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TITLE: IV EXECUTIVE BRANCH

CHAPTER: 14 GOVERNOR

PART: --

SECTIONS: §14.202 only

NOTE: Pertinent Parts Only!



§14.202 FS | ADMINISTRATION COMMISSION

There is created as part of the Executive Office of the Governor an Administration Commission composed of the Governor and Cabinet. The Governor is chair of the commission. The Governor or Chief Financial Officer may call a meeting of the commission promptly each time the need therefor arises. Unless otherwise provided herein, affirmative action by the commission shall require the approval of the Governor and at least two other members of the commission. The commission shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of law conferring duties upon it.

History.—s. 1, ch. 79-190; s. 39, ch. 95-147; s. 6, ch. 98-200; s. 3, ch. 2003-6.



CHAPTER 20 FLORIDA STATUTES | FLORIDA

TITLE: IV EXECUTIVE BRANCH

CHAPTER: 20 ORGANIZATIONAL STRUCTURE

PART: --

SECTIONS: §20.05, ¶20.055, §20.22 only

NOTE:



§20.05 FS | HEADS OF DEPARTMENTS; POWERS AND DUTIES

(1) Each head of a department, subject to the allotment of executive power under Article IV of the State Constitution, and except as otherwise provided by law, must:

(a) Plan, direct, coordinate, and execute the powers, duties, and functions vested in that department or vested in a division, bureau, or section of that department; powers and duties assigned or transferred to a division, bureau, or section of the department must not be construed to limit this authority and this responsibility;

(b) Have authority, without being relieved of responsibility, to execute any of the powers, duties, and functions vested in the department or in any administrative unit thereof through administrative units and through assistants and deputies designated by the head of the department from time to time, unless the head of the department is explicitly required by law to perform the same without delegation;

(c) Compile annually a comprehensive program budget reporting all program and fiscal matters related to the operation of his or her department, including each program, subprogram, and activity, and other matters as required by law;

(d) Reimburse the members of advisory bodies, commissions, and boards of trustees for their actual and necessary expenses incurred in the performance of their duties in accordance with s. 112.061;

(e) Subject to the requirements of chapter 120, exercise existing authority to adopt rules pursuant and limited to the powers, duties, and functions transferred to the department;

(f) Exercise authority on behalf of the department to accept gifts, grants, bequests, loans, and endowments for purposes consistent with the powers, duties, and functions of the department. All such funds must be deposited in the State Treasury and appropriated by the Legislature for the purposes for which they were received by the department;



(g) If a department is under the direct supervision of a board, including a board consisting of the Governor and Cabinet, however designated, employ an executive director to serve at its pleasure; and

(h) Make recommendations concerning more effective internal structuring of the department to the Legislature. Unless otherwise required by law, such recommendations must be provided to the Legislature at least 30 days before the first day of the regular session at which they are to be considered, when practicable.

(2) The appointment of a secretary appointed by the Governor to serve as the head of a department must be confirmed by the Senate.

(3) The Governor may assign the Lieutenant Governor, without Senate confirmation, the duty of serving as the head of any one department, the head of which is a secretary appointed by the Governor, notwithstanding any qualifications for appointment as secretary of the department.

(4) Each head of a department may require any officer or employee of the department to give a bond for the faithful performance of his or her duties. The head of a department may determine the amount of the bond and must approve the bond. In determining the amount of the bond, the head of the department may consider the amount of money or property likely to be in custody of the officer or employee at any one time. The premiums for the bonds must be paid out of the funds of the department.

History. — s. 5, ch. 69-106; s. 2, ch. 74-256; s. 8, ch. 77-104; s. 4, ch. 94-235; s. 1314, ch. 95-147; s. 3, ch. 98-34; s. 6, ch. 2012-116.



§20.055 FS | AGENCY INSPECTORS GENERAL

(1) As used in this section, the term:

(a) "Agency head" means the Governor, a Cabinet officer, or a secretary or executive director as those terms are defined in s. 20.03, the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, the executive director of the Office of Early Learning, and the Chief Justice of the State Supreme Court.

(b) "Entities contracting with the state" means for-profit and not-for-profit organizations or businesses that have a legal existence, such as corporations or partnerships, as opposed to natural persons, which have entered into a relationship with a state agency to provide for consideration certain goods or services to the state agency or on behalf of the state agency. The relationship may be evidenced by payment by warrant or purchasing card, contract, purchase order, provider agreement, or other such mutually agreed upon relationship. The term does not apply to entities that are the subject of audits or investigations conducted pursuant to ss. 112.3187-112.31895 or s. 409.913 or which are otherwise confidential and exempt under s. 119.07.

(c) "Individuals substantially affected" means natural persons who have established a real and sufficiently immediate injury in fact due to the findings, conclusions, or recommendations of a final report of a state agency inspector general, who are the subject of the audit or investigation, and who do not have or are not currently afforded an existing right to an independent review process. The term does not apply to employees of the state, including career service, probationary, other personal service, Selected Exempt Service, and Senior Management Service employees; former employees of the state if the final report of the state agency inspector general relates to matters arising during a former employee's term of state employment; or persons who are the subject of audits or investigations



conducted pursuant to ss. 112.3187-112.31895 or s. 409.913 or which are otherwise confidential and exempt under s. 119.07.

(d) "State agency" means each department created pursuant to this chapter and the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Office of Early Learning, and the state courts system.

(2) An office of inspector general is established in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government. It is the duty and responsibility of each inspector general, with respect to the state agency in which the office is established, to:

(a) Advise in the development of performance measures, standards, and procedures for the evaluation of state agency programs.

(b) Assess the reliability and validity of the information provided by the state agency on performance measures and standards, and make recommendations for improvement, if necessary, before submission of such information pursuant to s. 216.1827.

(c) Review the actions taken by the state agency to improve program performance and meet program standards and make recommendations for improvement, if necessary.

(d) Provide direction for, supervise, and coordinate audits, investigations, and management reviews relating to the programs and operations of the state agency, except that when the inspector general does not possess the qualifications specified in subsection (4), the director of auditing shall conduct such audits.

(e) Conduct, supervise, or coordinate other activities carried out or financed by that state agency for the purpose of promoting economy and efficiency in the



administration of, or preventing and detecting fraud and abuse in, its programs and operations.

(f) Keep the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General informed concerning fraud, abuses, and deficiencies relating to programs and operations administered or financed by the state agency, recommend corrective action concerning fraud, abuses, and deficiencies, and report on the progress made in implementing corrective action.

(g) Ensure effective coordination and cooperation between the Auditor General, federal auditors, and other governmental bodies with a view toward avoiding duplication.

(h) Review, as appropriate, rules relating to the programs and operations of such state agency and make recommendations concerning their impact.

(i) Ensure that an appropriate balance is maintained between audit, investigative, and other accountability activities.

(j) Comply with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.

(3)

(a)

1. For state agencies under the jurisdiction of the Cabinet or the Governor and Cabinet, the inspector general shall be appointed by the agency head. For state agencies under the jurisdiction of the Governor, the inspector general shall be appointed by the Chief Inspector General. The agency head or Chief Inspector General shall notify the Governor in writing of his or her intention to hire the inspector general at least 7 days before an offer of employment. The inspector general shall be appointed without regard to political affiliation.

2. Within 60 days after a vacancy or anticipated vacancy in the position of inspector general, the agency head or, for agencies under the jurisdiction



of the Governor, the Chief Inspector General, shall initiate a national search for an inspector general and shall set the salary of the inspector general. Effective July 1, 2017, an agency that enters into an employment agreement, or renewal or renegotiation of an existing contract or employment agreement with an inspector general or deputy inspector, may not offer a bonus on work performance in the contract or agreement and the awarding of such bonuses is prohibited. In the event of a vacancy in the position of inspector general, the agency head or, for agencies under the jurisdiction of the Governor, the Chief Inspector General, may appoint other office of inspector general management personnel as interim inspector general until such time as a successor inspector general is appointed.

3. A former or current elected official may not be appointed inspector general within 5 years after the end of such individual's period of service. This restriction does not prohibit the reappointment of a current inspector general.

(b) The inspector general shall report to and be under the general supervision of the agency head and is not subject to supervision by any other employee of the state agency in which the office is established. For state agencies under the jurisdiction of the Governor, the inspector general shall be under the general supervision of the agency head for administrative purposes, shall report to the Chief Inspector General, and may hire and remove staff within the office of the inspector general in consultation with the Chief Inspector General but independently of the agency.

(c) For state agencies under the jurisdiction of the Cabinet or the Governor and Cabinet, the inspector general may be removed from office by the agency head. For state agencies under the jurisdiction of the Governor, the inspector general may only be removed from office by the Chief Inspector General for cause, including concerns regarding performance, malfeasance, misfeasance, misconduct, or failure to carry out his or her duties under this section. The Chief Inspector



General shall notify the Governor in writing of his or her intention to remove the inspector general at least 21 days before the removal. For state agencies under the jurisdiction of the Governor and Cabinet, the agency head shall notify the Governor and Cabinet in writing of his or her intention to remove the inspector general at least 21 days before the removal. If the inspector general disagrees with the removal, the inspector general may present objections in writing to the Governor within the 21-day period.

(d) The Governor, the Governor and Cabinet, the agency head, or agency staff may not prevent or prohibit the inspector general from initiating, carrying out, or completing any audit or investigation.

(4)

(a) To ensure that state agency audits are performed in accordance with applicable auditing standards, the inspector general or the director of auditing within the inspector general's office shall possess the following qualifications:

1. A bachelor's degree from an accredited college or university with a major in accounting, or with a major in business which includes five courses in accounting, and 5 years of experience as an internal auditor or independent postauditor, electronic data processing auditor, accountant, or any combination thereof. The experience shall at a minimum consist of audits of units of government or private business enterprises, operating for profit or not for profit; or

2. A master's degree in accounting, business administration, or public administration from an accredited college or university and 4 years of experience as required in subparagraph 1.; or

3. A certified public accountant license issued pursuant to chapter 473 or a certified internal audit certificate issued by the Institute of Internal Auditors or earned by examination, and 4 years of experience as required in subparagraph 1.



(b) For agencies under the jurisdiction of the Governor, the inspector general shall be selected on the basis of integrity, leadership capability, and experience in accounting, auditing, financial analysis, law, management analysis, program evaluation, public administration, investigation, criminal justice administration, or other closely related field. The inspector general is subject to a level 2 background screening pursuant to chapter 435. The inspector general shall have a 4-year degree from an accredited institution of higher learning or have at least 5 years of experience in at least one of the following areas:

1. Inspector general.
2. Supervisory experience in an office of inspector general or an investigative public agency similar to an office of inspector general.
3. Local, state, or federal law enforcement officer.
4. Local, state, or federal court judge.
5. Senior-level auditor or comptroller.
6. The administration and management of complex audits and investigations.
7. Managing programs for prevention, examination, detection, elimination of fraud, waste, abuse, mismanagement, malfeasance, or misconduct in government or other organizations.

An advanced degree in law, accounting, public administration, or other relevant field may substitute for 1 year of required experience.

(c) The inspector general shall possess at appointment, or obtain within the first year after appointment, a certification from the Association of Inspectors General as a certified inspector general. The inspector general must have one or more other professional certifications, such as certified inspector general investigator, certified inspector general auditor, certified public accountant, certified internal auditor, certified



governmental financial manager, or certified fraud examiner, certified financial crimes investigator or other related certification, or be a licensed attorney.

(d) The inspector general may not hold, or be a candidate for, an elective office of the state or a municipality, county, or other political subdivision of the state while inspector general, and a current officer or employee of an office of inspector general may not hold, or be a candidate for, an elective office of the state or a municipality, county, or other political subdivision of the state. The inspector general may not hold office in a political party or political committee. An employee of an office of inspector general may not hold office in a political party or political committee while employed in the office of inspector general.

(5) It is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section. Beginning July 1, 2015, each contract, bid, proposal, and application or solicitation for a contract shall contain a statement that the corporation, partnership, or person understands and will comply with this subsection.

(6) In carrying out the auditing duties and responsibilities of this act, each inspector general shall review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general shall conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings. The scope and assignment of the audits shall be determined by the inspector general; however, the agency head may at any time request the inspector general to perform an audit of a special program, function, or organizational unit. The performance of the audit shall be under the direction of the inspector general, except that if the inspector general does not possess the qualifications specified in subsection (4), the director of auditing shall perform the functions listed in this subsection.

(a) Such audits shall be conducted in accordance with the current International Standards for the Professional Practice of Internal Auditing as published by the Institute of Internal Auditors, Inc., or, where appropriate, in accordance with generally accepted



governmental auditing standards. All audit reports issued by internal audit staff shall include a statement that the audit was conducted pursuant to the appropriate standards.

(b) Audit workpapers and reports shall be public records to the extent that they do not include information which has been made confidential and exempt from the provisions of s. 119.07(1) pursuant to law. However, when the inspector general or a member of the staff receives from an individual a complaint or information that falls within the definition provided in s. 112.3187(5), the name or identity of the individual may not be disclosed to anyone else without the written consent of the individual, unless the inspector general determines that such disclosure is unavoidable during the course of the audit or investigation.

(c) The inspector general and the staff shall have access to any records, data, and other information of the state agency he or she deems necessary to carry out his or her duties. The inspector general may also request such information or assistance as may be necessary from the state agency or from any federal, state, or local government entity.

(d) At the conclusion of each audit, the inspector general shall submit preliminary findings and recommendations to the person responsible for supervision of the program function or operational unit who shall respond to any adverse findings within 20 working days after receipt of the preliminary findings. Such response and the inspector general's rebuttal to the response shall be included in the final audit report.

