national origin, religion,
93 gender, or physical disability.
94 (2) A discriminatory restriction is not enforceable in
95 this state, and all discriminatory restrictions contained in any
96 title transaction recorded in this state are unlawful, are
97 unenforceable, and are declared null and void. Any
98 discriminatory restriction contained in a previously recorded
99 title transaction is extinguished and severed from the recorded
100 title transaction and the remainder of the title transaction

101 remains enforceable and effective. The recording of any notice
102 preserving or protecting interests or rights pursuant to s.
103 712.06 does not reimpose or preserve any discriminatory
104 restriction that is extinguished under this section.
105 (3) Upon request of a parcel owner, a discriminatory
106 restriction appearing in a covenant or restriction affecting the
107 parcel may be removed from the covenant or restriction by an
108 amendment approved by a majority vote of the board of directors
109 of the respective property owners' association, notwithstanding
110 any other requirements for approval of an amendment of the
111 covenant or restriction. Unless the amendment also changes other
112 provisions of the covenant or restriction, the recording of an
113 amendment removing a discriminatory restriction does not
114 constitute a title transaction occurring after the root of title
115 for purposes of s. 712.03(4).
116 (4) Any property owner may apply to the Department of
117 Economic Opportunity for a written determination that a
118 particular discriminatory restriction appearing in a previous
119 title transaction for the property is within the scope of this
120 section and is extinguished by this section. The recording of
121 any such written determination does not constitute a title
122 transaction occurring after the root of title for purposes of s.
123 712.03(4).
124 Section 4. Paragraph (b) of subsection (1) of section
125 712.12, Florida Statutes, is amended to read:

126 712.12 Covenant or restriction revitalization by parcel
127 owners not subject to a homeowners' association.—
128 (1) As used in this section, the term:
129 (b) "Covenant or restriction" means any agreement or
130 limitation ~~imposed by a private party and not required by a~~
131 ~~governmental agency as a condition of a development permit, as~~
132 ~~defined in s. 163.3164, which is~~ contained in a document
133 recorded in the public records of the county in which a parcel
134 is located and which subjects the parcel to any use restriction
135 that may be enforced by a parcel owner.
136 Section 5. The amendments to ss. 712.03, 712.04, and
137 712.12, Florida Statutes, in this act are intended to clarify
138 existing law, are remedial in nature, and apply to all estates,
139 interests, claims, covenants, restrictions, and charges, whether
140 imposed or accepted before, on, or after the effective date of
141 this act.
142 Section 6. A person with an interest in land which may
143 potentially be extinguished by this act, and whose interest has
144 not been extinguished before July 1, 2020, must file a notice
145 pursuant to s. 712.06, Florida Statutes, by July 1, 2021, to
146 preserve such interest.
147 Section 7. The Division of Law Revision is directed to
148 replace the phrase "the effective date of this act" wherever it
149 occurs in this act with the date the act becomes a law.
150 Section 8. This act shall take effect upon becoming a law.

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	____	

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Smith, D. offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 109-123 and insert:
6 of the respective property owners' association or an owners'
7 association in which all owners may voluntarily join,
8 notwithstanding any other requirements for approval of an
9 amendment of the covenant or restriction. Unless the amendment
10 also changes other provisions of the covenant or restriction,
11 the recording of an amendment removing a discriminatory
12 restriction does not constitute a title transaction occurring
13 after the root of title for purposes of s. 712.03(4).
14
15 ----------
16 **T I T L E A M E N D M E N T**

17 Remove lines 17-22 and insert:
18 or restriction;

HB 783

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 783 Uniform Commercial Real Estate Receivership Act
SPONSOR(S): Beltran
TIED BILLS: **IDEN./SIM. BILLS:** SB 660

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

SUMMARY ANALYSIS

A receiver is a person appointed by a court to take possession of another's property and to "receive, collect, care for, and dispose of the property or [its] fruits." In some instances, a receiver's appointment ("receivership") is governed by Florida statute. In other cases, such as receiverships for commercial real estate, a receiver is appointed under the court's equity powers ("equitable receivership"). The Uniform Commercial Real Estate Receivership Act (UCRERA), adopted by seven states since 2017, specifies the circumstances under which a receiver may be appointed for commercial real estate, the scope of such a receivership proceeding, and the receiver's powers, duties, and liabilities. In June of 2016, the Executive Council of the Florida Bar's Business Law Section formed the UCRERA Task Force ("task force") to study UCRERA and determine whether it should be enacted in Florida. The task force determined that existing receivership law in most states, including Florida, does not adequately provide a clear standard for receivership appointment or set forth a receiver's powers and duties, and that such lack of statutory guidance causes variation from one county to the next, as individual judges differ on when a receivership is an appropriate remedy.

HB 783 adopts UCRERA. Specifically, the bill:

- Specifies when and how a court may appoint a receiver, but leaves such appointment in the court's discretion;
- States factors disqualifying a person from appointment as a receiver;
- Authorizes the court to require a receiver to post a bond to protect the owner of receivership property from damages connected to or resulting from the receivership;
- Establishes the general powers and duties of a receiver, and the duties of the owner of receivership property, subject to modification by a court;
- Provides the circumstances, with court approval, under which a receiver can sell or transfer receivership property other than in the ordinary course of business and allows a court to declare such transfer free and clear of all liens, which liens then attach to the proceeds of the transfer;
- Requires court authorization for a lawsuit against a receiver connected to the performance of the receiver's duties;
- Allows a court to remove a receiver for cause and replace a receiver that dies, resigns, or is removed;
- Authorizes a court to order the payment of a receiver's fees and expenses from specified sources;
- Provides that a mortgagee's request for appointment of a receiver or application of receivership property to a secured obligation does not make the mortgagee a mortgagee in possession, constitute a foreclosure action, or have other specified effects on the secured obligation; and
- Applies to receiverships for which a receiver was appointed on or after July 1, 2020.

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

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Receiverships

A receiver is a person appointed by a court to take possession of another's property and to "receive, collect, care for, and dispose of the property or [its] fruits."[1] In some instances, a receiver's appointment ("receivership") is governed by statute.[2] In other cases, such as receiverships for commercial real estate, a receiver is appointed under the court's equity powers ("equitable receiverships").[3] Courts have found that equitable receiverships are "a drastic matter in that [they] constitute the taking of property and, therefore, should not be used…except in cases of necessity."[4]

Receiver's Appointment

Equitable receiverships are a secondary remedy, meaning that there is no independent cause of action one can bring to petition for a receiver's appointment.[5] Instead, an equitable receivership is available only to a plaintiff bringing an underlying cause of action, such as a foreclosure, who motions the court to appoint a receiver.[6] Ordinarily, the court must conduct a hearing on such a motion after notice to the adverse party.[7] However, the court may conduct an ex parte hearing if the:

- Movant shows by specific facts in a sworn affidavit or verified pleading[8] that "immediate and irreparable injury, loss, or damage, will result to the movant before the adverse party can be heard in opposition;"
- Movant's attorney "certifies in writing any efforts that have been made to give the adverse party notice and the reasons why such notice should not be required;" and
- Trial court's order "define[s] the injury, state[s] findings…why the injury may be irreparable, and give[s] the reasons why the order was granted without notice if notice was not given."[9]

In a commercial foreclosure proceeding based upon a mortgage default, courts have found that, if a mortgagee demonstrates a likelihood that he will prevail on the merits, that the mortgagor specifically pledged the property's rents and profits as security for the debt, and that such rents and profits are not being applied to the debt, a motion for a receiver's appointment should usually be granted.[10] However, the decision to appoint an equitable receiver in any case, and what such receiver's powers and duties will be, is in the trial court's discretion.[11] Such decision is an appealable non-final order.[12]

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[1] 1 Clark on Receivers § 11(a), at 13 (3d ed. 1959).
[2] *See, e.g.*, s. 393.0678, F.S., (authorizing a receivership for a residential habilitation center or a group home facility owned and operated by a corporation or partnership under specified circumstances), s. 607.1430(2)(a), F.S., (authorizing a receivership if, in a shareholder proceeding, it is established that the directors are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or suffered), and s. 720.3053, F.S., (authorizing a receivership if a homeowners' association fails to fill board of administration vacancies).
[3] Courts of equity provide a forum for the granting of relief according to principles of justice. However, a court may not disregard controlling legal principles clearly established in law. 22 Fla. Jur, 2d Equity § 2.
[4] *Electro Mech. Prods., Inc. v. Borana*, 324 So. 2d 638 (Fla. 3d DCA 1976).
[5] Joseph E. Foster, A Short Primer on Florida Receivership Law and the Answers to Some Frequently Asked Questions about Receiverships in General, (Sept. 25, 2012), http://www.trigild.com/wp-content/uploads/2012/10/Changing-Times-Changing-Tactics-Primer-on-Florida-receivership-law-2.doc (last visited Jan. 17, 2020).
[6] *Id.*
[7] *Edenfield v. Crisp*, 186 So. 2d 545 (Fla. 2d DCA 1966); Fla. R. Civ. P. 1.610 and 1.620.
[8] A verified pleading is a pleading signed under penalty of perjury. S. 92.525, F.S.
[9] *DeSilva v. First Cmty. Bank of Am.*, 42 So. 3d 285 (Fla. 2d DCA 2010); Fla. R. Civ. P. 1.610.
[10] *Carolina Portland Cement Co. v. Baumgartner*, 128 So. 241 (Fla. 1930).
[11] *See* Foster, *supra* note 5.
[12] *Turtle Lake Associates, Ltd. v. Third Financial Services, Inc.*, 518 So. 2d 959 (Fla. 1st DCA 1988); Fla. R. App. P. 1.610(a)(1)(A).

Receiver's Bond

Where a court appoints a receiver, a "bond with 'good and sufficient surety' should be required [of the receiver]…unless exceptional circumstances…are present."[13] The trial court has some discretion to determine the size of the receiver's bond, but such bond must be "adequate to indemnify an adverse party any damages it might suffer through the receivership of its property"[14] and "of a sufficiently high amount to protect the [adverse] party…should it ultimately be determined that the receivership was improvident."[15] Additionally, in setting the receiver's bond amount, the court must consider the fair market value of the property in receivership.[16] Where the bond amount is substantially less than the property's fair market value, the receiver's appointment is subject to reversal on appeal.[17]

Purposes of Receiver's Appointment

Equitable receiverships are generally only available in cases involving fraud, self-dealing, or waste.[18] However, a court in a foreclosure action may appoint a receiver post-judgment "where it appears that to protect the interests of all parties the decree of sale under foreclosure is to be postponed until the termination of other litigation…and where the terms of the mortgage being foreclosed specifically provide for the appointment of a receiver by the court."[19]

Receiver's Qualifications

A receiver, serving as an officer of the court, must be neutral and impartial, not favoring one party's interests over those of any other party.[20] A receiver acting without neutrality and impartiality faces court sanctions and claims for damages by the parties to the action.[21]

Immunities and Defenses

A receiver acting within the scope of his or her duties has the benefit of judicial immunity given to officers of the court.[22] Thus, a receiver cannot be sued without the court's permission.[23] Further, a receiver has available to him or her any defenses existing in law.

Receiver's Powers and Duties

Florida law does not specify a receiver's general powers and duties.[24] Thus, the court order appointing the receiver establishes the receiver's powers and duties for the particular receivership subject to the order.[25] However, a receiver cannot acquire any rights or powers over the property greater than those of the owner and mortgagee.[26] If the court makes an overly broad power grant, such action may be viewed as an abuse of the court's discretion and the order may be subject to reversal on appeal.[27]

The Florida Rules of Civil Procedure do set forth reporting and inventory requirements, however, requiring a receiver to file with the clerk of the court a "true and complete inventory under oath of the

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[13] *DeSilva*, 42 So. 3d 288; Fla. R. Civ. P. 1.610.
[14] *Turtle Lake*, 518 So. 2d 959.
[15] *Comprop Inv. Properties, Ltd. v. First Tex. Sav. Ass'n*, 534 So. 2d 418 (Fla. 3d DCA 1989).
[16] *Rescom Inv., Inc. v. Strategic Consulting and Managing, Inc.*, 635 So. 2d 1061; *Cohen v. Rubin*, 554 So.2d 4 (Fla. 3d DCA 1989).
[17] *Id.*
[18] *Granada Lakes Villa Condominium Ass'n, Inc. v. Metro-Dade Investments Co.*, 125 So. 3d 756 (Fla. 2013).
[19] *U.S. Bank Nat. Ass'n v. Cramer*, 113 So. 3d 1020 (Fla. 2d DCA 2013).
[20] *Lehman v. Trust Co. of Am.*, 49 So. 502 (Fla. 1909); *Beach v. Williamson*, 83 So. 860 (Fla. 1920).
[21] *See* Foster, *supra* note 5.
[22] *Id.*
[23] *Murtha v. Steijskal*, 232 So. 2d 53 (Fla. 4th DCA 1970).
[24] *MB Plaza, LLC v. Wells Fargo Bank, Nat'l Ass'n*, 72 So. 3d 205 (Fla. 2d DCA 2011).
[25] *Id.*
[26] *Hamilton v. Flowers*, 183 So. 811 (Fla. 1938).
[27] *MB Plaza, LLC*, 72 So. 3d 205.

property coming under the receiver's control or possession…within 20 days after appointment."[28] Every three months, a receiver must also file with the clerk "an inventory and account under oath of any additional property or effects which the receiver has discovered or which shall have to come under the receiver's hands since appointment, the amount remaining in or invested by the receiver's hands since appointment, and the manner in which the same is secured and invested."[29]

Receiver's Sale of Property

Courts have found that the sale of property by a receiver is "ordinarily improper."[30] When courts have authorized such sales, they usually involve sale of an entity, not real property, in the context of a business dissolution or partnership dispute where the sale is necessary to adequately protect the parties' rights.[31]

Court Powers

In addition to its authority to appoint a receiver and specify a receiver's powers and duties, the court has power in equity to make orders directing a receiver, an owner, or others relating to the receivership.[32] Specifically, a court may grant a stay or injunction as necessary to prevent waste or misappropriation of receivership property. Further, the court may order the owner and anyone in possession of receivership property to surrender such receivership property, direct the owner to take actions relating to receivership property, remove a receiver for cause, and discharge a receiver if his or her appointment was improvident or a receivership is no longer necessary. Additionally, the court may order that the receiver's necessary fees and expenses relating to his or her receivership duties be paid out of receivership property.

Uniform Commercial Real Estate Receivership Act

The Uniform Law Commission, also known as the National Conference of Commissioners on Uniform State Laws, drafts and approves comprehensive statutory schemes designed to standardize laws across the states.[33] One such scheme is the Uniform Commercial Real Estate Receivership Act (UCRERA). Adopted by seven states since 2017,[34] UCRERA specifies the circumstances under which a receiver may be appointed for commercial real estate, the scope of such a receivership proceeding, and the receiver's powers, duties, and liabilities.[35]

In June of 2016, the Executive Council of the Florida Bar's Business Law Section formed the UCRERA Task Force ("task force") to study UCRERA and determine whether it should be enacted in Florida.[36] The task force determined that existing receivership law in most states, including Florida, does not adequately provide a clear standard for receiver appointment for commercial real estate or set forth a receiver's powers and duties, and that such lack of statutory guidance causes variation from one county to the next, as individual judges differ on when a receivership is an appropriate remedy.[37]

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[28] Fla. R. Civ. P. 1.620(b).
[29] *Id.*
[30] *Fugazy Travel Bureau, Inc. v. State*, 188 So. 2d 842 (Fla. 4th DCA 1966).
[31] *Id.*
[32] *Schroeder v. Gebhart*, 825 So. 2d 442 (Fla. 5th DCA 2002) ("Once a court of equity acquires jurisdiction over a dispute, it is authorized to administer full, compete and final relief. Generally, courts of equity have wide discretion in fashioning remedies to satisfy the exigencies of the circumstances.")
[33] Wendel Rosen LLP, *The Uniform Commercial Real Estate Receivership Act (Part 1)*, https://www.jdsupra.com/legalnews/the-uniform-commercial-real-estate-38854/ (last visited Jan. 17, 2020).
[34] These states are Arizona (2019), Maryland (2019), Michigan (2018), Nevada (2017), Oregon (2017), Tennessee (2018), and Utah (2017). UCRERA is also pending before the Colorado Legislature. *See* The Florida Bar Business Law Sections' Task Force for the Uniform Commercial Real Estate Receivership Act ("Task Force"), *White Paper* (2019).
[35] *See* Task Force, *supra* note 34.
[36] The Florida Bar Business Law Section, *Uniform Commercial Real Estate Receivership Task Force*, https://www.flabizlaw.org/committees-task-force/task-forces/uniform-commercial-real-estate-receivership-act-task-force/ (last visited Jan. 17, 2020).
[37] *Id.*

Effect of Proposed Changes

HB 783 creates the Florida Uniform Commercial Real Estate Receivership Act ("Act"), providing a statutory scheme for commercial real estate receiverships that largely codifies existing common law.

Definitions

The bill defines:

- "Receiver" as a person appointed by the court as the court's agent, and subject to the court's discretion, to take possession of, manage, and, if authorized by this chapter or court order, transfer, sell, lease, license, exchange, collect, or otherwise dispose of receivership property.
- "Receivership" to mean a proceeding in which a receiver is appointed.
- "Receivership property" to mean the property described in the order appointing a receiver or any subsequent order, including any proceeds, products, offspring, rents, or profits of or from the property.

Applicability

The bill specifies that the Act applies only to a receivership for commercial real estate and any personal property related to or used in operating such property. Thus, the bill does not apply to actions in which a state agency is authorized by statute to seek a receiver's appointment, actions authorized or commenced under federal law, residential real property not used as rental property, homestead property, or personal property used primarily for personal, family or household purposes. Such actions and property continue to be regulated by other statutes or the common law for equitable receiverships.

Receiver's Appointment

Under the bill, a receiver's appointment for commercial real estate remains a secondary remedy, as the bill does not create an independent cause of action one can bring to petition for a receiver's appointment. A receivership could only be created when a party brings an underlying cause of action relating to commercial real estate, such as a foreclosure, and asks the court to appoint a receiver.

Like the common law, the decision to appoint a receiver is in the court's discretion, and the court must conduct a hearing on a motion for receiver after notice to the adverse party unless the:

- Movant shows by specific facts in an affidavit or verified pleading that "immediate and irreparable injury, loss, or damage, will result to the movant or that waste, dissipation, impairment, or substantial diminution in value will result to the…property before any adverse party can be heard in opposition;"
- Movant's attorney "certifies in writing all efforts that have been made to give notice to all known adverse parties or the reasons why such notice should not be required;" and
- Trial court's order "define[s] the injury,…state[s] findings by the court why the injury may be irreparable, and…give[s] the reasons why the order was granted without notice if notice was not given."[38]

The bill gives the court appointing a receiver under the Act exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property, consistent with its current authority under the common law.

Purpose of Receiver's Appointment

The bill both codifies and expands the common law relating to the purpose of a receiver's appointment. Before entry of a judgment on commercial real estate, the bill allows the court to appoint a receiver to protect the interests of a party if the property is in danger of waste, loss, or substantial diminution in

[38] *DeSilva v. First Cmty. Bank of Am.*, 42 So. 3d 285 (Fla. 2d DCA 2010); Fla. R. Civ. P. 1.610.

value, consistent with the common law. However the bill also allows the court to appoint a receiver if the property is about to be the subject of a voidable transaction. Further, the bill authorizes a court to appoint a receiver post-judgment to enforce the judgment, protect a property during the pendency of an appeal, or secure a property's rents to the person entitled to them after a foreclosure sale.

Bond

The bill requires a receiver to post a bond with the court conditioned on the faithful discharge of the receiver's duties, unless the court approves the posting of an alternative security, such as a letter of credit or deposit of funds. Like the common law, the bill charges the court with setting the bond amount; however, unlike the common law, the bill does not provide guidelines for what a minimum bond should be and limits claims against the bond to one year after the receiver's discharge.

Receiver's Qualifications

As under common law, the bill requires a receiver to be neutral and impartial. However, the bill goes further, requiring a prospective receiver to submit to the court under penalty of perjury a statement that the person is not disqualified for appointment. Under the bill, a person is so disqualified if the person:

- Is affiliated with a party;
- Has an interest materially adverse to a party's interest;
- Has a material financial interest in the action's outcome, other than court-ordered compensation;
- Has a debtor-creditor relationship with a party; or
- Holds an equity interest in a party, other than a non-controlling interest in a publicly traded company.

The bill also specifies that a person is not disqualified to serve as a receiver solely because the person:

- Was appointed receiver or is owed compensation in an unrelated matter involving a party or was engaged by a party in an unrelated matter;
- Is obligated to a party on a debt that is not in default and was incurred primarily for personal, family, or household purposes; or
- Maintains a deposit account with a party.

Additionally, the bill authorizes the appointment of a receiver appointed in another state as an ancillary receiver with respect to property located in Florida if such a person is otherwise qualified to serve as a receiver and the appointment furthers the person's possession or control of property subject to the other state's receivership. An ancillary receiver has the same rights, powers, and duties of any receiver appointed under the Act.

Immunity and Defenses

The bill entitles a receiver to all defenses and immunities provided by state law for an act or omission within the scope of the receiver's appointment. As under common law, a receiver cannot be sued for such an act or omission without the court's approval.

Receiver's Powers and Duties

Unlike the common law, the bill specifies a receiver's general powers and duties. These include:

- Collecting, controlling, managing, conserving, and protecting receivership property;
- Operating a business constituting receivership property, including preservation, use, and sale in the ordinary course of business;
- Incurring unsecured debt and paying expenses incidental to the receiver's preservation, use, or sale of receivership property;

- Asserting a right, claim, cause of action, or defense of the owner relating to receivership property;
- Engaging a professional, such as an attorney, in accordance with the requirements of the Act;
- Giving notice of his or her appointment to the owner's creditors;
- Filing interim reports detailing the receiver's recent activities;
- Filing a final report upon completion of the receiver's duties; and
- Exercising any power conferred by court order, the Act, or other state laws.

Additionally, with court approval, a receiver may:

- Incur debt for a receivership property's use or benefit other than in the ordinary course of business;
- Improve receivership property;
- Use or transfer receivership property other than in the ordinary course of business; and
- Adopt or reject an executory contract[39] relating to receivership property, except for an unexpired lease of real property under which the owner is the landlord if the:
    - Tenant occupies the leased premises as his or her primary residence;
    - Receiver was appointed at the request of someone other than a mortgagee; or
    - Receiver was appointed at the request of a mortgagee and certain conditions are met.

However, the bill allows the court to expand, modify, or limit a receiver's powers and duties, so that, just as in the common law, a receiver's powers and duties could vary from case to case.

Sale of Receivership Property

Though sale of receivership property other than in the ordinary course of business is generally improper under common law, the bill authorizes a receiver to sell or transfer receivership property before a judgment is entered in the underlying action with court approval after reasonable notice to all parties if the owner:

- Expressly consents to the receiver's proposed transfer, which consent must be noted in the motion to approve the transfer; or
- Fails to object, either before or at the hearing on the receiver's motion, despite reasonable advanced written notice of such hearing.

The court may also allow a receiver to transfer receivership property post-judgment to carry the judgment into effect or preserve the property during the pendency of the judgment's appeal. Such transfers by a receiver may be declared by the court to be free and clear of any liens on the property at the time of transfer. In that case, valid liens on the property extinguished by the transfer attach to the transfer's proceeds with the same validity, perfection, and priority the liens had immediately before the transfer.

Liens, Security Interests, and Receivership Property

Under the bill, a receiver has the same status as a lien creditor under chapter 679, F.S.,[40] as to receivership property or fixtures and chapter 695, F.S.,[41] as to receivership property that is real property. Further, the bill provides that property acquired by a receiver or an owner after the receiver's appointment is subject to a security agreement entered into before the appointment to the same extent as if the court had not appointed the receiver.

[39] An executory contract is a contract that has not yet been fully completed or performed or a contract the obligation of which relates to the future. Black's Law Dictionary 395 (6th ed. 1996).
[40] Chapter 679, F.S., relates to secured transactions under the Uniform Commercial Code.
[41] Chapter 679, F.S., relates to record of conveyances of real estate.

The bill also provides that, unless the court orders otherwise, on a receiver's demand, a person:

- Who owes a debt that is receivership property and is matured or payable on demand must pay the debt; and
- That has possession, custody, or control of receivership property must turn the property over to the receiver.

Owner's Duties

In addition to setting out a receiver's powers and duties, the bill also specifies duties of the owner of receivership property. Under the bill, the owner must:

- Assist and cooperate with the receiver in the administration of the receiver's duties;
- Preserve and turn over all receivership property in the owner's possession, custody, or control;
- Identify and make available all records and other information relating to the receivership property in the owner's possession, custody, or control;
- If subpoenaed, submit to examination under oath about any matter relating to the receivership property; and
- Perform any duty imposed by court order.

If an owner knowingly fails to perform his or her duties, the bill authorizes the court to sanction the failure as civil contempt and award the receiver actual damages, reasonable attorneys' fees, and costs.

Stays and Injunctions

The bill authorizes the court to enter a stay of any act, action, or proceeding relating to receivership property to obtain possession of, exercise control over, or enforce a judgment or lien against the receivership property. The court may also enjoin any act, action, or proceeding relating to receivership property if the injunction is necessary to protect the receivership property against misappropriation of, or waste relating directly to, the receivership property. In connection with a stay or injunction, the court may direct the party requesting such stay or injunction to post a bond before the stay or injunction may take effect.

Fees and Expenses

As under common law, the bill allows the court to award a receiver reasonable and necessary fees and expenses for performing his or her duties, which fees and expenses may be paid from receivership property. The bill also allows the court to order the following persons to pay such fees and expenses:

- A person that requested the receiver's appointment, if the receivership doesn't produce enough money to pay the fees and expenses; or
- A person whose conduct justified or would have justified the receiver's appointment.

Mortgagee's Enforcement

The bill specifies that a mortgagee's request for a receiver's appointment or application of receivership property to a secured obligation does not:

- Make the mortgagee a mortgagee in possession of the real property[42] or the owner's agent;
- Constitute an election of remedies precluding a later action to enforce the secured obligation;
- Make the secured obligation unenforceable;
- Limit any Right available to the mortgagee with respect to the secured obligation; or
- Constitute a foreclosure action.

[42] In a foreclosure, if a mortgagor voluntarily turns over the property to the mortgagee or abandons the property, the mortgagee becomes a mortgagee in possession. *See* Robert Kratovil, *Mortgages- Problems in Possession, Rents, and Mortgagee Liability*, 11 DePaul L. R. 2 (1961), https://via.library.depaul.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=3442&context=law-review (last visited Jan. 17, 2020).

Receiver's Removal or Replacement

Similar to the common law, the bill allows a court to remove a receiver for cause. Additionally, the bill requires a court to appoint a new receiver following a receiver's death, resignation, or removal, and to discharge a receiver and relinquish control over receivership property if the court finds that the receivership was improvident or the circumstances no longer merit a receivership.

Miscellaneous Provisions

The bill specifies that:

- In applying and construing the Act, consideration must be given to promoting uniformity of the law with respect to its subject matter among states with similar laws.
- It does not apply to receiverships for which a receiver was appointed before July 1, 2020.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Creates ch. 714, F.S., relating to the Uniform Commercial Real Estate Receivership Act.
Section 2: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to impact county or municipal governments.

2. Other:

Florida is a "lien theory" state, meaning that a mortgagee only has a lien on mortgaged property, while the mortgagor holds genuine fee simple title to the property.[43] A foreclosure sale raises due process concerns, as the enforcement of a mortgagor's rights necessarily results in the mortgagor's loss of his or her ownership interest in the real property. Consequently, all mortgage foreclosures in Florida must be filed and prosecuted as civil lawsuits, affording the mortgagor the same rights as a respondent in other civil actions. A receiver's sale or transfer of real property free and clear of all liens raises similar due process concerns, and title companies have expressed concern about their ability to insure title obtained in such a manner.[44]

The bill provides that, in applying and construing the Act, consideration must be given to promoting uniformity of the law with respect to its subject matter among states with similar laws. This appears to direct the courts, which may implicate article II, section 3 of the Florida Constitution, relating to separation of powers.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 321, the bill provides that, in connection with a mortgage foreclosure or enforcement, the court must consider certain facts and circumstances, together with any other relevant facts, in deciding whether to appoint a receiver for the mortgaged property. On line 329, the bill lists as one such fact whether "the owner agreed…to the appointment of a receiver on default." However, on line 331, the bill lists as another such fact whether "the owner agreed, after default…, to appointment of a receiver." It is unclear if the bill intended to refer to an owner twice, as the distinction does not seem material.

On lines 888-900, the bill provides that "a request by a mortgagee for the appointment of a receiver, for the appointment of a receiver, or the application by a mortgagee of receivership property or proceeds does not" have any of the bill's specified effects of enforcement by the mortgagee. "Appointment of a receiver" is listed twice without any apparent distinction in the phrases.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[43] Some states are "title theory" states, considering a mortgagee to have an ownership interest in the property subject to the mortgage. *See* Foster, *supra* note 5.
[44] *See* Foster, *supra* note 5.

1 A bill to be entitled
2 An act relating to the Uniform Commercial Real Estate
3 Receivership Act; creating chapter 714, F.S., relating
4 to the Uniform Commercial Real Estate Receivership
5 Act; providing a short title; defining terms;
6 prohibiting a court from issuing certain orders unless
7 certain requirements are met; providing requirements
8 for certain court orders; authorizing certain parties
9 to move to dissolve or modify certain orders;
10 requiring that such motions be heard within a
11 specified timeframe; providing construction and
12 applicability; specifying that a court has exclusive
13 jurisdiction to direct receivers and determine
14 controversies under certain circumstances; providing
15 requirements and authorizations relating to the
16 appointment of a receiver; specifying when a person is
17 or is not disqualified from appointment as a receiver;
18 authorizing certain persons to nominate someone to
19 serve as a receiver; specifying the court is not bound
20 by such nomination; requiring a receiver to post a
21 bond with the court which meets certain requirements;
22 providing an exception; prohibiting a claim against a
23 receiver's bond or alternative security from being
24 made after a certain time; providing that an appointed
25 receiver has certain statuses of a lien creditor;

26 providing that certain property is subject to
27 specified security agreements; providing requirements
28 relating to the collection and turnover of
29 receivership property; providing for powers and duties
30 of a receiver; authorizing the court to expand,
31 modify, or limit such powers and duties; providing for
32 duties of an owner; authorizing a court to take
33 certain actions if a person knowingly fails to perform
34 a duty; authorizing a court to take certain actions
35 relating to stays and injunctions; authorizing certain
36 persons to apply for relief from a stay or injunction;
37 specifying when an order does not operate as a stay or
38 injunction; authorizing receivers to engage and
39 compensate certain professionals under certain
40 circumstances; requiring certain persons to file an
41 itemized statement with the court; requiring a
42 receiver to pay an amount approved by the court;
43 defining the term "good faith"; authorizing a receiver
44 to use or transfer receivership property other than in
45 the ordinary course of business under certain
46 circumstances; providing for the service of notice to
47 lien holders who are not parties to the action;
48 defining the term "timeshare interest"; authorizing a
49 receiver to adopt or reject an executory contract of
50 the owner relating to receivership property under

51 certain circumstances; requiring that a claim of
52 damages for rejection of a contract be submitted
53 within a specified timeframe; authorizing a purchaser
54 to take certain actions if a receiver rejects an
55 executory contract under certain circumstances;
56 prohibiting a receiver from rejecting unexpired leases
57 of certain property under certain circumstances;
58 providing for defenses and immunities of a receiver;
59 providing requirements for interim reports filed by a
60 receiver; providing requirements relating to notices
61 of appointment; authorizing the court to enter certain
62 orders if the court concludes that receivership
63 property is likely to be insufficient to satisfy
64 certain claims; providing requirements for certain
65 distributions of receivership property; authorizing a
66 court to award fees and expenses; authorizing a court
67 to order certain persons to pay fees and expenses;
68 providing for the removal and replacement of a
69 receiver and the termination of a court's
70 administration of the receivership property under
71 certain circumstances; requiring a receiver to file a
72 final report containing certain information upon
73 completion of the receiver's duties; specifying that a
74 receiver is discharged if certain requirements are
75 met; authorizing a court to appoint ancillary

76 receivers under certain circumstances; providing for
77 rights, powers, and duties of an ancillary receiver;
78 specifying that certain requests, appointments, and
79 applications by a mortgagee do not have certain
80 effects; providing construction and applicability;
81 providing an effective date.
82
83 Be It Enacted by the Legislature of the State of Florida:
84
85 Section 1. Chapter 714, Florida Statutes, consisting of
86 sections 714.01-714.28, is created to read:
87 CHAPTER 714
88 UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT
89 714.01 Short title.—This chapter may be cited as the
90 "Uniform Commercial Real Estate Receivership Act."
91 714.02 Definitions.—For the purposes of this chapter, the
92 term:
93 (1)"Affiliate" means:
94 (a) With respect to an individual:
95 1. A companion of the individual;
96 2. A lineal ancestor or descendent, whether by blood or
97 adoption, of:
98 a. The individual; or
99 b. A companion of the individual;
100 3. A companion of an ancestor or descendent as described

101 in subparagraph 2.;
102 4. A sibling, aunt, uncle, great aunt, great uncle, first
103 cousin, niece, nephew, grandniece, or grandnephew of the
104 individual, whether related by the whole or the half blood or
105 adoption, or a companion of any of them; or
106 5. Any other person occupying the residence of the
107 individual; and
108 (b) With respect to a person other than an individual:
109 1. Another person who directly or indirectly controls, is
110 controlled by, or is under common control with the person;
111 2. An officer, director, manager, member, partner,
112 employee, or trustee or other fiduciary of the person; or
113 3. A companion of an individual or an individual occupying
114 the residence of an individual.
115 (2) "Companion" means:
116 (a) The spouse of an individual;
117 (b) The registered domestic partner of an individual; or
118 (c) Another individual in a civil union with an
119 individual.
120 (3) "Court" means the court of general equity jurisdiction
121 in this state.
122 (4) "Executory contract" means a contract, including a
123 lease, under which each party has an unperformed obligation and
124 the failure of a party to complete performance would constitute
125 a material breach.