(e) At the conclusion of an audit in which the subject of the audit is a specific entity contracting with the state or an individual substantially affected, if the audit is not confidential or otherwise exempt from disclosure by law, the inspector general shall, consistent with s. 119.07(1), submit the findings to the entity contracting with the state or the individual substantially affected, who shall be advised in writing that they may submit a written response within 20 working days after receipt of the findings. The response and the



inspector general's rebuttal to the response, if any, must be included in the final audit report.

(f) The inspector general shall submit the final report to the agency head, the Auditor General, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.

(g) The Auditor General, in connection with the independent postaudit of the same agency pursuant to s. 11.45, shall give appropriate consideration to internal audit reports and the resolution of findings therein. The Legislative Auditing Committee may inquire into the reasons or justifications for failure of the agency head to correct the deficiencies reported in internal audits that are also reported by the Auditor General and shall take appropriate action.

(h) The inspector general shall monitor the implementation of the state agency's response to any report on the state agency issued by the Auditor General or by the Office of Program Policy Analysis and Government Accountability. No later than 6 months after the Auditor General or the Office of Program Policy Analysis and Government Accountability publishes a report on the state agency, the inspector general shall provide a written response to the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General on the status of corrective actions taken. The inspector general shall file a copy of such response with the Legislative Auditing Committee.

(i) The inspector general shall develop long-term and annual audit plans based on the findings of periodic risk assessments. The plan, where appropriate, should include postaudit samplings of payments and accounts. The plan shall show the individual audits to be conducted during each year and related resources to be devoted to the respective audits. The Chief Financial Officer, to assist in fulfilling the responsibilities for examining, auditing, and settling accounts, claims, and demands pursuant to s. 17.03(1), and examining, auditing, adjusting, and settling accounts pursuant to s. 17.04, may use audits performed by the inspectors general and internal auditors. For state agencies under the



jurisdiction of the Governor, the audit plans shall be submitted to the Chief Inspector General. The plan shall be submitted to the agency head for approval. A copy of the approved plan shall be submitted to the Auditor General.

(7) In carrying out the investigative duties and responsibilities specified in this section, each inspector general shall initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. For these purposes, each inspector general shall:

(a) Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act pursuant to ss. 112.3187-112.31895.

(b) Receive and consider the complaints which do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate.

(c) Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, whenever the inspector general has reasonable grounds to believe there has been a violation of criminal law.

(d) Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This shall include freedom from any interference with investigations and timely access to records and other sources of information.

(e) At the conclusion of each investigation in which the subject of the investigation is a specific entity contracting with the state or an individual substantially affected as defined by this section, and if the investigation is not confidential or otherwise exempt from disclosure by law, the inspector general shall, consistent with s. 119.07(1), submit findings to the subject that is a specific entity contracting with the state or an individual substantially affected, who shall be advised in writing that they may submit a



written response within 20 working days after receipt of the findings. Such response and the inspector general's rebuttal to the response, if any, shall be included in the final investigative report.

(f) Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head, except for whistle-blower's investigations, which shall be conducted and reported pursuant to s. 112.3189.

(8)

(a) Except as provided in paragraph (b), each inspector general shall, not later than September 30 of each year, prepare an annual report summarizing the activities of the office during the immediately preceding state fiscal year.

(b) The inspector general of the Florida Housing Finance Corporation shall, not later than 90 days after the end of each fiscal year, prepare an annual report summarizing the activities of the office of inspector general during the immediately preceding fiscal year.

(c) The final reports prepared pursuant to paragraphs (a) and (b) shall be provided to the heads of the respective agencies and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General. Such reports shall include, but need not be limited to:

1. A description of activities relating to the development, assessment, and validation of performance measures.

2. A description of significant abuses and deficiencies relating to the administration of programs and operations of the agency disclosed by investigations, audits, reviews, or other activities during the reporting period.

3. A description of the recommendations for corrective action made by the inspector general during the reporting period with respect to significant problems, abuses, or deficiencies identified.



4. The identification of each significant recommendation described in previous annual reports on which corrective action has not been completed.

5. A summary of each audit and investigation completed during the reporting period.

(9) The inspector general in each state agency shall provide to the agency head, upon receipt, all written complaints concerning the duties and responsibilities in this section or any allegation of misconduct related to the office of the inspector general or its employees, if received from subjects of audits or investigations who are individuals substantially affected or entities contracting with the state, as defined in this section. For state agencies under the jurisdiction of the Governor, the inspector general shall also provide the complaint to the Chief Inspector General.

(10) Each agency inspector general shall, to the extent both necessary and practicable, include on his or her staff individuals with electronic data processing auditing experience.

History. — ss. 1, 2, ch. 86-131; s. 1, ch. 87-30; ss. 1, 4, ch. 90-247; s. 18, ch. 91-282; s. 2, ch. 91-285; s. 7, ch. 94-235; s. 1, ch. 94-340; s. 1315, ch. 95-147; s. 8, ch. 95-153; s. 8, ch. 95-312; s. 5, ch. 96-406; s. 15, ch. 98-73; s. 62, ch. 99-245; s. 2, ch. 2001-124; s. 21, ch. 2001-266; s. 68, ch. 2003-261; s. 2, ch. 2004-41; s. 1, ch. 2007-217; s. 1, ch. 2008-183; s. 1, ch. 2011-189; s. 2, ch. 2014-144; s. 5, ch. 2014-221; s. 1, ch. 2015-173; s. 1, ch. 2017-49; s. 14, ch. 2019-118.

§20.22 FS | DEPARTMENT OF MANAGEMENT SERVICES

There is created a Department of Management Services.

(1) The head of the Department of Management Services is the Secretary of Management Services, who shall be appointed by the Governor, subject to confirmation by the Senate, and shall serve at the pleasure of the Governor.

(2) The following divisions, programs, and services within the Department of Management Services are established:

- (a) Facilities Program.
- (b) The Florida Digital Service.
- (c) Workforce Program.
- (d)
 - 1. Support Program.
 - 2. Federal Property Assistance Program.
- (e) Administration Program.
- (f) Division of Administrative Hearings.
- (g) Division of Retirement.
- (h) Division of State Group Insurance.
- (i) Division of Telecommunications.

(3) The duties of the Chief Labor Negotiator shall be determined by the Secretary of Management Services, and must include, but need not be limited to, the representation of the Governor as the public employer in collective bargaining negotiations pursuant to the provisions of chapter 447.

History - s. 22, ch. 69-106; ss. 1, 2, ch. 70-146; s. 1, ch. 71-43; s. 2, ch. 71-286; s. 1, ch. 74-256; ss. 1, 2, ch. 75-70; s. 1, ch. 76-247; ss. 1, 2, 3, ch. 77-112; s. 5, ch. 83-92; s. 3, ch. 84-274; s. 25, ch. 85-349; s. 1, ch. 91-54; s. 4, ch. 92-279; s. 55, ch. 92-326; s. 4, ch. 94-113; s. 1, ch. 94-226; s. 20, ch. 94-249; s. 2, ch. 94-340; s. 1, ch. 97-92; s. 3, ch. 97-296; s. 6, ch. 99-2; s. 2, ch. 99-7; s. 1, ch. 99-255; s. 1, ch. 99-399; s. 1, ch. 2001-261; s. 2, ch. 2007-105; s. 55, ch. 2018-10; ss. 74, 82, 115, ch. 2019-116; s. 3, ch. 2019-118; s. 1, ch. 2020-161.



CHAPTER 25 FLORIDA STATUTES | FLORIDA

TITLE: V JUDICIAL BRANCH

CHAPTER: 25 SUPREME COURT

PART: --

SECTIONS: §25.075

NOTE:



§25.075 FS | UNIFORM CASE REPORTING SYSTEM

(1) The Supreme Court shall develop a uniform case reporting system, including a uniform means of reporting categories of cases, time required in the disposition of cases, and manner of disposition of cases.

(2) If any clerk willfully fails to report to the Supreme Court as directed by the court, the clerk shall be guilty of misfeasance in office.

History - (s. 5, ch. 72-406; s. 95, ch. 95-147; s. 2, ch. 2011-52.)



CHAPTER 27 FLORIDA STATUTES | FLORIDA

TITLE: V JUDICIAL BRANCH

CHAPTER: 27 STATE ATTORNEYS; PUBLIC DEFENDERS...

PART: III

SECTIONS: §27.52 only

NOTE:



§27.01 FS | STATE ATTORNEYS; NUMBER, ELECTION, TERMS

There shall be a state attorney for each of the judicial circuits, who shall be elected at the general election by the qualified electors of their respective judicial circuits as other state officials are elected, and who shall serve for a term of 4 years.

History - (s. 1, ch. 5120, 1903; GS 1796; ss. 1, chs. 6197, 6198, 1911; RGS 3026; CGL 4769; ss. 1, 5-A, ch. 17085, 1935; s. 1, ch. 26761, 1951.)



§27.02 FS | DUTIES BEFORE COURT

(1) The state attorney shall appear in the circuit and county courts within his or her judicial circuit and prosecute or defend on behalf of the state all suits, applications, or motions, civil or criminal, in which the state is a party, except as provided in chapters 39, 984, and 985. The intake procedures of chapters 39, 984, and 985 shall apply as provided therein. The state attorney shall appear in the circuit and county courts within his or her judicial circuit for the purpose of prosecuting violations of special laws and county or municipal ordinances punishable by incarceration if the prosecution is ancillary to a state prosecution or if the state attorney has contracted with the county or municipality for reimbursement for services rendered in accordance with s. 27.34(1).

(2) The state attorney, when complying with the discovery obligation pursuant to the applicable rule of procedure, may charge the defendant fees as provided for in s. 119.07(4), not to exceed 15 cents per page for a copy of a noncertified copy of a public record. However, these fees may be deferred if the defendant has been determined to be indigent as provided in s. 27.52.

History - (s. 3, ch. 1661, 1868; RS 1344; GS 1779; RGS 3005; CGL 4739; s. 5, ch. 72-404; s. 7, ch. 90-208; s. 116, ch. 95-147; s. 4, ch. 98-280; s. 6, ch. 2003-402; s. 4, ch. 2004-265; s. 31, ch. 2004-335.)



§27.14 FS | ASSIGNING STATE ATTORNEYS TO OTHER CIRCUITS

(1) If any state attorney is disqualified to represent the state in any investigation, case, or matter pending in the courts of his or her circuit or if, for any other good and sufficient reason, the Governor determines that the ends of justice would be best served, the Governor may, by executive order filed with the Department of State, either order an exchange of circuits or of courts between such state attorney and any other state attorney or order an assignment of any state attorney to discharge the duties of the state attorney with respect to one or more specified investigations, cases, or matters, specified in general in the executive order of the Governor. Any exchange or assignment of any state attorney to a particular circuit shall expire 12 months after the date of issuance, unless an extension is approved by order of the Supreme Court upon application of the Governor showing good and sufficient cause to extend such exchange or assignment.

(2) If the statewide prosecutor in charge of the Office of Statewide Prosecution determines that he or she is not qualified to represent the state in any investigation, case, or matter pending in the courts of the state or if a court of competent jurisdiction disqualifies him or her from representing the state, the Governor may, by executive order filed with the Department of State, order an assignment of any state attorney to discharge the duties of such prosecutor with respect to one or more specified investigations, cases, or matters, generally described in the order. The assignment of any state attorney shall expire 12 months after the date of issuance, unless an extension is approved by order of the Supreme Court upon application of the Governor showing good and sufficient cause to extend such assignment.

(3) Whenever a state attorney is exchanged or assigned, he or she may designate one or more of his or her assistant state attorneys and state attorney investigators to perform the duties assigned under the executive order.

History - (s. 2, ch. 5399, 1905; RGS 3009; CGL 4743; s. 1, ch. 69-1736; s. 4, ch. 73-334; s. 1, ch. 74-627; s. 1, ch. 75-193; s. 1, ch. 83-111; s. 2, ch. 85-179; s. 3, ch. 87-224; s. 123, ch. 95-147; s. 1, ch. 96-256.)



§27.52 FS | DETERMINATION OF INDIGENT STATUS

(1) APPLICATION TO THE CLERK. – A person seeking appointment of a public defender under s. 27.51 based upon an inability to pay must apply to the clerk of the court for a determination of indigent status using an application form developed by the Florida Clerks of Court Operations Corporation with final approval by the Supreme Court.

(a)The application must include, at a minimum, the following financial information:

1. Net income, consisting of total salary and wages, minus deductions required by law, including court-ordered support payments.
2. Other income, including, but not limited to, social security benefits, union funds, veterans' benefits, workers' compensation, other regular support from absent family members, public or private employee pensions, reemployment assistance or unemployment compensation, dividends, interest, rent, trusts, and gifts.
3. Assets, including, but not limited to, cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in a boat or a motor vehicle or in other tangible property.
4. All liabilities and debts.
5. If applicable, the amount of any bail paid for the applicant's release from incarceration and the source of the funds. The application must include a signature by the applicant which attests to the truthfulness of the information provided. The application form developed by the corporation must include notice that the applicant may seek court review of a clerk's determination that the applicant is not indigent, as provided in this section.



(b) An applicant shall pay a \$50 application fee to the clerk for each application for court-appointed counsel filed. The applicant shall pay the fee within 7 days after submitting the application. If the applicant does not pay the fee prior to the disposition of the case, the clerk shall notify the court, and the court shall:

1. Assess the application fee as part of the sentence or as a condition of probation; or
2. Assess the application fee pursuant to s. 938.29.

(c) Notwithstanding any provision of law, court rule, or administrative order, the clerk shall assign the first \$50 of any fees or costs paid by an indigent person as payment of the application fee. A person found to be indigent may not be refused counsel or other required due process services for failure to pay the fee.

(d) All application fees collected by the clerk under this section shall be transferred monthly by the clerk to the Department of Revenue for deposit in the Indigent Criminal Defense Trust Fund administered by the Justice Administrative Commission, to be used as appropriated by the Legislature. The clerk may retain 2 percent of application fees collected monthly for administrative costs from which the clerk shall remit \$0.20 from each application fee to the Department of Revenue for deposit into the General Revenue Fund prior to remitting the remainder to the Department of Revenue for deposit in the Indigent Criminal Defense Trust Fund.

(e)1. The clerk shall assist a person who appears before the clerk and requests assistance in completing the application, and the clerk shall notify the court if a person is unable to complete the application after the clerk has provided assistance.



2. If the person seeking appointment of a public defender is incarcerated, the public defender is responsible for providing the application to the person and assisting him or her in its completion and is responsible for submitting the application to the clerk on the person's behalf. The public defender may enter into an agreement for jail employees, pretrial services employees, or employees of other criminal justice agencies to assist the public defender in performing functions assigned to the public defender under this subparagraph.

(2) DETERMINATION BY THE CLERK.—The clerk of the court shall determine whether an applicant seeking appointment of a public defender is indigent based upon the information provided in the application and the criteria prescribed in this subsection.

(a) An applicant, including an applicant who is a minor or an adult tax-dependent person, is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services or if the person is receiving Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or Supplemental Security Income (SSI).

1. There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding \$5,000.



2. Notwithstanding the information that the applicant provides, the clerk may conduct a review of the property records for the county in which the applicant resides and the motor vehicle title records of the state to identify any property interests of the applicant under this paragraph. The clerk may evaluate and consider the results of the review in making a determination under this subsection. If the review is¹conducted, the clerk shall maintain the results of the review in a file with the application and provide the file to the court if the applicant seeks review under subsection (4) of the clerk's determination of indigent status.

(b) Based upon its review, the clerk shall make one of the following determinations:

1. The applicant is not indigent.
2. The applicant is indigent.

(c)1. If the clerk determines that the applicant is indigent, the clerk shall submit the determination to the office of the public defender and immediately file the determination in the case file.

2. If the public defender is unable to provide representation due to a conflict pursuant to s. 27.5303, the public defender shall move the court for withdrawal from representation and appointment of the office of criminal conflict and civil regional counsel.

(d) The duty of the clerk in determining whether an applicant is indigent shall be limited to receiving the application and comparing the information provided in the application to the criteria prescribed in this subsection. The determination of indigent status is a ministerial act of the clerk and not a decision based on further investigation or the exercise of independent judgment by the clerk. The clerk may contract with third parties to perform functions assigned to the clerk under this section.



(e) The applicant may seek review of the clerk's determination that the applicant is not indigent in the court having jurisdiction over the matter at the next scheduled hearing. If the applicant seeks review of the clerk's determination of indigent status, the court shall make a final determination as provided in subsection (4).

(3) APPOINTMENT OF COUNSEL ON INTERIM BASIS.—If the clerk of the court has not made a determination of indigent status at the time a person requests appointment of a public defender, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender, the office of criminal conflict and civil regional counsel, or private counsel on an interim basis.

(4) REVIEW OF CLERK'S DETERMINATION.—

(a) If the clerk of the court determines that the applicant is not indigent, and the applicant seeks review of the clerk's determination, the court shall make a final determination of indigent status by reviewing the information provided in the application against the criteria prescribed in subsection (2) and by considering the following additional factors:

1. Whether the applicant has been released on bail in an amount of \$5,000 or more.
2. Whether a bond has been posted, the type of bond, and who paid the bond.
3. Whether paying for private counsel in an amount that exceeds the limitations in s. 27.5304, or other due process services creates a substantial hardship for the applicant or the applicant's family.
4. Any other relevant financial circumstances of the applicant or the applicant's family.

(b) Based upon its review, the court shall make one of the following determinations and, if the applicant is indigent, shall appoint a public defender, the office of criminal conflict and civil regional counsel, or, if appropriate, private counsel:



1. The applicant is not indigent.
2. The applicant is indigent.

(5) INDIGENT FOR COSTS.—A person who is eligible to be represented by a public defender under s. 27.51 but who is represented by private counsel not appointed by the court for a reasonable fee as approved by the court or on a pro bono basis, or who is proceeding pro se, may move the court for a determination that he or she is indigent for costs and eligible for the provision of due process services, as prescribed by ss. 29.006 and 29.007, funded by the state.

(a) The person must file a written motion with the court and submit to the court:

1. The completed application prescribed in subsection (1).
2. In the case of a person represented by counsel, an affidavit attesting to the estimated amount of attorney's fees and the source of payment for these fees.

(b) The person shall arrange for service of a copy of the motion and attachments on the Justice Administrative Commission. The commission has standing to appear before the court to contest any motion to declare a person indigent for costs and may participate in a hearing on the motion by use of telephonic or other communication equipment.

(c) If the person did not apply for a determination of indigent status under subsection (1) in the same case and is not already liable for the application fee required under that subsection, he or she becomes liable for payment of the fee upon filing the motion with the court.

(d) In reviewing the motion, the court shall consider:

1. Whether the applicant applied for a determination of indigent status under subsection (1) and the outcome of such application.
2. The extent to which the person's income equals or exceeds the income criteria prescribed in subsection (2).



3. The additional factors prescribed in subsection (4).
4. Whether the applicant is proceeding pro se.
5. When the applicant retained private counsel.
6. The amount of any attorney's fees and who is paying the fees. There is a presumption that the applicant is not indigent for costs if the amount of attorney's fees exceeds \$5,000 for a noncapital case or \$25,000 for a capital case in which the state is seeking the death penalty. To overcome this presumption, the applicant has the burden to show through clear and convincing evidence that the fees are reasonable based on the nature and complexity of the case. In determining the reasonableness of the fees, the court shall consider the amount that a private court-appointed attorney paid by the state would receive for providing representation for that type of case.

(e) Based upon its review, the court shall make one of the following determinations:

1. The applicant is not indigent for costs.
2. The applicant is indigent for costs.

(f) The provision of due process services based upon a determination that a person is indigent for costs under this subsection must be effectuated pursuant to a court order, a copy of which the clerk shall provide to counsel representing the person, or to the person directly if he or she is proceeding pro se, for use in requesting payment of due process expenses through the Justice Administrative Commission. Private counsel representing a person declared indigent for costs shall execute the Justice Administrative Commission's contract for counsel representing persons determined to be indigent for costs. Private counsel representing a person declared indigent for costs may not receive state funds, either directly or on behalf of due process providers, unless the attorney has executed the contract required under this paragraph.



(g) Costs shall be reimbursed at the rates established under ss. 27.425 and 27.5305. To receive reimbursement of costs, either directly or on behalf of due process providers, private counsel representing a person declared indigent for costs shall comply with the procedures and requirements under this chapter governing billings by and compensation of private court-appointed counsel.

(h) The court may not appoint an attorney paid by the state based on a finding that the defendant is indigent for costs if the defendant has privately retained and paid counsel.

(i) A defendant who is found guilty of a criminal act by a court or jury or enters a plea of guilty or nolo contendere and who received due process services after being found indigent for costs under this subsection is liable for payment of due process costs expended by the state.

1. The attorney representing the defendant, or the defendant if he or she is proceeding pro se, shall provide an accounting to the court delineating all costs paid or to be paid by the state within 90 days after disposition of the case notwithstanding any appeals.

2. The court shall issue an order determining the amount of all costs paid by the state and any costs for which prepayment was waived under this section or s. 57.081. The clerk shall cause a certified copy of the order to be recorded in the official records of the county, at no cost. The recording constitutes a lien against the person in favor of the state in the county in which the order is recorded. The lien may be enforced in the same manner prescribed in s. 938.29.



3. If the attorney or the pro se defendant fails to provide a complete accounting of costs expended by the state and consequently costs are omitted from the lien, the attorney or pro se defendant may not receive reimbursement or any other form of direct or indirect payment for those costs if the state has not paid the costs. The attorney or pro se defendant shall repay the state for those costs if the state has already paid the costs. The clerk of the court may establish a payment plan under s. 28.246 and may charge the attorney or pro se defendant a one-time administrative processing charge under s. 28.24(26)(c).

(6) DUTIES OF PARENT OR LEGAL GUARDIAN.—A nonindigent parent or legal guardian of an applicant who is a minor or an adult tax-dependent person shall furnish the minor or adult tax-dependent person with the necessary legal services and costs incident to a delinquency proceeding or, upon transfer of such person for criminal prosecution as an adult pursuant to chapter 985, a criminal prosecution in which the person has a right to legal counsel under the Constitution of the United States or the Constitution of the State of Florida. The failure of a parent or legal guardian to furnish legal services and costs under this section does not bar the appointment of legal counsel pursuant to this section, s. 27.40, or s. 27.5303. When the public defender, the office of criminal conflict and civil regional counsel, a private court-appointed conflict counsel, or a private attorney is appointed to represent a minor or an adult tax-dependent person in any proceeding in circuit court or in a criminal proceeding in any other court, the parents or the legal guardian shall be liable for payment of the fees, charges, and costs of the representation even if the person is a minor being tried as an adult. Liability for the fees, charges, and costs of the representation shall be imposed in the form of a lien against the property of the nonindigent parents or legal guardian of the minor or adult tax-dependent person. The lien is enforceable as provided in s. 27.561 or s. 938.29.



(7) FINANCIAL DISCREPANCIES; FRAUD; FALSE INFORMATION. –

(a) If the court learns of discrepancies between the application or motion and the actual financial status of the person found to be indigent or indigent for costs, the court shall determine whether the public defender, office of criminal conflict and civil regional counsel, or private attorney shall continue representation or whether the authorization for any other due process services previously authorized shall be revoked. The person may be heard regarding the information learned by the court. If the court, based on the information, determines that the person is not indigent or indigent for costs, the court shall order the public defender, office of criminal conflict and civil regional counsel, or private attorney to discontinue representation and revoke the provision of any other authorized due process services.

(b) If the court has reason to believe that any applicant, through fraud or misrepresentation, was improperly determined to be indigent or indigent for costs, the matter shall be referred to the state attorney. Twenty-five percent of any amount recovered by the state attorney as reasonable value of the services rendered, including fees, charges, and costs paid by the state on the person's behalf, shall be remitted to the Department of Revenue for deposit into the Grants and Donations Trust Fund within the Justice Administrative Commission. Seventy-five percent of any amount recovered shall be remitted to the Department of Revenue for deposit into the General Revenue Fund.

(c) A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.



(History.—s. 3, ch. 63-409; s. 1, ch. 70-57; s. 4, ch. 73-334; s. 1, ch. 77-99; s. 1, ch. 77-378; s. 8, ch. 79-164; s. 3, ch. 80-376; s. 1, ch. 81-273; s. 139, ch. 95-147; s. 1, ch. 96-232; s. 4, ch. 97-107; s. 28, ch. 97-271; s. 6, ch. 98-280; s. 3, ch. 2001-122; s. 16, ch. 2003-402; s. 9, ch. 2004-265; s. 3, ch. 2005-236; s. 6, ch. 2007-62; s. 4, ch. 2008-111; s. 8, ch. 2010-162; s. 31, ch. 2012-30; s. 1, ch. 2012-100; s. 3, ch. 2012-123; s. 5, ch. 2019-58; s. 4, ch. 2020-2.)

(¹Note.—As amended by s. 3, ch. 2012-123. The amendment by s. 1, ch. 2012-100, used the words “completed by the clerk” instead of the word “conducted.”)



CHAPTER 30 FLORIDA STATUTES | FLORIDA

TITLE: V JUDICIAL BRANCH

CHAPTER: 30 SHERIFFS

PART: --

SECTIONS: §30.231 only

NOTE:



§30.231 FS | SHERIFFS' FEES FOR SERVICE OF SUMMONS, SUBPOENAS, AND EXECUTIONS

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

(a) All summons or writs except executions: \$40 for each summons or writ to be served.

(b) All writs except executions requiring a levy or seizure of property: \$50 in addition to the \$40 fee as stated in paragraph (a).

(c) Witness subpoenas: \$40 for each witness to be served.

(d) Executions:

1. Forty dollars for processing each writ of execution, regardless of the number of persons involved.

2. Fifty dollars for each levy.

a. A levy is considered made when any property or any portion of the property listed or unlisted in the instructions for levy is seized, or upon demand of the sheriff the writ is satisfied by the defendant in lieu of seizure. Seizure requires that the sheriff take actual possession, if practicable, or, alternatively, constructive possession of the property by order of the court.

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

c. When the instructions are for levy based upon personal property, one fee is allowed, unless the property is seized at different locations, conditional upon all of the items being advertised collectively and the sale being held at a single location. However, if the property seized cannot be sold at one location during the same sale as advertised, but requires separate sales at different locations, the sheriff may then impose a levy



fee for the property and sale at each location.

3. Forty dollars for advertisement of sale under process.

4. Forty dollars for each sale under process.

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

(2) For levying on property and for the seizure of persons, the sheriff shall be allowed anticipated expenses necessary for the execution of the process directing such levy or seizure and for the safekeeping of property and persons in the custody of the sheriff. A reasonable cost deposit to cover said fees and expenses in connection with the requested services shall be deposited in advance, by the party requesting the service, with the officer requested to perform the service.

(3) The party requesting service of process must furnish to the sheriff the original process, a certified copy of the process, or an electronic copy of the process, which was signed and certified by the clerk of court, and sufficient copies to be served on the parties receiving the service of process. The party requesting service of process shall provide the sheriff with the best known address where the person may be served. Failure to perfect service at the address provided does not excuse the sheriff from his or her duty to exercise due diligence in locating the person to be served.

(4) All fees collected under paragraphs (1) (a), (b), (c), and (d) shall be nonrefundable and shall be earned when each original request or service of process is made.