126 (5) "Governmental unit" means an office, department,
127 division, bureau, board, commission, or other agency of this
128 state or a subdivision of this state.
129 (6) "Lien" means an interest in property which secures
130 payment or performance of an obligation.
131 (7) "Mortgage" means a record, however denominated, that
132 creates or provides for a consensual lien on real property or
133 rents, even if the record also creates or provides for a lien on
134 personal property.
135 (8) "Mortgagee" means a person entitled to enforce an
136 obligation secured by a mortgage.
137 (9) "Mortgagor" means a person who grants a mortgage or a
138 successor in ownership of the real property described in the
139 mortgage.
140 (10) "Owner" means the person for whose property a
141 receiver is appointed.
142 (11) "Person" means an individual, estate, business or
143 nonprofit entity, public corporation, government or governmental
144 subdivision, agency, or instrumentality or other legal entity.
145 (12) "Proceeds" means any of the following property:
146 (a) Whatever is acquired on the sale, lease, license,
147 exchange, or other disposition of receivership property.
148 (b) Whatever is collected on, or distributed on account
149 of, receivership property.
150 (c) Rights arising out of receivership property.

151 (d) To the extent of the value of receivership property,
152 claims arising out of the loss, nonconformity, or interference
153 with the use of, defects or infringement of rights in, or damage
154 to the property.
155 (e) To the extent of the value of receivership property
156 and to the extent payable to the owner or mortgagee, insurance
157 payable by reason of the loss or nonconformity of, defects or
158 infringement of rights in, or damage to the property.
159 (13) "Property" means all of a person's right, title, and
160 interest, both legal and equitable, in real and personal
161 property, tangible and intangible, wherever located and however
162 acquired. The term includes proceeds, products, offspring,
163 rents, or profits of or from the property.
164 (14) "Receiver" means a person appointed by the court as
165 the court's agent, and subject to the court's direction, to take
166 possession of, manage, and, if authorized by this chapter or
167 court order, transfer, sell, lease, license, exchange, collect,
168 or otherwise dispose of receivership property.
169 (15) "Receivership" means a proceeding in which a receiver
170 is appointed.
171 (16) "Receivership property" means the property of an
172 owner which is described in the order appointing a receiver or a
173 subsequent order. The term includes any proceeds, products,
174 offspring, rents, or profits of or from the property.
175 (17) "Record," if used as a noun, means information that

176 is inscribed on a tangible medium or that is stored on an
177 electronic or other medium and is retrievable in perceivable
178 form.
179 (18) "Rents" means:
180 (a) Sums payable for the right to possess or occupy, or
181 for the actual possession or occupation of, real property of
182 another person;
183 (b) Sums payable to a mortgagor under a policy of rental-
184 interruption insurance covering real property;
185 (c) Claims arising out of a default in the payment of sums
186 payable for the right to possess or occupy real property of
187 another person;
188 (d) Sums payable to terminate an agreement to possess or
189 occupy real property of another person;
190 (e) Sums payable to a mortgagor for payment or
191 reimbursement of expenses incurred in owning, operating, and
192 maintaining real property or constructing or installing
193 improvements on real property; or
194 (f) Other sums payable under an agreement relating to the
195 real property of another person which constitute rents under the
196 laws of this state other than this act.
197 (19) "Secured obligation" means an obligation the payment
198 or performance of which is secured by a security agreement.
199 (20) "Security agreement" means an agreement that creates
200 or provides for a lien.

201 (21) "Sign" means, with present intent to authenticate or
202 adopt a record:
203 (a) To execute or adopt a tangible symbol; or
204 (b) To attach to or logically associate with the record an
205 electronic sound, symbol, or process.
206 (22) "State" means a state of the United States, the
207 District of Columbia, Puerto Rico, the United States Virgin
208 Islands, or any territory or insular possession subject to the
209 jurisdiction of the United States.
210 714.03 Notice and opportunity for hearing.—
211 (1) Except as otherwise provided in subsection (2), the
212 court may issue an order under this chapter only after notice
213 and opportunity for a hearing that is appropriate under the
214 circumstances.
215 (2) The court may issue an order under this chapter
216 without written or oral notice to the adverse party only if:
217 (a) It appears from the specific facts shown by affidavit
218 or verified pleading or motion that immediate and irreparable
219 injury, loss, or damage will result to the movant or that waste,
220 dissipation, impairment, or substantial diminution in value will
221 result to the subject real property before any adverse party can
222 be heard in opposition; and
223 (b) The movant's attorney certifies in writing all efforts
224 that have been made to give notice to all known adverse parties,
225 or the reasons why such notice should not be required.

226 (3) Only an affidavit, a declaration or a verified
227 pleading, or a motion may be used to support the application for
228 the appointment of a receiver, unless the adverse party appears
229 at the hearing or has received reasonable prior notice of the
230 hearing. Every order appointing a receiver without notice must
231 be endorsed with the date and hour of entry, must be filed
232 forthwith in the clerk's office, must define the injury, must
233 state findings by the court as to why the injury may be
234 irreparable, and must give the reasons why the order was granted
235 without notice if notice was not given. The order appointing a
236 receiver shall remain in effect until the further order of the
237 court.
238 (4) An order appointing a receiver or providing for
239 injunctive relief may not be entered unless a bond is given by
240 the movant in an amount the court deems proper, conditioned for
241 the payment of costs and damages sustained by the adverse party
242 if the order is improperly entered. When any order appointing a
243 receiver or providing for injunctive relief is issued on the
244 pleading of a municipality or the state, or any officer, agency,
245 or political subdivision thereof, the court may require or
246 dispense with a bond, with or without surety, and conditioned in
247 the same manner, having due regard for the public interest.
248 (5) If the court grants injunctive relief, the injunction
249 must specify the reasons for entry, must describe in reasonable
250 detail the act or acts restrained without reference to a

251 pleading or another document, and must be binding on the parties
252 to the action; on the parties' officers, agents, servants,
253 employees, and attorneys; and on any person in active concert or
254 participation with the parties who receives actual notice of the
255 injunction.
256 (6) A party adversely affected by an order appointing
257 receiver or for injunctive relief may move to dissolve or modify
258 the order at any time. If a party moves to dissolve or modify,
259 the motion shall be heard within 5 days after the movant applies
260 for a hearing on the motion.
261 (7) This chapter does not displace any existing rule of
262 procedural or judicial administration of this state governing
263 service or notice, including, without limitation, Rule 1.070,
264 Florida Rules of Civil Procedure and Rule 2.525, Florida Rules
265 of Judicial Administration, which shall remain in full force and
266 effect.
267 714.04 Scope; exclusions.—
268 (1) This chapter applies to a receivership initiated in a
269 court of this state for an interest in real property and any
270 personal property related to or used in operating the real
271 property.
272 (2) This chapter does not apply to:
273 (a) Actions in which a state agency or officer is
274 expressly authorized by statute to seek or obtain the
275 appointment of a receiver;

276 (b) Actions authorized by or commenced under federal law;
277 (c) Residential real property of an individual owner which
278 is occupied by the owner, the spouse of the owner, or a child or
279 other dependent of the owner;
280 (d) Property of an individual exempt from forced sale,
281 execution, or seizure under the laws of this state; or
282 (e) Personal property of an individual which is used
283 primarily for personal, family, or household purposes.
284 (3) This chapter does not limit the authority of a court
285 to appoint a receiver under the laws of this state other than
286 this chapter.
287 (4) This chapter does not limit an individual's homestead
288 and exemption rights under the laws of this state or federal
289 law.
290 (5) Unless displaced by a particular provision of this
291 chapter, the principles of law and equity, including the law
292 relative to capacity to contract, principal and agent, estoppel,
293 laches, fraud, misrepresentation, duress, coercion, mistake,
294 bankruptcy, or other validating or invalidating cause,
295 supplement this chapter.
296 714.05 Power of the court.—The court that appoints a
297 receiver under this chapter has exclusive jurisdiction to direct
298 the receiver and determine any controversy related to the
299 receivership or receivership property.
300 714.06 Appointment of receiver.—

301 (1) The court may appoint a receiver:
302 (a) Before judgment, to protect a party that demonstrates
303 an apparent right, title, or interest in real property that is
304 the subject of the action, if the property or its revenue-
305 producing potential:
306 1. Is being subjected to or is in danger of waste, loss,
307 substantial diminution in value, dissipation, or impairment; or
308 2. Has been or is about to be the subject of a voidable
309 transaction;
310 (b) After judgment:
311 1. To carry the judgment into effect; or
312 2. To preserve nonexempt real property pending appeal or
313 when an execution has been returned unsatisfied and the owner
314 refuses to apply the property in satisfaction of the judgment;
315 (c) In an action in which a receiver for real property may
316 be appointed on equitable grounds, subject to the requirements
317 of paragraphs (a) and (b); or
318 (d) During the time allowed for redemption, to preserve
319 real property sold in an execution or foreclosure sale and
320 secure its rents to the person entitled to the rents.
321 (2) In connection with the foreclosure or other
322 enforcement of a mortgage, the court shall consider the
323 following facts and circumstances, together with any other
324 relevant facts, in deciding whether to appoint a receiver for
325 the mortgaged property:

326 (a) Appointment is necessary to protect the property from
327 waste, loss, substantial diminution in value, transfer,
328 dissipation, or impairment;
329 (b) The owner agreed in a signed record to the appointment
330 of a receiver on default;
331 (c) The owner agreed, after default and in a signed
332 record, to appointment of a receiver;
333 (d) The property and any other collateral held by the
334 mortgagee are not sufficient to satisfy the secured obligation;
335 (e) The owner fails to turn over to the mortgagee proceeds
336 or rents the mortgagee was entitled to collect; or
337 (f) The holder of a subordinate lien obtains appointment
338 of a receiver for the property.
339 (3) The court may condition the appointment of a receiver
340 without prior notice or hearing under s. 714.03 on the giving of
341 security by the movant for the payment of damages, reasonable
342 attorney fees, and costs incurred or suffered by any person if
343 the court later concludes that the appointment was not
344 justified. If the court later concludes that the appointment was
345 justified and the order of appointment of the receiver becomes
346 final and no longer subject to appeal, the court shall release
347 the security.
348 714.07 Disqualification from appointment as receiver;
349 disclosure of interest.—
350 (1) The court may not appoint a person as receiver unless

351 the person submits to the court a statement under penalty of
352 perjury that the person is not disqualified.
353 (2) Except as otherwise provided in subsection (3), a
354 person is disqualified from appointment as receiver if the
355 person:
356 (a) Is an affiliate of a party;
357 (b) Has an interest materially adverse to an interest of a
358 party;
359 (c) Has a material financial interest in the outcome of
360 the action, other than compensation the court may allow the
361 receiver;
362 (d) Has a debtor-creditor relationship with a party; or
363 (e) Holds an equity interest in a party, other than a
364 noncontrolling interest in a publicly traded company.
365 (3) A person is not disqualified from appointment as
366 receiver solely because the person:
367 (a) Was appointed receiver or is owed compensation in an
368 unrelated matter involving a party or was engaged by a party in
369 a matter unrelated to the receivership;
370 (b) Is an individual obligated to a party on a debt that
371 is not in default and was incurred primarily for personal,
372 family, or household purposes; or
373 (c) Maintains with a party a deposit account, as defined
374 in s. 679.1021.
375 (4) A person seeking appointment of a receiver may

376 nominate a person to serve as receiver, but the court is not
377 bound by the nomination.
378 714.08 Receiver's bond; alternative security.—
379 (1) Except as otherwise provided in subsection (2), a
380 receiver shall post with the court a bond that:
381 (a) Is conditioned on the faithful discharge of the
382 receiver's duties;
383 (b) Has one or more sureties approved by the court;
384 (c) Is in an amount the court specifies; and
385 (d) Is effective as of the date of the receiver's
386 appointment.
387 (2) The court may approve the receiver posting an
388 alternative security with the court, such as a letter of credit
389 or deposit of funds. The receiver may not use receivership
390 property as alternative security. Interest that accrues on
391 deposited funds must be paid to the receiver upon the receiver's
392 discharge.
393 (3) The court may authorize a receiver to act before the
394 receiver posts the bond or alternative security required by this
395 section if the action is necessary to prevent or mitigate
396 immediate injury, loss, or damage to the party who sought the
397 appointment of the receiver, or immediate waste, dissipation,
398 impairment, or substantial diminution in value to the
399 receivership property.
400 (4) A claim against a receiver's bond or alternative

401 security must be made not later than 1 year after the date the
402 receiver is discharged.
403 714.09 Status of receiver as lien creditor.—Upon
404 appointment of a receiver, the receiver has the status of a lien
405 creditor under:
406 (1) Chapter 679 as to receivership property or fixtures;
407 and
408 (2) Chapter 695 as to receivership property that is real
409 property.
410 714.10 Security agreement covering after-acquired
411 property.—Except as otherwise provided by law other than this
412 chapter, property that a receiver or an owner acquires after
413 appointment of the receiver is subject to a security agreement
414 entered into before the appointment to the same extent as if the
415 court had not appointed the receiver.
416 714.11 Collection and turnover of receivership property.—
417 (1) Unless the court orders otherwise, on demand by a
418 receiver:
419 (a) A person that owes a debt that is receivership
420 property and is matured or payable on demand or on order shall
421 pay the debt to or on the order of the receiver, except to the
422 extent the debt is subject to setoff or recoupment; and
423 (b) Subject to subsection (3), a person that has
424 possession, custody, or control of receivership property shall
425 turn the property over to the receiver.

426 (2) A person that has notice of the appointment of a
427 receiver and owes a debt that is receivership property may not
428 satisfy the debt by payment to the owner.
429 (3) If a creditor has possession, custody, or control of
430 receivership property and the validity, perfection, or priority
431 of the creditor's lien on the property depends on the creditor's
432 possession, custody, or control, the creditor may retain
433 possession, custody, or control until the court orders adequate
434 protection of the creditor's lien.
435 (4) Unless a bona fide dispute exists about a receiver's
436 right to possession, custody, or control of receivership
437 property, the court may sanction as civil contempt a person's
438 failure to turn the property over when required by this section.
439 714.12 Powers and duties of receiver.—
440 (1) Except as limited by court order or the laws of this
441 state other than this chapter, a receiver may:
442 (a) Collect, control, manage, conserve, and protect
443 receivership property;
444 (b) Operate a business constituting receivership property,
445 including preservation, use, sale, lease, license, exchange,
446 collection, or disposition of the property in the ordinary
447 course of business;
448 (c) In the ordinary course of business, incur unsecured
449 debt and pay expenses incidental to the receiver's preservation,
450 use, sale, lease, license, exchange, collection, or disposition

451 of receivership property;
452 (d) Assert a right, claim, cause of action, or defense of
453 the owner which relates to receivership property;
454 (e) Seek and obtain instruction from the court concerning
455 receivership property, exercise of the receiver's powers, and
456 performance of the receiver's duties;
457 (f) Upon subpoena, compel a person to submit to
458 examination under oath, or to produce and permit inspection and
459 copying of designated records or tangible things, with respect
460 to receivership property or any other matter that may affect
461 administration of the receivership;
462 (g) Engage a professional pursuant to s. 714.15;
463 (h) Apply to a court of another state for appointment as
464 ancillary receiver with respect to receivership property located
465 in that state; and
466 (i) Exercise any power conferred by court order, this
467 chapter, or the laws of this state other than this chapter.
468 (2) With court approval, a receiver may:
469 (a) Incur debt for the use or benefit of receivership
470 property other than in the ordinary course of business;
471 (b) Make improvements to receivership property;
472 (c) Use or transfer receivership property other than in
473 the ordinary course of business pursuant to s. 714.16;
474 (d) Adopt or reject an executory contract of the owner
475 pursuant to s. 714.17;

476 (e) Pay compensation to the receiver pursuant to s.
477 714.21, and to each professional engaged by the receiver under
478 s. 714.15;
479 (f) Recommend allowance or disallowance of a claim of a
480 creditor pursuant to s. 714.20; and
481 (g) Make a distribution of receivership property pursuant
482 to s. 714.20.
483 (3) A receiver shall:
484 (a) Prepare and retain appropriate business records,
485 including a record of each receipt, disbursement, and
486 disposition of receivership property;
487 (b) Account for receivership property, including the
488 proceeds of a sale, lease, license, exchange, collection, or
489 other disposition of the property;
490 (c) File with the recording office of the county in which
491 the real property is located a copy of the order appointing the
492 receiver and, if a legal description of the real property is not
493 included in the order, the legal description;
494 (d) Disclose to the court any fact arising during the
495 receivership which would disqualify the receiver under s.
496 714.07; and
497 (e) Perform any duty imposed by court order, this chapter,
498 or the laws of this state other than this chapter.
499 (4) The powers and duties of a receiver may be expanded,
500 modified, or limited by court order.

501 714.13 Duties of owner.—
502 (1) An owner shall:
503 (a) Assist and cooperate with the receiver in the
504 administration of the receivership and the discharge of the
505 receiver's duties;
506 (b) Preserve and turn over to the receiver all
507 receivership property in the owner's possession, custody, or
508 control;
509 (c) Identify all records and other information relating to
510 the receivership property, including a password, authorization,
511 or other information needed to obtain or maintain access to or
512 control of the receivership property, and make available to the
513 receiver the records and information in the owner's possession,
514 custody, or control;
515 (d) Upon subpoena, submit to examination under oath by the
516 receiver concerning the acts, conduct, property, liabilities,
517 and financial condition of the owner or any matter relating to
518 the receivership property or the receivership; and
519 (e) Perform any duty imposed by court order, this chapter,
520 or the laws of this state other than this chapter.
521 (2) If an owner is a person other than an individual, this
522 section applies to each officer, director, manager, member,
523 partner, trustee, or other person exercising or having the power
524 to exercise control over the affairs of the owner.
525 (3) If a person knowingly fails to perform a duty imposed

526 by this section, the court may:
527 (a) Award the receiver actual damages caused by the
528 person's failure, reasonable attorney fees, and costs; and
529 (b) Sanction the failure as civil contempt.
530 714.14 Stay; injunction.—
531 (1) Except as otherwise provided in subsection (4), after
532 notice and a hearing, the court may enter an order providing for
533 a stay, applicable to all persons, of any act, action, or
534 proceeding:
535 (a) To obtain possession of, exercise control over, or
536 enforce a judgment against all or a portion of the receivership
537 property as defined in the order creating the stay; and
538 (b) To enforce a lien against all or a portion of the
539 receivership property to the extent the lien secures a claim
540 against the owner which arose before entry of the order.
541
542 The court shall include in its order a specific description of
543 the receivership property subject to the stay, and shall include
544 the following language in the title of the order: "Order Staying
545 Certain Actions to Enforce Claims against Receivership
546 Property."
547 (2) Except as otherwise provided in subsection (4), the
548 court may enjoin an act, action, or proceeding against or
549 relating to receivership property if the injunction is necessary
550 to protect against misappropriation of, or waste relating

551 directly to, the receivership property.
552 (3) A person whose act, action, or proceeding is stayed or
553 enjoined under this section may apply to the court for relief
554 from the stay or injunction. The court, after a hearing on
555 notice, may grant relief for cause shown.
556 (4) An order under subsection (1) or subsection (2) does
557 not operate as a stay or injunction of:
558 (a) Any act, action, or proceeding to foreclose or
559 otherwise enforce a mortgage by the person seeking appointment
560 of the receiver;
561 (b) Any act, action, or proceeding to perfect, or maintain
562 or continue the perfection of, an interest in receivership
563 property;
564 (c) Commencement or continuation of a criminal proceeding;
565 (d) Commencement or continuation of an action or
566 proceeding, or enforcement of a judgment other than a money
567 judgment, in an action or proceeding by a governmental unit to
568 enforce its police or regulatory power; or
569 (e) Establishment by a governmental unit of a tax
570 liability against the receivership property or the owner of such
571 receivership property, or an appeal of any such liability.
572 (5) The court may void an act that violates a stay or
573 injunction under this section.
574 (6) The scope of the receivership property subject to the
575 stay under subsection (1) may be modified upon request of the

576 receiver or other person, after a hearing on notice.
577 (7) In connection with the entry of an order under
578 subsection (1) or subsection (2), the court shall determine
579 whether an additional bond or alternative security will be
580 required as a condition to entry of the stay or injunction and,
581 if required, direct the party requesting the stay or injunction
582 to post a bond or alternative security as a condition for the
583 stay or injunction to become effective.
584 714.15 Engagement and compensation of professional.—
585 (1) With court approval, a receiver may engage an
586 attorney, an accountant, an appraiser, an auctioneer, a broker,
587 or another professional to assist the receiver in performing a
588 duty or exercising a power of the receiver. The receiver shall
589 disclose to the court:
590 (a) The identity and qualifications of the professional;
591 (b) The scope and nature of the proposed engagement;
592 (c) Any potential conflict of interest; and
593 (d) The proposed compensation.
594 (2) A person is not disqualified from engagement under
595 this section solely because of the person's engagement by,
596 representation of, or other relationship with the receiver, a
597 creditor, or a party. This chapter does not prevent the receiver
598 from serving in the receivership as an attorney, an accountant,
599 an auctioneer, or a broker when authorized by law.
600 (3) A receiver or professional engaged under subsection

601 (1) shall file with the court an itemized statement of the time
602 spent, work performed, and billing rate of each person that
603 performed the work and an itemized list of expenses. The
604 receiver shall pay the amount approved by the court.
605 714.16 Use or transfer of receivership property not in
606 ordinary course of business.—
607 (1) For the purposes of this section, the term "good
608 faith" means honesty in fact and the observance of reasonable
609 commercial standards of fair dealing.
610 (2) Before judgment is entered with respect to the
611 receivership property, with court approval after notice to all
612 parties with an interest in the property, including all lien
613 holders, and a hearing, a receiver may use or transfer by sale,
614 lease, license, exchange, or other disposition receivership
615 property other than in the ordinary course of business only if
616 the owner of the property:
617 (a) After the commencement of the action in which the
618 receiver is appointed, expressly consents to the receiver's
619 proposed use or transfer of the receivership property, and the
620 receiver notes the property owner's express consent in the
621 motion to approve the proposed use or transfer; or
622 (b) Before or at the hearing on the receiver's motion to
623 approve the use or transfer of the receivership property, fails
624 to object thereto after the receiver in good faith has provided
625 reasonable advance written notice to the property owner of the

626 proposed use or transfer, and the receiver demonstrates in the
627 motion that the proposed use or transfer is necessary to prevent
628 waste, loss, substantial diminution in value, dissipation, or
629 impairment of the property or its revenue-producing potential or
630 to prevent a voidable transaction involving the property.
631
632 Service of notice to lien holders who are not parties to the
633 action must be made as provided in chapter 48 for service of
634 original process. If service cannot be carried out in such
635 manner, upon authorization by court order, the receiver may
636 effect service of notice on the nonparty lien holder pursuant to
637 chapter 49 or as otherwise ordered by the court.
638 (3) After judgment is entered against the property owner
639 and with court approval, a receiver may use or transfer
640 receivership property other than in the ordinary course of
641 business to carry the judgment into effect or to preserve
642 nonexempt real property pending appeal or when an execution has
643 been returned unsatisfied and the owner refuses to apply the
644 property in satisfaction of the judgment.
645 (4) The court may order that a transfer of receivership
646 property under this section is free and clear of any liens on
647 the property at the time of the transfer. In such case, any
648 liens on the property, which were valid at the time of the
649 transfer but extinguished by the transfer, attach to the
650 proceeds of the transfer with the same validity, perfection, and

651 priority the liens had on the property immediately before the
652 transfer, even if the proceeds are not sufficient to satisfy all
653 obligations secured by the liens.
654 (5) A transfer under subsection (3) may occur by means
655 other than a public auction sale. A creditor holding a valid
656 lien on the property to be transferred may purchase the property
657 and offset against the purchase price part or all of the allowed
658 amount secured by the lien if the creditor tenders funds
659 sufficient to satisfy in full the reasonable expenses of
660 transfer and the obligation secured by any senior lien
661 extinguished by the transfer.
662 (6) A reversal or modification of an order approving a
663 transfer under subsection (3) does not affect the validity of
664 the transfer to a person that acquired the property in good
665 faith or revive against the person any lien extinguished by the
666 transfer, whether the person knew before the transfer of the
667 request for reversal or modification, unless the court stayed
668 the order before the transfer.
669 714.17 Executory contract.—
670 (1) For the purposes of this section, the term "timeshare
671 interest" has the same meaning as in s. 721.05(36).
672 (2) Except as otherwise provided in subsection (8), with
673 court approval, a receiver may adopt or reject an executory
674 contract of the owner relating to receivership property. The
675 court may condition the receiver's adoption and continued

676 performance of the contract on terms appropriate under the
677 circumstances. If the receiver does not request court approval
678 to adopt or reject the contract within a reasonable time after
679 the receiver's appointment, the receiver is deemed to have
680 rejected the contract.
681 (3) A receiver's performance of an executory contract
682 before court approval under subsection (2) of its adoption or
683 rejection is not an adoption of the contract and does not
684 preclude the receiver from seeking approval to reject the
685 contract.
686 (4) A provision in an executory contract which requires or
687 permits a forfeiture, modification, or termination of the
688 contract because of the appointment of a receiver or the
689 financial condition of the owner does not affect a receiver's
690 power under subsection (2) to adopt the contract.
691 (5) A receiver's right to possess or use receivership
692 property pursuant to an executory contract terminates on
693 rejection of the contract under subsection (2). Rejection is a
694 breach of the contract effective immediately before appointment
695 of the receiver. A claim for damages for rejection of the
696 contract must be submitted by the later of:
697 (a) The time set for submitting a claim in the
698 receivership; or
699 (b) Thirty days after the court approves the rejection.
700 (6) If at the time a receiver is appointed, the owner has

701 the right to assign an executory contract relating to
702 receivership property under the laws of this state other than
703 this chapter, the receiver may assign the contract with court
704 approval.
705 (7) If a receiver rejects an executory contract for the
706 sale of receivership property that is real property in
707 possession of the purchaser or a real-property timeshare
708 interest pursuant to subsection (2), the purchaser may:
709 (a) Treat the rejection as a termination of the contract,
710 and in that case the purchaser has a lien on the property for
711 the recovery of any part of the purchase price the purchaser
712 paid; or
713 (b) Retain the purchaser's right to possession under the
714 contract. If the purchaser retains his or her right to
715 possession pursuant to this paragraph, the purchaser must
716 continue to perform all obligations arising under the contract
717 and may offset any damages caused by nonperformance of an
718 obligation of the owner after the date of the rejection, but the
719 purchaser does not have a right or claim against other
720 receivership property or the receiver on account of the damages.
721 (8) A receiver may not reject an unexpired lease of real
722 property under which the owner is the landlord if:
723 (a) The tenant occupies the leased premises as the
724 tenant's primary residence;
725 (b) The receiver was appointed at the request of a person

726 other than a mortgagee; or
727 (c) The receiver was appointed at the request of a
728 mortgagee and:
729 1. The lease is superior to the lien of the mortgage;
730 2. The tenant has an enforceable agreement with the
731 mortgagee or the holder of a senior lien under which the
732 tenant's occupancy will not be disturbed as long as the tenant
733 performs its obligations under the lease;
734 3. The mortgagee has consented to the lease, either in a
735 signed record or by its failure to timely object that the lease
736 violated the mortgage; or
737 4. The terms of the lease were commercially reasonable at
738 the time the lease was agreed to and the tenant did not know or
739 have reason to know that the lease violated the mortgage.
740 714.18 Defenses and immunities of receiver.—
741 (1) A receiver is entitled to all defenses and immunities
742 provided by the laws of this state other than this chapter for
743 an act or omission within the scope of the receiver's
744 appointment.
745 (2) A receiver may be sued personally for an act or
746 omission in administering receivership property only with
747 approval of the court that appointed the receiver.
748 714.19 Interim report of receiver.—A receiver may file or,
749 if ordered by the court, shall file an interim report that
750 includes:

751 (1) The activities of the receiver since appointment or a
752 previous report;
753 (2) Receipts and disbursements, including a payment made
754 or proposed to be made to a professional engaged by the
755 receiver;
756 (3) Receipts and dispositions of receivership property;
757 (4) Fees and expenses of the receiver and, if not filed
758 separately, a request for approval of payment of the fees and
759 expenses; and
760 (5) Any other information required by the court.
761 714.20 Notice of appointment; claim against receivership;
762 distribution to creditors.—
763 (1) Except as otherwise provided in subsection (6), a
764 receiver shall give notice of appointment of the receiver to
765 creditors of the owner by:
766 (a) Deposit for delivery through first-class mail or other
767 commercially reasonable delivery method to the last known
768 address of each creditor; and
769 (b) Publication as directed by the court.
770 (2) Except as otherwise provided in subsection (6), the
771 notice required under subsection (1) must specify the date by
772 which each creditor holding a claim against the owner which
773 arose before appointment of the receiver must submit the claim
774 to the receiver. The date specified must be at least 90 days
775 after the later of notice under paragraph (1)(a) or last

776 publication under paragraph (1)(b). The court may extend the
777 period for submitting the claim. Unless the court orders
778 otherwise, a claim that is not timely submitted is not entitled
779 to a distribution from the receivership.
780 (3) A claim submitted by a creditor under this section
781 must:
782 (a) State the name and address of the creditor;
783 (b) State the amount and basis of the claim;
784 (c) Identify any property securing the claim;
785 (d) Be signed by the creditor under penalty of perjury;
786 and
787 (e) Include a copy of any record on which the claim is
788 based.
789 (4) An assignment by a creditor of a claim against the
790 owner is effective against the receiver only if the assignee
791 gives timely notice of the assignment to the receiver in a
792 signed record.
793 (5) At any time before entry of an order approving a
794 receiver's final report, the receiver may file with the court an
795 objection to a claim of a creditor, stating the basis for the
796 objection. The court shall allow or disallow the claim according
797 to the laws of this state other than this chapter.
798 (6) If the court concludes that receivership property is
799 likely to be insufficient to satisfy claims of each creditor
800 holding a perfected lien on the property, the court may order

801 that:
802 (a) The receiver need not give notice under subsection (1)
803 of the appointment to all creditors of the owner, but only such
804 creditors as the court directs; and
805 (b) Unsecured creditors need not submit claims under this
806 section.
807 (7) Subject to s. 714.21:
808 (a) A distribution of receivership property to a creditor
809 holding a perfected lien on the property must be made in
810 accordance with the creditor's priority under the laws of this
811 state other than this chapter; and
812 (b) A distribution of receivership property to a creditor
813 with an allowed unsecured claim must be made as the court
814 directs according to the laws of this state other than this
815 chapter.
816 714.21 Fees and expenses.—
817 (1) The court may award a receiver from receivership
818 property the reasonable and necessary fees and expenses of
819 performing the duties of the receiver and exercising the powers
820 of the receiver.
821 (2) The court may order one or more of the following to
822 pay the reasonable and necessary fees and expenses of the
823 receivership, including reasonable attorney fees and costs:
824 (a) A person that requested the appointment of the
825 receiver, if the receivership does not produce sufficient funds

826 to pay the fees and expenses; or
827 (b) A person whose conduct justified or would have
828 justified the appointment of the receiver under s. 714.06(1)(a).
829 714.22 Removal of receiver; replacement; termination of
830 receivership.—
831 (1) The court may remove a receiver for cause.
832 (2) The court shall replace a receiver that dies, resigns,
833 or is removed.
834 (3) If the court finds that a receiver that resigns or is
835 removed, or the representative of a receiver that is deceased,
836 has accounted fully for and turned over to the successor
837 receiver all receivership property and has filed a report of all
838 receipts and disbursements during the service of the replaced
839 receiver, the replaced receiver is discharged.
840 (4) The court may discharge a receiver and terminate the
841 court's administration of the receivership property if the court
842 finds that appointment of the receiver was improvident or that
843 the circumstances no longer warrant continuation of the
844 receivership. If the court finds that the appointment was sought
845 wrongfully or in bad faith, the court may assess against the
846 person that sought the appointment:
847 (a) The fees and expenses of the receivership, including
848 reasonable attorney fees and costs; and
849 (b) Actual damages caused by the appointment, including
850 reasonable attorney fees and costs.

851 714.23 Final report of receiver; discharge.—
852 (1) Upon completion of a receiver's duties, the receiver
853 shall file a final report including:
854 (a) A description of the activities of the receiver in the
855 conduct of the receivership;
856 (b) A list of receivership property at the commencement of
857 the receivership and any receivership property received during
858 the receivership;
859 (c) A list of disbursements, including payments to
860 professionals engaged by the receiver;
861 (d) A list of dispositions of receivership property;
862 (e) A list of distributions made or proposed to be made
863 from the receivership for creditor claims;
864 (f) If not filed separately, a request for approval of the
865 payment of fees and expenses of the receiver; and
866 (g) Any other information required by the court.
867 (2) If the court approves a final report filed under
868 subsection (1) and the receiver distributes all receivership
869 property, the receiver is discharged.
870 714.24 Receivership in another state; ancillary
871 proceeding.—
872 (1) The court may appoint a receiver appointed in another
873 state, or that person's nominee, as an ancillary receiver with
874 respect to property located in this state or subject to the
875 jurisdiction of the court for which a receiver could be

876 appointed under this chapter, if:
877 (a) The person or nominee would be eligible to serve as
878 receiver under s. 714.07; and
879 (b) The appointment furthers the person's possession,
880 custody, control, or disposition of property subject to the
881 receivership in the other state.
882 (2) The court may issue an order that gives effect to an
883 order entered in another state appointing or directing a
884 receiver.
885 (3) Unless the court orders otherwise, an ancillary
886 receiver appointed under subsection (1) has the rights, powers,
887 and duties of a receiver appointed under this chapter.
888 714.25 Effect of enforcement by mortgagee.—A request by a
889 mortgagee for the appointment of a receiver, the appointment of
890 a receiver, or the application by a mortgagee of receivership
891 property or proceeds to the secured obligation does not:
892 (1) Make the mortgagee a mortgagee in possession of the
893 real property;
894 (2) Make the mortgagee an agent of the owner;
895 (3) Constitute an election of remedies which precludes a
896 later action to enforce the secured obligation;
897 (4) Make the secured obligation unenforceable;
898 (5) Limit any right available to the mortgagee with
899 respect to the secured obligation; or
900 (6) Constitute an action under chapter 702.