(5) All fees collected under the provisions of this section shall be paid monthly into the fine and forfeiture fund of the county.

(6) Fees under this section chargeable to the state or its agencies shall be those fees that were effective under this section on June 30, 2009.

History - (ss. 1, 2, ch. 63-41; s. 2, ch. 72-92; s. 4, ch. 79-396; s. 1, ch. 82-118; s. 1, ch. 83-255; s. 1, ch. 87-405; s. 1, ch. 94-170; s. 1330, ch. 95-147; s. 6, ch. 2000-258; s. 1, ch. 2009-215; s. 1, ch. 2011-159; s. 1, ch. 2014-207.)



CHAPTER 35 FLORIDA STATUTES | FLORIDA

TITLE: V JUDICIAL BRANCH

CHAPTER: 35 DISTRICT COURTS OF APPEAL

PART: --

SECTIONS: §35.22 only

NOTE:



§35.22 FS | CLERK OF DISTRICT COURT; ASSISTANTS; FILING FEES; TELECONFERENCING

(1) The clerk may employ deputies and clerical assistants as may be necessary. Their number and compensation shall be approved by the court, and paid from the annual appropriation for the district courts of appeal.

(2)

(a) The clerk, upon the filing of a certified copy of a notice of appeal or petition, shall charge and collect a filing fee of \$300 for each case docketed, and service charges as provided in s. 28.24 for copying, certifying or furnishing opinions, records, papers or other instruments and for other services. The state or its agencies, when appearing as appellant or petitioner, is exempt from the filing fee required in this subsection. The clerk shall collect from each attorney appearance pro hac vice a fee of \$100 for deposit as provided in this section.

(b) Upon the filing of a notice of cross-appeal, or a notice of joinder or motion to intervene as an appellant, cross-appellant, or petitioner, the clerk shall charge and collect a filing fee of \$295. The clerk shall remit the fee to the Department of Revenue for deposit into the General Revenue Fund. The state and its agencies are exempt from the filing fee required by this paragraph.

(3) The opinions of the district court of appeal may not be recorded, but the original as filed shall be preserved with the record in each case.

(4) The clerk may immediately, after a case is disposed of, supply the judge who tried the case and from whose order, judgment, or decree, appeal or other review is taken, a copy of all opinions, orders, or judgments filed in such case. Copies of opinions, orders, and decrees shall be furnished in all cases to each attorney of record and for publication in Florida reports to the authorized publisher without charge, and copies furnished to other law book publishers at one-half the regular statutory fee.



(5) The clerk of each district court of appeal shall deposit all fees collected in the State Treasury to the credit of the General Revenue Fund, except that \$50 of each \$300 filing fee collected shall be deposited into the State Courts Revenue Trust Fund to fund court operations as authorized in the General Appropriations Act. The clerk shall retain an accounting of each such remittance.

(6) The clerk of the district court of appeal may collect a fee from the parties to an appeal reflecting the actual cost of conducting the proceeding through teleconferencing if the parties have requested that an oral argument or mediation be conducted through teleconferencing. The fee collected for this purpose shall be used to offset the expenses associated with scheduling the teleconference and shall be deposited in the State Courts Revenue Trust Fund.

History.—s. 1, ch. 57-248; s. 1, ch. 73-305; s. 4, ch. 75-124; s. 1, ch. 78-349; s. 2, ch. 85-222; s. 3, ch. 85-249; s. 7, ch. 89-290; s. 1, ch. 93-161; s. 202, ch. 95-147; s. 16, ch. 95-312; s. 35, ch. 2004-265; s. 5, ch. 2006-23; s. 13, ch. 2008-111; s. 18, ch. 2010-162; s. 3, ch. 2011-133; s. 13, ch. 2014-182.



CHAPTER 38 FLORIDA STATUTES | FLORIDA

TITLE: V JUDICIAL BRANCH

CHAPTER: 38 **JUDGES:** GENERAL PROVISIONS

PART: --

SECTIONS: §38.10 only

NOTE:



§38.10 FS | DISQUALIFICATION OF JUDGE FOR PREJUDICE; APPLICATION; AFFIDAVITS; ETC.

Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith. However, when any party to any action has suggested the disqualification of a trial judge and an order has been made admitting the disqualification of such judge and another judge has been assigned and transferred to act in lieu of the judge so held to be disqualified, the judge so assigned and transferred is not disqualified on account of alleged prejudice against the party making the suggestion in the first instance, or in favor of the adverse party, unless such judge admits and holds that it is then a fact that he or she does not stand fair and impartial between the parties. If such judge holds, rules, and adjudges that he or she does stand fair and impartial as between the parties and their respective interests, he or she shall cause such ruling to be entered on the minutes of the court and shall proceed to preside as judge in the pending cause. The ruling of such judge may be assigned as error and may be reviewed as are other rulings of the trial court.

History - (s. 4, ch. 7852, 1919; RGS 2674; s. 1, ch. 9276, 1923; CGL 4341; s. 3, ch. 83-260; s. 212, ch. 95-147.)



CHAPTER 40 FLORIDA STATUTES | FLORIDA

TITLE: V JUDICIAL BRANCH

CHAPTER: 40 JURIES; PAYMENT OF JURORS AND DUE PROCESS COSTS

PART: --

SECTIONS: §40.011, §40.013, §40.022, §40.225, §40.23 only

NOTE:



§40.011 FS | JURY LISTS

(1) A clerk of the court shall generate a set of juror candidate lists derived from the source lists described in s. 40.01. The source name lists and the juror candidate lists shall be maintained as specified in this chapter and in accordance with the juror selection plan approved in s. 40.225.

(2) Pursuant to s. 40.01, the Department of Highway Safety and Motor Vehicles shall deliver quarterly to the clerk of the circuit court in each county a list of names of persons who reside in that county, who are citizens of the United States, who are legal residents of Florida, who are 18 years of age or older, and for whom the department has a driver license or identification card record.

(3) The clerk of the circuit court shall add to the list of licensed drivers and identification cardholders the name of any person who is 18 years of age or older and who is a citizen of the United States and a legal resident of this state and who indicates a desire to serve as a juror, but whose name does not appear on the department list, by requiring such person to execute an affidavit at the office of the clerk.

(4) The affidavit executed pursuant to subsection (3) must be in substantially the following form:

State of Florida

I, _____, do solemnly swear (or affirm) that I am ___ years of age; that I am a citizen of the United States and a legal resident of Florida and _____ County; that I personally make application for jury duty; that I am eligible to serve as a juror under the Constitution and laws of Florida; and that I reside at _____ (Address) _____.

	(Signature)
--	-------------

Sworn to and subscribed before me this _____ day of _____, _____ (year), at _____ County, Florida.

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(Signature and title of
officer administering
oath)



(5) Using the source name lists described in subsections (2) and (3), a clerk of court may generate juror candidate lists as necessary to ensure a valid and consistent juror selection process.

(a) The initial juror candidate list is derived from the name sources and shall be the master list from which prospective jurors are drawn for summons.

(b) The final juror candidate list shall contain a list of those persons, drawn from the initial candidate list as prescribed in this chapter, who are to be summoned as a pool for possible juror service.

History - (History —s. 2, ch. 91-235; s. 1, ch. 99-6; s. 1, ch. 2002-76; s. 7, ch. 2012-100; s. 7, ch. 2013-15.)

§40.013 FS | PERSONS DISQUALIFIED OR EXCUSED FROM JURY SERVICE

(1) No person who is under prosecution for any crime, or who has been convicted in this state, any federal court, or any other state, territory, or country of bribery, forgery, perjury, larceny, or any other offense that is a felony in this state or which if it had been committed in this state would be a felony, unless restored to civil rights, shall be qualified to serve as a juror.

(2)

(a) Neither the Governor, nor Lieutenant Governor, nor any Cabinet officer, nor clerk of court, or judge shall be qualified to be a juror.

(b) Any full-time federal, state, or local law enforcement officer or such entities' investigative personnel shall be excused from jury service unless such persons choose to serve.

(3) No person interested in any issue to be tried therein shall be a juror in any cause; but no person shall be disqualified from sitting in the trial of any suit in which the state or any county or municipal corporation is a party by reason of the fact that such person is a resident or taxpayer within the state or such county or municipal corporation.

(4) Any expectant mother and any parent who is not employed full time and who has custody of a child under 6 years of age, upon request, shall be excused from jury service.

(5) A presiding judge may, in his or her discretion, excuse a practicing attorney, a practicing physician, or a person who is physically infirm from jury service, except that no person shall be excused from service on a civil trial jury solely on the basis that the person is deaf or hearing impaired, if that person wishes to serve, unless the presiding judge makes a finding that consideration of the evidence to be presented requires auditory discrimination or that the timely progression of the trial will be considerably affected thereby. However, nothing in this subsection shall affect a litigant's right to exercise a peremptory challenge.

(6) A person may be excused from jury service upon a showing of hardship, extreme inconvenience, or public necessity.

(7) A person who was summoned and who reported as a prospective juror in any court in that person's county of residence within 1 year before the first day for which the person is being considered



for jury service is exempt from jury service for 1 year from the last day of service.

(8) A person 70 years of age or older shall be excused from jury service upon request. A person 70 years of age or older may also be permanently excused from jury service upon written request. A person who is permanently excused from jury service may subsequently request, in writing, to be included in future jury lists provided such person meets the qualifications required by this chapter.

(9) Any person who, because of mental illness, intellectual disability, senility, or other physical or mental incapacity, is permanently incapable of caring for himself or herself may be permanently excused from jury service upon request if the request is accompanied by a written statement to that effect from a physician licensed pursuant to chapter 458 or chapter 459.

(10) Any person who is responsible for the care of a person who, because of mental illness, intellectual disability, senility, or other physical or mental incapacity, is incapable of caring for himself or herself shall be excused from jury service upon request.

(11) Upon request, a full-time student between 18 and 21 years of age, inclusive, who is attending high school or any state university, private postsecondary educational institution, Florida College System institution, or career center shall be excused from that specific summons for jury service.

History - (s. 3, ch. 3010, 1877; s. 1, ch. 4015, 1891; RS 1149; GS 1572; RGS 2774; CGL 4451; s. 2, ch. 26848, 1951; s. 7, ch. 73-334; s. 1, ch. 77-102; s. 1, ch. 77-431; s. 4, ch. 79-235; s. 1, ch. 80-170; s. 1, ch. 83-210; s. 1, ch. 87-75; s. 1, ch. 92-8; s. 1, ch. 92-297; s. 1, ch. 93-125; s. 245, ch. 95-147; s. 1, ch. 97-199; s. 2, ch. 2013-162; s. 1, ch. 2016-52; s. 1, ch. 2020-57.)

Note - (Former s. 40.07.)



§40.022 FS | CLERK TO PURGE JURY SELECTION LISTS; RESTORATION

(1) To ensure that the juror candidates summoned satisfy the requirements of ss. 40.01 and 40.013, each clerk of the circuit court shall, upon receipt of the list of persons in the department database from the Department of Highway Safety and Motor Vehicles and at least once each month thereafter, purge the final juror candidate lists of, at a minimum, the names of those persons:

- (a) Adjudicated mentally incompetent;
- (b) Convicted of a felony; or
- (c) Deceased.

(2) The Department of Health shall furnish monthly to each clerk of the circuit court a list containing the name, address, age, race, and sex of each person 18 years of age or older and a resident of such clerk's county who died during the preceding calendar month.

(3) A person who has had his or her mental competency or civil rights restored and who wants to serve as a juror must execute the affidavit under oath as provided in s. 40.011.

(4) The Department of Law Enforcement shall establish procedures to enable the clerk of the court in each county to submit monthly the names and other identifying information about the persons selected for the jury list. The Department of Law Enforcement will search its databases and return an automated file of matching records that would assist the clerk in evaluating whether a member of the jury pool should be disqualified under the provisions of s. 40.013(1).

History - (s. 3, ch. 91-235; s. 1, ch. 91-424; s. 247, ch. 95-147; s. 2, ch. 99-8; s. 2, ch. 2002-76; s. 9, ch. 2012-100.)



§40.225 FS | JURY SELECTION PLAN

(1) Pursuant to s. 40.001, the chief judge of each circuit shall review and consent to the process for selecting juror candidates within his or her circuit. The clerk of court shall implement an automated electronic system in which the names of prospective jurors and other data pertinent thereto shall be maintained for the purpose of the drawing of juror candidates. This system shall be used as the exclusive method authorized by law for obtaining jury venires, if such drawing is by lot and at random and is approved by the Supreme Court as hereinafter provided. Subject to ss. 40.001 and 40.02, the clerk of the circuit court in each county shall have the administrative responsibility for developing the automated system of jury venire selection, obtaining approval for the juror candidate selection process, and operating and updating the system in accordance with this chapter and technical standards and procedures adopted by the Chief Justice.

(2) The clerk of the court, or the chief judge of the circuit if performing the duties of juror candidate selection as provided in s. 40.02, shall submit for approval a plan for the selection of juror candidates as required in this section to the Chief Justice. The plan must be reapproved whenever required by a change in the law, a change in the technical standards and procedures, or a change in the approved clerk-maintained hardware or software used in the automated system of jury venire selection. The proposed plan, if submitted by the clerk, must be approved by the chief judge of the judicial circuit in which the county is located, and must include a description of the equipment, methods, and mode of operation to be used, in a manner consistent with the technical standards and procedures established by the Chief Justice.

(3) The Chief Justice shall examine the proposed plan for compliance with applicable statutory requirements and with established technical standards and procedures. If the Chief Justice finds that the proposed plan is in compliance with applicable statutory requirements and established technical standards and procedures, will produce venires selected by lot and at random, and is otherwise feasible and practicable, an administrative order of approval of same shall be made and filed. Thereafter, the approved system for automated selection of jury venires shall be used in the county so authorized.

(4) This section does not require uniform equipment or methods throughout the state.



History - (s. 1, ch. 71-52; s. 6, ch. 79-235; s. 11, ch. 2012-100.)

Note - (Former s. 40.371.)



§40.23 FS | SUMMONING JURORS

(1) The clerk of the court shall generate a venire as prescribed in s. 40.221 and shall summon the persons named in such venire to attend court as jurors at least 14 days prior to the sitting of such court by mailing to each person so named in the venire a written notice, addressed to his or her place of residence, and placing such notice in the United States mail with sufficient postage to carry the same. Upon order of the court, jurors may be summoned with less than 14 days' notice.

(2) The jury service of any person who has been summoned may be postponed for a period not to exceed 6 months upon written or oral request. However, if either a public health emergency has been declared by the State Health Officer pursuant to s. 381.00315 or a state of emergency has been declared by the Governor pursuant to s. 252.36(2), the jury service of any person who has been summoned may be postponed for a period not to exceed 12 months upon written or oral request. The request may specify a date or period of time to which service is to be postponed and, if so, shall be given consideration when the assignment of the postponed date of jury service is made.

(3) Any person who is duly summoned to attend as a juror in any court and who fails to attend without any sufficient excuse shall pay a fine not to exceed \$100, which fine shall be imposed by the court to which the juror was summoned, and, in addition, such failure may be considered a contempt of court.

History - (s. 8, ch. 1628, 1868; RS 1155; GS 1585; RGS 2787; s. 1, ch. 9167, 1923; CGL 4464; s. 2, ch. 16410, 1933; s. 1, ch. 22766, 1945; s. 3, ch. 71-67; s. 7, ch. 79-235; s. 249, ch. 95-147; s. 8, ch. 2021-230)



CHAPTER 43 FLORIDA STATUTES | FLORIDA

TITLE: V JUDICIAL BRANCH

CHAPTER: 43 COURTS: GENERAL PROVISIONS

PART: --

SECTIONS: §43.26 only

NOTE:



§43.26 FS | CHIEF JUDGE OF CIRCUIT; SELECTION; POWERS

(1) The chief judge of each judicial circuit, who shall be a circuit judge, shall exercise administrative supervision over all the trial courts within the judicial circuit and over the judges and other officers of such courts.

(2) The chief judge of the circuit shall have the power:

(a) To assign judges to any division of the court and to determine the length of the assignment;

(b) To regulate use of courtrooms;

(c) To supervise dockets and calendars;

(d) To require attendance of state attorneys, public defenders, clerks, bailiffs, and all other officers of the court; and

(e) To do everything necessary to promote the prompt and efficient administration of justice in the courts over which he or she is chief judge.

(f) To delegate to the trial court administrator, by administrative order, the authority to bind the circuit in contract.

(g) To manage, operate, and oversee the jury system as provided in s. 40.001.

(3) The chief judge shall be responsible to the Chief Justice of the Supreme Court for such information as may be required by the Chief Justice, including, but not limited to, caseload, status of dockets, and disposition of cases in the courts over which he or she presides.

(4) Failure of any judge, clerk, prosecutor, public defender, or other officer of the court to comply with an order or directive of the chief judge under this section shall constitute neglect of duty for which such officer may be suspended from office as provided by law.

(5) There may be a trial court administrator who shall perform such duties as the chief judge may direct.

(6) The chief judge of each circuit is charged by s. 2(d), Art. V of the State Constitution and this section with the authority to promote the prompt and efficient administration of justice in the courts over which he or she is chief judge.



The clerks of court provide court-related functions which are essential to the orderly operation of the judicial branch. The chief judge of each circuit, after consultation with the clerk of court, shall determine the priority of services provided by the clerk of court to the trial court. The clerk of court shall manage the performance of such services in a method or manner that is consistent with statute, rule, or administrative order.

History - (s. 1, ch. 71-214; s. 1, ch. 77-119; s. 260, ch. 95-147; s. 65, ch. 2003-402; s. 30, ch. 2005-236.)



CHAPTER 47 FLORIDA STATUTES | FLORIDA

TITLE: VI CIVIL PRACTICE AND PROCEDURE

CHAPTER: 47 VENUE

PART: --

SECTIONS: §47.011 through §47.191

NOTE: Pertinent Parts Only!!!



§47.011 FS | WHERE ACTIONS MAY BE BEGUN

Actions shall be brought only in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located. This section shall not apply to actions against nonresidents.

(History.—s. 7, Nov. 21, 1829; s. 1, ch. 3721, 1887; RS 998; GS 1383; RGS 2579; CGL 4219; s. 24, ch. 57-1; s. 12, ch. 63-572; s. 6, ch. 65-1; s. 3, ch. 67-254; s. 11, ch. 73-334.)

(Note.—Former s. 46.01.)



§47.021 FS | ACTIONS AGAINST DEFENDANTS RESIDING IN DIFFERENT COUNTIES

Actions against two or more defendants residing in different counties may be brought in any county in which any defendant resides.

(History.—s. 10, Nov. 23, 1828; RS 999; GS 1384; RGS 2580; CGL 4220; s. 3, ch. 67-254; s. 11, ch. 73-334.)

(Note.—Former s. 46.02.)



§47.051 FS | ACTIONS AGAINST CORPORATIONS

Actions against domestic corporations shall be brought only in the county where such corporation has, or usually keeps, an office for transaction of its customary business, where the cause of action accrued, or where the property in litigation is located. Actions against foreign corporations doing business in this state shall be brought in a county where such corporation has an agent or other representative, where the cause of action accrued, or where the property in litigation is located.

(History.—s. 24, ch. 1639, 1869; RS 1001; s. 1, ch. 5221, 1903; GS 1386; RGS 2582; CGL 4222; s. 3, ch. 67-254; s. 11, ch. 73-334.)

(Note.—Former s. 46.04.)



§47.081 FS | MILITARY, NAVAL, OR OTHER SERVICE AS RESIDENCE

Any person in any branch of the Armed Forces of the United States, and the husband or the wife of any such person, if he or she is living within the borders of the state, shall be prima facie a resident of the state for the purpose of maintaining any action.

(History.—s. 1, ch. 21966, 1943; s. 3, ch. 67-254; s. 3, ch. 84-114.)

(Note.—Former s. 46.12.)



§47.091 FS | CHANGE OF VENUE; POWER TO GRANT

All courts have power and it is their duty to grant changes of venue as hereinafter provided. The order of transfer shall require the movant or, if the action was initially filed in the improper venue, the initially filing party to pay the filing fee required to file a new action in the court to which the action is moved. The payment of such filing fee shall be considered a transfer fee.

(History.—s. 1, ch. 373, 1851; RS 1077; GS 1469; RGS 2668; CGL 4335; s. 3, ch. 67-254; s. 1, ch. 89-84.)

(Note.—Former s. 53.01.)



§47.101 FS | CHANGE OF VENUE; APPLICATION

(1) If a party desires a change of venue he or she may move therefor stating the belief that he or she will not receive a fair trial in the court where the action is pending:

(a) Because the adverse party has an undue influence over the minds of the inhabitants of the county.

(b) Because movant is so odious to the inhabitants of the county that he or she could not receive a fair trial.

(2) Such motion shall be verified and filed not less than 10 days after the action is at issue unless good cause is shown for failure to so file. It shall set forth the facts on which the motion is based and be supported by affidavits of at least two reputable citizens of the county not of kin to the defendant or his or her attorney.

(History.—s. 37, Nov. 23, 1828; RS 1079; GS 1471; s. 10, ch. 7838; s. 2, ch. 7852, 1919; RGS 2670; CGL 4337; s. 3, ch. 67-254; s. 11, ch. 73-334; s. 267, ch. 95-147.)

(Note.—Former s. 53.03.)



§47.111 FS | CHANGE OF VENUE; DENIAL OF MOTION

The adverse party has the right to deny the allegations of the motion. The court shall hear the evidence on the motion.

(History.—s. 1, ch. 5372, 1905; GS 1474; s. 3, ch. 7852, 1919; RGS 2673; CGL 4340; s. 3, ch. 67-254.)

(Note.—Former s. 53.04.)



§47.121 FS | CHANGE OF VENUE; WHEN UNABLE TO OBTAIN JURY

A change of venue shall be granted when it appears impracticable to obtain a qualified jury in the county where the action is pending.

(History.—s. 1, ch. 4137, 1893; GS 1472; RGS 2671; CGL 4338; s. 3, ch. 67-254.)

(Note.—Former s. 53.05.)



**§47.122 FS | CHANGE OF VENUE; CONVENIENCE OF PARTIES OR WITNESSES
OR IN THE INTEREST OF JUSTICE**

For the convenience of the parties or witnesses or in the interest of justice, any court of record may transfer any civil action to any other court of record in which it might have been brought.

(History.—s. 1, ch. 69-83.)



§47.131 FS | CHANGE OF VENUE; SECOND CHANGE, WHEN PERMITTED

When it appears to the court to which an action has been transferred by a change of venue that any of the grounds for change of venue exist in the county to which the action has been transferred, the court may order a second change of venue, but it shall not be made to the county from which it was originally transferred.

(History.—s. 2, ch. 4394, 1895; GS 1473; RGS 2672; CGL 4339; s. 3, ch. 67-254; s. 11, ch. 73-334.)

(Note.—Former s. 53.06.)



§47.141 FS | CHANGE OF VENUE; SAME JURISDICTION

The order granting change of venue shall transfer the action to a court of the same jurisdiction in another county. If the judge of such court is disqualified, some other court shall be selected.

(History.—RS 1077; s. 1, ch. 4724, 1899; GS 1475; RGS 2675; CGL 4342; s. 12, ch. 17171, 1935; s. 3, ch. 67-254; s. 11, ch. 73-334.)

(Note.—Former s. 53.07.)



§47.151 FS | CHANGE OF VENUE; TO ANOTHER COUNTY OF CIRCUIT

If a change of venue is granted on grounds other than the disqualification or prejudice of a judge of the circuit court, the action may be removed to any other county in the same circuit.

(History.—s. 1, ch. 4394, 1895; GS 1476; RGS 2676; CGL 4343; s. 3, ch. 67-254.)

(Note.—Former s. 53.08.)



§47.172 FS | CHANGE OF VENUE; TRANSFER OF PAPERS, ETC.

On a change of venue the clerk of the court in which such action was pending shall transmit all papers filed in said action, a certified copy of all entries of record in the progress docket and a copy of the order of transfer to the court to which the action is transferred, which court has full power to hear and determine the action.

(History.—s. 3, ch. 373, 1851; RS 1077; GS 1479; RGS 2679; CGL 4346; s. 3, ch. 67-254.)

(Note.—Former s. 53.10.)



§47.181 FS | CHANGE OF VENUE; TESTIMONY OF WITNESSES

After a change of venue, testimony of witnesses residing in the county from which the action is removed may be taken in the manner provided for taking testimony of witnesses residing out of the county in which any action is pending.

(History.—s. 2, ch. 373, 1851; RS 1077; GS 1480; RGS 2680; CGL 4347; s. 3, ch. 67-254.)

(Note.—Former s. 53.11.)



§47.191 FS | CHANGE OF VENUE; PAYMENT OF COSTS

No change of venue shall be granted except on condition that the movant, unless otherwise provided by the order of transfer, shall pay all costs that have accrued in the action including the required transfer fee. No change is effective until the costs are paid.

(History.—s. 3, ch. 373, 1851; RS 1077; GS 1478; RGS 2678; CGL 4345; s. 3, ch. 67-254; s. 2, ch. 89-84.)

(Note.—Former s. 53.12.)



CHAPTER 48 FLORIDA STATUTES | FLORIDA

TITLE: VI CIVIL PRACTICE AND PROCEDURE

CHAPTER: 48 PROCESS AND SERVICE OF PROCESS

PART: --

SECTIONS: §48.011 through §48.31

NOTE: Entire Chapter



§48.011 FS | PROCESS; HOW DIRECTED

Summons, subpoenas, and other process in civil actions run throughout the state. All process except subpoenas shall be directed to all and singular the sheriffs of the state.

History - s. 1, ch. 4397, 1895; GS 1397; RGS 2594; CGL 4234; s. 2, ch. 29737, 1955; s. 4, ch. 67-254.

Note - Former s. 47.08.



§48.021 FS | PROCESS; BY WHOM SERVED

(1) All process shall be served by the sheriff of the county where the person to be served is found, except nonenforceable civil process, criminal witness subpoenas, and criminal summonses may be served by a special process server appointed by the sheriff as provided in this section or by a certified process server as provided in s. 48.27. Civil witness subpoenas shall be served by any person authorized by rules of civil procedure.

(2)

(a) The sheriff of each county may, in his or her discretion, establish an approved list of natural persons designated as special process servers. The sheriff shall add to such list the names of those natural persons who have met the requirements provided for in this section. Each natural person whose name has been added to the approved list is subject to annual recertification and reappointment by the sheriff. The sheriff shall prescribe an appropriate form for application for appointment. A reasonable fee for the processing of the application shall be charged.

(b) A person applying to become a special process server shall:

1. Be at least 18 years of age.
2. Have no mental or legal disability.
3. Be a permanent resident of the state.
4. Submit to a background investigation that includes the right to obtain and review the criminal record of the applicant.
5. Obtain and file with the application a certificate of good conduct that specifies there is no pending criminal case against the applicant and that there is no record of any felony conviction, nor a record of a misdemeanor involving moral turpitude or dishonesty, with respect to the applicant within the past 5 years.



6. Submit to an examination testing the applicant's knowledge of the laws and rules regarding the service of process. The content of the examination and the passing grade thereon, and the frequency and the location at which the examination is offered must be prescribed by the sheriff. The examination must be offered at least once annually.