901 714.26 Uniformity of application and construction.—In
902 applying and construing this chapter, consideration must be
903 given to the need to promote uniformity of the law with respect
904 to its subject matter among states that have enacted a similar
905 law.
906 714.27 Relation to electronic signatures in global and
907 national commerce act.—This act modifies, limits, or supersedes
908 the Electronic Signatures in Global and National Commerce Act,
909 15 U.S.C. ss. 7001 et seq., but does not modify, limit, or
910 supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or
911 authorize electronic delivery of any of the notices described in
912 s. 103(b) of that act, 15 U.S.C. s. 7003(b).
913 714.28 Transition.—This chapter does not apply to a
914 receivership for which the receiver was appointed before July 1,
915 2020.
916 Section 2. This act shall take effect July 1, 2020.

HB 811

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 811 Transfers in Divorce
SPONSOR(S): Geller
TIED BILLS: **IDEN./SIM. BILLS:** SB 1306

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

SUMMARY ANALYSIS

An Individual Retirement Account (IRA) is a retirement savings account that provides the account owner with certain tax benefits which are not available for a traditional savings account. An IRA may be a traditional IRA or a Roth IRA. While a traditional IRA allows an account owner to make tax deductible contributions into the account and defer being taxed on the income until making withdrawals after retirement, a Roth IRA allows an account owner to make non-tax-deductible contributions into the account and make tax free withdrawals after retirement.

An IRA is intended to be the property of its owner and may only be transferred to another person upon the owner's death or in a dissolution of marriage (divorce). When an IRA account owner dies, the account may be transferred to a named beneficiary, and if the beneficiary is not the account owner's spouse, the IRA is considered an inherited IRA. If an IRA is transferred to a spouse or ex-spouse incident to a divorce, the spouse receiving the IRA becomes the new owner of the assets in the other spouse's IRA on the effective date of the transfer. The assets in an IRA may be transferred in a divorce by:

- Name change: The transfer is executed by changing the name of the IRA owner from that of one spouse or former spouse to that of the other; or
- Direct transfer: The assets in one spouse's IRA are directly transferred to a new or existing IRA of the other spouse.

Under the Internal Revenue Code (IRC), a state may specify assets which are exempt from creditor claims in a bankruptcy proceeding and may choose to provide greater protection than the IRC. Florida generally adopts the federal exemptions for an IRA and certain pension, profit sharing, and retirement benefits. While Florida adopts the general IRC exemption for an IRA, which includes the transfer incident to a divorce, Florida includes a specified additional exemption for an inherited IRA which the IRC does not. Although there is no current controversy in Florida regarding the exemption for an IRA account awarded incident to a divorce, recent bankruptcy court decisions from other jurisdictions may indicate the need to clarify Florida's exemption.

HB 811 clarifies that any interest in an IRA received during a transfer incident to divorce remains exempt from creditor claims after the transfer is complete. Because the bill does not change existing law or practice, the bill intends to clarify existing law, is remedial in nature, and applies retroactively to all transfers made incident to divorce.

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

The bill provides an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Individual Retirement Accounts

An Individual Retirement Account (IRA) is "…a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries."[1] An IRA is created by a written document which must show that the account meets all of the following criteria: [2]

- The account's trustee or custodian must be a bank, federally insured credit union, savings and loan association, or other entity approved by the internal revenue service (IRS) to act as such.
- The trustee or custodian generally may not accept contributions in an amount more than the account's deductible amount for the year, but rollover contributions and employer contributions to a simplified employee pension (SEP)[3] can be more than this amount.
- Contributions, except for rollover contributions, must be in cash.
- The account owner must have a non-forfeitable right to the amount in the account at all times.
- Money in the account cannot be used to buy a life insurance policy.
- Assets in the account cannot be combined with other property, except in a common trust fund or common investment fund.
- The account owner must begin receiving distributions from the account in April of the year after he or she reaches age 70 1/2.

An IRA may be a traditional IRA or a Roth IRA. While a traditional IRA allows an account owner to make tax deductible contributions into the account and defer being taxed on the income until making withdrawals after retirement,[4] a Roth IRA allows an account owner to make non-tax-deductible contributions into the account and make tax free withdrawals after retirement.[5]

IRA Transfer

An IRA is intended to be the property of its owner and may only be transferred to another person upon the owner's death or in a dissolution of marriage (divorce). When an IRA account owner dies, the account may be transferred to a named beneficiary.

If the beneficiary is not the account owner's spouse, the IRA is considered an inherited IRA.[6] The beneficiary of an inherited IRA:

- May not make contributions to the account;
- Must make withdrawals regardless of his or her age; and
- Is not subject to a penalty for early withdrawals from the account.

If the beneficiary is the account owner's spouse, the beneficiary may do one of the following:[7]

- Treat the IRA as his or her own IRA by designating himself or herself as the account owner;

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[1] 26 U.S.C. § 408(a).
[2] IRS Publication 590-A, *Contributions to Individual Retirement Arrangements (IRAs)*, (Dec. 21, 2018), https://www.irs.gov/pub/irs-pdf/p590a.pdf (last visited Jan. 18, 2020).
[3] An SEP is a written arrangement that allows your employer to make deductible contributions to a traditional IRA (an SEP IRA) set up for the account owner to receive such contributions. *Id*.
[4] *Id*. at 5.
[5] *Id*. at 39.
[6] 26 U.S.C. §401(a)(9).
[7] IRS, *supra* note 2, at 20.

- Treat the IRA as his or her own by rolling it over into his or her own IRA, or to the extent it is taxable, into a:
    - Qualified employer plan;
    - Qualified employee annuity plan (section 403(a) plan);
    - Tax-sheltered annuity plan (section 403(b) plan); or
    - State or local government Deferred compensation plan (section 457 plan).
- Treat himself or herself as the beneficiary of the IRA.

When an IRA is transferred to a spouse or ex-spouse incident to a divorce, the spouse receiving the IRA becomes the new owner of the assets in the other spouse's IRA on the effective date of the transfer. There is no legal authority for an IRA to be split or transferred until the divorce is finalized, and a court order is entered directing how the account must be split. The parties must give the IRA custodian a copy of the court's order, and the custodian may then split the account or transfer the account accordingly, in a tax-free transfer. The assets in an IRA may be transferred by:

- Changing the name on the IRA owner from that of one spouse or former spouse to that of the other; or
- Making a direct transfer of the IRA assets or a portion of the assets from one spouse's IRA directly into the other spouse's new or existing IRA.

IRA Asset Protection

Although established under the federal tax code, a state's laws may affect an IRA in a case involving a trust, real estate, or most commonly a bankruptcy exemption. A person may file bankruptcy to assist in discharging debt or making a plan to repay debts. All bankruptcy cases are handled in federal courts under rules outlined in the U.S. Bankruptcy Code.[8] In general, filing bankruptcy serves two purposes: to convert the estate of the debtor into cash and distribute it among creditors; and to give the debtor a fresh start by providing certain exemptions and rights to assets that bankruptcy does not reach.[9] A person may file one of two primary forms of bankruptcy.[10] In a proceeding under Chapter 7 of the federal bankruptcy code, a debtor must surrender his or her assets to a trustee who then liquidates the assets and distributes all proceeds to the debtor's creditors.[11] A Chapter 13 bankruptcy petition allows a debtor to stay creditor actions and propose a plan to pay all creditors, thus rehabilitating the debtor financially.[12]

In either a Chapter 7 or Chapter 13 bankruptcy, a debtor may claim certain property as exempt from creditors in the bankruptcy proceedings.[13] The Internal Revenue Code (IRC) provides many exemptions to protect certain assets from creditor's claims, but under the IRC, a state may choose to opt-out of these exemptions.[14] If a state chooses to opt-out, the IRC exemptions are not available to debtors within that state, unless the state specifically opts-in to an IRC exemption within state law. A state may also provide greater asset protections than the IRC provides.

Florida is an-opt out state, meaning that when a Florida resident files for bankruptcy or is otherwise subject to a creditor's judgment, Florida law provides the exemptions available to the debtor, not the IRC.[15] Florida specifically opts-in to a number of exemptions included in the IRC, such as IRAs and other pension, profit sharing, and retirement benefits.[16] However, Florida also exempts all inherited IRA accounts from creditor claims, while the IRC does not.[17]

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[8] 11 U.S.C. § 101, et seq.
[9] 9 Am. Jur. 2d Bankruptcy s. 5.
[10] An individual may also file a petition under Chapter 11, but such petitions are rare.
[11] 11 U.S.C. §§ 704 & 726.
[12] 9 Am Jur 2d Bankruptcy s. 72.
[13] 11.U.S.C. § 522.
[14] 11.U.S.C. §§ 522(b)(3)(A) & (d).
[15] S. 222.20, F.S.
[16] S. 222.21(2), F.S.
[17] S. 222.21(c), F.S.

Transfers Incident to Divorce

While Florida opts-in to the exemption for IRA accounts under s. 408 of the IRC,[18] the IRC exemption for an IRA account awarded incident to a divorce protects a former spouse's interest in such an account only at the time the transfer is made, and thereafter. Although there is no current controversy in Florida regarding the exemption for an IRA account awarded incident to a divorce, recent bankruptcy court decisions from other jurisdictions may indicate the need to clarify Florida's exemption.

In a 2018 opinion, the U.S. Bankruptcy Appellate Court for the Eighth Circuit held that a debtor's funds must satisfy two requirements in order to be considered exempt retirement funds under the bankruptcy exemption in 11 U.S.C. § 522(d)(12):

- The amount must be retirement funds; and
- The retirement funds must be in an account that is exempt from taxation under one of the provisions of the IRC.[19]

The Court found that the funds in an IRA account awarded to Mr. Lerbakken incident to his divorce years before he filed for chapter 7 bankruptcy, but which he never transferred from his former wife's IRA account or designated himself as the owner, were not retirement funds for purposes of a bankruptcy exemption.[20] As such, these funds were subject to creditor's claims.

Effect of Proposed Changes

HB 811 clarifies that any interest in an IRA received during a transfer incident to divorce remains exempt from creditor claims after the transfer is complete. Because the bill does not change existing law or practice, the bill applies retroactively to all transfers made incident to divorce.

The bill provides an effective date of upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 222.21, F.S., relating to exemption of pension money and certain tax-exempt funds or accounts from legal processes.
Section 2: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[18] S. 222.21(2), F.S.
[19] *In re Lerbakken*, 590 B.R. 895 (2018). *See also Clark v. Rameker*, 573 U.S. 122 (2014).
[20] *Lerbakken* at 897, 898.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

The bill amends s. 222.21(2)(c), F.S., leaving intact an existing provision stating that the paragraph "is intended to clarify existing law, is remedial in nature, and shall have retroactive application." Retroactive application of legislation may implicate the due process provisions of the U.S. Constitution.[21] However, as a general matter, statutes that do not alter vested rights but relate only to remedies or procedure may be applied retroactively.[22]

Although there is no apparent controversy over the meaning of s. 222.21, F.S., the Florida Supreme Court has ruled that statutes enacted soon after a controversy over the meaning of legislation may be considered a legislative interpretation of the original law and not substantive change:

> When, as occurred here, an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof. This Court has recognized the propriety of considering subsequent legislation in arriving at the proper interpretation of the prior statute.[23]

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 24-26: As drafted, the bill may not achieve its intended effect to specifically protect a former spouse's interest in an IRA account awarded to him or her, even if he or she did not yet take the necessary steps to transfer the account pursuant to a court ordered property settlement. Adding language to line 24 to protect an IRA "account awarded or received" and to line 26 indicating the interest "continues to be exempt before and after the transfer" would fix this issue.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[21] *See State Department of Transportation v. Knowles*, 402 So. 2d 1155 (Fla. 1981).
[22] *See Metropolitan Dade County v. Chase Federal Housing Corporation*, 737 So. 2d. 494 (Fla. 1999). *See also City of Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986).
[23] *Lowry v. Parole and Probation Commission*, 473 So. 2d 1248, 1250 (Fla. 1985).

1 A bill to be entitled
2 An act relating to transfers in divorce; amending s.
3 222.21, F.S.; specifying that certain interests
4 received by a transferee after a divorce remain exempt
5 from claims of creditors; provides retroactive
6 application; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Paragraph (c) of subsection (2) of section
11 222.21, Florida Statutes, is amended to read:
12 222.21 Exemption of pension money and certain tax-exempt
13 funds or accounts from legal processes.—
14 (2)
15 (c) Any money or other assets or any interest in any fund
16 or account that is exempt from claims of creditors of the owner,
17 beneficiary, or participant under paragraph (a) does not cease
18 to be exempt after the owner's death by reason of a direct
19 transfer or eligible rollover that is excluded from gross income
20 under the Internal Revenue Code of 1986, including, but not
21 limited to, a direct transfer or eligible rollover to an
22 inherited individual retirement account as defined in s.
23 408(d)(3) of the Internal Revenue Code of 1986, as amended. <u>An</u>
24 <u>interest in any fund or account received in a transfer incident</u>
25 <u>to divorce described in s. 408(d)(6) of the Internal Revenue</u>

26 Code of 1986, as amended, continues to be exempt after the
27 transfer. This paragraph is intended to clarify existing law, is
28 remedial in nature, and shall have retroactive application to
29 all inherited individual retirement accounts and to each
30 transfer incident to divorce without regard to the date an
31 account was created or the transfer was made.
32 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 843 Dissolution of Marriage
SPONSOR(S): Andrade and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1832

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

SUMMARY ANALYSIS

Chapter 61, F.S., governs domestic relations, including actions for dissolution of marriage (DOM), child custody, child support, and alimony. Alimony is a court ordered payment from one spouse to another, most commonly awarded for support or maintenance during a pending action for DOM and after a DOM is final.

Florida currently recognizes five main types of alimony: temporary; bridge-the-gap, rehabilitative, durational, and permanent. In determining the type, amount, duration, and later modification or termination of an alimony award, the court has broad discretion but may only award alimony after initially determining that one spouse needs alimony and the other spouse is able to pay alimony. If a court awards or denies an alimony request, it must also consider enumerated factors and may also consider the adultery of either spouse or any other factor it finds necessary to achieve equity and justice between the parties. An alimony award may be modified or terminated when the circumstances or financial ability of either party changes, including changes due to a receiving spouse's supportive relationship or a paying spouse's retirement.

HB 843 makes a number of changes to ch. 61, F.S. Specifically, the bill:

- Defines alimony as any payment of support after filing for DOM, whether it is court-ordered or not.
- Places the burden of proving need and ability to pay alimony on the spouse seeking an alimony award.
- Removes the statutory presumptions regarding the length of a short, moderate, or long-term marriage.
- Eliminates permanent alimony and limits the length of a durational alimony award to 50 percent of the length of the parties' marriage.
- Prioritizes awarding bridge-the-gap alimony, followed by rehabilitative alimony, before any other form.
- Redefines the permissible amount and duration for bridge-the-gap, rehabilitative, and durational alimony.
- Requires the court to make written findings when awarding more than one type of alimony and requires such an award when awarded to a recipient spouse for rehabilitation.
- Amends, removes, and limits the factors a court must consider in alimony awards, and requires written findings of fact relative to the factors.
- Removes the court's authority to order an obligor to purchase a life insurance policy to secure an alimony award, and instead permits an obligee to purchase such a policy.
- Substantially amends the law regarding modification of alimony, support, and maintenance.
    - Removes statutory authority for the court to increase alimony.
    - Limits statutory authority for the court to reduce alimony.
- Prohibits ordering a spouse who retired prior to a DOM action to pay alimony, and generally terminates any alimony award when an obligor reaches full retirement age.
- Amends state policy regarding parental time-sharing and requires the court to begin with a presumption that equal time-sharing is in the best interest of any minor children common to the parties in a DOM.
- Permits separate adjudication of issues in a DOM action under certain circumstances.
- Retroactively applies the bill's changes to modification actions.

The bill may have a significant fiscal impact on state government, but does not appear to have a fiscal impact on local government.

The bill provides an effective date of July 1, 2020, but may permit retroactive application of the changes made to alimony modification.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 61, F.S., governs domestic relations actions including actions for dissolution of marriage (DOM), alimony, and child custody and support.

While alimony is created and guided by statute, it is also governed by case law. The leading alimony case, *Canakaris v. Canakaris*,[1] set forth many of the general concepts of alimony but confirmed that the ultimate decision in awarding alimony should be within the court's discretion, because:

> In considering the appropriate criteria for the award of the different types of alimony, it is important that appellate courts avoid establishing inflexible rules that make the achievement of equity between the parties difficult, if not impossible.[2]
>
> Dissolution proceedings present a trial judge with the difficult problem of apportioning assets acquired by the parties and providing necessary support. The judge possesses broad discretionary authority to do equity between the parties and has available various remedies to accomplish this purpose …. As considered by the trial court, these remedies are interrelated; to the extent of their eventual use, the remedies are part of one overall scheme.[3]

However, the Florida Supreme Court (FSC) also explained that:

> [t]he discretionary power that is exercised by a trial judge is not, however, without limitation, and both appellate and trial judges should recognize the concern which arises from substantial disparities in domestic judgments resulting from basically similar factual circumstances …. The trial court's discretionary power is subject only to the test of reasonableness, but that test requires a determination of whether there is logic and justification for the result. The trial courts' discretionary power was never intended to be exercised in accordance with whim or caprice of the judge nor in an inconsistent manner. Judges dealing with cases essentially alike should reach the same result. Different results reached from substantially the same facts comport with neither logic nor reasonableness.[4]

In the 36 years since *Canakaris*, the legislature has provided greater statutory guidance by codifying many alimony concepts already applicable through appellate court and FSC decisions and case law has continued to narrow the exercise of judicial discretion. Despite these changes, disagreement exists regarding the court's exercise of broad discretion in determining alimony awards.[5]

Alimony Generally

Background

Alimony, also known as spousal support or spousal maintenance, is a court ordered payment from one spouse to another at any time before, during, and after a DOM. Alimony is most commonly awarded for support or maintenance during a pending action for DOM and after a DOM is final, but may also be awarded without an accompanying DOM action.[6] A person who receives payment pursuant to an order

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[1] *Canakaris v. Canakaris*, 382 So. 2d 1197 (Fla. 1980).
[2] *Id*. at 1200.
[3] *Id*. at 1202.
[4] *Id*. at 1203.
[5] *See Bacon v. Bacon*, 819 So. 2d 950, 954 (Fla. 4th DCA 2002) (Farmer, J., concurring) (Opining that broad discretion in alimony awards is no longer justifiable and should be discarded in favor of guidelines; proposing that 35 percent of obligor's income is a reasonable range).
[6] S. 61.09, F.S.

establishing, enforcing, or modifying an alimony obligation is called an obligee,[7] and a person responsible for making payments pursuant to an order establishing, enforcing, or modifying an alimony obligation is called an obligor.[8]

The court may award alimony only after initially determining that one spouse actually needs alimony and the other spouse is able to pay alimony.[9] As such, alimony may not be awarded when the requesting spouse has no actual need for support or when the other spouse has no ability to pay.

When determining an alimony award, there is a rebuttable presumption that a:

- Short-term marriage lasts less than 7 years;
- Moderate-term marriage lasts more than 7 years but less than 17 years; and
- Long-term marriage lasts 17 years or more.[10]

In determining the appropriate amount of alimony, the court's award may not leave an obligor with significantly less net income than the obligee, absent exceptional circumstances.[11] The court may order an obligor to pay alimony in periodic payments, lump sum payments, or a combination of the two.[12] The court may also require an obligor to maintain life insurance or a bond, or to otherwise secure an alimony award, to safeguard an obligee's support in the event the obligor reaches an untimely death.

Effect of Proposed Changes

HB 843 defines alimony as any payment of support from one spouse to another after a petition for DOM is filed, regardless of whether the payment is court-ordered.

- By limiting alimony to include only support payments made subsequent to a DOM action, the bill removes guidance to the court in determining alimony awards unconnected to a DOM, under s. 61.09, F.S.

The bill removes all references to maintenance in s. 61.08(2), F.S., which may leave the court without guidance as to the threshold consideration of need and ability to pay when awarding alimony or maintenance unconnected with a DOM under s. 61.09, F.S. While the bill removes references to maintenance in s. 61.08(2), F.S., references to maintenance in ss. 61.09 and 61.14(2), F.S., remain.

The bill requires a spouse seeking alimony, to prove his or her need for alimony and the obligor spouse's ability to pay alimony. If the court finds that the spouse seeking alimony has met his or her burden of proof, the bill requires the court to make a written determination regarding whether the obligee spouse has an actual need and whether the obligor spouse has the ability to pay.

- By removing the court's ability to make the initial determination of need and ability to pay and placing the burden of proving these aspects on the spouse seeking alimony, the bill may result in increased court filings, hearings, attorney's fees, and litigation surrounding the determination.
- The bill does not provide any guidelines or factors the seeking spouse must demonstrate in order to prove need and ability to pay.

The bill removes the court's authority to order an obligor to secure an alimony award by purchasing a life insurance policy or a bond, or to otherwise secure an alimony award with appropriate assets. The bill instead provides an obligee the option to purchase a life insurance policy on the obligor's life in an amount adequate to secure an alimony award.

- While the bill requires an obligor's cooperation in procuring such a policy, the bill does not contemplate whether the:
    - Cost of such a policy may be considered an obligee's expense in determining an initial alimony award; or

[7] S. 61.046(12), F.S.
[8] S. 61.046(13), F.S.
[9] S. 61.08(2), F.S.
[10] S. 61.08(4), F.S.
[11] S. 61.08(9), F.S.
[12] For lump sum alimony to be awarded, there must be a showing of need and ability to pay as well as unusual circumstances which require non-modifiable support and justification that does not substantially endanger the payor's economic status. *Rosario v. Rosario*, 945 So. 2d 629, 632 (Fla. 4th DCA 2006).

- Obligee may receive an offset in his or her alimony award for the cost of such life insurance policy, particularly if such life insurance premiums increase substantially over time.

The bill eliminates the classification of marriage as one that is short-term, moderate-term, or long-term, and instead treats all marriages, regardless of length, the same for purposes of awarding alimony.

Types of Alimony

Background

Florida recognizes five main types of alimony:[13] temporary, bridge-the-gap, rehabilitative, durational, and permanent. Each type of alimony has a defined purpose, duration, and requirements for modification or termination, as generally illustrated below.

Type	Purpose	Duration	Modification/Termination	Automatic Termination
Temporary (*Pendente-Lite*) S. 61.071, F.S.	A reasonable sum awarded after initiation of DOM proceedings for support during the pending litigation.	Only during the pending DOM litigation.	Good cause.	Final Judgment in DOM action (including appeals).
Bridge-the-Gap S. 61.08(5), F.S.	To provide assistance with legitimate, identifiable short-term needs to help with the transition from being married to being single.	May not exceed 2 years.	Not modifiable in amount or duration.	Remarriage of recipient or death of either party.
Rehabilitative S. 61.08(6)(a), F.S.	To assist in establishing the capacity for self-support through: • Redevelopment of previous skills or credentials; or • Education, training, or work experience to develop appropriate employment skills or credentials.	Requires a specific, defined plan; duration varies depending on circumstances.	Substantial change in circumstances; Non-compliance with rehabilitation plan; or Completion of rehabilitation plan.	Death of either party.
Durational S. 61.08(7), F.S.	Awarded when permanent alimony is not appropriate to assist with economic assistance for a set period of time following a marriage of short or moderate duration. [14]	May not exceed the duration of the marriage; duration varies.	• Amount: Substantial change in circumstances. • Duration: Exceptional circumstances.	Remarriage or recipient or death of either party.
Permanent S. 61.08(8), F.S.	To provide for needs and necessities of life as established during marriage for a party lacking financial ability to meet such needs on his/her own following a: • Long duration marriage; • Moderate duration marriage, if appropriate considering enumerated factors;[15] or • Short duration marriage, in exceptional circumstances.[16]	Perpetual (unless modified or terminated)	Substantial change in circumstances, including the existence of a recipient's supportive relationship.[17]	Remarriage of recipient or death of either party.

[13] Alimony may also be awarded to a spouse in an action for support unrelated to a DOM action. If a spouse has the ability to contribute to the maintenance and support of his or her spouse and minor children but fails to do so, the spouse in need may apply to the court for alimony and child support without seeking a DOM. S. 61.09, F.S

[14] S. 61.08(4), F.S.

[15] S. 61.08(2), F.S., lists these factors.

[16] A permanent alimony award is generally inappropriate in a short-term marriage unless DOM created a genuine inequity. *Segall v. Segall*, 708 So. 2d 983 (Fla. 4th DCA 1998).

Equitable Distribution

Except for a temporary alimony award, before awarding alimony, the court must equitably distribute the spouses' assets. When determining the distribution of the parties' marital assets, the court must begin with the presumption that the assets should be distributed equally between the parties, unless there is justification for an unequal distribution based on all relevant factors, including:[18]

- The contribution to the marriage by each spouse, including contributions to the care and education of the parties' children and either spouse's services as homemaker.
- The economic circumstances of the parties.
- The duration of the marriage.
- Any interruption of a personal career or educational opportunity by either party.
- The contribution of one spouse to the personal career or educational opportunity of the other spouse.
- The desirability of keeping any asset, such as an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party.
- The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement and liabilities associated with the parties' marital and nonmarital assets.
- The desirability of retaining the marital home as a residence for any dependent child of the marriage, or any other party, when doing so is in the best interest of the child or that party and it is financially feasible for the parties to maintain the residence until:
    - The child is emancipated; or
    - Exclusive possession is otherwise terminated by the court.
        - In making this determination, the court must first determine if it would be in the best interest of the dependent child to remain in the marital home; and, if not, whether other equities justify giving any other party exclusive use and possession of the marital home.
- The intentional dissipation, waste, depletion, or destruction of marital assets after the date the initial petition for DOM is filed or within 2 years prior to the filing of the petition.
- "Any other factors necessary" to do equity and justice between the parties.[19]

<u>Effect of Proposed Changes</u>

The bill determines the length of a marriage by calculating the period of time beginning on the date the parties' were married and ending on the date a petition for DOM is filed.

Permanent Alimony

HB 843 eliminates permanent alimony as a type of alimony the court may award.

Bridge-the-Gap Alimony

The bill requires the court to prioritize awarding bridge-the-gap alimony, followed by the rehabilitative alimony, before any other type of alimony. The bill does not change the current two year maximum length for a bridge-the-gap alimony award.

Rehabilitative Alimony

The bill provides that the length of a rehabilitative alimony award is limited to the lesser of:

- 5 years; or
- 50 percent of the duration of the marriage.

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[17] S. 61.14(1)(b), F.S.
[18] S. 61.075(8), F.S.
[19] See Effect of Proposed Changes – Equitable Distribution, *infra*, p. 7.

    - As such, a rehabilitative alimony award in any marriage lasting 10 years or longer could not exceed 5 years.

The bill provides that when alimony is awarded to provide greater economic assistance for an obligee to achieve rehabilitation, the court must award a combination of alimony types and make written findings regarding the:

- Basis for awarding more than one type of alimony;
- Type of alimony awarded; and
- Length of time the alimony is awarded.

Durational Alimony

The bill permits a durational alimony award in any marriage, regardless of length. However, if a court awards durational alimony, the bill requires the court to:

- Make written findings that no other type of alimony or combination of other types of alimony is appropriate under the circumstances;
- Modify or terminate the award based on a:
    - Substantial change in circumstances; or
    - Finding that a supportive relationship exists or existed between the obligee and another person.

The bill provides that the length of a durational alimony award may not exceed 50 percent of the length of the marriage.

The bill limits the amount of a durational alimony award to the lesser of:

- A receiving spouse's reasonable need; or
- 25 percent of the difference between the parties' net incomes, as provided in s. 61.30, F.S.
    - S. 61.30, F.S., calculates net income by subtracting allowable deductions from gross income. Allowable deductions include:
        - Federal, state, and local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.
        - Federal insurance contributions or self-employment tax.
        - Mandatory union dues.
        - Mandatory retirement payments.
        - Health insurance payments, excluding payments for coverage of the minor child.
        - Court-ordered support for other children which is actually paid.
        - Spousal support paid pursuant to a court order from a previous marriage or the marriage before the court.

By using s. 61.30, F.S. to determine the parties' net incomes, the obligor is permitted to deduct any amount of spousal support he or she may currently pay to the other party, including temporary support or alimony, potentially resulting in a net income far lower than what his or her net income may be during the period durational alimony will be paid.

The bill provides that any support payments, whether voluntary or court-ordered, made to an obligee after a petition for DOM is filed are credited to the obligor for purposes of calculating the durational limits of an alimony award.

The bill requires the court to subtract any funds an obligee receives from social security, disability benefits, or retirement payments from the amount of alimony it awards to an obligee.

- If an obligee begins receiving any such payments after the court orders an initial alimony award, subtracting the dollar value of the obligee's new funds directly from the initial alimony award contradicts the requirements for determining a durational alimony award, which is calculated by determining 25 percent of the difference between the parties' net incomes. A dollar-for-dollar deduction results in a much larger reduction in alimony than using the 25 percent formula.

The bill removes access to any type of alimony for a spouse who proves a need for support when the obligor spouse meets the requirements for retirement, before a petition for DOM is filed.

- By prohibiting the court from ordering a retired spouse to pay alimony, the bill may:
  - Permit an older spouse to avoid supporting his or her dependent spouse by:
    - Retiring in anticipation of filing for a DOM; or
    - Purposely waiting to file for DOM until he or she has retired.
  - Leave dependent spouses with no support from the retired spouse, without consideration of the:
    - Statutory factors for determining alimony; or
    - Potential impact on state financial support, food stamps, and other state-provided services which the dependent spouse may require without access to any form of alimony.

Equitable Distribution

While the bill does not change the law regarding equitable distribution, the bill's changes to alimony law will impact how the court may utilize equitable distribution. By eliminating permanent alimony and otherwise limiting the amount and duration of the remaining forms of alimony, the court may look to equitable distribution in order to equitably and adequately provide support for a lower-earning spouse. Because the court is permitted to consider any factor necessary to do equity and justice between the parties, some courts may award the majority of assets to a lower-earning spouse to compensate for the limitations the bill places on the amount and duration of alimony.

Alternatively, the bill's changes to alimony law may result in a court determining there is no authority to keep certain assets, such as a business interest, intact during equitable distribution in exchange for an increase in the amount or duration of an alimony award, even if such an arrangement is equitable or agreed upon by the parties.

Alimony Factors

Background

After equitably distributing the parties' assets,[20] the court must consider the following factors, before awarding alimony:

- The standard of living established during the marriage;
  - However, the award may not be so high as to cause the obligor spouse to be unable to meet his or her own needs,[21] and an alimony award that is over 50 percent of the obligor spouse's income is considered too high.[22]
- The duration of the marriage;[23]
- The age and the physical and emotional condition of each party;
- The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each;
- The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment;
- The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party;
  - Such as an agreement between the parties that one spouse would stay home with the children, or whether, as a result of the marriage, the requesting spouse's ability to earn enough to support himself or herself has been damaged in any way.[24]

[20] Unless the court is awarding temporary alimony, in which case the court may determine the temporary alimony award prior to equitable distribution. S. 61.075(8), F.S.
[21] *Rashotsky v. Rashotsky*, 782 So. 2d 542 (Fla. 3d DCA 2001).
[22] *O'Conner v. O'Conner*, 782 So. 2d 502 (Fla. 2d D.C.A. 2001).
[23] *See* s. 61.08(4), F.S.
[24] *Segall*, 708 So. 2d at 983.

- The responsibilities each party will have regarding any minor children they have in common;
- The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment;
- All sources of income[25] available to either party, including income available to either party through investments of any asset held by that party;
    - Income may be imputed to a voluntarily unemployed or underemployed spouse, whether the spouse is an obligee or obligor.[26]
- Any other factor necessary to do equity and justice between the parties.

Adultery

In addition to the enumerated factors, the court may also consider the adultery of either spouse and the circumstances surrounding the adultery.[27] However, a requesting spouse's adultery is not a complete bar from receiving alimony,[28] and a spouse's adulterous behavior may not be the basis for requiring him or her to pay alimony, unless such adultery contributed to a depletion of marital assets.[29] The spouse seeking to prove adultery has the burden of proof.[30]

These statutory guidelines provide the framework within which the court may exercise its discretion to determine the type, amount, and duration of an alimony award, if any. There are no bright line rules which determine in each unique scenario whether awarding alimony is appropriate and if so, what kind. No single factor justifies an alimony award, rather, all factors must be considered as a whole, and the court is permitted to analyze the entire marital situation, to consider how alimony, child support, and equitable distribution are interrelated, and to exercise its discretion based on knowledge of a total financial snapshot to make an equitable decision regarding an alimony award.

Effect of Proposed Changes

The bill amends the factors the court must consider in determining the type and amount of alimony by:

- Removing the requirement that the court consider:
    - The standard of living established during the marriage.
    - Either spouse's contributions to the marriage in the form of:
        - Homemaking;
        - Child care;
        - Education; and
        - Career building of the other spouse.
    - The tax consequences specifically relating to the designation of all or a portion of an alimony payment as a nontaxable, nondeductible payment.