7. Take an oath that the applicant will honestly, diligently, and faithfully exercise the duties of a special process server.

(c) The sheriff may prescribe additional rules and requirements directly related to subparagraphs (b)1.-7. regarding the eligibility of a person to become a special process server or to have his or her name maintained on the list of special process servers.

(d) An applicant who completes the requirements of this section must be designated as a special process server provided that the sheriff of the county has determined that the appointment of special process servers is necessary or desirable. Each special process server must be issued an identification card bearing his or her identification number, printed name, signature and photograph, and an expiration date. Each identification card must be renewable annually upon proof of good standing.

(e) The sheriff shall have the discretion to revoke an appointment at any time that he or she determines a special process server is not fully and properly discharging the duties as a special process server. The sheriff shall institute a program to determine whether the special process servers appointed as provided for in this section are faithfully discharging their duties pursuant to such appointment, and a reasonable fee may be charged for the costs of administering such program.

(3) A special process server appointed in accordance with this section shall be authorized to serve process in only the county in which the sheriff who appointed him or her resides and may charge a reasonable fee for his or her services.



(4) Any special process server shall be disinterested in any process he or she serves; and if the special process server willfully and knowingly executes a false return of service or otherwise violates the oath of office, he or she shall be guilty of a felony of the third degree, punishable as provided for in s. 775.082, s. 775.083, or s. 775.084, and shall be permanently barred from serving process in Florida.

History - s. 16, July 22, 1845; s. 1, ch. 3721, 1887; RS 1014, 1246; GS 1401; RGS 2598; s. 1, ch. 9318, 1923; CGL 4238; s. 4, ch. 67-254; s. 12, ch. 73-334; s. 1, ch. 76-263; s. 2, ch. 79-396; s. 1, ch. 81-266; s. 1, ch. 88-135; s. 2, ch. 91-306; s. 268, ch. 95-147; s. 16, ch. 98-34; s. 2, ch. 2009-215; s. 3, ch. 2019-67.

Note - Former s. 47.12.



§48.031 FS | SERVICE OF PROCESS GENERALLY; SERVICE OF WITNESS SUBPOENAS

(1)

(a) Service of original process is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents. Minors who are or have been married shall be served as provided in this section.

(b) An employer, when contacted by an individual authorized to serve process, shall allow the authorized individual to serve an employee in a private area designated by the employer. An employer who fails to comply with this paragraph commits a noncriminal violation, punishable by a fine of up to \$1,000.

(2)

(a) Substituted service on the spouse of the person to be served may be made at any place in a county by an individual authorized under s. 48.021 or s. 48.27 to serve process in that county, if the cause of action is not an adversarial proceeding between the spouse and the person to be served, if the spouse requests such service or the spouse is also a party to the action, and if the spouse and person to be served reside together in the same dwelling, regardless of whether such dwelling is located in the county where substituted service is made.

(b) Substituted service may be made on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge of the business at the time of service if two attempts to serve the owner are made at the place of business.



(3)

(a) The service of process of witness subpoenas, whether in criminal cases or civil actions, shall be made as provided in subsection (1). However, service of a subpoena on a witness in a civil traffic case, a criminal traffic case, a misdemeanor case, or a second degree or third degree felony may be made by United States mail directed to the witness at the last known address, and the service must be mailed at least 7 days prior to the date of the witness's required appearance. Failure of a witness to appear in response to a subpoena served by United States mail that is not certified may not be grounds for finding the witness in contempt of court.

(b) A criminal witness subpoena commanding the witness to appear for a court appearance may be posted by a person authorized to serve process at the witness's residence if three attempts to serve the subpoena, made at different times of the day or night on different dates, have failed. A criminal witness subpoena commanding the witness to appear for a deposition may be posted by a person authorized to serve process at the witness's residence if one attempt to serve the subpoena has failed. The subpoena must be posted at least 5 days before the date of the witness's required appearance.

(4)

(a) Service of a criminal witness subpoena upon a law enforcement officer or upon any federal, state, or municipal employee called to testify in an official capacity in a criminal case may be made as provided in subsection (1) or by delivery to a designated supervisory or administrative employee at the witness's place of employment if the agency head or highest ranking official at the witness's place of employment has designated such employee to accept such service. However, no such designated employee is required to accept service:

1. For a witness who is no longer employed by the agency at that place of employment;
2. If the witness is not scheduled to work prior to the date the witness is required to appear; or



3. If the appearance date is less than 5 days from the date of service.

The agency head or highest ranking official at the witness's place of employment may determine the days of the week and the hours that service may be made at the witness's place of employment.

(b) Service may also be made in accordance with subsection (3) provided that the person who requests the issuance of the criminal witness subpoena shall be responsible for mailing the subpoena in accordance with that subsection and for making the proper return of service to the court.

(5) A person serving process shall place, on the first page only of at least one of the processes served, the date and time of service, his or her initials or signature, and, if applicable, his or her identification number. The person requesting service or the person authorized to serve the process shall file the return-of-service form with the court.

(6)

(a) If the only address for a person to be served which is discoverable through public records is a private mailbox, a virtual office, or an executive office or mini suite, substituted service may be made by leaving a copy of the process with the person in charge of the private mailbox, virtual office, or executive office or mini suite, but only if the process server determines that the person to be served maintains a mailbox, a virtual office, or an executive office or mini suite at that location.

(b) For purposes of this subsection, the term "virtual office" means an office that provides communications services, such as telephone or facsimile services, and address services without providing dedicated office space, and where all communications are routed through a common receptionist. The term "executive office or mini suite" means an office that provides communications services, such as telephone and facsimile services, a dedicated office space, and other supportive services, and where all communications are routed through a common receptionist.



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

History - s. 5, Nov. 23, 1828; RS 1015; GS 1402; RGS 2599; CGL 4246; s. 6, ch. 29737, 1955; s. 4, ch. 67-254; s. 1, ch. 75-34; s. 3, ch. 79-396; s. 3, ch. 82-118; s. 1, ch. 84-339; s. 7, ch. 85-80; s. 2, ch. 87-405; s. 6, ch. 93-208; s. 269, ch. 95-147; s. 1, ch. 95-172; s. 1, ch. 98-410; s. 1, ch. 2004-273; s. 2, ch. 2011-159; s. 2, ch. 2014-207; s. 1, ch. 2015-51; s. 1, ch. 2015-59; s. 1, ch. 2016-207; s. 4, ch. 2019-67.

Note - Former s. 47.13.



§48.041 FS | SERVICE ON MINOR

(1) Process against a minor who has never been married shall be served:

(a) By serving a parent or guardian of the minor as provided for in s. 48.031 or, when there is a legal guardian appointed for the minor, by serving the guardian as provided for in s. 48.031.

(b) By serving the guardian ad litem or other person, if one is appointed by the court to represent the minor. Service on the guardian ad litem is unnecessary when he or she appears voluntarily or when the court orders the appearance without service of process on him or her.

(2) In all cases heretofore adjudicated in which process was served on a minor as prescribed by any law heretofore existing, the service was lawfully made, and no proceeding shall be declared irregular or illegal if a guardian ad litem appeared for the minor.

History - ss. 1, 2, ch. 7853, 1919; CGL 4273, 4274; s. 1, ch. 19175, 1939; CGL 1940 Supp. 4274(13); s. 2, ch. 29737, 1955; s. 4, ch. 67-254; s. 1, ch. 84-176; s. 270, ch. 95-147.

Note - Former ss. 47.23-47.25.



§48.042 FS | SERVICE ON INCOMPETENT

(1) Process against an incompetent shall be served:

(a) By serving two copies of the process to the person who has care or custody of the incompetent or, when there is a legal guardian appointed for the incompetent, by serving the guardian as provided in s. 48.031.

(b) By serving the guardian ad litem or other person, if one is appointed by the court to represent the incompetent. Service on the guardian ad litem is unnecessary when he or she appears voluntarily or when the court orders the appearance without service of process on him or her.

(2) In all cases heretofore adjudicated in which process was served on an incompetent as prescribed by any law heretofore existing, the service was lawfully made, and no proceeding shall be declared irregular or illegal if a guardian ad litem appeared for the incompetent.

History - s. 2, ch. 84-176; s. 271, ch. 95-147.



§48.051 FS | SERVICE ON STATE PRISONERS

Process against a state prisoner shall be served on the prisoner.

History - s. 30, ch. 3883, 1889; RS 3043; GS 4124; RGS 6243; CGL 8580; s. 1, ch. 21992, 1943; s. 1, ch. 25041, 1949; s. 44, ch. 57-121; s. 4, ch. 67-254; ss. 19, 35, ch. 69-106; s. 13, ch. 71-355.

Note - Former s. 47.26.



§48.061 FS | SERVICE ON PARTNERSHIPS AND LIMITED PARTNERSHIPS

(1) Process against a partnership shall be served on any partner and is as valid as if served on each individual partner. If a partner is not available during regular business hours to accept service on behalf of the partnership, he or she may designate an employee to accept such service. After one attempt to serve a partner or designated employee has been made, process may be served on the person in charge of the partnership during regular business hours. After service on any partner, plaintiff may proceed to judgment and execution against that partner and the assets of the partnership. After service on a designated employee or other person in charge, plaintiff may proceed to judgment and execution against the partnership assets but not against the individual assets of any partner.

(2) Process against a domestic limited partnership may be served on any general partner or on the agent for service of process specified in its certificate of limited partnership or in its certificate as amended or restated and is as valid as if served on each individual member of the partnership. After service on a general partner or the agent, the plaintiff may proceed to judgment and execution against the limited partnership and all of the general partners individually. If a general partner cannot be found in this state and service cannot be made on an agent because of failure to maintain such an agent or because the agent cannot be found or served with the exercise of reasonable diligence, service of process may be effected by service upon the Secretary of State as agent of the limited partnership as provided for in s. 48.181. Service of process may be made under ss. 48.071 and 48.21 on limited partnerships.

(3) Process against a foreign limited partnership may be served on any general partner found in the state or on any agent for service of process specified in its application for registration and is as valid as if served on each individual member of the partnership. If a general partner cannot be found in this state and an agent for service of process has not been appointed or, if appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence, service of process may be effected by service upon the Secretary of State as agent of the limited partnership as provided for in s. 48.181, or process may be served as provided in ss. 48.071 and 48.21.



History - s. 13, Nov. 23, 1828; RS 1017; GS 1404; RGS 2601; CGL 4248; s. 4, ch. 67-254; s. 74, ch. 86-263; s. 3, ch. 87-405; s. 272, ch. 95-147.

Note - Former s. 47.15.



§48.062 FS | SERVICE ON A LIMITED LIABILITY COMPANY

(1) Process against a limited liability company, domestic or foreign, may be served on the registered agent designated by the limited liability company under chapter 605. A person attempting to serve process pursuant to this subsection may serve the process on any employee of the registered agent during the first attempt at service even if the registered agent is a natural person and is temporarily absent from his or her office.

(2) If service cannot be made on a registered agent of the limited liability company because of failure to comply with chapter 605 or because the limited liability company does not have a registered agent, or if its registered agent cannot with reasonable diligence be served, process against the limited liability company, domestic or foreign, may be served:

(a) On a member of a member-managed limited liability company;

(b) On a manager of a manager-managed limited liability company; or

(c) If a member or manager is not available during regular business hours to accept service on behalf of the limited liability company, he, she, or it may designate an employee of the limited liability company to accept such service. After one attempt to serve a member, manager, or designated employee has been made, process may be served on the person in charge of the limited liability company during regular business hours.

(3) If, after reasonable diligence, service of process cannot be completed under subsection (1) or subsection (2), service of process may be effected by service upon the Secretary of State as agent of the limited liability company as provided for in s. 48.181.

(4) If the address for the registered agent, member, or manager is a residence, a private mailbox, a virtual office, or an executive office or mini suite, service on the domestic or foreign limited liability company may be made by serving the registered agent, member, or manager in accordance with s. 48.031.

(5) This section does not apply to service of process on insurance companies.

History - s. 3, ch. 2013-180; s. 13, ch. 2015-148; s. 5, ch. 2019-67.



§48.071 FS | SERVICE ON AGENTS OF NONRESIDENTS DOING BUSINESS IN THE STATE

When any natural person or partnership not residing or having a principal place of business in this state engages in business in this state, process may be served on the person who is in charge of any business in which the defendant is engaged within this state at the time of service, including agents soliciting orders for goods, wares, merchandise or services. Any process so served is as valid as if served personally on the nonresident person or partnership engaging in business in this state in any action against the person or partnership arising out of such business. A copy of such process with a notice of service on the person in charge of such business shall be sent forthwith to the nonresident person or partnership by registered or certified mail, return receipt requested. An affidavit of compliance with this section shall be filed before the return day or within such further time as the court may allow.

History - s. 1, ch. 59-280; s. 4, ch. 67-254; s. 273, ch. 95-147.

Note - Former s. 47.161.



§48.081 FS | SERVICE ON CORPORATION

(1) Process against any private corporation, domestic or foreign, may be served:

(a) On the president or vice president, or other head of the corporation;

(b) In the absence of any person described in paragraph (a), on the cashier, treasurer, secretary, or general manager;

(c) In the absence of any person described in paragraph (a) or paragraph (b), on any director; or

(d) In the absence of any person described in paragraph (a), paragraph (b), or paragraph (c), on any officer or business agent residing in the state.

(2) If a foreign corporation has none of the foregoing officers or agents in this state, service may be made on any agent transacting business for it in this state.

(3)

(a) As an alternative to all of the foregoing, process may be served on the agent designated by the corporation under s. 48.091. However, if service cannot be made on a registered agent because of failure to comply with s. 48.091, service of process shall be permitted on any employee at the corporation's principal place of business or on any employee of the registered agent. A person attempting to serve process pursuant to this paragraph may serve the process on any employee of the registered agent during the first attempt at service even if the registered agent is temporarily absent from his or her office.

(b) If the address for the registered agent, officer, director, or principal place of business is a residence, a private mailbox, a virtual office, or an executive office or mini suite, service on the corporation may be made by serving the registered agent, officer, or director in accordance with s. 48.031.

(4) This section does not apply to service of process on insurance companies.



(5) When a corporation engages in substantial and not isolated activities within this state, or has a business office within the state and is actually engaged in the transaction of business therefrom, service upon any officer or business agent while on corporate business within this state may personally be made, pursuant to this section, and it is not necessary in such case that the action, suit, or proceeding against the corporation shall have arisen out of any transaction or operation connected with or incidental to the business being transacted within the state.

History - s. 8, Nov. 21, 1829; s. 2, Feb. 11, 1834; s. 1, ch. 3590, 1885; RS 1019; GS 1406; s. 1, ch. 6908, 1915; s. 1, ch. 7752, 1918; RGS 2604; CGL 4251; s. 1, ch. 57-97; ss. 1, 2, 3, ch. 59-46; s. 4, ch. 67-254; s. 1, ch. 67-399; s. 6, ch. 79-396; s. 7, ch. 83-216; s. 1, ch. 84-2; s. 2, ch. 2004-273; s. 3, ch. 2011-159; s. 3, ch. 2014-207; s. 3, ch. 2016-207.

Note - Former s. 47.17.



§48.091 FS | CORPORATIONS; DESIGNATION OF REGISTERED AGENT AND REGISTERED OFFICE

(1) Every Florida corporation and every foreign corporation now qualified or hereafter qualifying to transact business in this state shall designate a registered agent and registered office in accordance with part I of chapter 607.

(2) Every corporation shall keep the registered office open from 10 a.m. to 12 noon each day except Saturdays, Sundays, and legal holidays, and shall keep one or more registered agents on whom process may be served at the office during these hours. The corporation shall keep a sign posted in the office in some conspicuous place designating the name of the corporation and the name of its registered agent on whom process may be served.

History - ss. 1, 2, 11, 13, 14, ch. 11829, 1927; CGL 4257, 4258, 4267, 4269, 4270; ss. 1, 2, ch. 20842, 1941; s. 1, ch. 29873, 1955; s. 24, ch. 57-1; s. 1, ch. 63-241; s. 1, ch. 65-32; s. 4, ch. 67-254; s. 2, ch. 67-562; ss. 10, 35, ch. 69-106; s. 3, ch. 71-114; s. 1, ch. 71-269; s. 28, ch. 71-377; s. 1, ch. 76-209; s. 36, ch. 2014-209.

Note - Former ss. 47.34, 47.35, 47.42, 47.43, 47.45, 47.50.



§48.092 FS | SERVICE ON FINANCIAL INSTITUTIONS

Service on financial institutions must be made in accordance with s. 655.0201.

History - s. 1, ch. 2016-180.



§48.101 FS | SERVICE ON DISSOLVED CORPORATIONS

Process against the directors of any corporation which was dissolved before July 1, 1990, as trustees of the dissolved corporation shall be served on one or more of the directors of the dissolved corporation as trustees thereof and binds all of the directors of the dissolved corporation as trustees thereof. Process against any other dissolved corporation shall be served in accordance with s. 48.081.

History - s. 1, ch. 19064, 1939; CGL 1940 Supp. 4251(1); s. 4, ch. 67-254; s. 3, ch. 97-230.

Note - Former s. 47.22.



§48.111 FS | SERVICE ON PUBLIC AGENCIES AND OFFICERS

(1) Process against any municipal corporation, agency, board, or commission, department, or subdivision of the state or any county which has a governing board, council, or commission or which is a body corporate shall be served:

(a) On the president, mayor, chair, or other head thereof; and in his or her absence;

(b) On the vice president, vice mayor, or vice chair, or in the absence of all of the above;

(c) On any member of the governing board, council, or commission.

(2) Process against any public agency, board, commission, or department not a body corporate or having a governing board or commission shall be served on the public officer being sued or the chief executive officer of the agency, board, commission, or department.

(3) In any suit in which the Department of Revenue or its successor is a party, process against the department shall be served on the executive director of the department. This procedure is to be in lieu of any other provision of general law, and shall designate said department to be the only state agency or department to be so served.

History - ss. 1, 2, ch. 3242, 1881; RS 581, 1021, 1022; GS 774, 1408, 1409; RGS 1494, 2606, 2607; CGL 2203, 4253, 4254; s. 4, ch. 67-254; s. 1, ch. 73-73; s. 8, ch. 83-216; s. 274, ch. 95-147.

Note - Former ss. 47.20, 47.21.



§48.121 FS | SERVICE ON THE STATE

When the state has consented to be sued, process against the state shall be served on the state attorney or an assistant state attorney for the judicial circuit within which the action is brought and by sending two copies of the process by registered or certified mail to the Attorney General. The state may serve motions or pleadings within 40 days after service is made. This section is not intended to authorize the joinder of the Attorney General or a state attorney as a party in such suit or prosecution.

History - s. 2, ch. 29724, 1955; s. 4, ch. 67-254; s. 7, ch. 2001-266.

Note - Former s. 69.18.



§48.131 FS | SERVICE ON ALIEN PROPERTY CUSTODIAN

In every action or proceeding in any court or before any administrative board involving real, personal, or mixed property, or any interest therein, when service of process or notice is required or directed to be made upon any person, firm or corporation located, or believed to be located, within any country or territory in the possession of or under the control of any country between which and the United States a state of war exists, in addition to the giving of the notice or service of process, a copy of the notice or process shall be sent by registered or certified mail to the alien property custodian, addressed to him or her at Washington, District of Columbia; but failure to mail a copy of the notice or process to the alien property custodian does not invalidate the action or proceeding.

History - s. 1, ch. 22074, 1943; s. 4, ch. 67-254; s. 275, ch. 95-147.

Note - Former s. 47.51.



§48.141 FS | SERVICE ON LABOR UNIONS

Process against labor organizations shall be served on the president or other officer, business agent, manager or person in charge of the business of such labor organization.

History - s. 4, ch. 67-254.



§48.151 FS | SERVICE ON STATUTORY AGENTS FOR CERTAIN PERSONS

(1) When any law designates a public officer, board, agency, or commission as the agent for service of process on any person, firm, or corporation, service of process thereunder shall be made by leaving one copy of the process with the public officer, board, agency, or commission or in the office thereof, or by mailing one copy to the public officer, board, agency, or commission. The public officer, board, agency, or commission so served shall retain a record copy and promptly send the copy served, by registered or certified mail, to the person to be served as shown by his or her or its records. Proof of service on the public officer, board, agency, or commission shall be by a notice accepting the process which shall be issued by the public officer, board, agency, or commission promptly after service and filed in the court issuing the process. The notice accepting service shall state the date upon which the copy of the process was mailed by the public officer, board, agency, or commission to the person being served and the time for pleading prescribed by the rules of procedure shall run from this date. The service is valid service for all purposes on the person for whom the public officer, board, agency, or commission is statutory agent for service of process.

(2) This section does not apply to substituted service of process on nonresidents.

(3) The Chief Financial Officer or his or her assistant or deputy or another person in charge of the office is the agent for service of process on all insurers applying for authority to transact insurance in this state, all licensed nonresident insurance agents, all nonresident disability insurance agents licensed pursuant to s. 626.835, any unauthorized insurer under s. 626.906 or s. 626.937, domestic reciprocal insurers, fraternal benefit societies under chapter 632, warranty associations under chapter 634, prepaid limited health service organizations under chapter 636, and persons required to file statements under s. 628.461. As an alternative to service of process made by mail or personal service on the Chief Financial Officer, on his or her assistant or deputy, or on another person in charge of the office, the **Department of Financial Services** may create an Internet-based transmission system to accept service of process by electronic transmission of documents.



(4) The Director of the Office of Financial Regulation of the Financial Services Commission is the agent for service of process for any issuer as defined in s. 517.021, or any dealer, investment adviser, or associated person registered with that office, for any violation of any provision of chapter 517.

(5) The Secretary of State is the agent for service of process for any retailer, dealer or vendor who has failed to designate an agent for service of process as required under s. 212.151 for violations of chapter 212.

(6) For purposes of this section, records may be retained as paper or electronic copies.

History - s. 4, ch. 67-254; ss. 10, 12, 13, 35, ch. 69-106; s. 14, ch. 71-355; s. 29, ch. 71-377; s. 2, ch. 76-100; s. 16, ch. 79-164; s. 4, ch. 83-215; s. 1, ch. 87-316; s. 10, ch. 90-248; s. 276, ch. 95-147; s. 100, ch. 2003-261; s. 4, ch. 2011-159; s. 1, ch. 2016-132.



§48.161 FS | METHOD OF SUBSTITUTED SERVICE ON NONRESIDENT

(1) When authorized by law, substituted service of process on a nonresident or a person who conceals his or her whereabouts by serving a public officer designated by law shall be made by leaving a copy of the process with a fee of \$8.75 with the public officer or in his or her office or by mailing the copies by certified mail to the public officer with the fee. The service is sufficient service on a defendant who has appointed a public officer as his or her agent for the service of process. Notice of service and a copy of the process shall be sent forthwith by registered or certified mail by the plaintiff or his or her attorney to the defendant, and the defendant's return receipt and the affidavit of the plaintiff or his or her attorney of compliance shall be filed on or before the return day of the process or within such time as the court allows, or the notice and copy shall be served on the defendant, if found within the state, by an officer authorized to serve legal process, or if found without the state, by a sheriff or a deputy sheriff of any county of this state or any duly constituted public officer qualified to serve like process in the state or jurisdiction where the defendant is found. The officer's return showing service shall be filed on or before the return day of the process or within such time as the court allows. The fee paid by the plaintiff to the public officer shall be taxed as cost if he or she prevails in the action. The public officer shall keep a record of all process served on him or her showing the day and hour of service.

(2) If any person on whom service of process is authorized under subsection (1) dies, service may be made on his or her administrator, executor, curator, or personal representative in the same manner.

(3) This section does not apply to persons on whom service is authorized under s. 48.151.

(4) The public officer may designate some other person in his or her office to accept service.

History - ss. 2, 4, ch. 17254, 1935; CGL 1936 Supp. 4274 (8), (10); s. 1, ch. 59-382; s. 4, ch. 67-254; s. 4, ch. 71-114; s. 1, ch. 71-308; s. 57, ch. 90-132; s. 277, ch. 95-147.

Note - Former ss. 47.30, 47.32.



§48.171 FS | SERVICE ON NONRESIDENT MOTOR VEHICLE OWNERS, ETC.

Any nonresident of this state, being the operator or owner of any motor vehicle, who accepts the privilege extended by the laws of this state to nonresident operators and owners, of operating a motor vehicle or of having it operated, or of permitting any motor vehicle owned, or leased, or controlled by him or her to be operated with his or her knowledge, permission, acquiescence, or consent, within the state, or any resident of this state, being the licensed operator or owner of or the lessee, or otherwise entitled to control any motor vehicle under the laws of this state, who becomes a nonresident or conceals his or her whereabouts, by the acceptance or licensure and by the operation of the motor vehicle, either in person, or by or through his or her servants, agents, or employees, or by persons with his or her knowledge, acquiescence, and consent within the state constitutes the Secretary of State his or her agent for the service of process in any civil action begun in the courts of the state against such operator or owner, lessee, or other person entitled to control of the motor vehicle, arising out of or by reason of any accident or collision occurring within the state in which the motor vehicle is involved.

History - s. 1, ch. 17254, 1935; CGL 1936 Supp. 4274(7); ss. 1, 2, ch. 25003, 1949; s. 4, ch. 67-254; s. 278, ch. 95-147.

Note - Former s. 47.29.



§48.181 FS | SERVICE ON NONRESIDENT ENGAGING IN BUSINESS IN STATE

(1) The acceptance by any person or persons, individually or associated together as a copartnership or any other form or type of association, who are residents of any other state or country, and all foreign corporations, and any person who is a resident of the state and who subsequently becomes a nonresident of the state or conceals his or her whereabouts, of the privilege extended by law to nonresidents and others to operate, conduct, engage in, or carry on a business or business venture in the state, or to have an office or agency in the state, constitutes an appointment by the persons and foreign corporations of the Secretary of State of the state as their agent on whom all process in any action or proceeding against them, or any of them, arising out of any transaction or operation connected with or incidental to the business or business venture may be served. The acceptance of the privilege is signification of the agreement of the persons and foreign corporations that the process against them which is so served is of the same validity as if served personally on the persons or foreign corporations.

(2) If a foreign corporation has a resident agent or officer in the state, process shall be served on the resident agent or officer.

(3) Any person, firm, or corporation which sells, consigns, or leases by any means whatsoever tangible or intangible personal property, through brokers, jobbers, wholesalers, or distributors to any person, firm, or corporation in this state is conclusively presumed to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business or business venture in this state.

History - s. 1, ch. 6224, 1911; RGS 2602; CGL 4249; s. 1, ch. 26657, 1951; s. 1, ch. 57-747; s. 4, ch. 67-254; s. 2, ch. 84-2; s. 279, ch. 95-147.

Note - Former s. 47.16.



§48.183 FS | SERVICE ON PROCESS IN ACTION FOR POSSESSION OF PREMISES

(1) In an action for possession of any residential premises, including those under chapters 83, 723, and 513, or nonresidential premises, if the tenant cannot be found in the county or there is no person 15 years of age or older residing at the tenant's usual place of abode in the county after at least two attempts to obtain service as provided above in this subsection, summons may be served by attaching a copy to a conspicuous place on the property described in the complaint or summons. The minimum time delay between the two attempts to obtain service shall be 6 hours. Nothing herein shall be construed as prohibiting service of process on a tenant as is otherwise provided on defendants in civil cases.