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[25] Defined very broadly as "any form of payment to an individual, regardless of source, including, but not limited to: wages, salary, commissions and bonuses, compensation as an independent contractor, worker's compensation, disability benefits, annuity and retirement benefits, pensions, dividends, interest, royalties, trusts, and any other payments, made by any person, private entity, federal or state government, or any unit of local government. United States Department of Veterans Affairs disability benefits and reemployment assistance or unemployment compensation, as defined in chapter 443, are excluded from this definition of income except for purposes of establishing an amount of support." S. 61.046(8), F.S. "Support," unless otherwise specified, means: child support and, when the child support obligation is being enforced by the Department of Revenue, spousal support or alimony for the spouse or former spouse of the obligor with whom the child is living; child support only in cases not being enforced by the Department of Revenue. S. 61.046(22), F.S. Case law has expanded the definition to include in-kind payments and regular gifts and clarified that the source of income must be "available" to the party. *See Fitzgerald v. Fitzgerald*, 912 So. 2d 363 (Fla. 2d DCA 2005); *Weiser v. Weiser*, 782 So. 2d 986 (Fla. 4th DCA 2000), and *Zold v. Zold*, 880 So. 2d 779 (Fla. 5th DCA 2004). However, a party may not voluntarily make income unavailable in order to reduce his or her annual income. *See Geoghegan v. Geoghegan*, 969 So. 2d 482 (Fla. 5th DCA 2007).

[26] *See Keyser v. Keyser*, 204 So. 3d 159 (Fla. 1st DCA 2016); *Lostaglio v. Lostaglio*, 199 So. 3d 560 (Fla. 5th DCA 2016); *Kovar v. Kovar*, 648 So. 2d 177 (Fla. 4th DCA 2003); *Rojas v. Rojas*, 656 So. 2d 563 (Fla. 3d DCA 1995).

[27] S. 61.08(1), F.S.

[28] *See Coltea v. Coltea*, 856 So. 2d 1047 (Fla. 4th DCA 2003); *Johnson v. Johnson*, 847 So. 2d 1157 (Fla. 5th DCA 2003).

[29] *See Haley v. Haley*, 649 So. 2d 332 (Fla. 5th DCA 1995); *Santoro v. Santoro*, 642 So. 2d 86 (Fla. 2d DCA 1994); *Pyle v. Pyle*, 617 So. 2d 1098 (Fla. 3d DCA 1993); *Noah v. Noah*, 491 So. 2d 1124 (Fla. 1986).

[30] *Engebretsen v. Engebretsen*, 151 Fla. 372, 11 So. 2d 322 (1942).

- Limiting the requirement that the court consider:
    - The age, physical, and emotional condition of the obligee by providing that an obligee who asserts an inability to earn income imputed to him or her by the court because of his or her physical disability must qualify for benefits under the Social Security Administration Disability Insurance Program (SSADIP) or demonstrate that his or her specific disability meets the qualification standards of the SSADIP.
    - Nonmarital assets to only those which were relied upon by the couple during the marriage.
    - The sources of income available to either party through investment of any asset to only those which were:
        - Acquired during the marriage; or
        - Acquired before the marriage and relied upon during the marriage.
    - All sources of income available to either party by specifically precluding the court from imputing income to an obligor based on his or her social security retirement benefits as demonstrated by a social security retirement benefits entitlement letter.
    - Any other factor necessary for equity and justice between the parties to only factors specifically identified in the court's alimony award which must be accompanied by findings of fact justifying the court's consideration.

Adding a requirement that the court consider the needs and necessities of each party after the DOM, specifically considering a rebuttable presumption that the DOM will result in both spouses having a lower standard of living than during the marriage.

Requiring consideration of only those nonmarital assets or sources of income relied upon during the marriage may result in an alimony award that is inequitable to an obligor or an obligee, as either may have significant assets or sources of income that were not relied upon during the marriage.

Modification of Support, Maintenance, or Alimony

Background

When the court orders, or when the parties enter an agreement, requiring payments for – or payments instead of – support, maintenance, or alimony, regardless of whether the agreement or order is connected to a DOM, petition for separate maintenance,[31] or voluntary property settlement, either party may ask the court to decrease or increase the amount of support, maintenance, or alimony based on a change in circumstances or financial ability.[32] In the case of a support order, a petition for modification may be based on a beneficiary child reaching the age of majority, availability of medical insurance, or the child support guidelines schedule in s. 61.30, F.S.[33] If the court finds in favor of the party seeking modification, the court may modify support, maintenance, or alimony retroactively to the date modification was sought, as equity requires.[34]

Alimony Modification

When the circumstances or financial ability of an obligee or an obligor change, either may petition the court to modify an alimony award, whether the award was agreed to by the parties in a marital settlement agreement[35] or ordered by the court.[36] The party seeking alimony modification must show:

- A substantial change in circumstances;[37]

[31] S. 61.09, F.S.
[32] S. 61.14(1)(a), F.S.
[33] *Id*.
[34] S. 61.14(1)(a), F.S.
[35] Despite such statutory authorization, a marital settlement agreement becomes a contractual duty which, when endorsed by court order, may not be set aside or revisited, according to principles of collateral estoppel and res judicata. Florida courts do not take lightly agreements made by husband and wife concerning spousal support. A marital settlement agreement as to alimony or property rights which is entered before the dissolution of marriage is binding upon the parties. *See, e.g., Perry v. Perry*, 976 So. 2d 1151 (Fla. 4th DCA 2008) and *Griffith v. Griffith*, 860 So. 2d 1069, 1073 (Fla. 1st DCA 2003).
[36] S. 61.14, F.S.

- That the change was not contemplated at the time of the final judgment of DOM; and
- That the change is sufficient, material, involuntary and permanent in nature.[38]

Supportive Relationships

An obligor may seek modification of his or her alimony obligation if a supportive relationship has existed between the obligee and a person with whom the obligee resides. The court may reduce or terminate an alimony award based on the existence of such a relationship. The obligor has the burden of proving the obligee's supportive relationship by a preponderance of the evidence. If the court finds in favor of the obligor, the court must make specific written findings that, subsequent to the court's granting of a divorce and award of alimony, the obligee entered into a supportive relationship with a person whom he or she is unrelated to by consanguinity or affinity and with whom he or she resides. In determining whether a supportive relationship exists, the court must consider circumstances including, but not limited to:[39]

- The extent to which the obligee and the other person have held themselves out as a married couple, including referring to each other in terms such as "my husband" or "my wife."
- The period of time that the obligee has resided with the other person in a permanent place of abode.
- The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.
- The extent to which the obligee or the other person has supported the other, in whole or in part.
- The extent to which the obligee or the other person has performed valuable services for the other.
- The extent to which the obligee or the other person has performed valuable services for the other's company or employer.
- Whether the obligee and the other person have worked together to create or enhance anything of value.
- Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.
- Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.
- Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.
- Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

Obligor's Subsequent Relationships

The financial status of an obligor's successor spouse is generally irrelevant in a modification proceeding, and it is improper for the court to consider the income of the obligor's current spouse in an action to modify the obligor's alimony obligation. However, an exception exists if the court determines that the obligor is deliberately limiting his or her income for the purpose of reducing an alimony obligation and is living off the income of a successor spouse.[40]

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[37] The change in circumstances alleged must have occurred after the last judgment or order awarding alimony. *Johnson v. Johnson*, 537 So. 2d 637 (Fla. 2d DCA 1998).

[38] *Townsend v. Townsend*, 585 So. 2d 468 (Fla. 2d DCA 1991); Courts have found a substantial change in circumstance where: an obligor's health deteriorated due to two heart attacks, he was unable to continue gainful employment, and received social security disability income as his full income (*Scott v. Scott*, 109 So. 3d 804 (Fla. 5th DCA 2012)); an obligor demonstrated a substantial change in financial circumstances resulting from a detrimental impact on his business of manufacturing cathode ray television tubes due to advancing technology that made his product obsolete. The court noted that the obligor was forced to remove money from family trust accounts to meet his alimony obligation. (*Shawfrank v. Shawfrank*, 97 So. 3d 934, 937 (Fla. 1st DCA 2012)); Financial affidavits showed the obligee's income increased from $1,710 to $4,867 a month, making her income higher than the obligor's income of $3,418 a month. (*Koski v. Koski*, 98 So. 3d 93, 94 (Fla. 4th DCA 2012)).

[39] S. 61.14, F.S.

[40] *Harmon v. Harmon*, 523 So. 2d 187 (Fla. 2d DCA 1988); *Hayden v. Hayden*, 662 So. 2d 714 (Fla. 4th DCA 1995).

Retirement

While there are no statutory standards relating to modification or termination of alimony based on an obligor's retirement, the Florida Supreme Court, in *Pimm v. Pimm*, provides guidance the court must follow in exercising its discretion to grant a modification based on retirement.[41] An obligor's retirement may be considered by the court among the totality of circumstances in determining if a substantial change in circumstances exists warranting a modification of alimony. The Florida Supreme Court has directed that in modification cases based on the obligor's retirement, the court should consider the:[42]

- Obligor's age, health, and motivation for retirement;
- Type of work the obligor performs and the age at which others engaged in that line of work normally retire; and
- Obligee's needs and the impact a termination or reduction of alimony would have on him or her.
    - In assessing those needs, the court should consider any assets the receiving spouse has accumulated or received since the DOM, as well as any income generated by those assets and whether the retirement places the obligee in peril of poverty.

<u>Effect of Proposed Changes</u>

Alimony Modification, Generally

HB 843 removes s. 61.14(1)(a), F.S., to remove the court's general authority to modify agreements or court orders for support, maintenance, or alimony based on a change in either party's circumstances or financial ability, unless such change is specifically related to an obligee's supportive relationship or receipt of social security, disability, or retirement funds or an obligor's subsequent retirement.

- The bill creates a gap in statutory authority for the court to modify support, maintenance, or alimony orders or agreements. While the court may be able to use its inherent authority to modify its own orders to modify an alimony award, the court may no longer have any authority to modify an alimony award determined by agreement.
- The bill removes current statutory authority providing directions for pro se litigants and attorneys as to where and when a party may seek modification of an existing court order or agreement.
- The Department of Revenue (DOR) indicates concern that repealing the specific text as to modifying support[43] may leave some parties, attorneys, and courts without guidance on this matter, potentially resulting in increased litigation and federal compliance issues which may result in the loss of federal funding and grants.[44] However, the court would likely be able to make such modifications by exercising its inherent authority to modify its own orders and under other provisions of law relating to child support,[45] but the bill may still leave a gap in the guidance currently offered for pro se litigants.
- The bill removes the court's authority to modify support, maintenance, or alimony based on a party failing to comply with the terms of a property settlement, which may include an obligee's agreement to receive no alimony or a smaller alimony award in exchange for receiving such property from the other party.

By removing s. 61.14(1)(a), F.S., and generally restricting the court's statutory authority to modify an alimony award, with limited exceptions, the bill may remove the court's ability to increase an alimony award when either party's circumstances or financial ability changes. However, the bill continues to provide several ways for the court to reduce or terminate an alimony award.

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[41] *Pimm v. Pimm*, 601 So. 2d 534 (Fla. 1992).
[42] *Id*. at 537.
[43] *See* statutory definition of support, *Supra*, at note 23.
[44] Department of Revenue, Agency Analysis of 2020 House Bill 843, pp. 2-4 (Jan. 6, 2020).
[45] *See e.g.* ss. 61.30(1) and 409.2564(11)–(12), F.S.

Retroactivity

The bill provides that any modification or termination of an alimony award is effective as of July 1, 2020, or retroactive to the date the petition for modification was filed.

- The bill permits an obligor to seek modification or termination of an alimony award entered prior to July 1, 2020, by applying the new law under the bill.
- This provision of the bill may make the bill entirely retroactive, permitting an obligor to seek modification or termination of any alimony award, including a permanent alimony award.

Alimony Modification, Supportive Relationships

The bill removes the court's discretion to reduce or terminate an alimony award based on an obligee's supportive relationship, and instead requires the court to reduce or terminate the award if a supportive relationship exists or existed between the obligee and another person at any time during the 180 days before the obligor filed his or her petition for modification.

- By requiring the court to modify or terminate alimony based on a supportive relationship that may no longer exist, the bill removes the court's discretion to determine what is appropriate to provide equity between the parties.

The bill provides that an obligor's subsequent remarriage or cohabitation does not constitute a basis for alimony modification, and that in a modification action, the income and assets of an obligor's subsequent spouse or person with whom the obligor resides is irrelevant.

- By removing the court's ability to consider a successor spouse's income in limited circumstances, the bill permits an obligor to rely on the income of a successor spouse and to become voluntarily unemployed or underemployed to avoid paying his or her alimony obligation.
- The bill contradicts current case law permitting such consideration in limited circumstances.[46]

The bill provides that when the court orders an obligor to pay alimony and child support concurrently,[47] the alimony award may not be modified based only upon a subsequent reduction or termination of a child support obligation.

- While current law provides for such a modification only in limited circumstances to provide equity between the parties, the bill removes the court's authority to make any such modification.
    - For example: The court may find an obligee needs alimony but an obligor's ability to pay alimony may be limited at the time. As such, the court's initial alimony award may be for an amount less than that which an obligee needs. However, if an obligor is also ordered to pay child support and that support obligation terminates, the court may determine that the obligor's changed circumstances regarding his or her ability to pay alimony is an equitable reason to modify an alimony award.

The bill permits the court in any modification action to award reasonable attorney's fees and costs in accordance with s. 61.16, F.S., to a party if it determines that the other party unnecessarily or unreasonably litigated the matter, specifically including unreasonable litigation regarding the date of alimony termination.

- Current law already provides a remedy for unsupported claims under s. 57.105, F.S.

Retirement

The bill substantially changes the law regarding modification of alimony based on an obligor's retirement, in the following manner:

- An obligor's alimony obligation terminates on the earlier of when:
    - He or she reaches full retirement age as determined by the U.S. Social Security Administration; or

[46] *Harmon*, 523 So. 2d at 187.
[47] Child support payments are intended to pay for the cost of raising a child (providing clothes, food, etc.), whereas alimony is for the benefit of the receiving spouse.

    - When the obligor actually retires, if such retirement occurs at an age that is reasonable for his or her profession or line of work.
- To determine if an obligor's retirement is reasonable, the court must consider the obligor's:
    - Age;
    - Health;
    - Motivation for retirement; and
    - Type of work and the typical retirement age for that type of work.[48]
- An obligor may file a petition to terminate an alimony obligation before he or she reaches full retirement age, requesting termination effective upon his or her retirement date. The court must terminate the alimony obligation after the obligor retires, unless it finds that the retirement is not reasonable.
- An obligor's social security or disability benefits or retirement payments may not be garnished for alimony enforcement.

Child Support, Parenting, and Time-Sharing

Background

Florida courts have consistently ruled that a parent's desire and right to the companionship, care, custody, and management of his or her children is an important interest that warrants deference and, absent a powerful countervailing interest, protection. Although the right to integrity of the family is among the most fundamental rights, when married parents divorce or separate, the parents' rights are subject to the overriding concern for the ultimate welfare or best interests of their children.

Time-Sharing

Section 61.13, F.S., provides guidelines to assist courts in determining matters related to parenting[49] and time-sharing[50] of minor children in actions under ch. 61, F.S., in accordance with the best interests of the child while balancing the rights of parents. As a threshold consideration, the Legislature has declared that:[51]

> It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.

To that end, current law presumes[52] that parental responsibility be shared by both parents, unless shared responsibility would be detrimental to the child.[53] However, current law does not provide a presumption in favor of a specific time-sharing schedule, thus when the parties are unable to agree, the court sets a time-sharing schedule.

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[48] The bill codifies a portion of the *Pimm* decision, but omits consideration of an obligee's needs and the impact a termination or reduction of alimony would have on him or her. *See Pimm*, 601 So. 2d at 534.
[49] Parenting or parental responsibility refers to the responsibility and right to make important decisions about the child's welfare, such as education and medical care after the parents separate.
[50] Time-sharing refers to the time, including overnights and holidays, which the child spends with each parent. S. 61.046(23), F.S.
[51] S. 61.13(2)(c)1., F.S.
[52] A presumption is an assumption of fact which the law makes from the existence of another fact or group of facts found or otherwise established. S. 90.301, F.S.
[53] S. 61.13(2)(c)2., F.S. "Evidence that a parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28 and chapter 775, or meets the criteria of s. 39.806(1)(d), creates a rebuttable presumption of detriment to the child."

In establishing time-sharing, the court must consider the best interests of the child,[54] and the court must evaluate all factors affecting the welfare and interests of the child and the circumstances of the family, including, but not limited to the:

- Demonstrated capacity and disposition of each parent to facilitate and encourage a continuing parent-child relationship, honor the time-sharing schedule, and accommodate necessary changes.
- Anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.
- Demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child.
- Length of time the child has lived in a stable environment and the desirability of maintaining continuity.
- Geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.
- Mental health, physical health, and moral fitness of the parents.
- Home, school, and community record of the child.
- Reasonable preference of the child.
- Demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, the child's friends, teachers, and daily activities.
- Demonstrated capacity and disposition of each parent to:
    - Provide a consistent routine; and
    - Communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has ever knowingly provided false information about such matters.
- Particular parenting tasks customarily performed by each parent, including the extent to which parenting responsibilities were undertaken by third parties.
- Demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.
- Demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.
- Capacity and disposition of each parent to protect the child from the ongoing litigation regarding child custody.
- Developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

Time-sharing and Child Support

A time-sharing order entered by a court may impact the child support obligation of the parents. In a ch. 61, F.S., proceeding, the court may order either or both parents to pay child support in accordance with the child support guidelines provided in s. 61.30, F.S. These guidelines use a mathematical formula to develop the basic child support obligation of each parent. The court may not deviate from the basic child support obligation provided under the guidelines by more than five percent when establishing the child support award except in very limited circumstances, such as when a court orders substantial time-sharing.

Section 61.30(11)(b), F.S., provides that a court must adjust the basic child support obligation if the parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement agreed upon by the parties provides that a child spend a substantial amount of time with each parent.[55] The adjustment of a child support award based on substantial time-sharing, usually results in a lower child support

[54] S. 61.13(2)(c), F.S.
[55] A substantial amount of time means exercising time-sharing at least 20 percent of overnights per year. S. 61.30(11)(b)8., F.S.

obligation for both parents and a reduction in the child support payment.[56] Failure to regularly exercise a substantial time-sharing schedule that caused the adjustment of child support pursuant to s. 61.30(11)(b), F.S., constitutes grounds to modify the adjusted child support award, and the modification is retroactive to the date of non-compliance with the time-sharing schedule.[57]

Effect of Proposed Changes

The bill deletes the state policy that there is no presumption for or against the father or mother of a child or for or against any specific time-sharing schedule when creating or modifying a parenting plan, and instead requires the court, when there is no agreement between the parties, to begin with the presumption that equal time-sharing is in the best interest of all minor children common to the parties in a DOM.

- The bill requires the court to begin with an unsupported premise that a parent must overcome in order to ensure the best interest of his or her child is met. By shifting the burden of proof to a parent and thus requiring him or her to prove a lack of involvement or unfitness of the other parent, the bill may result in increased litigation.

Bifurcation of Divorce

Background

Bifurcation is a split procedure in which the court grants a dissolution of marriage and reserves jurisdiction regarding property settlement, debts, alimony and child support. While bifurcation is permitted in limited circumstances, current case law discourages the use of bifurcation. Specifically, in *Claughton v. Claughton*, the FSC explained that:

> [T]rial judges should avoid this split procedure. The general law and our procedural rules at both the trial and appellate levels are designed for one final judgment and one appeal. Splitting the process can cause multiple legal and procedural problems which result in delay and additional expense to the litigants. This split procedure should be used only when it is clearly necessary for the best interests of the parties or their children. The convenience of one of the parties for an early remarriage does not justify its use.[58]

Effect of Proposed Changes

The bill amends s. 61.19, F.S., to permit the separate adjudication of issues in a DOM action. If more than 365 days have pass since the filing of the original petition for DOM, the bill authorizes either party to request the court to grant a final judgement dissolving the parties' marriage and reserving jurisdiction to determine all remaining substantive issues. The bill requires the court to grant such request, unless either party shows that irreparable harm will result. The bill requires, prior to granting a dissolution of the parties' marriage, the court to enter any temporary order necessary to protect the parties and the parties' children.

- By permitting a party to petition the court for bifurcation of a DOM, the bill may potentially decrease litigation in some cases by ending the parties' legal connection to each other. However, the bill may increase litigation over issues that remain unsettled after the parties' marriage is legally dissolved. A spouse seeking bifurcation in order to remarry may have less motivation to settle remaining issues between the parties, especially if he or she is in a better financial position to pay attorneys fees. Likewise, the other spouse in such a situation may become emotionally motivated to further the litigation of remaining issues.

[56] The court may deviate from the child support amount calculated under the required "substantial time-sharing" adjustment based upon a number of factors, including the "likelihood that either parent will actually exercise the time-sharing schedule." S. 61.30(11)(b)7., F.S.
[57] S. 61.30(11)(c), F.S.
[58] *Claughton v. Claughton*, 393 So. 2d 1061, 1062 (Fla. 1981).

B. SECTION DIRECTORY:

Section 1: Amends s. 61.08, F.S., relating to alimony.
Section 2: Amends s. 61.13, F.S., relating to support of children; parenting and time-sharing; powers of court.
Section 3: Amends s. 61.14, F.S., relating to enforcement and modification of support, maintenance, or alimony agreement or orders.
Section 4: Amends s. 61.19, F.S., relating to entry of judgment of dissolution of marriage, delay period.
Section 5: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   By eliminating permanent alimony, permitting retroactivity of the bill's changes to the law, and otherwise substantially limiting the court's authority to award alimony, the bill may result in a significant increase in lower-earning former spouses need for state benefits.

   The bill's changes to ch. 61, F.S., will require the Florida State Court System to create new family law self-help forms.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The full fiscal impact of the bill is unknown, as the number of current alimony obligor's who may seek modification based on the new law cannot be determined.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

Generally, Social Security benefits are exempt from execution, levy, attachment, garnishment, or other legal process, or from the operation of any bankruptcy or insolvency law. However, benefits are subject to:

- The authority of the Secretary of the Treasury to make levies for the collection of delinquent Federal taxes and under certain circumstances delinquent child support payments; and
- Garnishment or similar legal process brought by an individual to enforce a child support or alimony obligation.[59]

The bill conflicts with federal law by providing that an obligor's social security or disability benefits or retirement payments are exempt from garnishment for alimony enforcement.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 64-69: The order of words in this paragraph may cause confusion. As drafted, the bill requires the court to award a combination of alimony types when alimony is awarded to provide greater economic assistance for an obligee to achieve rehabilitation. The following is suggested alternative language:

> The court may award a combination of forms of alimony only to provide greater economic assistance to allow the recipient to achieve rehabilitation. When awarding a combination of forms of alimony, the court shall make written findings regarding the basis for such an award, including the basis for each form of alimony awarded and the length of time for which each form is awarded.

Lines 80-82: By using the general language "the other party," it is unclear to which party the bill is referring. The first "the other party" should read "the party seeking alimony" and the second "the other party" should read "the party from whom alimony is sought."

Lines 96-97 and 115-117: Limiting the consideration of nonmarital assets to only those relied upon by the parties during the marriage may result in an alimony award that is inequitable to an obligor or an obligee.

Lines 105-106: Removing a specific reference to services rendered in homemaking, child care, education, and career building of the other party but leaving a reference to the contribution of each party to the marriage may result in the court failing to consider contributions other than those which result in a paycheck or other monetary earnings.

Lines 122-123: References a presumption that may be overcome by a preponderance of the evidence, but there is no presumption set forth in the preceding language, and it is unclear what a party may need to overcome by a preponderance of the evidence.

Lines 278-280: "All support payments made to the obligee … are credited to the obligor"

- "Support" is defined as:[60] child support and, when the child support obligation is being enforced by the DOR, spousal support or alimony for the spouse or former spouse of the obligor with whom the child is living; or child support only in cases not being enforced by the DOR.
    - As such, the bill may have the unintended consequence of crediting child support payments to the obligor in calculating the durational limitation of an alimony award. Recommend changing "all support payments" to "any alimony payment."
- Additionally, it may be difficult for a court to interpret what "credited" to an obligor means for such payments.

[59] 42 U.S.C. § 659.
[60] S. 61.046(22), F.S.

Lines 355-383: When the court orders an initial alimony award, the court must consider any funds an obligee is receiving from social security, disability benefits, or retirement payments in determining the initial alimony amount. As drafted, the bill may permit an obligor to immediately seek modification to reduce his or her initial alimony obligation by the amount an obligee is receiving from social security, disability, or retirement, even though such amount was already considered in the court's initial award.

Lines 445-447: Stating that "[a]ny modification or termination of an alimony award is effective as of July 1, 2020, or retroactive to the date of the filing of the petition" is unclear and may be interpreted to apply the new provisions of the bill retroactively to existing alimony awards.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to dissolution of marriage; amending
3 s. 61.08, F.S.; providing definitions; providing for
4 the priority of different forms of alimony; requiring
5 a court to make written findings regarding the basis
6 for awarding a combination of forms of alimony;
7 providing that the party seeking alimony has the
8 burden of proof of certain factors; revising and
9 adding specified relevant factors to be considered
10 when determining alimony; revising provisions relating
11 to the protection of awards of alimony; removing the
12 rebuttable presumption of the length of a marriage;
13 revising provisions and criteria for an award of
14 rehabilitative and durational alimony; removing the
15 authorization of permanent alimony; providing that a
16 retired party does not have to pay alimony under
17 certain circumstances; providing for imputation of
18 income to the obligor or obligee; crediting prior
19 support payments made by the obligor when calculating
20 durational limitations; amending s. 61.13, F.S.;
21 amending provisions to conform to changes made by the
22 act; amending s. 61.14, F.S.; revising and creating
23 provisions relating to the modification or termination
24 of an alimony award; providing that any modification
25 or termination of an alimony award is retroactive to

26 the date of the filing of the petition; providing for
27 an award of attorney fees and costs under certain
28 circumstances; prohibiting an alimony award from being
29 modified or terminated because of the later
30 modification or termination of child support payments;
31 providing that an obligor's subsequent remarriage or
32 cohabitation is not a basis for modification or
33 termination of alimony; providing that attaining
34 retirement age is considered a substantial change in
35 circumstances; providing factors to be considered in
36 determining whether the retirement is reasonable;
37 requiring a court to terminate or reduce an alimony
38 award based on certain factors; amending s. 61.19,
39 F.S.; authorizing separate adjudication of issues in a
40 dissolution of marriage in certain circumstances;
41 providing for temporary orders to protect the parties
42 and their children; creating a presumption for equal
43 time-sharing; providing an effective date.
44
45 Be It Enacted by the Legislature of the State of Florida:
46
47 Section 1. Section 61.08, Florida Statutes, is amended to
48 read:
49 61.08 Alimony.—
50 (1) As used in this section, the term:

51 (a) "Alimony" means a payment, regardless of whether it is
52 court-ordered, of support by one spouse to the other spouse
53 after the filing of a petition for dissolution of marriage.
54 (b) "Net income" means net income as determined in
55 accordance with s. 61.30.
56 (2)(a)~~(1)~~ In a proceeding for dissolution of marriage, the
57 court may grant alimony to either party in the form of~~, which~~
58 ~~alimony may be~~ bridge-the-gap, rehabilitative, or durational
59 alimony, or a ~~permanent in nature or any~~ combination of these
60 forms of alimony, but shall prioritize an award of bridge-the-
61 gap alimony, followed by rehabilitative alimony, over any other
62 form of alimony. In an ~~any~~ award of alimony, the court may order
63 periodic payments, ~~or~~ payments in lump sum, or both.
64 (b) The court shall make written findings regarding the
65 basis for awarding a combination of forms of alimony, including
66 the type of alimony and the length of time for which the alimony
67 is awarded. The court may award only a combination of forms of
68 alimony to provide greater economic assistance in order to allow
69 the recipient to achieve rehabilitation.
70 (c) ~~The court may consider the adultery of either spouse~~
71 ~~and the circumstances thereof in determining the amount of~~
72 ~~alimony, if any, to be awarded.~~ In all dissolution actions, the
73 court shall include written findings of fact relative to the
74 factors provided ~~enumerated~~ in subsection (3)~~(2)~~ supporting an
75 award or denial of alimony.

76 (3) ~~(2)~~ The party seeking alimony has the burden of proof
77 of demonstrating a need for alimony and that the other party has
78 the ability to pay alimony. In determining whether to award
79 alimony ~~or maintenance~~, the court shall ~~first~~ make, in writing,
80 a specific factual determination as to whether the other ~~either~~
81 party has an actual need for alimony ~~or maintenance~~ and whether
82 the other ~~either~~ party has the ability to pay alimony ~~or~~
83 ~~maintenance~~. If the court finds that the ~~a~~ party seeking alimony
84 has met its burden of proof in demonstrating a need for alimony
85 ~~or maintenance~~ and that the other party has the ability to pay
86 alimony ~~or maintenance~~, then in determining the proper type and
87 amount of alimony ~~or maintenance~~ under subsections (5)-(7) ~~(5)-~~
88 ~~(8)~~, the court shall consider all relevant factors, including~~,~~
89 ~~but not limited to~~:
90 ~~(a) The standard of living established during the~~
91 ~~marriage.~~
92 (a) ~~(b)~~ The duration of the marriage.
93 (b) ~~(c)~~ The age and the physical and emotional condition of
94 each party.
95 (c) ~~(d)~~ The financial resources of each party, including
96 the portion of nonmarital assets that were relied upon by the
97 parties during the marriage and the marital assets and
98 liabilities distributed to each party.
99 (d) ~~(e)~~ The earning capacities, educational levels,
100 vocational skills, and employability of the parties and, when

101 applicable, the time necessary for either party to acquire
102 sufficient education or training to enable such party to find
103 appropriate employment.
104 (e) ~~(f)~~ The contribution of each party to the marriage~~,~~
105 ~~including, but not limited to, services rendered in homemaking,~~
106 ~~child care, education, and career building of the other party~~.
107 (f) ~~(g)~~ The responsibilities each party will have with
108 regard to any minor children that the parties ~~they~~ have in
109 common.
110 (g) ~~(h)~~ The tax treatment and consequences to both parties
111 of an ~~any~~ alimony award~~, including the designation of all or a~~
112 ~~portion of the payment as a nontaxable, nondeductible payment~~.
113 (h) ~~(i)~~ All sources of income available to either party,
114 including income available to either party through investments
115 of any asset held by that party that were acquired during the
116 marriage or acquired outside of the marriage and relied upon
117 during the marriage.
118 (i) The needs and necessities of life for each party after
119 dissolution of marriage taking into consideration that both
120 parties will have a lower standard of living after the
121 dissolution of marriage than the standard of living they enjoyed
122 during the marriage. This presumption may be overcome by a
123 preponderance of the evidence.
124 (j) Any other factor necessary to do equity and justice
125 between the parties if such factor is specifically identified in

126 the award with findings of fact justifying the application of
127 such factor.
128 (4) ~~(3)~~ To the extent necessary to protect an award of
129 alimony, the obligee may ~~court may order any party who is~~
130 ~~ordered to pay alimony to~~ purchase or maintain a life insurance
131 policy on the obligor's life in an amount adequate to ~~or a bond,~~
132 ~~or to otherwise~~ secure such alimony award ~~with any other assets~~
133 ~~which may be suitable for that purpose~~. If the obligee purchases
134 a life insurance policy, the obligor shall cooperate in the
135 process of procuring the issuance and underwriting of such life
136 insurance policy.
137 ~~(4) For purposes of determining alimony, there is a~~
138 ~~rebuttable presumption that a short-term marriage is a marriage~~
139 ~~having a duration of less than 7 years, a moderate-term marriage~~
140 ~~is a marriage having a duration of greater than 7 years but less~~
141 ~~than 17 years, and long-term marriage is a marriage having a~~
142 ~~duration of 17 years or greater. The length of a marriage is the~~
143 ~~period of time from the date of marriage until the date of~~
144 ~~filing of an action for dissolution of marriage.~~
145 (5) Bridge-the-gap alimony may be awarded to assist a
146 party by providing support to allow the party to make a
147 transition from being married to being single. Bridge-the-gap
148 alimony is designed to assist a party with legitimate
149 identifiable short-term needs, and the length of an award of
150 bridge-the-gap alimony may not exceed 2 years. An award of

151 bridge-the-gap alimony terminates upon the death of either party
152 or upon the remarriage of the party receiving alimony. An award
153 of bridge-the-gap alimony is ~~shall~~ not ~~be~~ modifiable in amount
154 or duration.
155 (6)(a) Rehabilitative alimony may be awarded to assist a
156 party in establishing the capacity for self-support through
157 either:
158 1. The redevelopment of previous skills or credentials; or
159 2. The acquisition of education, training, or work
160 experience necessary to develop appropriate employment skills or
161 credentials.
162 (b) In order to award rehabilitative alimony, there must
163 be a specific and defined rehabilitative plan which shall be
164 included as a part of any order awarding rehabilitative alimony.
165 (c) The length of an award of rehabilitative alimony may
166 not exceed 5 years or the limitations for durational alimony as
167 provided in subsection (7), whichever period of time is shorter.
168 (d) An award of rehabilitative alimony may be modified or
169 terminated in accordance with s. 61.14 based upon a substantial
170 change in circumstances, upon noncompliance with the
171 rehabilitative plan, or upon completion of the rehabilitative
172 plan if the plan is completed before the length of the award of
173 rehabilitative alimony expires.
174 (7)(a) Durational alimony may be awarded ~~when permanent~~
175 ~~periodic alimony is inappropriate. The purpose of durational~~

176 ~~alimony is~~ to provide a party with economic assistance for a set
177 period of time ~~following a marriage of short or moderate~~
178 ~~duration or following a marriage of long duration if there is no~~
179 ~~ongoing need for support on a permanent basis~~. An award of
180 durational alimony terminates upon the death of either party or
181 upon the remarriage of the party receiving alimony. The amount
182 of an award of durational alimony shall ~~may~~ be modified or
183 terminated based upon a substantial change in circumstances or
184 upon a finding that a supportive relationship exists or existed
185 between the obligee and another person in accordance with s.
186 61.14. ~~However,~~ The length of an award of durational alimony may
187 not ~~be modified except under exceptional circumstances and may~~
188 ~~not~~ exceed 50 percent of the length of the marriage. For
189 purposes of this subsection, the length of a marriage is the
190 period of time beginning on the date of marriage and ending on
191 the date an action for dissolution of marriage is filed.
192 (b) When awarding durational alimony, the court must make
193 written findings that an award of another type of alimony, or a
194 combination of the other forms of alimony, is not appropriate.
195 (c) The amount of durational alimony is the amount
196 determined to be the obligee's reasonable need or 25 percent of
197 the difference between the parties' net incomes, whichever
198 amount is less.
199 (8) A party against whom alimony is sought who has met the
200 requirements for retirement in accordance with s. 61.14(12)

201 before the filing of the petition for dissolution of marriage
202 may not be ordered to pay alimony.
203 (9)(a) Notwithstanding any other provision of law, alimony
204 may not be awarded to a party who has a monthly net income that
205 is equal to or more than the other party's monthly net income.
206 (b) Social security retirement benefits may not be imputed
207 to the obligor as demonstrated by a social security retirement
208 benefits entitlement letter.
209 (c) If the obligee alleges that a physical disability has
210 impaired his or her capability to earn the income imputed by the
211 court, the obligee must have qualified for benefits under the
212 Social Security Administration Disability Insurance Program or,
213 in the event the obligee is not eligible for the program, must
214 demonstrate that his or her disability meets the disability
215 qualification standards of the Social Security Administration
216 Disability Insurance Program.
217 ~~(8) Permanent alimony may be awarded to provide for the~~
218 ~~needs and necessities of life as they were established during~~
219 ~~the marriage of the parties for a party who lacks the financial~~
220 ~~ability to meet his or her needs and necessities of life~~
221 ~~following a dissolution of marriage. Permanent alimony may be~~
222 ~~awarded following a marriage of long duration if such an award~~
223 ~~is appropriate upon consideration of the factors set forth in~~
224 ~~subsection (2), following a marriage of moderate duration if~~
225 ~~such an award is appropriate based upon clear and convincing~~

226 ~~evidence after consideration of the factors set forth in~~
227 ~~subsection (2), or following a marriage of short duration if~~
228 ~~there are written findings of exceptional circumstances. In~~
229 ~~awarding permanent alimony, the court shall include a finding~~
230 ~~that no other form of alimony is fair and reasonable under the~~
231 ~~circumstances of the parties. An award of permanent alimony~~
232 ~~terminates upon the death of either party or upon the remarriage~~
233 ~~of the party receiving alimony. An award may be modified or~~
234 ~~terminated based upon a substantial change in circumstances or~~
235 ~~upon the existence of a supportive relationship in accordance~~
236 ~~with s. 61.14.~~
237 ~~(9) The award of alimony may not leave the payor with~~
238 ~~significantly less net income than the net income of the~~
239 ~~recipient unless there are written findings of exceptional~~
240 ~~circumstances~~.
241 (10)(a) With respect to any order requiring the payment of
242 alimony entered on or after January 1, 1985, unless ~~the~~
243 ~~provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the
244 court shall direct in the order that the payments of alimony be
245 made through the appropriate depository as provided in s.
246 61.181.
247 (b) With respect to any order requiring the payment of
248 alimony entered before January 1, 1985, upon the subsequent
249 appearance~~,~~ on or after that date~~,~~ of one or both parties before
250 the court having jurisdiction for the purpose of modifying or

251 enforcing the order or in any other proceeding related to the
252 order~~,~~ or upon the application of either party, unless ~~the~~
253 ~~provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the
254 court shall modify the terms of the order as necessary to direct
255 that payments of alimony be made through the appropriate
256 depository as provided in s. 61.181.
257 (c) If there is no minor child, alimony payments need not
258 be directed through the depository.
259 (d)1. If there is a minor child of the parties and both
260 parties so request, the court may order that alimony payments
261 need not be directed through the depository. In this case, the
262 order of support must ~~shall~~ provide, or be deemed to provide,
263 that either party may subsequently apply to the depository to
264 require that payments be made through the depository. The court
265 shall provide a copy of the order to the depository.
266 2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~,
267 either party may subsequently file with the depository an
268 affidavit alleging default or arrearages in payment and stating
269 that the party wishes to initiate participation in the
270 depository program. The party shall provide copies of the
271 affidavit to the court and the other party or parties. Fifteen
272 days after receipt of the affidavit, the depository shall notify
273 all parties that future payments shall be directed to the
274 depository.
275 3. In IV-D cases, the IV-D agency has ~~shall have~~ the same

276 rights as the obligee in requesting that payments be made
277 through the depository.
278 (11) All support payments made to the obligee after the
279 date of filing of a petition for dissolution of marriage, either
280 voluntarily or pursuant to a court order, are credited to the
281 obligor for purposes of calculating the durational limitations
282 of alimony.
283 Section 2. Paragraph (c) of subsection (2) of section
284 61.13, Florida Statutes, is amended to read:
285 61.13 Support of children; parenting and time-sharing;
286 powers of court.—
287 (2)
288 (c) The court shall determine all matters relating to
289 parenting and time-sharing of each minor child of the parties in
290 accordance with the best interests of the child and in
291 accordance with the Uniform Child Custody Jurisdiction and
292 Enforcement Act, except that modification of a parenting plan
293 and time-sharing schedule requires a showing of a substantial,
294 material, and unanticipated change of circumstances.
295 1. It is the public policy of this state that each minor
296 child has frequent and continuing contact with both parents
297 after the parents separate or the marriage of the parties is
298 dissolved and to encourage parents to share the rights and
299 responsibilities, and joys, of childrearing. ~~There is no~~
300 ~~presumption for or against the father or mother of the child or~~

301 ~~for or against any specific time-sharing schedule when creating~~
302 ~~or modifying the parenting plan of the child.~~
303 2. The court shall order that the parental responsibility
304 for a minor child be shared by both parents unless the court
305 finds that shared parental responsibility would be detrimental
306 to the child. Evidence that a parent has been convicted of a
307 misdemeanor of the first degree or higher involving domestic
308 violence, as defined in s. 741.28 and chapter 775, or meets the
309 criteria of s. 39.806(1)(d), creates a rebuttable presumption of
310 detriment to the child. If the presumption is not rebutted after
311 the convicted parent is advised by the court that the
312 presumption exists, shared parental responsibility, including
313 time-sharing with the child, and decisions made regarding the
314 child, may not be granted to the convicted parent. However, the
315 convicted parent is not relieved of any obligation to provide
316 financial support. If the court determines that shared parental
317 responsibility would be detrimental to the child, it may order
318 sole parental responsibility and make such arrangements for
319 time-sharing as specified in the parenting plan as will best
320 protect the child or abused spouse from further harm. Regardless
321 of whether ~~or not~~ there is a conviction of any offense of
322 domestic violence or child abuse or the existence of an
323 injunction for protection against domestic violence, the court
324 shall consider evidence of domestic violence or child abuse as
325 evidence of detriment to the child.

326 a. In ordering shared parental responsibility, the court
327 may consider the expressed desires of the parents and may grant
328 to one party the ultimate responsibility over specific aspects
329 of the child's welfare or may divide those responsibilities
330 between the parties based on the best interests of the child.
331 Areas of responsibility may include education, health care, and
332 any other responsibilities that the court finds unique to a
333 particular family.
334 b. The court shall order sole parental responsibility for
335 a minor child to one parent, with or without time-sharing with
336 the other parent if it is in the best interests of the minor
337 child.
338 3. Access to records and information pertaining to a minor
339 child, including, but not limited to, medical, dental, and
340 school records, may not be denied to either parent. Full rights
341 under this subparagraph apply to either parent unless a court
342 order specifically revokes these rights, including any
343 restrictions on these rights as provided in a domestic violence
344 injunction. A parent having rights under this subparagraph has
345 the same rights upon request as to form, substance, and manner
346 of access as are available to the other parent of a child,
347 including, without limitation, the right to in-person
348 communication with medical, dental, and education providers.
349 Section 3. Subsection (1) of section 61.14, Florida
350 Statutes, is amended, paragraphs (c) and (d) are added to

351 subsection (11), and subsections (12) and (13) are added to that
352 section, to read:
353 61.14 Enforcement and modification of support,
354 maintenance, or alimony agreements or orders.—
355 (1)(a) ~~When the parties enter into an agreement for~~
356 ~~payments for, or instead of, support, maintenance, or alimony,~~
357 ~~whether in connection with a proceeding for dissolution or~~
358 ~~separate maintenance or with any voluntary property settlement,~~
359 ~~or when a party is required by court order to make any payments,~~
360 ~~and the circumstances or the financial ability of either party~~
361 ~~changes or the child who is a beneficiary of an agreement or~~
362 ~~court order as described herein reaches majority after the~~
363 ~~execution of the agreement or the rendition of the order, either~~
364 ~~party may apply to the circuit court of the circuit in which the~~
365 ~~parties, or either of them, resided at the date of the execution~~
366 ~~of the agreement or reside at the date of the application, or in~~
367 ~~which the agreement was executed or in which the order was~~
368 ~~rendered, for an order decreasing or increasing the amount of~~
369 ~~support, maintenance, or alimony, and the court has jurisdiction~~
370 ~~to make orders as equity requires, with due regard to the~~
371 ~~changed circumstances or the financial ability of the parties or~~
372 ~~the child, decreasing, increasing, or confirming the amount of~~
373 ~~separate support, maintenance, or alimony provided for in the~~
374 ~~agreement or order. A finding that medical insurance is~~
375 ~~reasonably available or the child support guidelines schedule in~~

376 ~~s. 61.30 may constitute changed circumstances. Except as~~
377 ~~otherwise provided in s. 61.30(11)(c), the court may modify an~~
378 ~~order of support, maintenance, or alimony by increasing or~~
379 ~~decreasing the support, maintenance, or alimony retroactively to~~
380 ~~the date of the filing of the action or supplemental action for~~
381 ~~modification as equity requires, giving due regard to the~~
382 ~~changed circumstances or the financial ability of the parties or~~
383 ~~the child.~~
384 ~~(b)~~1. The court shall ~~may~~ reduce or terminate an award of
385 alimony upon specific written findings by the court that since
386 the granting of a divorce and the award of alimony, a supportive
387 relationship exists or ~~has~~ existed between the obligee and
388 another ~~a~~ person at any time during the 180 days before the
389 filing of a petition for modification of alimony ~~with whom the~~
390 ~~obligee resides~~. On the issue of whether alimony should be
391 reduced or terminated under this paragraph, the burden is on the
392 obligor to prove by a preponderance of the evidence that a
393 supportive relationship exists or existed.
394 2. In determining whether an existing award of alimony
395 should be reduced or terminated because of an alleged supportive
396 relationship between an obligee and a person who is not related
397 by consanguinity or affinity and with whom the obligee resides,
398 the court shall elicit the nature and extent of the relationship
399 in question. The court shall give consideration, without
400 limitation, to circumstances, including, but not limited to, the

401 following, in determining the relationship of an obligee to
402 another person:
403 a. The extent to which the obligee and the other person
404 have held themselves out as a married couple by engaging in
405 conduct such as using the same last name, using a common mailing
406 address, referring to each other in terms such as "my husband"
407 or "my wife," or otherwise conducting themselves in a manner
408 that evidences a permanent supportive relationship.
409 b. The period of time that the obligee has resided with
410 the other person in a permanent place of abode.
411 c. The extent to which the obligee and the other person
412 have pooled their assets or income or otherwise exhibited
413 financial interdependence.
414 d. The extent to which the obligee or the other person has
415 supported the other, in whole or in part.
416 e. The extent to which the obligee or the other person has
417 performed valuable services for the other.
418 f. The extent to which the obligee or the other person has
419 performed valuable services for the other's company or employer.
420 g. Whether the obligee and the other person have worked
421 together to create or enhance anything of value.
422 h. Whether the obligee and the other person have jointly
423 contributed to the purchase of any real or personal property.
424 i. Evidence in support of a claim that the obligee and the
425 other person have an express agreement regarding property

426 sharing or support.
427 j. Evidence in support of a claim that the obligee and the
428 other person have an implied agreement regarding property
429 sharing or support.
430 k. Whether the obligee and the other person have provided
431 support to the children of one another, regardless of any legal
432 duty to do so.
433 3. This paragraph does not abrogate the requirement that
434 every marriage in this state be solemnized under a license, does
435 not recognize a common law marriage as valid, and does not
436 recognize a de facto marriage. This paragraph recognizes only
437 that relationships do exist that provide economic support
438 equivalent to a marriage and that alimony terminable on
439 remarriage may be reduced or terminated upon the establishment
440 of equivalent equitable circumstances as described in this
441 paragraph. The existence of a conjugal relationship, though it
442 may be relevant to the nature and extent of the relationship, is
443 not necessary for the application of ~~the provisions of~~ this
444 paragraph.
445 4. Any modification or termination of an alimony award is
446 effective as of July 1, 2020, or retroactive to the date of the
447 filing of the petition. In an action under this section, if it
448 is determined that the obligee or obligor unnecessarily or
449 unreasonably litigated the underlying petition for modification
450 or termination, including litigation over the date of

451 termination of the alimony, the court may award the other party
452 his or her reasonable attorney fees and costs under s. 61.16.
453 (b) ~~(c)~~ For each support order reviewed by the department
454 as required by s. 409.2564(11), if the amount of the child
455 support award under the order differs by at least 10 percent but
456 not less than $25 from the amount that would be awarded under s.
457 61.30, the department shall seek to have the order modified and
458 any modification shall be made without a requirement for proof
459 or showing of a change in circumstances.
460 (c) ~~(d)~~ The department may ~~shall have authority to~~ adopt
461 rules to administer ~~implement~~ this section.
462 (11)
463 (c) If the court orders alimony payable concurrent with a
464 child support order, the alimony award may not be modified
465 solely because of a later reduction or termination of child
466 support payments.
467 (d) An obligor's subsequent remarriage or cohabitation
468 does not constitute a basis for a modification of alimony. The
469 income and assets of the obligor's subsequent spouse or person
470 with whom the obligor resides is not relevant in a modification
471 action.
472 (12)(a) An alimony award terminates when the obligor
473 reaches full retirement age as determined by the United States
474 Social Security Administration or when the obligor retires at an
475 age that is reasonable for his or her profession or line of

476 work, whichever is earlier. In determining whether the obligor's
477 retirement age is reasonable, the court shall consider the
478 obligor's:
479 1. Age.
480 2. Health.
481 3. Motivation for retirement.
482 4. Type of work.
483 5. Typical retirement age for that type of work.
484 (b) In anticipation of retirement, the obligor may file a
485 petition for termination of the alimony award effective upon his
486 or her retirement date before the obligor reaches full
487 retirement age as determined by the United States Social
488 Security Administration. The court shall terminate the alimony
489 award after the retirement of the obligor unless the court makes
490 findings of fact that the obligor's retirement age is not
491 reasonable.
492 (13)(a) An alimony award shall be reduced by the amount of
493 any social security or disability benefits or retirement
494 payments that the obligee receives.
495 (b) The obligor's social security or disability benefits
496 or retirement payments are exempt from garnishment for alimony
497 enforcement.
498 Section 4. Section 61.19, Florida Statutes, is amended to
499 read:
500 61.19 Entry of judgment of dissolution of marriage;~~,~~ delay

501 period; separate adjudication of issues.—
502 (1) A ~~No~~ final judgment of dissolution of marriage may not
503 be entered until at least 20 days have elapsed from the date of
504 filing the original petition for dissolution of marriage,~~;~~ but
505 the court, on a showing that injustice would result from this
506 delay, may enter a final judgment of dissolution of marriage at
507 an earlier date.
508 (2)(a) If more than 365 days have elapsed after the date
509 of service of the original petition for dissolution of marriage,
510 absent a showing by either party that irreparable harm will
511 result from granting a final dissolution, the court shall, upon
512 request of either party, grant a final dissolution of marriage
513 with a reservation of jurisdiction to subsequently determine all
514 other substantive issues. Before granting a final dissolution of
515 marriage with a reservation of jurisdiction to subsequently
516 determine all other substantive issues, the court shall enter
517 temporary orders necessary to protect the parties and their
518 children, which orders remain effective until all other issues
519 can be adjudicated by the court.
520 (b) Unless otherwise agreed to by the parties, there is a
521 presumption that equal time-sharing is in the best interests of
522 the minor children common to both parties.
523 Section 5. This act shall take effect July 1, 2020.

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	____	

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Andrade offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 61.08, Florida Statutes, is amended to read:
7 61.08 Alimony.—
8 (1) As used in this section, the term:
9 (a) "Alimony" means a court-ordered payment of support by
10 one spouse to the other spouse. The term alimony includes the
11 terms maintenance, spousal support, or separate support, when
12 not intended for the benefit of a child.
13 (b) "Gross income" means gross income as determined under
14 s. 61.30.

15 (c) Net income is determined by subtracting allowable
16 deductions from gross income. Allowable deductions shall
17 include:
18 1. Federal, state, and local income tax deductions,
19 adjusted for actual filing status and allowable dependents and
20 income tax liabilities.
21 2. Federal insurance contributions or self-employment tax.
22 3. Mandatory union dues.
23 4. Mandatory retirement payments.
24 5. Health insurance payments, excluding payments for
25 coverage of the minor child.
26 6. Court-ordered support for other children which is
27 actually paid.
28 7. Spousal support paid pursuant to a court order from a
29 previous marriage.
30 (2)(a)~~(1)~~ In a proceeding for dissolution of marriage, the
31 court may grant alimony to either party in the form of~~, which~~
32 ~~alimony may be~~ bridge-the-gap, rehabilitative, or durational
33 alimony, or ~~permanent in nature or~~ any combination of these
34 forms of alimony, but shall prioritize an award of bridge-the-
35 gap alimony, followed by rehabilitative alimony, over any other
36 form of alimony. The court may grant permanent alimony only when
37 the parties enter into an agreement for permanent alimony. In
38 any award of alimony, the court may order periodic payments, ~~or~~
39 payments in lump sum, or both.

40 (b) The court shall make written findings regarding the
41 basis for awarding a combination of forms of alimony, including
42 the type of alimony and the length of time for which the alimony
43 is awarded. The court may award a combination of forms of
44 alimony only to provide greater economic assistance in order to
45 allow the recipient to achieve rehabilitation.
46 (c) The court may consider the adultery of either spouse
47 and the circumstances thereof in determining the amount of
48 alimony, if any, to be awarded. However, the adultery of a
49 spouse may not be the court's sole basis for:
50 1. Denying a request for alimony; or
51 2. Awarding alimony, unless the adultery contributed to a
52 depletion of marital assets.
53 (d) In all dissolution actions, the court shall include
54 written findings of fact relative to the factors provided
55 ~~enumerated~~ in subsection (3) ~~(2)~~ supporting the ~~an~~ award or
56 denial of alimony.
57 (3) ~~(2)~~ In determining whether to award alimony or
58 maintenance, the court shall first make, in writing, a specific
59 factual determination as to whether the party requesting alimony
60 has an actual need for alimony or maintenance and whether the
61 other ~~either~~ party has the ability to pay alimony or
62 maintenance. If the court finds that the ~~a~~ party seeking alimony
63 or maintenance has a need for alimony or maintenance and that
64 the other party has the ability to pay alimony or maintenance,

65 then in determining the proper type and amount of alimony or
66 maintenance under subsections (5)-(7) ~~(5)-(8)~~, the court shall
67 consider all relevant factors, including, but not limited to:
68 (a) The standard of living established during the
69 marriage, including the needs and necessities of life for each
70 party after the dissolution of marriage, taking into
71 consideration the presumption that both parties will have a
72 lower standard of living after the dissolution of marriage than
73 the standard of living they enjoyed during the marriage. This
74 presumption may be overcome by a preponderance of the evidence.
75 (b) The duration of the marriage.
76 (c) The age and the physical and emotional condition of
77 each party.
78 (d) The financial resources of each party, including the
79 nonmarital and the marital assets and liabilities distributed to
80 each party.
81 (e) The earning capacities, educational levels, vocational
82 skills, and employability of the parties and, when applicable,
83 the time necessary for either party to acquire sufficient
84 education or training to enable such party to find appropriate
85 employment.
86 (f) The contribution of each party to the marriage,
87 including, but not limited to, services rendered in homemaking,
88 child care, education, and career building of the other party.

89 (g) The responsibilities each party will have with regard
90 to any minor children that the parties ~~they~~ have in common.
91 (h) The tax treatment and consequences to both parties of
92 any alimony award~~, including the designation of all or a portion~~
93 ~~of the payment as a nontaxable, nondeductible payment~~.
94 (i) All sources of income available to either party,
95 including income available to either party through investments
96 of any asset held by that party.
97 (j) Any other factor necessary to do equity and justice
98 between the parties if such factor is specifically identified in
99 the award with findings of fact justifying the application of
100 such factor.
101 (4)~~(3)~~ To the extent necessary to protect an award of
102 alimony, the obligee may ~~court may order any party who is~~
103 ~~ordered to pay alimony to~~ purchase or maintain a life insurance
104 policy on the obligor's life in an amount adequate to ~~or a bond,~~
105 ~~or to otherwise~~ secure such alimony award ~~with any other assets~~
106 ~~which may be suitable for that purpose~~. If the obligee purchases
107 such a life insurance policy, the court may order the obligor to
108 cooperate in the process of procuring the issuance and
109 underwriting of the life insurance policy and to reimburse the
110 obligee for the cost of procuring and maintaining the policy.
111 ~~(4) For purposes of determining alimony, there is a~~
112 ~~rebuttable presumption that a short-term marriage is a marriage~~
113 ~~having a duration of less than 7 years, a moderate-term marriage~~

114 ~~is a marriage having a duration of greater than 7 years but less~~
115 ~~than 17 years, and long-term marriage is a marriage having a~~
116 ~~duration of 17 years or greater. The length of a marriage is the~~
117 ~~period of time from the date of marriage until the date of~~
118 ~~filing of an action for dissolution of marriage.~~
119 (5) Bridge-the-gap alimony may be awarded to assist a
120 party by providing support to allow the party to make a
121 transition from being married to being single. Bridge-the-gap
122 alimony is designed to assist a party with legitimate
123 identifiable short-term needs, and the length of an award of
124 bridge-the-gap alimony may not exceed 2 years. An award of
125 bridge-the-gap alimony terminates upon the death of either party
126 or upon the remarriage of the party receiving alimony. An award
127 of bridge-the-gap alimony is ~~shall~~ not ~~be~~ modifiable in amount
128 or duration.
129 (6)(a) Rehabilitative alimony may be awarded to assist a
130 party in establishing the capacity for self-support through
131 either:
132 1. The redevelopment of previous skills or credentials; or
133 2. The acquisition of education, training, or work
134 experience necessary to develop appropriate employment skills or
135 credentials.
136 (b) In order to award rehabilitative alimony, there must
137 be a specific and defined rehabilitative plan which shall be
138 included as a part of any order awarding rehabilitative alimony.

139 (c) The length of an award of rehabilitative alimony may
140 not exceed 5 years or the limitations for durational alimony as
141 provided in subsection (7), whichever period of time is shorter.
142 (d) An award of rehabilitative alimony may be modified or
143 terminated in accordance with s. 61.14 based upon a substantial
144 change in circumstances, upon noncompliance with the
145 rehabilitative plan, or upon completion of the rehabilitative
146 plan, including completion of the rehabilitative plan before the
147 length of the award of rehabilitative alimony expires.
148 (7)(a) Durational alimony may be awarded ~~when permanent~~
149 ~~periodic alimony is inappropriate. The purpose of durational~~
150 ~~alimony is~~ to provide a party with economic assistance for a set
151 period of time ~~following a marriage of short or moderate~~
152 ~~duration or following a marriage of long duration if there is no~~
153 ~~ongoing need for support on a permanent basis~~. An award of
154 durational alimony terminates upon the death of either party or
155 upon the remarriage of the party receiving alimony. The amount
156 of an award of durational alimony may be modified or terminated
157 based upon a substantial change in circumstances, including a
158 finding that a supportive relationship exists or existed between
159 the obligee and another person in accordance with s. 61.14.
160 ~~However,~~ The length of an award of durational alimony may not be
161 modified except under exceptional circumstances and may not
162 exceed 50 percent of the length of the marriage. For purposes of
163 this subsection, the length of a marriage is the period of time

164 beginning on the date of marriage and ending on the date the
165 action for dissolution of marriage currently pending before the
166 court is filed.
167 (b) When awarding durational alimony, the court must make
168 written findings that an award of another type of alimony, or
169 any combination of the other forms of alimony, is not
170 appropriate.
171 (c) The amount of durational alimony is the amount
172 determined to be the obligee's reasonable need or 25 percent of
173 the difference between the parties' net incomes, whichever
174 amount is less.
175 (8) A party against whom alimony is sought who has met the
176 requirements for retirement in accordance with s. 61.14(12)
177 before the filing of the petition for dissolution of marriage
178 may not be ordered to pay bridge-the-gap, rehabilitative, or
179 durational alimony, unless the court determines that the needs
180 and necessities of life for the party seeking alimony are not
181 adequately provided for by nonmarital assets or the distribution
182 of marital assets.
183 (9)(a) Notwithstanding any other provision of law, alimony
184 may not be awarded to a party who has a monthly net income that
185 is equal to or more than the other party's monthly net income.
186 (b) Social security retirement benefits may not be imputed
187 to the obligor or the obligee as demonstrated by a social
188 security retirement benefits entitlement letter.

189 (c) If the obligee alleges that a physical disability has
190 impaired his or her capability to earn the income imputed by the
191 court, the obligee must have qualified for benefits under the
192 Social Security Administration Disability Insurance Program or,
193 in the event the obligee is not eligible for the program, must
194 demonstrate that his or her disability meets the disability
195 qualification standards of the Social Security Administration
196 Disability Insurance Program.
197 ~~(8) Permanent alimony may be awarded to provide for the~~
198 ~~needs and necessities of life as they were established during~~
199 ~~the marriage of the parties for a party who lacks the financial~~
200 ~~ability to meet his or her needs and necessities of life~~
201 ~~following a dissolution of marriage. Permanent alimony may be~~
202 ~~awarded following a marriage of long duration if such an award~~
203 ~~is appropriate upon consideration of the factors set forth in~~
204 ~~subsection (2), following a marriage of moderate duration if~~
205 ~~such an award is appropriate based upon clear and convincing~~
206 ~~evidence after consideration of the factors set forth in~~
207 ~~subsection (2), or following a marriage of short duration if~~
208 ~~there are written findings of exceptional circumstances. In~~
209 ~~awarding permanent alimony, the court shall include a finding~~
210 ~~that no other form of alimony is fair and reasonable under the~~
211 ~~circumstances of the parties. An award of permanent alimony~~
212 ~~terminates upon the death of either party or upon the remarriage~~
213 ~~of the party receiving alimony. An award may be modified or~~

214 ~~terminated based upon a substantial change in circumstances or~~
215 ~~upon the existence of a supportive relationship in accordance~~
216 ~~with s. 61.14.~~
217 ~~(9) The award of alimony may not leave the payor with~~
218 ~~significantly less net income than the net income of the~~
219 ~~recipient unless there are written findings of exceptional~~
220 ~~circumstances.~~
221 (10)(a) With respect to any order requiring the payment of
222 alimony entered on or after January 1, 1985, unless ~~the~~
223 ~~provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the
224 court shall direct in the order that the payments of alimony be
225 made through the appropriate depository as provided in s.
226 61.181.
227 (b) With respect to any order requiring the payment of
228 alimony entered before January 1, 1985, upon the subsequent
229 appearance~~,~~ on or after that date~~,~~ of one or both parties before
230 the court having jurisdiction for the purpose of modifying or
231 enforcing the order or in any other proceeding related to the
232 order~~,~~ or upon the application of either party, unless ~~the~~
233 ~~provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the
234 court shall modify the terms of the order as necessary to direct
235 that payments of alimony be made through the appropriate
236 depository as provided in s. 61.181.
237 (c) If there is no minor child, alimony payments need not
238 be directed through the depository.

239 (d)1. If there is a minor child of the parties and both
240 parties so request, the court may order that alimony payments
241 need not be directed through the depository. In this case, the
242 order of support must ~~shall~~ provide, or be deemed to provide,
243 that either party may subsequently apply to the depository to
244 require that payments be made through the depository. The court
245 shall provide a copy of the order to the depository.
246 2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~,
247 either party may subsequently file with the depository an
248 affidavit alleging default or arrearages in payment and stating
249 that the party wishes to initiate participation in the
250 depository program. The party shall provide copies of the
251 affidavit to the court and the other party or parties. Fifteen
252 days after receipt of the affidavit, the depository shall notify
253 all parties that future payments shall be directed to the
254 depository.
255 3. In IV-D cases, the IV-D agency has shall have the same
256 rights as the obligee in requesting that payments be made
257 through the depository.
258 (11) The court may consider any alimony payments made to
259 the obligee after the date of filing of a petition for
260 dissolution of marriage, either voluntarily or pursuant to a
261 court order, in determining the amount and length of an award of
262 rehabilitative or durational alimony.

263 Section 2. Paragraph (c) of subsection (2) of section
264 61.13, Florida Statutes, is amended to read:
265 61.13 Support of children; parenting and time-sharing;
266 powers of court.—
267 (2)
268 (c) The court shall determine all matters relating to
269 parenting and time-sharing of each minor child of the parties in
270 accordance with the best interests of the child and in
271 accordance with the Uniform Child Custody Jurisdiction and
272 Enforcement Act, except that modification of a parenting plan
273 and time-sharing schedule requires a showing of a substantial,
274 material, and unanticipated change of circumstances.
275 1. It is the public policy of this state that each minor
276 child has frequent and continuing contact with both parents
277 after the parents separate or the marriage of the parties is
278 dissolved and to encourage parents to share the rights and
279 responsibilities, and joys, of childrearing. Unless otherwise
280 agreed to by the parties, there is a presumption that equal
281 time-sharing is in the best interests of the minor children
282 common to both parties. ~~There is no presumption for or against~~
283 ~~the father or mother of the child or for or against any specific~~
284 ~~time-sharing schedule when creating or modifying the parenting~~
285 ~~plan of the child.~~
286 2. The court shall order that the parental responsibility
287 for a minor child be shared by both parents unless the court

288 finds that shared parental responsibility would be detrimental
289 to the child. Evidence that a parent has been convicted of a
290 misdemeanor of the first degree or higher involving domestic
291 violence, as defined in s. 741.28 and chapter 775, or meets the
292 criteria of s. 39.806(1)(d), creates a rebuttable presumption of
293 detriment to the child. If the presumption is not rebutted after
294 the convicted parent is advised by the court that the
295 presumption exists, shared parental responsibility, including
296 time-sharing with the child, and decisions made regarding the
297 child, may not be granted to the convicted parent. However, the
298 convicted parent is not relieved of any obligation to provide
299 financial support. If the court determines that shared parental
300 responsibility would be detrimental to the child, it may order
301 sole parental responsibility and make such arrangements for
302 time-sharing as specified in the parenting plan as will best
303 protect the child or abused spouse from further harm. Regardless
304 of whether ~~or not~~ there is a conviction of any offense of
305 domestic violence or child abuse or the existence of an
306 injunction for protection against domestic violence, the court
307 shall consider evidence of domestic violence or child abuse as
308 evidence of detriment to the child.
309 a. In ordering shared parental responsibility, the court
310 may consider the expressed desires of the parents and may grant
311 to one party the ultimate responsibility over specific aspects
312 of the child's welfare or may divide those responsibilities

313 between the parties based on the best interests of the child.
314 Areas of responsibility may include education, health care, and
315 any other responsibilities that the court finds unique to a
316 particular family.
317 b. The court shall order sole parental responsibility for
318 a minor child to one parent, with or without time-sharing with
319 the other parent if it is in the best interests of the minor
320 child.
321 3. Access to records and information pertaining to a minor
322 child, including, but not limited to, medical, dental, and
323 school records, may not be denied to either parent. Full rights
324 under this subparagraph apply to either parent unless a court
325 order specifically revokes these rights, including any
326 restrictions on these rights as provided in a domestic violence
327 injunction. A parent having rights under this subparagraph has
328 the same rights upon request as to form, substance, and manner
329 of access as are available to the other parent of a child,
330 including, without limitation, the right to in-person
331 communication with medical, dental, and education providers
332 Section 3. Paragraph (b) of subsection (1) of section
333 61.14, Florida Statutes, is amended, paragraphs (c) and (d) are
334 added to subsection (11), and subsections (12), (13), and (14)
335 are added to that section, to read:
336 61.14 Enforcement and modification of support,
337 maintenance, or alimony agreements or orders.—

338 (1)(a) When the parties enter into an agreement for
339 payments for, or instead of, support, maintenance, or alimony,
340 whether in connection with a proceeding for dissolution or
341 separate maintenance or with any voluntary property settlement,
342 or when a party is required by court order to make any payments,
343 and the circumstances or the financial ability of either party
344 changes or the child who is a beneficiary of an agreement or
345 court order as described herein reaches majority after the
346 execution of the agreement or the rendition of the order, either
347 party may apply to the circuit court of the circuit in which the
348 parties, or either of them, resided at the date of the execution
349 of the agreement or reside at the date of the application, or in
350 which the agreement was executed or in which the order was
351 rendered, for an order decreasing or increasing the amount of
352 support, maintenance, or alimony, and the court has jurisdiction
353 to make orders as equity requires, with due regard to the
354 changed circumstances or the financial ability of the parties or
355 the child, decreasing, increasing, or confirming the amount of
356 separate support, maintenance, or alimony provided for in the
357 agreement or order. A finding that medical insurance is
358 reasonably available or the child support guidelines schedule in
359 s. 61.30 may constitute changed circumstances. Except as
360 otherwise provided in s. 61.30(11)(c), the court may modify an
361 order of support, maintenance, or alimony by increasing or
362 decreasing the support, maintenance, or alimony retroactively to

363 the date of the filing of the action or supplemental action for
364 modification as equity requires, giving due regard to the
365 changed circumstances or the financial ability of the parties or
366 the child.
367 (b)1. The court may reduce or terminate an award of
368 alimony or order reimbursement to the obligor for any amount the
369 court determines is equitable upon specific written findings by
370 the court that since the granting of a divorce and the award of
371 alimony a supportive relationship exists or ~~has~~ existed between
372 the obligee and another ~~a~~ person at any time during the 180 days
373 before the filing of a petition for modification of alimony ~~with~~
374 ~~whom the obligee resides~~. On the issue of whether alimony should
375 be reduced or terminated under this paragraph, the burden is on
376 the obligor to prove by a preponderance of the evidence that a
377 supportive relationship exists or existed.
378 2. In determining whether an existing award of alimony
379 should be reduced or terminated because of an alleged supportive
380 relationship between an obligee and a person who is not related
381 by consanguinity or affinity and with whom the obligee resides,
382 the court shall elicit the nature and extent of the relationship
383 in question. The court shall give consideration, without
384 limitation, to circumstances, including, but not limited to, the
385 following, in determining the relationship of an obligee to
386 another person:

387 a. The extent to which the obligee and the other person
388 have held themselves out as a married couple by engaging in
389 conduct such as using the same last name, using a common mailing
390 address, referring to each other in terms such as "my husband"
391 or "my wife," or otherwise conducting themselves in a manner
392 that evidences a permanent supportive relationship.
393 b. The period of time that the obligee has resided with
394 the other person in a permanent place of abode.
395 c. The extent to which the obligee and the other person
396 have pooled their assets or income or otherwise exhibited
397 financial interdependence.
398 d. The extent to which the obligee or the other person has
399 supported the other, in whole or in part.
400 e. The extent to which the obligee or the other person has
401 performed valuable services for the other.
402 f. The extent to which the obligee or the other person has
403 performed valuable services for the other's company or employer.
404 g. Whether the obligee and the other person have worked
405 together to create or enhance anything of value.
406 h. Whether the obligee and the other person have jointly
407 contributed to the purchase of any real or personal property.
408 i. Evidence in support of a claim that the obligee and the
409 other person have an express agreement regarding property
410 sharing or support.

411 j. Evidence in support of a claim that the obligee and the
412 other person have an implied agreement regarding property
413 sharing or support.
414 k. Whether the obligee and the other person have provided
415 support to the children of one another, regardless of any legal
416 duty to do so.
417 3. This paragraph does not abrogate the requirement that
418 every marriage in this state be solemnized under a license, does
419 not recognize a common law marriage as valid, and does not
420 recognize a de facto marriage. This paragraph recognizes only
421 that relationships do exist that provide economic support
422 equivalent to a marriage and that alimony terminable on
423 remarriage may be reduced or terminated upon the establishment
424 of equivalent equitable circumstances as described in this
425 paragraph. The existence of a conjugal relationship, though it
426 may be relevant to the nature and extent of the relationship, is
427 not necessary for the application of ~~the provisions of~~ this
428 paragraph.
429 (c) For each support order reviewed by the department as
430 required by s. 409.2564(11), if the amount of the child support
431 award under the order differs by at least 10 percent but not
432 less than $25 from the amount that would be awarded under s.
433 61.30, the department shall seek to have the order modified and
434 any modification shall be made without a requirement for proof
435 or showing of a change in circumstances.

436 (d) The department may ~~shall have authority to~~ adopt rules
437 to administer ~~implement~~ this section.
438 (11)
439 (c) An obligor's subsequent remarriage or cohabitation
440 does not constitute a basis for either party to seek
441 modification of alimony. An obligee may not seek modification to
442 increase an award of alimony based on the income and assets of
443 the obligor's subsequent spouse or person with whom the obligor
444 resides, and the obligor may not seek modification to reduce an
445 award of alimony based on the obligor’s reliance upon the income
446 and assets of the obligor's subsequent spouse or person with
447 whom the obligor resides.
448 (12)(a) An alimony award may be modified when the obligor
449 reaches full retirement age as determined by the United States
450 Social Security Administration or when the obligor retires at an
451 age that is reasonable for his or her profession or line of
452 work, whichever is earlier. However, if an alimony award was
453 made pursuant to an agreement between the parties, the court
454 must make written findings of fact indicating exceptional
455 circumstances which require the court to modify the agreed upon
456 alimony award.
457 (b) In determining whether the obligor's retirement age is
458 reasonable, the court shall consider:
459 1. The obligor’s age and health.
460 2. The obligor’s motivation for retirement.

461 3. The obligor’s type of work and the typical retirement
462 age for the type of work.
463 4. The obligee’s needs and necessities of life.
464 5. The impact a termination or reduction of alimony would
465 have on the receiving spouse. In determining the impact, the
466 court shall consider any assets accumulated or received by the
467 obligee, including any income generated by such assets, since
468 the final judgment of dissolution of marriage.
469 (c) Up to 12 months prior to the obligor’s anticipated
470 retirement, the obligor may file a petition to modify the
471 alimony award effective upon the obligor’s actual retirement
472 date. The court shall modify the alimony award after the
473 retirement of the obligor, unless the court makes written
474 findings of fact that the obligor's retirement is not
475 reasonable.
476 (13) Any amount of social security or disability benefits
477 or retirement payments received by an obligee subsequent to an
478 initial award of alimony constitutes a change in circumstances
479 for which an obligor may seek modification to reduce an alimony
480 award.
481 (14) Nothing in this section shall make invalid any
482 support, maintenance, or alimony award, including a permanent
483 alimony award, ordered prior to July 1, 2020.
484 Section 4. This act shall take effect July 1, 2020.
485 ----------

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

487 Remove everything before the enacting clause and insert:
488 An act relating to dissolution of marriage; amending s. 61.08,
489 F.S.; providing definitions; providing for the priority of
490 different forms of alimony; requiring a court to make written
491 findings regarding the basis for awarding a combination of forms
492 of alimony; revising factors the court must considered when
493 determining an alimony award; revising provisions relating to
494 the protection of awards of alimony; removing the rebuttable
495 presumption of the length of a marriage; revising provisions and
496 criteria for an award of rehabilitative and durational alimony;
497 removing the authorization for a court to order permanent
498 alimony; permitting the court to approve an award of permanent
499 alimony only when by agreement of the parties; providing that a
500 retired party does not have to pay alimony under certain
501 circumstances; permitting the court to consider prior support
502 payments made by the obligor when calculating durational
503 limitations; amending s. 61.13, F.S.; creating a presumption for
504 equal time-sharing; amending provisions to conform to changes
505 made by the act; amending s. 61.14, F.S.; revising and creating
506 provisions relating to the modification or termination of an
507 alimony award; providing that an obligor's subsequent remarriage
508 or cohabitation is not a basis for modification or termination
509 of alimony; providing that attaining retirement age is a basis
510 for an obligor to seek modification of an alimony award;

511 providing factors to be considered in determining whether
512 retirement is reasonable; requiring the court to make written
513 findings of exceptional circumstances to modify an alimony award
514 made by agreement of the parties; allowing the court to modify
515 an alimony award based on certain factors; allowing an obligor
516 to petition for modification up to 12 months prior to
517 anticipated retirement; providing that certain benefits received
518 by an obligee subsequent to an initial alimony award constitute
519 a substantial change in circumstances; providing that nothing in
520 the modification statute shall be interpreted to invalidate any
521 alimony award ordered prior to July 1, 2020; providing an
522 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 967 Clerks of the Court
SPONSOR(S): Gregory
TIED BILLS: **IDEN./SIM. BILLS:** SB 590

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

SUMMARY ANALYSIS

The State Constitution establishes the office of the clerk of the circuit court in each of the state's 67 counties, and each clerk is elected to a 4-year term. The clerk of court is responsible for administering parts of the jury selection process, including the compensation of jurors.

Currently, the Legislature appropriates funds to the Justice Administrative Commission (JAC), which then distributes those funds to the clerks for the compensation of jurors for meals and lodging and other jury-related personnel and operational costs. The amount disbursed to each clerk for juror compensation is calculated based on an estimate of juror compensation costs to be incurred during the upcoming quarter.

HB 967 transfers the duty of providing funds to the clerks of court for jury compensation from the JAC to the Department of Revenue (DOR). Under the bill, instead of being paid upfront for the projected costs of compensating jurors, the clerks must submit a request for reimbursement to the Florida Clerks of Court Operations Corporation within 30 days after each quarter ends. Each clerk must attest to the actual costs to compensate jurors.

The bill also provides a purpose statement for the Clerks of the Court Trust Fund within DOR, codifying the current practice of receiving money from counties with a surplus and disbursing money to counties with a shortfall.

The bill may have an indeterminate but insignificant fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Clerks of Court

The State Constitution establishes the office of the clerk of the circuit court in each of the state's 67 counties, and each clerk is elected to a 4-year term.[1] The clerk's duties may be divided by special or general law between two officers.[2]

While the chief judge of a judicial circuit has overall authority for oversight of the jury selection system, the clerk of court also has responsibilities relating to the jury process, including:

- Determining the qualifications of jurors;
- Creating lists of potential jurors for future summons;
- Issuing jury summons for prospective jurors;
- Reporting information related to jurors, including the costs associated with the jury process; and
- Compensating jurors.[3]

It is estimated that clerks of the court summon almost two million jurors statewide on an annual basis.[4]

Florida Clerks of Courts Corporation

In 2003, the Legislature created the Florida Clerks of Court Operations Corporation (CCOC).[5] All clerks of the circuit court are members of the CCOC, and the CCOC's duties are performed by an executive council composed of eight clerks and three ex officio members designated by the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court.[6] The CCOC's tasks include:

- Recommending changes in the amounts of various court-related fines, fees, service charges, and costs established by law to ensure that clerks have reasonable and adequate funding to perform their court-related functions;
- Developing and certifying a uniform system of workload measures and workload standards for court-related functions;
- Contracting with the Department of Financial Services (DFS) for audit of the court-related expenditures of individual clerks; and
- Approving the clerks' proposed budgets.[7]

When approving a clerk's proposed budget, the CCOC must ensure that the total combined budgets of the clerks do not exceed:

- The total estimated revenues from fees, service charges, costs, and fines for court-related functions available for court-related expenditure, as determined by the most recent Revenue Estimating Conference; plus
- The total unspent budgeted funds for court-related functions carried forward by the clerks from the previous county fiscal year; plus

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[1] Art. VIII, s. 1(d), Fla. Const.
[2] *Id.*; art. V, s. 16, Fla. Const.
[3] S. 40.001, F.S.
[4] Florida Clerks of Court Operations Corporation, Agency Analysis of 2020 Senate Bill 590, p. 1 (Dec. 2, 2019).
[5] Ch. 2003-402, Laws of Fla.
[6] S. 28.35, F.S.
[7] S. 28.35(2), F.S.

- The balance of funds remaining in the Clerks of Court Trust Fund after funds are transferred to the General Revenue Fund as required by law.[8]

Budget Procedure for Payment of Jury Costs

The Justice Administrative Commission (JAC) receives funds from the Legislature and then provides those funds to the clerks to compensate jurors, pay for meals or lodging for jurors, and pay jury-related personnel costs.[9] Since 2016, the Legislature has provided $11.7 million from General Revenue to cover the projected costs of managing the jury process.[10] The funds are released quarterly. Before 2008, jury costs were funded by the Legislature through the Office of the State Court Administrator.[11]

The current process for clerks to submit information to the JAC to request funding is as follows:

- Each clerk forwards to the CCOC a quarterly estimate of funds needed to compensate jurors, pay for meals or lodging, and personnel and other costs related to jury management for the upcoming quarter. Each clerk must include a signed and dated certification letter by the tenth of the month immediately before the beginning of the requested quarter.
- The CCOC reviews the quarterly requests and determines a funding allocation for each of the 67 clerks, then forwards the funding estimate to the JAC for its review.
- The JAC reviews the funding estimate for the individual counties, determines that the funds are available for the upcoming quarterly funding allocation from General Revenue, and sends the information to the Division of Financial Services for pre-imbursement payments to each clerk.

Pursuant to s. 40.29(5), F.S., if the JAC believes the amount appropriated by the Legislature is not sufficient to meet the costs for the remainder of the state fiscal year, the JAC may apportion funds appropriated in the General Appropriations Act (GAA) among the counties. The apportionment is based on the amount expended for those purposes in each county during the previous fiscal year. The Chief Financial Officer then issues the appropriate apportioned amount to each county. The statute further provides that the clerks are responsible for any compensation costs that exceed the funding provided in the GAA.[12]

Clerks of the Court Trust Fund

The Legislature created the Clerks of the Court Trust Fund in 2001 within the Department of Revenue (DOR).[13] In 2009, the JAC was given oversight of the trust fund when the clerks' budget was considered within the state budget process. However, the trust fund was transferred back to DOR in 2013 when the clerks' budget was removed from the GAA.[14]

Effect of Proposed Changes

HB 967 transfers the duty of providing funds to the clerks of court for jury compensation from the JAC to DOR. The bill also provides a purpose statement for the Clerks of the Court Trust Fund within DOR, codifying the current practice of receiving money from counties with a surplus and disbursing money to counties with a shortfall. The bill requires DOR to deposit into the Clerks of the Court Trust Fund the funds appropriated to the clerks in the GAA to cover the compensation of jurors, payment for meals and lodging for jurors, and payment for jury-related personnel and operational costs as provided in the GAA.

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[8] *Id.*
[9] *See* s. 40.29(5), F.S.
[10] *See* ch. 2019-115, s. 4, Laws of Fla., Specific Appropriation 770 (Reimbursement of Expenditures Related to Circuit and County Juries Required by Statute from General Revenue Fund . . . $11,700,000).
[11] *See* s. 40.31, F.S. (2007).
[12] S. 40.29(5), F.S.
[13] Ch. 2001-121, s. 1, Laws of Fla.
[14] Agency Analysis of SB 590, *supra*, at 2.

Under the bill, instead of being paid upfront for the projected costs of compensating jurors, the clerks must submit a request for reimbursement to the CCOC within 30 days after each quarter ends. Each clerk must attest to the actual costs to compensate jurors, pay for meals and lodging for jurors, and pay for jury-related personnel and operational costs.

The CCOC must then review the request for reimbursement to ensure the costs are reasonable and directly related to jury management. After completing its review tasks, the CCOC must forward to DOR the amount necessary to reimburse each clerk. As in current law, the clerks remain responsible for any compensation costs that exceed the funding provided in the GAA.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 40.29, F.S., relating to payment of due-process costs.
Section 2: Amends s. 213.131, F.S., relating to clerks of the Court Trust Fund within the Department of Revenue.
Section 3: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill will have an indeterminate impact on state expenditures. The bill changes the process for juror compensation from a pre-imbursement system to a reimbursement system, which means State funds will only pay for juror compensation costs actually incurred by the clerk. The bill will eliminate the necessity to review the estimation of projected quarterly funds needed for juror compensation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill will have an indeterminate but likely insignificant fiscal impact on local governments. Since clerks will be required to pay juror costs upfront and then be reimbursed at the end of each quarter, the bill may have a short-term negative fiscal impact on the clerks, at least until they are reimbursed during the next fiscal quarter. However, the bill will eliminate the necessity of estimating a quarterly projection for juror costs, which may have an insignificant positive fiscal impact.

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 county mandates provision of article VII, section 18 of the Florida Constitution may apply because the bill requires the clerks of court to pay for juror costs upfront and then be reimbursed later; however, an exemption may apply because the bill may have only an insignificant fiscal impact.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to clerks of the court; amending s. 40.29, F.S.; deleting a requirement that the Justice Administrative Commission provide funds to the clerks of the court to compensate jurors and pay for certain expenses and certain jury-related personnel costs; amending s. 213.131, F.S.; providing the purpose of the Clerks of the Court Trust Fund within the Department of Revenue; requiring the distribution of certain funds to cover projected revenue deficits; requiring the department to deposit certain funds into the trust fund for purposes of compensating jurors and paying certain expenses and certain jury-related personnel costs; providing requirements relating to such reimbursement; specifying that the clerks of the court are responsible for any such costs that exceed the amount appropriated by the Legislature; providing an effective date.

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

Section 1. Subsection (5) of section 40.29, Florida Statutes, is amended to read:

40.29 Payment of due-process costs.—

~~(5) The Justice Administrative Commission shall provide~~

26 ~~funds to the clerks of the court to compensate jurors, to pay~~
27 ~~for meals or lodging provided to jurors, and to pay for jury-~~
28 ~~related personnel costs as provided in this section. Each clerk~~
29 ~~of the court shall forward to the Justice Administrative~~
30 ~~Commission a quarterly estimate of funds necessary to compensate~~
31 ~~jurors and pay for meals or lodging provided to jurors during~~
32 ~~the upcoming quarter. The Florida Clerks of Court Operations~~
33 ~~Corporation shall forward to the Justice Administrative~~
34 ~~Commission a quarterly estimate of the amount necessary to~~
35 ~~reimburse each clerk of the court for its personnel and other~~
36 ~~costs related to jury management. Upon receipt of such~~
37 ~~estimates, the Justice Administrative Commission shall determine~~
38 ~~the amount deemed necessary for payment to the clerks of the~~
39 ~~court during the upcoming quarter and submit a request for~~
40 ~~payment to the Chief Financial Officer. If the Justice~~
41 ~~Administrative Commission believes that the amount appropriated~~
42 ~~by the Legislature is insufficient to meet such costs during the~~
43 ~~remaining part of the state fiscal year, the commission may~~
44 ~~apportion the funds appropriated in the General Appropriations~~
45 ~~Act for those purposes among the several counties, basing the~~
46 ~~apportionment upon the amount expended for such purposes in each~~
47 ~~county during the prior fiscal year, in which case, the Chief~~
48 ~~Financial Officer shall issue the appropriate apportioned amount~~
49 ~~by warrant to each county. The clerks of the court are~~
50 ~~responsible for any compensation to jurors, for payments for~~

51 ~~meals or lodging provided to jurors, and for jury-related~~
52 ~~personnel costs that exceed the funding provided in the General~~
53 ~~Appropriations Act for these purposes.~~
54 Section 2. Section 213.131, Florida Statutes, is amended
55 to read:
56 213.131 Clerks of the Court Trust Fund within the
57 Department of Revenue.—
58 (1) The Clerks of the Court Trust Fund is created within
59 the Department of Revenue.
60 (2) The trust fund is established as a depository for the
61 portion of all fines, fees, service charges, and costs collected
62 monthly by each clerk of the court which is in excess of one-
63 twelfth of that clerk's total budget. Other funds that may be
64 deposited in the trust fund include revenues designated for that
65 purpose by law, funds appropriated by the Legislature, and
66 grants from public or private entities.
67 (3) Funds collected and deposited into the trust fund
68 monthly that exceed one-twelfth of each clerk's total budget
69 shall only be used to provide funds to clerks of the court with
70 projected revenue deficits.
71 (4) The Department of Revenue shall deposit into the trust
72 fund funds appropriated to the clerks of the court in the
73 General Appropriations Act to compensate jurors, pay for meals
74 and lodging to jurors, and pay for jury-related personnel and
75 operational costs as provided in that act. Each clerk of the

76 court shall submit a reimbursement request to the Florida Clerks
77 of Court Operations Corporation within 30 days after each
78 quarter attesting to the clerk's actual costs to compensate
79 jurors, pay for meals and lodging to jurors, and pay for jury-
80 related personnel and operational costs. The Florida Clerks of
81 Court Operations Corporation shall review the request for
82 reimbursement to determine whether the costs are reasonable and
83 directly related to jury management and shall forward to the
84 Department of Revenue the amount necessary to reimburse each
85 clerk of the court. The clerks of the court are responsible for
86 any compensation to jurors, for payments for meals or lodging
87 provided to jurors, and for jury-related personnel and
88 operational costs that exceed the funding provided in the
89 General Appropriations Act for these purposes.
90 Section 3. This act shall take effect July 1, 2020.

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	____	

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Gregory offered the following:
3 **Amendment (with title amendment)**
4 Remove everything after the enacting clause and insert:
5 Section 1. Subsection (5) of section 40.29, Florida
6 Statutes, is amended to read:
7 40.29 Payment of due-process costs.—
8 (5) The Justice Administrative Commission shall provide
9 funds to the clerks of the court to compensate jurors, to pay
10 for meals or lodging provided to jurors, and to pay for jury-
11 related personnel and operational costs as provided in this
12 section. Each clerk of the court shall ~~forward~~ submit a request
13 for reimbursement to the ~~Justice Administrative Commission~~
14 Clerks of Court Operations Corporation within 20 days after each
15 quarter ~~a quarterly estimate of funds necessary~~ attesting to the
16 clerk's actual costs to compensate jurors, ~~and~~ pay for meals or

17 lodging provided to jurors, and to pay for jury-related
18 personnel and operational costs ~~during the upcoming quarter~~. The
19 Florida Clerks of Court Operations Corporation shall review the
20 request for reimbursement to ensure that the costs are
21 reasonable and directly related to jury management. The Clerks
22 of Court Operations Corporation shall forward to the Justice
23 Administrative Commission ~~a quarterly estimate of~~ the amount
24 necessary to reimburse each clerk of the court unless the total
25 request for reimbursement by the clerks exceeds the quarterly
26 funds available provided by the Justice Administrative
27 Commission, in which case the Clerks of Court Operations
28 Corporation shall adjust the cumulative total to match the
29 available funds before submitting the request to the Justice
30 Administrative Commission ~~for its personnel and other costs~~
31 ~~related to jury management~~. Upon receipt of ~~such estimates~~ the
32 request for reimbursement, the Justice Administrative Commission
33 shall ~~determine~~ review the amount deemed necessary for payment
34 to the clerks of the court ~~during the upcoming~~ for the most
35 recently completed quarter, determine if the total payment
36 amount is available, and submit a request for payment to the
37 Chief Financial Officer. ~~If the Justice Administrative~~
38 ~~Commission believes that the amount appropriated by the~~
39 ~~Legislature is insufficient to meet such costs during the~~
40 ~~remaining part of the state fiscal year, the commission may~~
41 ~~apportion the funds appropriated in the General Appropriations~~

42 ~~Act for those purposes among the several counties, basing the~~
43 ~~apportionment upon the amount expended for such purposes in each~~
44 ~~county during the prior fiscal year, in which case, the Chief~~
45 ~~Financial Officer shall issue the appropriate apportioned amount~~
46 ~~by warrant to each county.~~ The clerks of the court are
47 responsible for any compensation to jurors, for payments for
48 meals or lodging provided to jurors, and for jury-related
49 personnel and operational costs that exceed the funding provided
50 in the General Appropriations Act for these purposes.
51 Section 2. This act shall take effect July 1, 2020.
52
53 ----------
54 **T I T L E A M E N D M E N T**
55 Remove lines 3-18 and insert:
56 40.29, F.S.; requiring the Justice Administrative Commission to
57 provide funds to the clerks of court for jury-related
58 operational costs; requiring the clerks of court to submit a
59 request for reimbursement for jury-related costs to the Clerks
60 of Court Operations Corporation within specified timeframes;
61 requiring the Clerks of Court Operations Corporation to review
62 the requests for reimbursement and submit a request for payment
63 to the Chief Financial Officer; providing an effective date.

HB 6507

STORAGE NAME: h6507.CJS
DATE: 1/18/2020

January 18, 2020

SPECIAL MASTER'S FINAL REPORT

The Honorable Jose R. Oliva
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6507 - Representative Daniels and others
Relief/Clifford Williams/State of Florida

THIS IS AN EQUITABLE CLAIM FOR $2,150,000 TO COMPENSATE CLIFFORD WILLIAMS FOR NEARLY 43 YEARS OF WRONGFUL INCARCERATION.

FINDINGS OF FACT:

In 1976, 34-year-old Clifford Williams ("Claimant") and his nephew, 18-year-old Hubert Nathan Myers, were convicted of the murder of Jeanette Williams,[1] the attempted murder of Nina Marshall, and burglary. In turn, they were sentenced to prison and incarcerated for nearly 43 years.

On May 2, 1976, at about 1:30 a.m., Jeanette Williams and her girlfriend, Nina Marshall, were shot while asleep in bed. Ms. Williams died instantly, but Ms. Marshall survived. She stumbled out of her apartment, flagged down a passing car, and went to the hospital, where she identified her assailants as Claimant and Mr. Myers.

Claimant and Mr. Myers maintained their innocence, stating that they were at the birthday party of a Rachael Jones at the time of the shooting, just down the street. After the police arrived, Claimant and Mr. Myers were among a group of onlookers who

[1] Jeanette Williams was not related to Claimant.

came down the street near the crime scene. Many of the attendants at the birthday party confirmed that Claimant and Mr. Myers were at the party when gunfire was heard. Despite their alibis and based solely on Ms. Marshall's identifying statement, Claimant and Mr. Myers were arrested less than two hours after the shooting.

PROCEDURAL HISTORY:

Conviction and Sentencing

Two months after being arrested, Claimant and Mr. Myers were jointly tried, resulting in a mistrial from an error. During the retrial, the State offered Mr. Myers five years in prison in exchange for testimony against his uncle, the Claimant. Then-18-year-old Myers, who had never been convicted of a felony and who was facing the death penalty, rejected the State's offer. Both men were subsequently convicted, following a two-day trial.

The jury recommended life imprisonment for both defendants, but the trial judge overrode the jury's recommendation and sentenced Claimant to death. On appeal, the Florida Supreme Court reduced Claimant's death sentence to a life sentence, finding no aggravating factors.[2] As a result, both Claimant and Mr. Myers were ultimately given life sentences.

State Attorney's Conviction Integrity Unit

In 2007, prosecutors' offices around the country began developing conviction integrity units to review claims of wrongful conviction. In January 2018, Melissa Nelson, the State Attorney for Florida's Fourth Judicial Circuit, created Florida's first conviction integrity review unit.

The conviction integrity review division (CIR) within the State Attorney's Office investigates claims of actual innocence, providing analysis and assistance to prevent errors leading to injustice. The CIR investigates claims arising from felony convictions that are capable of being substantiated by credible, factual information or evidence not considered by the original factfinder.

A person claiming wrongful incarceration may file with the CIR a petition, which is reviewed by the division director and an investigator. If the petition meets applicable criteria, the CIR opens an investigation, which may involve:

- A review of agency files or other relevant documents;
- A review of legal briefs and transcripts;
- Witness interviews;
- Obtaining sworn statements; and
- Submission of evidence for testing or retesting.

[2] *Williams v. State*, 386 So. 2d 538 (Fla. 1980).

After the CIR concludes its independent review and investigation, it submits its report and recommendation to an Independent Audit Board (IAB) comprised of five members of the community. The IAB reviews the CIR's findings to verify that the CIR's recommendation is supported by substantial and credible information. The State Attorney makes the final decision on the matter.[3]

State Attorney's CIR Investigation into Claimant's Case

On January 17, 2017, Claimant's nephew and co-defendant, Mr. Myers, wrote to the State Attorney's Office, claiming innocence for the crimes involving Ms. Williams and Ms. Marshall. The State Attorney's Office accepted review of the case and began a comprehensive investigation.

The State's investigation led to several discoveries weighing against Claimant's guilt. Specifically, the State's investigation confirmed that:

- Another man—Nathaniel Lawson—admitted to several people that he shot the victims through a window because Ms. Williams had stolen heroin from him; and regretted that Claimant and Mr. Myers were serving time for his own crime.[4]
- Nathaniel Lawson was present at the scene at the time of the shooting.[5]
- Multiple witnesses recalled being with both Claimant and Mr. Myers at the nearby party when shots were heard, indicating that Claimant had a reasonable alibi on the night of the crimes.

The CIR ultimately found significant exculpatory evidence indicating that Claimant and Mr. Myers did not commit the crimes. The State Attorney's CIR report summarized the evidence of Claimant's and Mr. Myers's innocence as follows:

> Every investigative step the CIR took corroborated Defendant Myers' claim of innocence, and placed into doubt Ms. Marshall's identification. While no single item of evidence, in and of itself, exonerates Defendant Myers or Defendant Williams, **the culmination of all the evidence, most of which the jury never heard or saw, leaves no abiding confidence in the convictions or the guilt of the defendants.** It is the opinion of the CIR that these men would not be convicted by a jury today if represented by competent counsel who presented all of

[3] *See* Conviction Integrity Investigation, *State v. Myers* and *State v. Williams*, at 1 (Mar. 27, 2019), https://secureservercdn.net/198.71.233.254/9c2.a8b.myftpupload.com/wp-content/uploads/2019/03/CIR_Investigative_Report_FINAL_3.28.19_R.pdf (last visited Jan. 18, 2020).

[4] Nathaniel Lawson died in 1994; however, the people to whom he made his incriminating admissions are still alive. Conviction Integrity Investigation at 4.

[5] During the CIR investigation, Claimant offered to take a polygraph test but was unable to complete the test due to diminished cognitive ability. Conviction Integrity Investigation at 4 n.8.

> the exculpatory evidence that exists in this case for the jury's consideration.[6]

On March 28, 2019, with the consent of the State,[7] the circuit court vacated Claimant's convictions and sentences relating to the May 2, 1976, shootings of Jeanette Williams and Nina Marshall.[8]

Wrongful Incarceration Proceedings

Nathan Myers, Claimant's nephew and codefendant, filed a wrongful incarceration petition under chapter 961, F.S. On September 10, 2019, the circuit court granted the petition, finding that Mr. Myers had "met the burden of establishing by clear and convincing evidence" that he did not commit the crimes serving as the basis for his conviction and incarceration.[9]

While Mr. Myers was able to obtain relief under chapter 961, Claimant was ineligible do so because of that chapter's "clean hands provision," which eliminates from consideration any petitioner who, before or during his or her wrongful incarceration, was convicted of two felonies.[10]

CLAIMANT'S POSITION: Claimant asserts that he is actually innocent of the charges and seeks monetary compensation for his time in prison, as well as a tuition waiver for 120 hours of career center or college instruction.

RESPONDENT'S POSITION: Officially, Respondent neither supports nor opposes the claim bill. However, Claimant's exoneration stems from the Respondent's establishment of the Wrongful Conviction Unit in the State Attorney's Office, which stated, in its official report, that "after review and reinvestigation of the case, evidence, and trial, the State of Florida no longer has confidence in the integrity of the convictions or guilt of the accused."[11]

CONCLUSIONS OF LAW: Wrongful Incarceration under Chapter 961

Chapter 961, Florida Statutes, governs the general process for compensating victims of wrongful incarceration. Chapter 961 requires a person claiming to be a victim of wrongful incarceration to prove that he or she is actually innocent of the crime and meet other criteria, such as not having been previously convicted of multiple felonies.[12]

Here, Claimant has been unable to obtain relief under chapter

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[6] Conviction Integrity Investigation at 4 (emphasis added).
[7] *See* Office of the State Attorney for the Fourth Judicial Circuit, *Conviction Integrity Review of 1976 Case Leads to Release of Williams, Myers*, https://www.sao4th.com/conviction-integrity-williams-myers/ (last visited Jan. 18, 2020).
[8] Duval Co. Case No. 76-CF-000912 (Order Vacating Defendant's Judgment and Sentences) (Mar. 28, 2019).
[9] Duval Co. Case No. 76-CF-000912 (Order Granting Petition for Wrongful Incarceration) (Sept. 10, 2019).
[10] S. 961.04(1) and (2), F.S. (prohibiting relief for a person committing a violent felony or more than one non-violent felony).
[11] Conviction Integrity Investigation at 1 (Mar. 27, 2019).
[12] *See* ss. 961.03, 961.04, F.S.

961 because he was convicted of two felonies prior to his convictions for the shootings of Ms. Williams and Ms. Marshall. The first was a conviction for attempted arson in 1960, for which he served two years in county jail; and the second was a conviction for robbery in 1966. Even though Claimant is ineligible under the chapter 961 process, the Legislature is not bound by that process and may pass this claim bill regardless of whether Claimant could otherwise obtain relief.

Evidentiary Standard for Victims of Wrongful Incarceration

Generally, a claimant seeking tort damages under a claim bill must prove entitlement to relief by a preponderance of the evidence—that is, more likely than not. When a claimant seeks a claim bill for wrongful incarceration, he or she must demonstrate actual innocence, but the appropriate burden of proof is not well-established.

William Dillon was the first and only person to receive a claim bill for wrongful incarceration since the enactment of chapter 961, F.S. Mr. Dillon argued that the Legislature should apply a "preponderance of the evidence" standard. The Senate Special Master agreed, but the House Special Master applied a "clear and convincing" standard. This standard is an intermediate burden of proof requiring that the evidence is of "such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established."[13] Applying this more exacting standard, the House Special Master found that Mr. Dillon had proven actual innocence.

Here, the Legislature is not bound by a previous Legislature's application of the clear and convincing standard. Still, the Legislature's previous application of that standard, coupled with the Legislature's requirement of that same standard for every other person claiming to be a victim of wrongful incarceration, demonstrates that this standard is appropriate for wrongful incarceration cases.[14]

Because the Legislature has demonstrated an intent to hold persons claiming to be victims of wrongful incarceration to this higher evidentiary standard, I find that the clear and convincing standard should apply, in accordance with House precedent and legislative intent.

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[13] *See S. Fla. Water Mgmt. Dist. v. RLI Live Oak, LLC*, 139 So. 3d 869, 872 (Fla. 2014).

[14] *See* s. 961.03(3), F.S. (requiring that a victim of wrongful incarceration is entitled to relief if he or she can present "clear and convincing evidence that [he or she] committed neither the act nor the offense that served as the basis for the conviction and incarceration," among other requirements). Moreover, while not dispositive as to legislative intent, it would seem odd to require a person with "clean hands" seeking relief under chapter 961, F.S., to prove his innocence by a clear and convincing standard, while requiring a person not eligible under chapter 961, F.S., to prove his innocence by the lesser preponderance of the evidence standard.

Application of Burden of Proof to Claimant's Case

Throughout this process, Claimant has successfully demonstrated his actual innocence by clear and convincing evidence. Specifically, I find the following to be persuasive:

- There are multiple credible alibi witnesses who were not called to testify at trial;
- There is a sworn affidavit stating that Nathaniel Lawson confessed to the crimes before he died;
- Nathaniel Lawson was placed at the scene on the night of the crime;
- Ms. Marshall's testimony has changed throughout the proceedings, demonstrating that she is not a credible witness;
- Ms. Marshall's testimony is rebutted by the scientific and physical evidence in the case;
- There is evidence demonstrating that the gunshots were likely fired from the outside of the apartment, not from the inside as Ms. Marshall testified;
- There was clothing draped over the inside bedroom door, preventing the door from closing, which undercuts Ms. Marshall's testimony that her assailant closed the door after leaving;
- Claimant and his codefendant Mr. Myers have consistently maintained their innocence; and
- Mr. Myers took and passed a polygraph test.

Moreover, I give great weight to the fact that Claimant's innocence came to light through the State's own investigation. The Conviction Integrity Review Division within the State Attorney's Office stated in its official report that "[t]here is no credible evidence of guilt, and likewise, there is credible evidence of innocence"; and recommended a determination that the office has lost faith in the convictions of Claimant and Mr. Myers.[15] In turn, the State Attorney did not oppose Claimant's motion for postconviction relief and has not opposed this claim bill.

I find that Claimant has successfully demonstrated, by clear and convincing evidence, that he is actually innocent of the crimes for which he was convicted in 1976.

Amount of Claim Bill

Claimant seeks a total monetary award of $2,150,000, which is $50,000 for each of the 43 years that he was wrongfully incarcerated. While $50,000 is the appropriate amount for each year of wrongful incarceration under chapter 961, F.S., that chapter also limits the total amount that can be recovered to $2,000,000.[16] While the Legislature is not limited by chapter 961's cap in this claim bill proceeding, the Legislature may decide that Claimant should not recover more than other similarly-situated petitioners eligible under the normal chapter

961 process.

On the other hand, given that Claimant has lost nearly forty-three years of his most valuable years serving time for a crime he did not commit, the Legislature may decide that the full amount sought is equitable under these particular circumstances.

Exhaustion of Remedies

House Rule 5.6(c) requires a claim bill to be held in abeyance until a claimant has exhausted "all available administrative and judicial remedies. . . ." Here, Claimant has exhausted his remedies under the normal chapter 961 process; however, he currently has a lawsuit pending wherein he claims that the "clean hands" and monetary cap portions of chapter 961 are unconstitutional as applied to him. It is true that if the court agrees and holds those portions of chapter 961 unconstitutional, he will presumably be able to pursue compensation under that revised version of chapter 961. As it now stands, however, Claimant is ineligible for relief under chapter 961. Accordingly, I recommend the Legislature find that he has exhausted his remedies for purposes of Rule 5.6(c).[17]

ATTORNEY'S/ LOBBYING FEES: Claimant's attorneys are providing representation on a pro bono basis. There are no attorney fees, lobbying fees, or costs associated with this claim bill.

RESPONDENT'S ABILITY TO PAY: Because any award would presumably come from the General Revenue Fund, it would not affect Respondent's operations.

LEGISLATIVE HISTORY: This is the first session this bill has been presented to the Legislature.

RECOMMENDATION: Because Claimant has demonstrated by clear and convincing evidence that he is actually innocent of the crimes for which he was convicted in 1976, I recommend that House Bill 6507 be reported **FAVORABLY**.

Respectfully submitted,

JORDAN JONES

House Special Master

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[15] Conviction Integrity Investigation at 44.

[16] S. 961.06(1)(a), F.S. ("Monetary compensation for wrongful incarceration [shall] be calculated at a rate of $50,000 for each year of wrongful incarceration"); s. 961.06(1)(e), F.S. ("The total compensation awarded under [paragraph] (a) . . . may not exceed $2 million").

[17] Notably, Senate Rule 4.81(6), while including a similar exhaustion of remedies requirement, states that such requirement "does not apply to a bill which relates to a claim of wrongful incarceration."

cc: Representative Daniels, House Sponsor
Senator Gibson, Senate Sponsor
Christie Letarte, Senate Special Master

1 A bill to be entitled
2 An act for the relief of Clifford Williams; providing
3 an appropriation to compensate him for being
4 wrongfully incarcerated for 43 years; directing the
5 Chief Financial Officer to draw a warrant for the
6 purchase of an annuity; requiring the Department of
7 Financial Services to pay specified funds; providing
8 for the waiver of certain tuition and fees for Mr.
9 Williams; specifying conditions for payment; providing
10 that the act does not waive certain defenses or
11 increase the state's limits of liability; prohibiting
12 any further award to include certain fees and costs;
13 providing that certain benefits are vacated upon
14 specified findings; providing an effective date.
15
16 WHEREAS, Clifford Williams was arrested on May 2, 1976, and
17 convicted of first-degree murder and first-degree attempted
18 murder on September 2, 1976, and
19 WHEREAS, Clifford Williams spent 4 years on death row
20 before the Florida Supreme Court reversed his death sentence in
21 1980, and
22 WHEREAS, Clifford Williams has maintained his innocence,
23 and
24 WHEREAS, on February 25, 2019, the Conviction Integrity
25 Review Division (CIR) for the Office of the State Attorney for

26 the Fourth Judicial Circuit issued a report and recommendation,
27 based on a comprehensive investigation spanning nearly a year,
28 in Clifford Williams' case, and
29 WHEREAS, on March 28, 2019, the Circuit Court for the
30 Fourth Judicial Circuit granted, with the concurrence of the
31 state, a motion for postconviction relief, vacated the judgment
32 and sentence of Clifford Williams, and ordered a new trial, and
33 WHEREAS, on March 28, 2019, the state orally pronounced a
34 nolle prosequi with regard to the retrial of Clifford Williams,
35 and
36 WHEREAS, the report found that there was no credible
37 evidence of Clifford Williams' guilt, and likewise, that there
38 was substantial credible evidence of Clifford Williams'
39 innocence, and
40 WHEREAS, the Legislature acknowledges that the state's
41 system of justice yielded an imperfect result that had tragic
42 consequences in this case, and
43 WHEREAS, the Legislature acknowledges that, as a result of
44 his physical confinement, Clifford Williams suffered significant
45 damages that are unique to Clifford Williams, and such damages
46 are due to the fact that he was physically restrained and
47 prevented from exercising the freedom to which all innocent
48 citizens are entitled, and
49 WHEREAS, before his conviction for the above-mentioned
50 crimes, Clifford Williams had two prior convictions for

51 unrelated felonies, and
52 WHEREAS, because of his prior violent felony convictions,
53 Clifford Williams is ineligible for compensation under chapter
54 961, Florida Statutes, and
55 WHEREAS, the Legislature is providing compensation to
56 Clifford Williams to acknowledge the fact that he suffered
57 significant damages that are unique to Clifford Williams for
58 being wrongfully incarcerated, and
59 WHEREAS, the CIR's comprehensive investigation of the
60 matter found verifiable and substantial evidence of Clifford
61 Williams' actual innocence of first-degree murder and first-
62 degree attempted murder, and
63 WHEREAS, the Legislature apologizes to Clifford Williams on
64 behalf of the state, NOW, THEREFORE,
65
66 Be It Enacted by the Legislature of the State of Florida:
67
68 Section 1. The facts stated in the preamble to this act
69 are found and declared to be true.
70 Section 2. The sum of $2,150,000 is appropriated from the
71 General Revenue Fund to the Department of Financial Services
72 under the conditions provided in this act.
73 Section 3. The Chief Financial Officer is directed to draw
74 a warrant in the sum specified in section 2 for the purposes
75 provided in this act.

76 Section 4. The Department of Financial Services shall pay
77 the funds appropriated under this act to an insurance company or
78 other financial institution admitted and authorized to issue
79 annuity contracts in this state and selected by Clifford
80 Williams to purchase an annuity. The Chief Financial Officer
81 shall execute all necessary agreements to implement this act and
82 to maximize the benefit to Clifford Williams.
83 Section 5. Tuition and fees for Clifford Williams shall be
84 waived for up to a total of 120 hours of instruction at any
85 career center established pursuant to s. 1001.44, Florida
86 Statutes, Florida College System institution established under
87 part III of chapter 1004, Florida Statutes, or state university.
88 For any educational benefit made, Clifford Williams must meet
89 and maintain the regular admission and registration requirements
90 of such career center, institution, or state university and make
91 satisfactory academic progress as defined by the educational
92 institution in which he is enrolled.
93 Section 6. The Chief Financial Officer shall purchase the
94 annuity as required by this act upon delivery by Clifford
95 Williams to the Chief Financial Officer, the Department of
96 Financial Services, the President of the Senate, and the Speaker
97 of the House of Representatives of a release executed by
98 Clifford Williams for himself and on behalf of his heirs,
99 successors, and assigns which fully and forever releases and
100 discharges the state and its agencies and subdivisions, as

101 defined by s. 768.28(2), Florida Statutes, from any and all
102 present or future claims or declaratory relief that Clifford
103 Williams or any of his heirs, successors, or assigns may have
104 against the state and its agencies and subdivisions, as defined
105 by s. 768.28(2), Florida Statutes, arising out of the factual
106 situation in connection with the arrest, conviction, and
107 incarceration for which compensation is awarded. Without
108 limitation on the foregoing, the release must specifically
109 release and discharge Sheriff Mike Williams of the Jacksonville
110 Sheriff's Office in his official capacity, and any current or
111 former sheriffs, deputies, agents, or employees of the
112 Jacksonville Sheriff's Office in their individual capacities,
113 from all claims, causes of action, demands, rights, and claims
114 for attorney fees or costs, of whatever kind or nature, whether
115 in law or equity, including, but not limited to, any claims
116 pursuant to 42 U.S.C. s. 1983, that Clifford Williams had, has,
117 or might hereinafter have or claim to have, whether known or
118 not, against the Jacksonville Sheriff's Office, and Sheriff Mike
119 Williams' assigns, successors in interest, predecessors in
120 interest, heirs, employees, agents, servants, officers,
121 directors, deputies, insurers, reinsurers, and excess insurers,
122 in their official and individual capacities, and that arise out
123 of, are associated with, or are a cause of the arrest,
124 conviction, and incarceration for which compensation is awarded,
125 including any known or unknown loss, injury, or damage related

126 to or caused by the same and which may arise in the future.
127 However, this act does not prohibit declaratory action by a
128 judicial or executive branch agency, as otherwise provided by
129 law, for Clifford Williams to obtain judicial expungement of his
130 criminal history record as related to the arrest and convictions
131 for first-degree murder and first-degree attempted murder.
132 Section 7. The Legislature does not waive any defense of
133 sovereign immunity or increase the limits of liability on behalf
134 of the state or any person or entity that is subject to s.
135 768.28, Florida Statutes, or any other law.
136 Section 8. This award is intended to provide the sole
137 compensation for any and all present and future claims arising
138 out of the factual situation described in this act which
139 resulted in Clifford Williams' arrest, conviction, and
140 incarceration. There may not be any further award to include
141 attorney fees, lobbying fees, costs, or other similar expenses
142 to Clifford Williams by the state or any agency,
143 instrumentality, or political subdivision thereof, or any other
144 entity, including any county constitutional officer, officer, or
145 employee, in state or federal court.
146 Section 9. If any future factual finding determines that
147 Clifford Williams, by DNA evidence or otherwise, participated in
148 any manner related to the death of Jeanette Williams or the
149 attempted murder of Nina Marshall, the unused benefits to which
150 Clifford Williams is entitled under this act are vacated.

151 Section 10. This act shall take effect upon becoming a
152 law.

IN RE:

SENATE BILL – 28
RELIEF OF CLIFFORD WILLIAMS BY
THE STATE OF FLORIDA

_____/

AFFIDAVIT OF CLAIMANT'S ATTORNEY
GEORGE E. SCHULZ, JR.

STATE OF FLORIDA
COUNTY OF DUVAL

BEFORE ME the undersigned, George E. Schulz, Jr., who, together with other attorneys of Holland & Knight LLP, represents Claimant, Clifford Williams, being duly sworn states that:

1. Holland & Knight LLP represents Clifford Williams on a pro bono basis, and there are no attorney fees, lobbyist fees or costs related to this bill.

2. Further attached hereto are:

   A. Attachment A, and

   B. Attachment B.

FURTHER Affiant sayeth naught.

George E. Schulz

George E. Schulz, Jr., Affiant

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 2nd day of October, 2019, by the Affiant, George E. Schulz, Jr., who is personally known to me.

Wanda G Adair

Notary Public, State of Florida

My Commission Expires: 12-08-2021. (SEAL)

Notary Public State of Florida
WANDA G ADAIR
My Commission GG 161298
Expires 12/08/2021

ATTACHMENT "A" TO AFFIDAVIT: The following is incorporated into the sworn affidavit.

1. **Claimant's full name is** CLIFFORD WILLIAMS.
2. **Respondent's full name is** STATE ATTORNEY FOR THE FOURTH JUDICIAL CIRCUIT
3. **The total amount sought in this claim bill is $** 2,150,000.
4. **The Respondent (choose one):** AT THE PRE-HEARING CONFERENCE ON 9-24-19 COUNSEL FOR RESPONDENT STATED THAT RESPONDENT "WILL NOT TAKE A POSITION ONE WAY OR THE OTHER."
   - ○ Contests this claim bill.
   - ○ Supports this claim bill.
   - ○ Is prohibited from contesting this claim bill.
   - ○ Is not prohibited from contesting this claim bill and does not contest this claim bill.
5. **This claim bill is the result of** (check all that apply): CLAIMANT'S WRONGFULL CONVICTION.
   - ☐ A jury verdict. The amount of fault attributed to Claimant by the verdict is _____%.
   - ☐ A settlement agreement.
6. **Respondent has already paid Claimant a total of $** 0.
7. **Has Claimant received monies from any collateral sources?**
   - ● No.
   - ○ Yes. (Please list all amounts and sources in affidavit.)
8. **What percentage of any award will go to attorney's fees and lobbying fees?**
   - Attorney's fees will be 0 % of the total award.
   - Lobbying fees will be 0 % of the total award.
9. **Are there outstanding costs?**
   - ● No.
   - ○ Yes. Outstanding costs total $_____ (please attach itemized list).
10. **Are there any outstanding liens?**
    - ● No.
    - ○ Yes. (Please attach itemized list of outstanding liens.)
11. **Have all other remedies been exhausted?** (See Fla. House Rule 5.6(c).)
    - ○ No. (Please explain in affidavit.)
    - ● Yes.

Claimant's Attorney

ATTACHMENT "B" TO AFFIDAVIT: The following is incorporated into the sworn affidavit.

I, [Claimant], consent that all confidentiality rights pertaining to all records submitted to the Legislature for this claim bill, including but not limited to medical records, are waived; except that any documents marked as confidential will be deemed confidential pursuant to applicable law.

Claimant

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CJS 20-01 Litigation Financing Consumer Protection
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Mawn	Luczynski

SUMMARY ANALYSIS

Consumer litigation financing is a non-recourse transaction in which a third party ("litigation financier") provides funds to a consumer in exchange for an assignment of the consumer's contingent right to receive an amount of the potential proceeds of a civil action or claim. Unlike a traditional loan, where a lender might look at a consumer's credit score, income, and other indicators of the consumer's ability to pay, a litigation financier looks at the strength of the consumer's action or claim, the consumer's likelihood of prevailing, and the potential damages a consumer could obtain. A litigation financier also assesses the consumer's other debts, such as attorneys' fees or liens, which might take priority over the litigation financier's repayment.

Conferred funds, paid directly to consumers, are used primarily for living expenses while the consumer waits for resolution of the civil action or claim that is the subject of the litigation financing contract ("subject claim"). Because the contract obligation can only be collected out of the subject claim's proceeds, if the consumer recovers nothing in the subject claim, he or she owes the litigation financier nothing, and there are no monthly payments required during the subject claim's pendency. However, because interest and fees for a litigation financing contract can be extremely high, and litigation financing contract terms may be unclearly stated or require complicated calculations, opponents argue that consumers may end up owing much more than they might have anticipated at the contract's initiation, driving up litigation costs as they reject reasonable settlement offers on the chance of winning more in court. Consumers may also reject reasonable settlement offers at the direction of a litigation financier hoping to ensure full payment of the contract obligation. For these reasons, the Alliance for Responsible Consumer Legal Funding advocates for state regulation of litigation financing. However, Florida courts have held that litigation financing is not a loan subject to the state's existing consumer finance, interest, and usury laws, and thus, the product is unregulated in the state.

PCB CJS 20-01 creates the Litigation Financing Consumer Protection Act ("Act"). Specifically, the PCB:

- Requires a litigation financier to register with the Department of State and file a bond, provides registration and bond requirements, and allows revocation of a registration for non-compliance.
- Requires all litigation financing contracts be in writing, completely filled in, and contain mandatory terms and disclosures, including a rescission right.
- Prohibits a litigation financier from engaging in specified conduct, including making settlement decisions.
- Sets the maximum interest rate at 30 percent, requires simple interest, and specifies how long interest can accrue.
- Caps fees and charges at $500 for any civil action or claim, regardless of the number of contracts a litigation financier enters into with the consumer with respect to that civil action or claim.
- Specifies litigation financier lien priority.
- Requires disclosure of litigation financing contracts in a civil action and protects communications between a consumer's attorney and a litigation financier about a litigation financing contract.
- Provides that a violation of the Act is a violation of the Florida Deceptive and Unfair Trade Practices Act.

The PCB does not appear to have a fiscal impact on local governments but may have a fiscal impact on state government.

The PCB provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Litigation Financing

Litigation financing is a non-recourse transaction[1] in which a third party ("litigation financier") provides funds to a person bringing a civil action or claim in exchange for an assignment of the person's contingent right to receive an amount of the civil action or claim's potential proceeds.[2] Litigation financing is available to both the commercial and consumer sectors.[3] In the commercial sector, the funds are provided to sophisticated litigants and used primarily for litigation costs in a commercial dispute.[4] However, in the consumer sector ("consumer litigation financing"), the funds are paid directly to individuals and used primarily for living expenses while the consumer waits for resolution of the civil action or claim that is the subject of the litigation financing contract ("subject action or claim").[5] Industry data suggests that more than half of such consumers have an annual family income of $50,000 or less and lack a college degree, while less than half are homeowners, suggesting that lower-income consumers with access to fewer resources are the primary market for litigation funding contracts.[6]

A consumer can apply for litigation financing any time before resolution of his or her civil action or claim.[7] Unlike a traditional loan, where a lender might look at a consumer's credit score, income, and other indicators of the consumer's ability to pay, a litigation financier looks at the strength of the consumer's civil action or claim, the consumer's likelihood of prevailing at trial or in settlement, and the potential damages a consumer could obtain.[8] A litigation financier also assesses the consumer's attorney fees and other debts, such as medical or child support liens,[9] which might take priority over the litigation financier's repayment.[10]

Benefits and Criticisms

Litigation financing proponents argue that the product provides a necessary funding source for consumers suffering an unexpected economic loss connected to a pending legal action or claim, giving consumers financial stability and helping them meet immediate personal needs, including rent, utilities, and groceries.[11] Proponents also point out that, because litigation financing is a non-recourse

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[1] A non-recourse transaction is a financial transaction in which the borrower is not personally liable to the lender, so that the lender can only pursue the collateral to collect what the borrower owes. In other words, the lender does not have a lien on and cannot seize the borrower's assets to repay the debt. *See* United States Department of the Treasury, Internal Revenue Service, *Recourse vs. Nonrecourse Debt*, https://apps.irs.gov/app/vita/content/36/36_02_020.jsp (last visited Jan. 15, 2020).
[2] *See* Ronen Avraham and Anthony Sebok, *An Empirical Investigation of Third Party Consumer Litigation Funding*, 104 Cornell L. Rev. 1133 (2019), https://www.law.gwu.edu/sites/g/files/zaxdzs2351/f/downloads/Empirical-Investigation-Sebok.pdf (last visited Jan. 15, 2020).
[3] *Id*.
[4] *Id*.
[5] Paige Marta Skiba and Jean Xiao, *Consumer Litigation Funding: Just Another Form of Payday Lending?*, Law and Contemporary Problems Vol. 80 No. 117 (Nov. 3, 2017), https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4840&context=lcp (last visited Jan. 15, 2020).
[6] Eric Schuller, President, Alliance for Responsible Consumer Legal Funding, *Consumer Legal Funding 101: Also Known As…Everything You Wanted To Know About Consumer Legal Funding But Were Afraid to Ask*, presented to the Florida House of Representatives Civil Justice Subcommittee, Dec. 12, 2019, https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804_2019121124 (last visited Jan. 15, 2020).
[7] *See* Skiba and Xiao, *supra* note 5.
[8] *Id*.; *see also* Schuller, *supra* note 6.
[9] A lien is a claim against property evidencing a debt, obligation, or duty. A lien can be created by judgment, equity, agreement, or statute. Fla. Jur. 2d Liens § 37:1.
[10] *See* Skiba and Xiao, *supra* note 5.
[11] The Alliance for Responsible Consumer Legal Funding (ARC), *More than A Trade Association*, http://arclegalfunding.org/ (last visited Jan. 15, 2020).

transaction, if the consumer loses the subject action or claim, he or she owes nothing under a litigation financing contract, making litigation financing less risky than a traditional loan.[12] Additionally, because the contract obligation is paid only out of the proceeds of a subject action or claim, there are no monthly or upfront payments required before the subject action or claim resolves.[13]

However, litigation financing opponents point out that in order to estimate the total amount owed under a litigation financing contract, including interest[14] and fees, a consumer must accurately predict the date of the subject action or claim's resolution and the amount of any settlement or judgment that will result in the consumer's favor.[15] Because contract terms may be unclearly stated or require complicated calculations, opponents argue that consumers may end up owing much more than they might have anticipated at the contract's initiation.[16] Additionally, the interest charged on a litigation financing contract, even if clearly stated, can be extremely high.[17] Where a consumer realizes he or she may owe more than he or she may recover, the consumer may drive up litigation costs by rejecting reasonable settlement offers for a chance to win a larger verdict in court.[18]

Further, uncertainty exists as to whether an attorney can discuss a litigation financing contract with a litigation financier without waiving the attorney-client[19] or work product[20] privileges. Such privileges are typically waived or limited when protected information is shared with a third party, but attorney-financier communication may be necessary for a litigation financier to evaluate a consumer's claim.[21] The American Bar Association urges attorneys discussing a litigation financing contract with a litigation financier to safeguard against waiving privilege, warning that infringing a client's rights requires the client's informed consent after full, candid disclosure of all associated risks and benefits.[22]

To address these issues, the Alliance for Responsible Consumer Funding ("ARC"), a national coalition of litigation financiers, requires its members to provide certain consumer protections in their litigation financing contracts.[23] These protections include clearly-defined contract terms, which a consumer's attorney must review, and no hidden fees or complicated calculations.[24] However, ARC membership is not mandatory for litigation financiers, leaving each state the responsibility for regulating litigation financing within its borders. To that end, ARC advocates for state regulation creating litigation financing consumer protections while preserving a consumer's access to litigation financing.[25]

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[12] *See* Schuler, *supra* note 6; *see also* ARC, *What is Consumer Legal Funding?*, http://arclegalfunding.org/consumer-legal-funding/ (last visited Jan. 15, 2020).
[13] *See* Schuler, *supra* note 6; *see also* ARC, *What is Consumer Legal Funding?*, http://arclegalfunding.org/consumer-legal-funding/ (last visited Jan. 15, 2020).
[14] Interest is the cost of borrowing money, expressed as a percentage of the borrowed amount. *See* Anya Martin, *The Interest Rate v. the Annual Percentage Rate*, The Wall Street Journal, May 21, 2015, https://www.wsj.com/articles/the-interest-rate-vs-the-annual-percentage-rate-1432215724 (last visited Jan. 15, 2020).
[15] *See* Skiba and Xiao, *supra* note 5.
[16] *Id.*
[17] A plaintiff suing a litigation financing company for violating Florida's usury laws, alleging that his litigation financing contract charged interest at a rate of 3.5 percent compounded monthly, which, if the subject civil action or claim did not quickly resolve, could result in an effective 51 percent interest rate. *See Taylor v. Certified Legal Funding, Inc.*, No. 8:18CV00027, (M.D. Fla. 2018).
[18] *See* Skiba and Xiao, *supra* note 5.
[19] Under the attorney-client privilege, communication between an attorney and his or her client is typically confidential if such persons do not intend to disclose it to a third party. This protects the giving of information to an attorney so that the attorney can give sound and informed legal advice. S. 9.502(1)(c), F.S.; *Upjohn Co. v. United States*, 101 S.Ct. 677 (1981).
[20] Work product is "documents and other tangible things…prepared in anticipation of litigation or for trial." Work product is almost absolutely protected under Florida common law if it contains mental impressions, conclusions, opinions and legal theories about litigation. Fla. R. Civ. P. 1.280(b)(3); *State v. Rabin*, 495 So. 2d 257(Fla. 3d DCA 1986).
[21] *See* ARC, *supra* note 11.
[22] American Bar Association, Commission on Ethics 20/20, *Informational Report to the House of Delegates*, https://www.law.columbia.edu/sites/default/files/microsites/clwa/CIAA/keynote_third_party_funding.pdf (last visited Jan. 15, 2020).
[23] *See* Schuler, *supra* note 6; *see also* ARC, *What is Consumer Legal Funding?*, http://arclegalfunding.org/consumer-legal-funding/ (last visited Jan. 15, 2020).
[24] *See* ARC, *What is Consumer Legal Funding?*, http://arclegalfunding.org/consumer-legal-funding/ (last visited Jan. 15, 2020).
[25] *Id.*

Litigation Financing - Florida

Florida regulates consumer loans and financing, usury,[26] and interest.[27] However, Florida courts have specifically found that litigation financing is not a loan subject to existing law, leaving litigation financing and associated interest charges unregulated in the state.[28] Given the lack of regulation, the Florida Bar[29] generally "discourages the use of [litigation financing] companies," allowing an attorney to inform a client about litigation financing only if the attorney feels it is in the client's best interests.[30]

Litigation Financing Regulation - Other States

Since 2007, 11 states have passed legislation regulating litigation financing. Of these, most require a litigation financier to register with the state prior to engaging in litigation financing and cap the interest or fees chargeable on a litigation financing contract. Two states require litigation financing contract disclosure in civil actions or claims, and four protect privileged communications.

State (Statute)	Year Passed	Registration Required	Interest Caps	Fee Caps	Disclosure Required	Privilege Protected
Arkansas (§ 4-57-109)	2015		X			
Indiana (§ 24-12)	2016	X	X	X		X
Maine (§ 9A-12)	2007	X				
Nebraska (§§ 25-3301 to 3309)	2010	X		X		X
Nevada (§ 604C)	2019	X	X	X		
Ohio (§ 1349.55)	2008					X
Oklahoma (§§ 14A-3-801 to 817)	2013	X				
Tennessee (§ 47-16)	2014	X	X	X		
Vermont (§74-2251 to 2260)	2016	X				X
West Virginia (§ 46A-6N)	2019	X	X	X	X	
Wisconsin (§801.01(2)(bg))	2018				X	

New York and South Carolina took a different approach, regulating litigation financing through administrative action. Specifically, New York's Attorney General requires litigation financing contracts to provide certain consumer protections,[31] while South Carolina's Department of Consumer Affairs declared the product a loan subject to the state's consumer protection code.[32] Courts in Colorado, Kentucky, and North Carolina have also deemed litigation financing a loan subject to state usury laws.[33] Uniquely, Pennsylvania courts have invalidated litigation financing contracts under a common law

[26] "Usury" means loaning money at an exorbitant or illegally high interest rate. States set their own maximum interest rates. Florida declares interest higher than 18 percent per year for loans up to $500,000 and higher than 25 percent for loans over $500,000 usurious unless otherwise allowed by law. Legal Information Institute, *Usury*, https://www.law.cornell.edu/wex/usury (last visited Jan. 15, 2020); Ss. 687.02(1) and 687.071(2) and (3), F.S.
[27] See generally chs. 516 and 687, F.S
[28] *Fausone v. U.S. Claims, Inc.*, 915 So. 2d 626 (Fla. 2nd DCA 2005); *see also Taylor*, No. 8:18CV00027.
[29] Article V, s. 15 of the Florida Constitution gives the Florida Supreme Court exclusive and ultimate regulatory authority over persons admitted to practice law in Florida. The Court performs this function through the Florida Bar, an investigative and prosecutorial authority charged with ensuring that all attorneys meet the minimum standards of conduct set out in the Rules Regulating the Florida Bar.
[30] 00-3 Fla. Ethics Op. Fla. Bar (Mar. 15, 2002), https://www.floridabar.org/etopinions/etopinion-00-3/ (last visited Jan. 15, 2020).
[31] *See* Julia H. McLaughlin, *Litigation Funding: Charting a Legal and Ethical Course*, 31 Vt. L. Rev. 615 (2007), https://lawreview.vermontlaw.edu/wp-content/uploads/2012/02/mclaughlin.pdf (last visited Jan. 15, 2020).
[32] U.S. Chamber Institute for Legal Reform, *Lawsuit Lending: South Carolina Calls it Like It Is*, https://www.instituteforlegalreform.com/resource/lawsuit-lending-south-carolina-calls-it-like-it-is (last visited Jan. 15, 2020).
[33] *Oasis Legal Fin. Grp., LLC v. Coffman*, 361 P. 3d 400 (Co. S.Ct. 2015); *Boling v. Prospect Funding Holdings, LLC*, 2017 WL 1193064, (W.D. Ky. 2017); *Odell v. Legal Bucks, LLC,* 192 N.C.App. 298 (N.C. Ct. of Appeals 2008).

champerty doctrine,[34] and Alabama courts have held that litigation financing contracts are a form of gambling, or speculating, in litigation and thus void as against public policy.[35]

Effect of Proposed Changes

PCB CJS 20-01 creates the Litigation Financing Consumer Protection Act, regulating litigation financing to protect Florida consumers.

Definitions

The PCB defines litigation financing as a non-recourse transaction in which a litigation financier gives a consumer funds in exchange for an assignment of the consumer's contingent right to receive an amount of a civil action or claim's potential proceeds. This term specifically excludes, and thus the bill does not apply to:

- Legal services provided by an attorney on a contingency fee[36] basis;
- A commercial tort claim;[37]
- A Workers' Compensation claim;[38]
- Lending or financial arrangements between an attorney or law firm and a lending institution to fund litigation costs in the ordinary course of business; and
- A consumer finance loan.[39]

Florida regulates these excluded products, practices, and claims under other existing laws and rules.

Registration and Revocation

The PCB requires a litigation financier to register as a litigation financier with the Department of State ("Department") before offering litigation financing and to file with the Department a $250,000 bond:

- Issued by a surety company authorized to do business in the state; and
- Payable to the Department for the payment of damages awarded to a consumer in a Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") action.

Corporate, Limited Liability Company, and Partnership Registration

A business may be a corporation, a limited liability company ("LLC"), or a partnership. Florida law already requires such businesses to register with the Department by filing an organizational document[40] or certificate of authority application[41] and meeting other requirements. The PCB supplements existing registration requirements for such businesses wishing to engage in litigation financing, providing that a litigation financier registered as a corporation, LLC, or partnership is also registered as a litigation financier if it:

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[34] The champerty doctrine prohibits selling legal judgment or settlement proceeds before such judgement or settlement to a disinterested party. *See* Paul Bond, *Making Champerty Work: An Invitation to State Action*, 150 U. Penn. L. Rev. 1297 (2002), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3271&context=penn_law_review (last visited Jan. 15, 2020); *WFIC, LLC v. LaBarre, 2016 WL 4769436 (Pa. 1st J.D. 2016).*

[35] *Wilson v. Harris*, 688 So. 2d 265 (Ala. Civ. App. 1996).

[36] In certain lawsuits, such as a personal injury lawsuit, an attorney may agree to accept a portion of the money a client recovers from his or her civil action or claim as the fee for the attorney's service. Such agreements must be in writing and entered into at the outset of the representation. See The Florida Bar, Consumer Pamphlet: Attorney's Fees, https://www.floridabar.org/public/consumer/pamphlet003/ (last visited Jan. 15, 2020).

[37] A "commercial tort claim" is a claim arising in tort with respect to which the claimant is an organization or the claimant is an individual and the claim arose in the course of the claimant's business or profession and does not include damages arising out of personal injury to or the death of an individual. S. 679.1021(1)(m), F.S.

[38] A "workers' compensation claim" is a claim for disability and medical benefits made by an injured worker. Such benefits are paid at the employer's expense. See Ch. 440, F.S.

[39] A "consumer finance loan" is a loan of money, credit, or goods in an mount or to a value of $25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum. S. 516.01(2), F.S.

[40] Organizational documents include articles of organization or incorporation and a certificate of limited partnership.

[41] A certificate of authority allows a foreign corporation or limited liability company to do business in the state.

- Meets the bond requirements;
- Has a status of active and in good standing in Department records; and
- Indicated in its organizational document, or certificate of authority application, that it is a litigation financier.

A litigation financier that is a corporation, LLC, or partnership must amend its registration within 30 days of the information it contains changing or becoming inaccurate by updating its organizational document or certificate of authority application in the manner already prescribed by the Department.

Sole Proprietorship Registration

A business may also be a sole proprietorship. Florida law does not require sole proprietorships to register with the Department, and thus the PCB creates a unique registration process for such businesses wishing to engage in litigation financing. Under the PCB, a sole proprietorship is registered as a litigation financier in the state if it:

- Meets the bond requirements; and
- Files a litigation financier registration application with the Department containing:
    - The applicant's full legal name and fictitious name, if any;
    - The applicant's physical and mailing addresses and telephone number;
    - A statement that the applicant is a litigation financier; and
    - Any other information the Department requires.

A sole proprietorship litigation financier must amend its registration within 30 days of the information it contains changing or becoming inaccurate by filing a prescribed amendment form with the Department.

Registration Revocation

The PCB gives the Department the authority to revoke a litigation financier's registration for non-compliance with the registration, registration amendment, and bond requirements. Specifically, if the Department determines that a litigation financier violated any of these requirements, the Department must serve the litigation financier notice of its intent to revoke the litigation financier's registration. Such notice must specifically list all revocation grounds and may be sent by electronic mail if the litigation financier gave the Department an electronic mail address. A litigation financier has 60 days from the date the Department sends such notice to correct each revocation ground or to show there were no such violations. Otherwise, the Department must revoke the litigation financier's registration, after which the litigation financier may not continue to offer litigation financing in the state.

<u>Contract Terms and Disclosures</u>

The PCB requires that all litigation financing contracts be in writing and completely filled in when offered or presented to a consumer. The PCB also provides mandatory contract terms and disclosures designed to inform consumers of their financial obligations under the contract.

Mandatory Terms

The PCB requires that a litigation financing contract contain a right of rescission allowing the consumer to cancel the contract without penalty if the consumer gives written rescission notice and returns any funds already provided under the contract to the litigation financier within five business days after contract execution or receipt of the funds. This prevents a litigation financier from assessing interest, fees, or charges to a consumer who timely and correctly cancels a litigation financing contract.

The bill also requires that a litigation financing contract include:

- The consumer's written acknowledgement of whether he or she has an attorney; and
- A statement indicating that, if the subject action or claim's proceeds are paid into a settlement fund or trust, the litigation financier must notify the fund or trust administrator of any outstanding financial obligations under the contract.

Mandatory Disclosures

The PCB requires that a litigation financing contract disclose that a litigation financier may not, and will not, make any decisions about the subject action or claim or try to influence its direction. Further, the PCB requires a litigation financing contract to contain specifically worded disclosures pertaining to a consumer's contract rescission rights and warning that a consumer should not sign the contract without completely reading it or if any part of the contract is incomplete or blank.

The PCB also requires a litigation financing contract to include notice that, if the net proceeds of the subject action or claim are insufficient to fully repay the litigation financier, the litigation financier will accept a reduced sum as full payment of what is owed under the contract, which sum cannot exceed the net proceeds less proceeds specifically awarded for medical expenses. If the consumer recovers nothing in the subject action claim, the consumer owes the litigation financier nothing.

Additionally, the bill requires a litigation financing contract to specifically state:

- The total funded amount;
- An itemized list of all fees and charges;
- The interest rate; and
- The total amount the consumer owes in six-month intervals for three years.

<u>Prohibited Conduct</u>

The PCB prohibits a litigation financier from engaging in conduct harmful to consumers. Specifically, the bill prohibits a litigation financier from:

- Paying, offering to pay, or accepting a referral fee or other consideration.
- Advertising false or misleading information about its product or services.
- Referring a consumer to a specific attorney or health care practitioner.[42]
- Failing to promptly give a consumer a copy of any complete litigation financing contract.
- Trying to obtain a waiver of a consumer's remedy in the subject action or claim.
- Trying to effect arbitration or waiver of a consumer's jury trial right in the subject action or claim.
- Offering or giving a consumer legal advice about the litigation financing contract or the subject action or claim.
- Assigning a litigation financing contract in whole or in part.
- Reporting to a consumer credit agency if there are not enough funds left from the net proceeds of the subject action or claim to repay the litigation financier.
- Directing, or making, any decisions about, the subject action or claim.
- Entering into a litigation financing contract with a consumer incorporating the consumer's obligations to the litigation financier under an existing contract.
- Knowingly entering into a litigation financing contract with a consumer who already has a contract with another litigation financier without first paying off the amount owed under that contract, unless the consumer consents to multiple contracts in writing.

[42] "Health care practitioner" has the same meaning as in s. 456.001(4), F.S.

Interest, Fees, Charges, and Penalties

The PCB limits the amount and duration of interest, fees, charges, and penalties a litigation financier may assess a consumer, preventing exorbitant assessments and enabling a consumer to determine at the time of contract execution the maximum amount owed under the contract.

Interest

The PCB prohibits a litigation financier from assessing an interest rate greater than 30 percent of the funded amount[43] and requires that, in determining this rate, the computations used are simple interest.[44] The maximum interest a litigation financier may charge is 12 times the maximum monthly rate, which must be computed on the basis of one-twelfth the annual rate for each full month. This means that interest can only accrue on the original funded amount, not on any fees, charges, or interest assessed, and cannot exceed the specified maximum rate even if interest is assessed daily or monthly.

The PCB also specifies that interest only accrues until a court enters a final order or a settlement agreement is executed in the subject action or claim, whichever is earlier, but provides that in no case can interest accrue for more than three years from the date the consumer receives the funds. Further, the PCB prohibits a litigation financier from assessing interest on a rescinded contract. This means that a consumer will not pay more than three years' worth of interest on the funded amount regardless of how long the subject action or claim's resolution takes, and will owe no interest if he or she properly rescinds the contract.

Fees, Charges, and Penalties

The PCB caps fees a litigation financier may charge at $500 with regard to any civil action or claim. This means that if a consumer enters into multiple litigation financing contracts with a litigation financier in exchange for assigning to the litigation financier his or her contingent right to proceeds from a single action or claim, the consumer will not owe more than $500 in charges and fees. Additionally, the PCB prohibits a litigation financier from assessing any fee, charge, or penalty for contract rescission, so that a consumer properly rescinding the contract will owe nothing.

Privilege and Discovery

Privilege

The PCB specifies that communication between an attorney and a litigation financier about a litigation financing contract does not limit, waive, or abrogate any statutory or common-law privilege, including the attorney-client privilege and the work product doctrine. This means that an attorney may discuss a litigation financing contract with a litigation financier within the bounds of any applicable Florida Bar rules without waiving a client's privileges.

Discovery

The PCB requires a consumer to provide to all parties to a civil action or claim any litigation financing contract relating to such action or claim without waiting for a discovery request. This gives a defendant notice of a plaintiff's obligation to a litigation financier, which might impact settlement negotiations as a plaintiff seeks to recover enough to both repay the obligation and retain funds for him or herself.

[43] The funded amount is the funds originally given to a consumer and includes only those funds the consumer actually retained.
[44] Simple interest is interest paid on the amount lent, at a certain rate, which does not become part of the base on which future interest is calculated. Black's Law Dictionary 561 (6th ed. 1991).

Violations and Enforcement

The PCB specifies that any litigation financier violating the Act violates FDUTPA.[45] Such violations occurring in or affecting a single judicial circuit are enforced by the office of the state attorney ("OSA") for the affected circuit, or the Department of Legal Affairs ("DLA") if the state attorney defers to DLA in writing or fails to act within 90 days after a written complaint is filed.[46] DLA also enforces violations occurring in or affecting more than one judicial circuit.[47]

Enforcement Actions

The enforcing authority has numerous FDUTPA violation enforcement remedies, which may be brought after the enforcement authority reviews the matter and determines that such an action serves the public interest.[48] These remedies include bringing an action:

- For a declaratory judgment stating that an act or practice violates FDUTPA.[49]
- To enjoin a litigation financier violating FDUTPA.[50]
- On behalf of a consumer or governmental entity for the actual damages caused by an act or practice violating FDUTPA.[51]

Any litigation financier who willfully[52] uses a deceptive or unfair trade act or practice faces a civil penalty of up to $10,000 per violation, and a civil penalty of up to $15,000 per violation if the victim was a senior citizen,[53] disabled person,[54] or military service member.[55] Further, the litigation financier may forfeit the bond held by the Department, and could be ordered to pay the enforcing authority's attorney fees and costs should the enforcing authority prevail.[56]

Cease and Desist Orders

If DLA believes a litigation financier is violating FDUTPA, and that a cease and desist order ("order") would serve the public interest, DLA must serve the litigation financier with a complaint and order stating its charges.[57] Such complaint must contain a notice setting a hearing for a date and time at least 30 days after service, which hearing must comply with the Administrative Procedures Act.[58] An order, appealable to the circuit court of appeals, takes effect ten days after all administrative action concludes or, if appealed, when the appellate court enters a final order in favor of DLA.[59] A litigation financier violating such an order faces a civil penalty of up to $5,000 per violation.[60]

Declaratory Judgment Actions

A consumer harmed by a litigation financier's FDUTPA violation may bring an action for a declaratory judgment that a litigation financier's act or practice violates FDUTPA and to enjoin the litigation financier

[45] FDUTPA is set forth in ch. 501, F.S., part II.
[46] S. 501.203(2), F.S.
[47] *Id.*
[48] S. 501.207(2), F.S.
[49] S. 501.207(1)(a), F.S.
[50] S. 501.207(1)(b), F.S.
[51] S. 501.207(1)(c), F.S.
[52] A willful violation occurs when a person knew or should have known his or her conduct was unfair or deceptive and prohibited. S. 501.2075, F.S.
[53] As used here, "senior citizen" means a person 60 years of age or older. S. 501.2077(1)(e), F.S.
[54] As used here, "disabled person" means a person who has a mental or educational impairment that substantially limits one or more major life activities. S. 501.2077(1)(d), F.S.
[55] Ss. 501.2075 and s. 501.2077(2) and (3), F.S.
[56] S. 501.2105, F.S.
[57] S. 501.208(1), F.S.
[58] *Id.*
[59] S. 501.208(4), F.S.
[60] S. 501.208(7), F.S.

from committing such an act or practice.[61] A consumer bringing a declaratory judgment action may recover his or her actual damages, plus attorneys' fees and costs, from the litigation financier, and a litigation financier may forfeit the bond posted by the Department.[62]

B. SECTION DIRECTORY:

Section 1: Provides that this Act may be cited as the Litigation Financing Consumer Protection Act.

Section 2: Creates s. 501.1001, F.S., relating to definitions.

Section 3: Creates s. 501.1002, F.S., relating to litigation financier registration; registration revocation.

Section 4: Creates s. 501.1003, F.S., relating to litigation financing contracts; terms.

Section 5: Creates s. 501.1004, F.S., relating to prohibited conduct.

Section 6: Creates s. 501.1005, F.S., relating to required disclosures.

Section 7: Creates s. 501.1006, F.S., relating to contingent right to proceeds assignable; priority of lien or right to proceeds.

Section 8: Creates s. 501.1007, F.S., relating to interest, fees, charges, and penalties.

Section 9: Creates s. 501.1008, F.S., relating to litigation financing contracts; discovery.

Section 10: Creates s. 501.1009, F.S., relating to effect of communication on privilege.

Section 11: Creates s. 501.1010, F.S., relating to violation; enforcement.

Section 12: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The PCB may have an insignificant impact on the Department, as it requires the Department to process a new type of registration, revoke such registration for specified violations after notice and opportunity to cure, and to hold bonds. However, these costs may be absorbed in the Department's operating budget as the Department currently serves a similar registration function for corporations, limited liability companies, and partnerships.

   Additionally, because the PCB creates a FDUTPA violation, the bill may have an insignificant impact on DLA and the OSA for each judicial circuit, as both are currently charged with prosecuting such violations. However, these costs may be absorbed in such entities' respective operating budgets.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[61] S. 501.211(1), F.S.
[62] S. 501.211(2), F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCB may save a consumer from paying unreasonably high interest rates on and hidden fees and charges for a litigation financing contract. The PCB may also reduce litigation costs as a consumer may accept reasonable settlement offers in the knowledge that his or her obligation under a litigation financing contract is no more than what he or she expected at the contract's initiation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to effect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill gives the Department the authority to promulgate rules necessary to implement the bill's registration, bond, and revocation requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to litigation financing consumer
3 protection; creating s. 501.1001; proving definitions;
4 creating s. 501.1002; requiring litigation financiers
5 to register with the Department of State; providing
6 registration requirements; creating s. 501.1003;
7 providing mandatory litigation financing contract
8 terms; creating s. 501.1004; prohibiting litigation
9 financiers from engaging in specified conduct;
10 creating s. 501.1005; providing for mandatory
11 litigation financing contract disclosures; creating s.
12 501.1006; providing for contingent right to civil
13 action proceeds assignability; establishing the
14 priority of liens against or rights to civil action or
15 claim proceeds; creating s. 501.1007; authorizing
16 litigation financiers to charge interest up to a
17 specified amount annually; providing for simple
18 compounding; providing for a maximum annual, monthly,
19 and daily percentage rate; providing a maximum
20 interest accrual period; providing that total interest
21 must be calculated based on the actual number of days
22 for which interest accrued; capping fees and charges a
23 litigation financer may assess; prohibiting a
24 litigation financier from assessing specified fees or
25 charges; creating s. 501.1008; requiring litigation

26 financing contract disclosure under specified
27 circumstances; creating s. 501.1009; providing that
28 specified communications between attorneys and
29 litigation financiers do not limit or waive statutory
30 or common-law privilege; creating s. 501.1010;
31 providing that a violation of this part is a violation
32 of the Florida Deceptive and Unfair Trade Practices
33 Act; providing that nothing in this section limits the
34 powers, duties, and rights of specified persons
35 created under other law; providing an effective date.
36
37 Be It Enacted by the Legislature of the State of Florida:
38 Section 1. Part VIII of chapter 501, Florida Statutes,
39 consisting of sections 501.1001, 501.1002, 501.1003, 501.1004,
40 501.1005, 501.1006, 501.1007, 501.1008, 501.1009, and 501.1010,
41 is created and may be cited as the "Litigation Financing
42 Consumer Protection Act."
43 Section 2. Section 501.1001, Florida Statutes, is created
44 to read:
45 501.1001 Definitions.— As used in this part, the term:
46 (1) "Consumer" means any natural person residing,
47 physically present, or domiciled in this state.
48 (2) "Department" means the Department of State.
49 (3) "Enforcing authority" has the same meaning as in s.
50 501.203.

51 (4) "Funded amount" means the funds actually received and
52 retained by a consumer under a litigation financing contract.
53 (5) "Health care practitioner" has the same meaning as in
54 s. 456.001(4).
55 (6) "Interest" means the cost of obtaining litigation
56 financing and includes any profit or advantage of any kind
57 whatsoever that a litigation financier may charge, contract for,
58 collect, receive, or in any way obtain as a condition for a
59 litigation financing contract. Charges and fees specifically
60 permitted by this part shall not be deemed interest.
61 (7) "Litigation financier" means a person engaged in the
62 business of litigation financing.
63 (8) "Litigation financing" means a non-recourse
64 transaction in which a litigation financier provides funds to a
65 consumer in exchange for an assignment of the consumer's
66 contingent right to receive an amount of the potential proceeds
67 of the consumer's civil action or claim. The term does not
68 include:
69 (a) Legal services provided to a consumer on a contingency
70 fee basis, or advanced legal costs, where such services or costs
71 are provided by an attorney representing the consumer in
72 accordance with the Florida Rules of Professional Conduct;
73 (b) A commercial tort claim as defined by s.
74 679.1021(1)(m);
75 (c) A claim under the Workers' Compensation Law in chapter

76 440;
77 (d) Lending or financing arrangements between an attorney
78 or law firm and a lending institution to fund litigation costs
79 in the ordinary course of business; or
80 (e) A consumer finance loan, as defined by s. 516.01(2).
81 (9) "Net proceeds" means the portion of the proceeds of a
82 civil action or claim remaining after satisfaction of all liens
83 with a higher priority than that of the litigation financier as
84 specified in s. 501.1006(2).
85 Section 3. Section 501.1002, Florida Statutes, is created
86 to read:
87 501.1002 Litigation financier registration; registration
88 revocation.—
89 (1) No litigation financier may engage in litigation
90 financing in this state before registering as a litigation
91 financier under this section.
92 (a) A litigation financier that is a corporation, limited
93 liability company, or partnership is registered under this
94 section if it has:
95 1. Met the bond requirements of subsection (2);
96 2. A status of active and in good standing as reflected in
97 Department records; and
98 3. Filed articles of organization or incorporation, a
99 certificate of limited partnership, or another organizational
100 document, or, if a foreign entity, an application for a

101 certificate of authority with the Department stating therein
102 that it is a litigation financier.
103 (b) A litigation financier that is not a corporation,
104 limited liability company, or partnership is registered under
105 this section if it has:
106 1. Met the bond requirements of subsection (2); and
107 2. Filed a litigation financier registration application
108 with the Department on a form prescribed by the Department
109 containing, at a minimum:
110 a. The applicant's full legal name and fictitious name, if
111 any;
112 b. The applicant's physical address, mailing address, and
113 telephone number;
114 c. A statement that the applicant is a litigation
115 financier; and
116 d. Any other information the Department deems necessary.
117 (2) Each litigation financier must file with the
118 Department a $250,000 surety bond, which bond must be:
119 (a) Issued by a surety company authorized to do business
120 in this state.
121 (b) Payable to the Department for the payment of damages
122 awarded to a consumer under part II of this chapter.
123 (c) Effective so long as the Department's records
124 designate a litigation financier as such or a litigation
125 financing contract with the litigation financier is effective.

126 (3) A litigation financier must amend its registration
127 within 30 days whenever the information contained therein
128 changes or becomes inaccurate in any respect. A litigation
129 financier that is not a corporation, limited liability company,
130 or partnership may amend its registration by filing with the
131 Department an amendment on a form prescribed by the Department.
132 (4) If the Department determines that a litigation
133 financier has not complied with the requirements of this
134 section, the Department must serve the litigation financier
135 notice in a record of its intent to revoke the litigation
136 financier's registration. Such notice:
137 (a) Must specifically state all grounds for revocation.
138 (b) May be sent by electronic mail to a litigation
139 financier that provided the Department with an electronic mail
140 address.
141 (5) A litigation financier has 60 days from the date the
142 Department sends the notice required by subsection (4) to
143 correct the grounds for revocation or demonstrate to the
144 reasonable satisfaction of the Department that each ground
145 determined by the Department does not exist. The Department must
146 revoke the litigation financier registration of any litigation
147 financier who fails to comply with the requirements of this
148 section.
149 (6) The Department has the authority reasonably necessary
150 to enable it to administer this section efficiently, to perform

151 duties imposed upon it, and to promulgate rules to implement
152 this section.
153 Section 4. Section 501.1003, Florida Statutes, is created
154 to read:
155 501.1003 Litigation financing contracts; terms.— The
156 litigation financing terms must be set forth in a written
157 contract containing:
158 (1) A right of rescission allowing the consumer to cancel
159 the contract without penalty, interest, fees, or charges, or
160 further obligation if, within 5 business days after contract
161 execution or funds receipt by the consumer, whichever is later,
162 the consumer provides written rescission notice and returns any
163 funds already provided under the contract to the litigation
164 financier;
165 (2) The consumer's written acknowledgement of whether an
166 attorney represents him or her in the civil action or claim that
167 is the subject of the contract; and
168 (3) A statement indicating that, in the event the proceeds
169 of the subject civil action or claim are paid into a settlement
170 fund or trust, the litigation financier must notify the fund or
171 trust administrator of any outstanding financial obligations
172 arising from the contract.
173 Section 5. Section 501.1004, Florida Statutes, is created
174 to read:
175 501.1004 Prohibited conduct.— A litigation financier may

176 not:
177 (1) Pay or offer to pay a commission, referral fee or
178 other consideration to any person, including an attorney, law
179 firm, or health care practitioner, for referring a consumer to a
180 litigation financier;
181 (2) Accept a commission, referral fee, rebate, or other
182 consideration from any person, including an attorney, law firm,
183 or health care practitioner;
184 (3) Advertise false or misleading information about its
185 products or services;
186 (4) Refer a consumer to a specific attorney, law firm, or
187 health care practitioner, except that, if a consumer lacks legal
188 representation, the litigation financier may refer the consumer
189 to an attorney referral service operated by a county or state
190 bar association;
191 (5) Fail to promptly supply a copy of any complete
192 litigation financing contract to the consumer;
193 (6) Attempt to obtain a waiver of any remedy, including
194 but not limited to, compensatory, statutory, or punitive
195 damages, that the consumer might otherwise have in the subject
196 civil action or claim;
197 (7) Attempt to effect arbitration or waiver of a
198 consumer's right to a jury trial in the subject civil action or
199 claim;
200 (8) Offer or provide legal advice to the consumer

201 regarding the litigation financing contract or the subject civil
202 action or claim;
203 (9) Assign a litigation financing contract in whole or in
204 part;
205 (10) Report to a consumer credit reporting agency if
206 insufficient funds remain from the net proceeds of the subject
207 civil action or claim to repay the litigation financier;
208 (11) Direct, or make any decisions with respect to, the
209 course of the subject civil action or claim or any settlement
210 thereof;
211 (12) Enter into a litigation financing contract with a
212 consumer incorporating the consumer's obligations to the
213 litigation financier under an existing litigation financing
214 contract; or
215 (13) Knowingly enter into a litigation financing contract
216 with a consumer already under a litigation financing contract
217 with another litigation financier without first paying the
218 entire funded amount and all fees and charges owed under the
219 existing contract, unless the consumer consents to a
220 contemporaneous financing arrangement in writing.
221 Section 6. Section 501.1005, Florida Statutes, is created
222 to read:
223 501.1005 Required disclosures.—
224 (1) A litigation financing contract must contain the
225 following disclosures on the front page of the contract in at

226 least 12-point boldfaced type:
227 (a) Notice of the consumer's right to a completely filled
228 in contract;
229 (b) A statement that the litigation financier has no right
230 to and will not make any decisions or attempt to influence the
231 consumer or his or her attorney about the conduct of the civil
232 action or claim that is the subject of the contract and that the
233 right to make such decisions remains solely with the consumer;
234 (c) The total funded amount provided to the consumer;
235 (d) An itemized list of all fees and charges payable by
236 the consumer;
237 (e) The interest rate;
238 (f) The total amount due from the consumer in 6-month
239 intervals for 3 years, including all interest, fees, and
240 charges;
241 (g) A statement that the consumer will owe no fees or
242 charges other than those described in the disclosures;
243 (h) The cumulative amount due from the consumer for all
244 litigation financing contracts if the consumer seeks multiple
245 contracts and makes repayment any time after contract execution;
246 (i) Notice that if the consumer recovers nothing from the
247 subject civil action or claim, he or she will owe the litigation
248 financier nothing; and
249 (j) Notice that if the net proceeds of the subject civil
250 action or claim are insufficient to fully repay the litigation

251 financier, the litigation financier will accept a reduced sum as
252 full payment of the funded amount and all fees and charges owed,
253 which sum may not exceed the net proceeds less proceeds
254 specifically awarded for future medical expenses.
255 (2) A litigation financing contract must also contain the
256 following disclosure on the front page of the contract in at
257 least 18-point uppercase and boldfaced type:
258
259 CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT
260 WITHOUT PENALTY, INTEREST, FEES, CHARGES, OR FURTHER OBLIGATION
261 WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT EXECUTION OR
262 RECEIVING FUNDS FROM [INSERT NAME OF THE LITIGATION FINANCIER], WHICHEVER
263 IS LATER, BY GIVING WRITTEN NOTICE OF THE CANCELLATION AND BY
264 RETURNING THE FUNDS TO [INSERT NAME OF THE LITIGATION FINANCIER]. FOR
265 PURPOSES OF THE DEADLINE, THE POSTMARK DATE ON FUNDS RETURNED BY
266 REGULAR U.S. MAIL, OR THE DATE OF THE RETURN RECEIPT REQUESTED
267 IF MAILED BY CERTIFIED MAIL, WILL BE CONSIDERED THE DATE OF
268 RETURN OF THE FUNDS.
269
270 (3) A litigation financing contract must contain the
271 following disclosure immediately above the consumer's signature
272 line in 18-point uppercase and boldfaced type:
273
274 DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY OR
275 IF THE CONTRACT CONTAINS ANY INCOMPLETE OR BLANK SECTIONS.

276 BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD CONSULT AN ATTORNEY.
277 YOU MAY ALSO WANT TO CONSULT A TAX ADVISOR, A FINANCIAL
278 PROFESSIONAL, OR AN ACCOUNTANT.
279
280 Section 7. Section 501.1006, Florida Statutes, is created
281 to read:
282 501.1006 Contingent right to proceeds assignable; priority
283 of lien or right to proceeds.—
284 (1) A consumer may assign his or her contingent right to
285 receive an amount of the potential proceeds of a civil action or
286 claim.
287 (2) A litigation financier's lien on the potential
288 proceeds of a civil action or claim has priority over liens that
289 attach to such proceeds subsequent to the attachment of the
290 litigation financier's lien, except for:
291 (a) Attorney, insurance carrier, or healthcare
292 practitioner liens or liens based upon subrogation interests or
293 reimbursement rights related to the subject civil action or
294 claim; and
295 (b) Child support, Medicare, tax, or any other statutory
296 or governmental lien.
297 Section 8. Section 501.1007, Florida Statutes, is created
298 to read:
299 501.1007 Interest, fees, charges, and penalties.—
300 (1) A litigation financier may not directly or indirectly

301 charge, contract for, or receive an interest rate of greater
302 than 30 percent of the funded amount per annum. In determining
303 compliance with the statutory maximum interest rate, the
304 computations used must be simple interest and not add-on
305 interest or any other computations.
306 (2) The maximum interest rate which may be contracted for
307 and received by a litigation financier is 12 times the maximum
308 monthly rate, and the maximum monthly rate must be computed on
309 the basis of one-twelfth of the annual rate for each full month.
310 The maximum daily rate must be computed on the basis of the
311 maximum monthly rate divided by the number of days in the month.
312 (3) Interest may only accrue until a court enters a final
313 order or a settlement agreement is executed in the civil action
314 or claim that is the subject of the litigation financing
315 contract, whichever is earlier, but in no case may interest
316 accrue for a period exceeding three years from the date the
317 consumer receives the funds from the litigation financier. The
318 total interest assessed must be calculated based on the actual
319 number of days for which interest accrued.
320 (4) A litigation financier may not directly or indirectly
321 charge, contract for, or receive any fees or charges the
322 combined total of which exceeds $500 with regard to a single
323 civil action or claim, regardless of the number of litigation
324 financing contracts the consumer enters into with the litigation
325 financier with respect to the civil action or claim.

326 (5) A litigation financier may not directly or indirectly
327 charge, contract for, or receive any interest, fees, or charges,
328 for rescission or cancellation of a litigation financing
329 contract under subsection 501.1003(1).
330 Section 9. Section 501.1008, Florida Statutes, is created
331 to read:
332 501.1008 Litigation financing contracts; discovery.—
333 Except as otherwise ordered by the court, a party to any civil
334 action or claim must, without awaiting a discovery request,
335 provide to the other parties any contract under which a
336 litigation financier has a contingent right to receive
337 compensation sourced from potential proceeds of the civil action
338 or claim.
339 Section 10. Section 501.1009, Florida Statutes, is created
340 to read:
341 501.1009 Effect of communication on privilege.— No
342 communication between a consumer's attorney and a litigation
343 financier as it pertains to a litigation financing contract
344 limits, waives, or abrogates the scope or nature of any
345 statutory or common-law privilege, including the work-product
346 doctrine and the attorney-client privilege.
347 Section 11. Section 501.1010, Florida Statutes, is created
348 to read:
349 501.1010 Violation; enforcement.—
350 (1) A violation of this part is an unfair and deceptive

351 trade practice actionable under part II of this chapter.
352 (2) Nothing in this section may be construed to limit the:
353 (a) Enforcing authority's exercise of powers or
354 performance of duties which the enforcing authority is otherwise
355 legally authorized or required to exercise or perform.
356 (b) Rights and remedies available to the state or a person
357 under any other law.
358 Section 12. This act shall take effect July 1, 2020.

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	____	

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Leek offered the following:
3
4 **Amendment**
5 Remove line 46 and insert:
6 (1) "Consumer" means any individual residing,

Workshop Presenters

Civil Justice Subcommittee

Wednesday, January 23, 2020

Workshop on Public Nuisance and Other Matters of Statewide Concern

Presenters

Trevor Cox

Trevor Cox is counsel for Hunton Andres Kurth (HAK), a firm of over 1,000 lawyers with offices in the United States, Asia, Europe, and the Middle East. Prior to joining HAK, he served for more than four years in the Solicitor General's division of the Office of the Attorney General of Virginia (OAG), as Deputy Solicitor General, Senior Appellate Counsel, and Acting Solicitor General. During his tenure at the OAG, Mr. Cox handled important litigation matters at every level of the Virginia and federal judiciaries, arguing a dozen cases in the Fourth Circuit alone, successfully opposing certiorari in the US Supreme Court, and authoring dozens of briefs in federal courts and the Supreme Court of Virginia. In addition to personally handling litigation matters and overseeing others within the division, Mr. Cox provided legal advice to the Attorney General and Governor and advised other attorneys in the OAG on legal strategy. He also drafted numerous Opinions of the Attorney General on a variety of matters relating to the Constitution of Virginia and state government.

Melissa McKinlay

Palm Beach County Commissioner Melissa McKinlay, a Florida State University graduate, was elected to the Board of County Commissioners in 2014 and reelected without opposition in 2018. Prior to her election, Commissioner McKinlay spent nearly twenty years advocating on behalf of women, children, and families as a Legislative aide to the Palm Beach County Legislative Affairs Office, to members of Congress and the U.S. Senate, and as a volunteer with several organizations including the Junior League. She served as Mayor of Palm Beach County from 2017-2018, and her public service involves working at all three levels of government, including the Florida Department of Community Affairs, the Sarasota County Budget Department, the office of U.S. Senator Bill Nelson, and the U.S. House & Florida House of Representatives.

James Ferraro

James Ferraro, a graduate of the University of Miami School of Law, founded The Ferraro Law Firm in Miami and is one of the two founding partners behind the Cleveland, Ohio firm Kelley & Ferraro LLP. For over 20 years, Mr. Ferraro has focused his career on mass tort litigation, achieving major results in injury cases, including multi-million dollar jury verdicts. Mr. Ferraro obtained the highest compensatory recovery in a Florida mesothelioma lawsuit in 1995 and achieved a nationally record-breaking compensatory jury award for a benign asbestos case in 1997.

Mr. Ferraro was among just 10 finalists from around the country considered for 1997 Trial Lawyer of the Year after being the first to successfully prosecute a case against a major chemical giant whose products led to birth defects. In a nationally televised and recognized case, he held chemical giant DuPont responsible after a woman's baby was born missing eyes after she was exposed to a dangerous fungicide during her pregnancy. The Supreme Court of Florida re-affirmed this verdict seven years later.

Jeff Gaddy

Jeff Gaddy is an associate attorney with Levin Papantonio. He earned a Bachelor of Science degree in Business Administration from Auburn University where he graduated *magna cum laude* with a major in Human Resource Management. Mr. Gaddy then received his Juris Doctorate from the University of Mississippi in 2007, graduating *cum laude*. Upon graduation from law school, Mr. Gaddy moved to Pensacola, Florida, and spent eight years as an Assistant State Attorney at the Office of the State Attorney of the First Judicial Circuit where he served as a special prosecutor in the Homicide and Major Crimes Division. During his time as a prosecutor, Mr. Gaddy tried over one hundred jury trials to verdict. Since joining Levin Papantonio, Mr. Gaddy has focused his practice on mass tort litigation.

Bill McCollum

Former Florida Attorney General and Congressman Bill McCollum Co-Chairs Dentons' US State Attorney General Practice. His practice focuses on corporate compliance and investigations; complex state legal, regulatory and legislative matters; state anti-trust law enforcement; multi-state investigations and litigation; public policy; and advising and assisting companies with disruptive new technologies. He has represented and consulted for companies from a variety of industries with manufacturing and other business interests in Asia, Europe, the Middle East and Latin America.

Mr. McCollum served as the 36th Attorney General of Florida from 2007-2011. During his term he championed a wide range of consumer protection causes from claims coming out of the Deepwater Horizon oil spill to combatting mortgage fraud and Medicaid fraud. Since developing, advocating for and gaining enactment of a law in Florida capping contingency fees in state litigation outsourced to private attorneys, Mr. McCollum has championed enactment of similar legislation in many other states.

Mr. McCollum also represented Florida's 8th Congressional District in the US House of Representatives from 1981-2001, serving on the Judiciary, Banking and Financial Services and Intelligence Committees. He held a number of leadership positions including Chairman of the Judiciary Subcommittee on Crime; Chairman of the Subcommittee on Human Intelligence, Analysis and Counterintelligence; Vice Chairman of the Banking and Financial Services Committee; Ranking Member of the subcommittee overseeing the Federal Reserve; Founder and Chairman of the House Task Force on Terrorism; and served as Vice Chairman of the House Republican Conference for three terms.

Mr. McCollum served on active duty in the US Navy from 1969-1972, and in 1992 retired from the Naval Reserve as a Commander, having served 23 years as an officer in the Judge Advocate General's Corps (JAG). Prior to his election to Congress he was a litigation partner with the Orlando law firm Pitts, Eubanks & Ross. After retiring from Congress in 2001 until assuming office as Florida Attorney General in 2007 Bill was a partner with Baker & Hostetler, LLP.