(2) If a landlord causes or anticipates causing a defendant to be served with a summons and complaint solely by attaching them to some conspicuous place on the property described in the complaint or summons, the landlord shall provide the clerk of the court with an additional copy of the complaint and a prestamped envelope addressed to the defendant at the premises involved in the proceeding. The clerk of the court shall immediately mail the copy of the summons and complaint by first-class mail, note the fact of mailing in the docket, and file a certificate in the court file of the fact and date of mailing. Service shall be effective on the date of posting or mailing, whichever occurs later, and at least 5 days must elapse from the date of service before a judgment for final removal of the defendant may be entered.

History - s. 4, ch. 73-330; s. 1, ch. 75-34; s. 1, ch. 83-39; s. 2, ch. 84-339; s. 4, ch. 87-405; s. 1, ch. 88-379; s. 3, ch. 94-170; s. 2, ch. 98-410; s. 1, ch. 2003-263.



§48.19 FS | SERVICE ON NONRESIDENTS OPERATING AIRCRAFT OR WATERCRAFT IN THE STATE

The operation, navigation, or maintenance by a nonresident of an aircraft or a boat, ship, barge, or other watercraft in the state, either in person or through others, and the acceptance thereby by the nonresident of the protection of the laws of this state for the aircraft or watercraft, or the operation, navigation, or maintenance by a nonresident of an aircraft or a boat, ship, barge, or other watercraft in the state, either in person or through others, other than under the laws of the state, or any person who is a resident of the state and who subsequently becomes a nonresident or conceals his or her whereabouts, constitutes an appointment by the nonresident of the Secretary of State as the agent of the nonresident or concealed person on whom all process may be served in any action or proceeding against the nonresident or concealed person growing out of any accident or collision in which the nonresident or concealed person may be involved while, either in person or through others, operating, navigating, or maintaining an aircraft or a boat, ship, barge, or other watercraft in the state. The acceptance by operation, navigation, or maintenance in the state of the aircraft or watercraft is signification of the nonresident's or concealed person's agreement that process against him or her so served shall be of the same effect as if served on him or her personally.

History - s. 1, ch. 59-148; s. 1, ch. 65-118; s. 4, ch. 67-254; s. 2, ch. 70-90; s. 280, ch. 95-147.

Note - Former s. 47.162.



§48.193 FS | ACTS SUBJECTING PERSON TO JURISDICTION OF COURTS OF STATE

(1)

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

1. Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.
2. Committing a tortious act within this state.
3. Owning, using, possessing, or holding a mortgage or other lien on any real property within this state.
4. Contracting to insure a person, property, or risk located within this state at the time of contracting.
5. With respect to a proceeding for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintaining a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.
6. Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either:
 - a. The defendant was engaged in solicitation or service activities within this state; or



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

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

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

9. Entering into a contract that complies with s. 685.102.

(b) Notwithstanding any other provision of this subsection, an order issued, or a penalty or fine imposed, by an agency of another state is not enforceable against any person or entity incorporated or having its principal place of business in this state if the other state does not provide a mandatory right of review of the agency decision in a state court of competent jurisdiction.

(2) A defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity.

(3) Service of process upon any person who is subject to the jurisdiction of the courts of this state as provided in this section may be made by personally serving the process upon the defendant outside this state, as provided in s. 48.194. The service shall have the same effect as if it had been personally served within this state.

(4) If a defendant in his or her pleadings demands affirmative relief on causes of action unrelated to the transaction forming the basis of the plaintiff's claim, the defendant shall thereafter in that action be subject to the jurisdiction of the court for any cause of action, regardless of its basis, which the plaintiff may by amendment assert against the defendant.



(5) Nothing contained in this section limits or affects the right to serve any process in any other manner now or hereinafter provided by law.

History - s. 1, ch. 73-179; s. 3, ch. 84-2; s. 3, ch. 88-176; s. 3, ch. 93-250; s. 281, ch. 95-147; s. 1, ch. 2013-164; s. 2, ch. 2016-207.



§48.194 FS | PERSONAL SERVICE OUTSIDE STATE

(1) Except as otherwise provided herein, service of process on persons outside of this state shall be made in the same manner as service within this state by any person authorized to serve process in the state where the person is served. No order of court is required. A court may consider the return-of-service form described in s. 48.21, or any other competent evidence, in determining whether service has been properly made. Service of process on persons outside the United States may be required to conform to the provisions of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

(2) Where in rem or quasi in rem relief is sought in a foreclosure proceeding as defined by s. 702.09, service of process on a person outside of this state where the address of the person to be served is known may be made by registered mail as follows:

(a) The party's attorney or the party, if the party is not represented by an attorney, shall place a copy of the original process and the complaint, petition, or other initial pleading or paper and, if applicable, the order to show cause issued pursuant to s. 702.10 in a sealed envelope with adequate postage addressed to the person to be served.

(b) The envelope shall be placed in the mail as registered mail.

(c) Service under this subsection shall be considered obtained upon the signing of the return receipt by the person allowed to be served by law.

(3) If the registered mail which is sent as provided for in subsection (2) is returned with an endorsement or stamp showing "refused," the party's attorney or the party, if the party is not represented by an attorney, may serve original process by first-class mail. The failure to claim registered mail is not refusal of service within the meaning of this subsection. Service of process pursuant to this subsection shall be perfected as follows:

(a) The party's attorney or the party, if the party is not represented by an attorney, shall place a copy of the original process and the complaint, petition, or other initial pleading or paper and, if applicable, the order to show cause issued pursuant to s. 702.10 in a



sealed envelope with adequate postage addressed to the person to be served.

(b) The envelope shall be mailed by first-class mail with the return address of the party's attorney or the party, if the party is not represented by an attorney, on the envelope.

(c) Service under this subsection shall be considered obtained upon the mailing of the envelope.

(4) If service of process is obtained under subsection (2), the party's attorney or the party, if the party is not represented by an attorney, shall file an affidavit setting forth the return of service. The affidavit shall state the nature of the process; the date on which the process was mailed by registered mail; the name and address on the envelope containing the process; the fact that the process was mailed registered mail return receipt requested; who signed the return receipt, if known, and the basis for that knowledge; and the relationship between the person who signed the receipt and the person to be served, if known, and the basis for that knowledge. The return receipt from the registered mail shall be attached to the affidavit. If service of process is perfected under subsection (3), the party's attorney or the party, if the party is not represented by an attorney, shall file an affidavit setting forth the return of service. The affidavit shall state the nature of the process; the date on which the process was mailed by registered mail; the name and address on the envelope containing the process that was mailed by registered mail; the fact that the process was mailed registered mail and was returned with the endorsement or stamp "refused"; the date, if known, the process was "refused"; the date on which the process was mailed by first-class mail; the name and address on the envelope containing the process that was mailed by first-class mail; and the fact that the process was mailed by first-class mail with a return address of the party or the party's attorney on the envelope. The return envelope from the attempt to mail process by registered mail and the return envelope, if any, from the attempt to mail the envelope by first-class mail shall be attached to the affidavit.

History - s. 1, ch. 73-179; s. 4, ch. 93-250; s. 7, ch. 97-278; s. 6, ch. 2019-67.



§48.195 FS | SERVICE OF FOREIGN PROCESS

(1) The service of process issued by a court of a state other than Florida may be made by the sheriffs of this state in the same manner as service of process issued by Florida courts. The provisions of this section shall not be interpreted to permit a sheriff to take any action against personal property, real property, or persons.

(2) An officer serving such foreign process shall be deemed as acting in the performance of his or her duties for the purposes of ss. 30.01, 30.02, 843.01, and 843.02, but shall not be held liable as provided in s. 839.19 for failure to execute any process delivered to him or her for service.

(3) The sheriffs shall be entitled to charge fees for the service of foreign process, and the fees shall be the same as fees for the service of comparable process for the Florida courts. When the service of foreign process requires duties to be performed in excess of those required by Florida courts, the sheriff may perform the additional duties and may collect reasonable additional compensation for the additional duties performed.

History - s. 7, ch. 79-396; s. 36, ch. 81-259; s. 11, ch. 91-45; s. 282, ch. 95-147.



§48.196 FS | SERVICE OF PROCESS IN CONNECTION WITH ACTIONS UNDER THE FLORIDA INTERNATIONAL COMMERCIAL ARBITRATION ACT

(1) Any process in connection with the commencement of an action before the courts of this state under chapter 684, the Florida International Commercial Arbitration Act, shall be served:

(a) In the case of a natural person, by service upon:

1. That person;
2. Any agent for service of process appointed in, or pursuant to, any applicable agreement or by operation of any law of this state; or
3. Any person authorized by the law of the jurisdiction where process is being served to accept service for that person.

(b) In the case of any person other than a natural person, by service upon:

1. Any agent for service of process appointed in, or pursuant to, any applicable agreement or by operation of any law of this state;
2. Any person authorized by the law of the jurisdiction where process is being served to accept service for that person; or
3. Any person, whether natural or otherwise and wherever located, who by operation of law or internal action is an officer, business agent, director, general partner, or managing agent or director of the person being served; or
4. Any partner, joint venturer, member or controlling shareholder, wherever located, of the person being served, if the person being served does not by law or internal action have any officer, business agent, director, general partner, or managing agent or director.

(2) The process served under subsection (1) shall include a copy of the application to the court together with all attachments thereto and shall be served in the following manner:

(a) In any manner agreed upon, whether service occurs within or without this state;



(b) If service is within this state:

1. In the manner provided in ss. 48.021 and 48.031, or
2. If applicable under their terms, in the manner provided in ss. 48.161, 48.183, 48.23, or chapter 49; or

(c) If service is outside this state:

1. By personal service by any person authorized to serve process in the jurisdiction where service is being made or by any person appointed to do so by any competent court in that jurisdiction;
2. In any other manner prescribed by the laws of the jurisdiction where service is being made for service in an action before a local court of competent jurisdiction;
3. In the manner provided in any applicable treaty to which the United States is a party;
4. In the manner prescribed by order of the court;
5. By any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the person being served; or
6. If applicable, in the manner provided in chapter 49.

(3) No order of the court is required for service of process outside this state. The person serving process shall make proof of service to the court by affidavit or as prescribed by the law of the jurisdiction where process is being served or as prescribed in an order of the court. Such proof shall be made prior to expiration of the time within which the person served must respond. If service is by mail, the proof of service shall state the date and place of mailing and shall include a receipt signed by the addressee or other evidence of delivery satisfactory to the court.

History - s. 2, ch. 86-266; s. 1, ch. 2010-60; s. 2, ch. 2015-59.



§48.197 FS | SERVICE IN A FOREIGN COUNTRY

(1) Service of process may be effectuated in a foreign country upon a party, other than a minor or an incompetent person, as provided in any of the following:

(a) By any internationally agreed-upon means of service reasonably calculated to give actual notice of the proceedings, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

(b) If there is no internationally agreed-upon means of service, or if an international agreement allows but does not specify other means, by a method reasonably calculated to give actual notice of the proceedings:

1. As prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

2. As the foreign authority directs in response to a letter rogatory or letter of request; or

3. Unless prohibited by the foreign country's law, by:

a. If serving an individual, delivering a copy of the summons and of the complaint to the individual personally; or

b. Using any form of mail that the clerk addresses and sends to the party and which requires a signed receipt.

(c) Pursuant to motion and order by the court, by other means, including electronically by e-mail or other technology, which the party seeking service shows is reasonably calculated to give actual notice of the proceedings and is not prohibited by international agreement, as the court orders.

(2) Service of process may be effectuated in a foreign country upon a minor or an incompetent person in the manner prescribed by subparagraph (1) (b)1., subparagraph (1) (b)2., or paragraph (1) (c).

History - (s. 15, ch. 2022-190.)



§48.20 FS | SERVICE OF PROCESS ON SUNDAY

Service or execution on Sunday of any writ, process, warrant, order, or judgment is void and the person serving or executing, or causing it to be served or executed, is liable to the party aggrieved for damages for so doing as if he or she had done it without any process, writ, warrant, order, or judgment. If affidavit is made by the person requesting service or execution that he or she has good reason to believe that any person liable to have any such writ, process, warrant, order, or judgment served on him or her intends to escape from this state under protection of Sunday, any officer furnished with an order authorizing service or execution by the trial court judge may serve or execute such writ, process, warrant, order, or judgment on Sunday, and it is as valid as if it had been done on any other day.

History - s. 44, Nov. 23, 1828; RS 1025; GS 1413; RGS 2611; CGL 4275; s. 4, ch. 67-254; s. 12, ch. 73-334; s. 283, ch. 95-147; s. 5, ch. 2004-11.

Note - Former s. 47.46.



§48.21 FS | RETURN OF EXECUTION OF PROCESS

(1) Each person who effects service of process shall note on a return-of-service form attached thereto the date and time when it comes to hand, the date and time when it is served, the manner of service, the name of the person on whom it was served, and, if the person is served in a representative capacity, the position occupied by the person. The return-of-service form must list all pleadings and documents served and be signed by the person who effects the service of process. However, a person who is authorized under this chapter to serve process and who effects such service of process may sign the return-of-service form using an electronic signature.

(2) A failure to state the facts or to include the signature required by subsection (1) invalidates the service, but the return is amendable to state the facts or to include the signature at any time on application to the court from which the process issued. On amendment, service is as effective as if the return had originally stated the omitted facts or included the signature. A failure to state all the facts in or to include the signature on the return shall subject the person effecting service to a fine not exceeding \$10, in the court's discretion.

History - s. 18, Nov. 23, 1828; RS 1026; GS 1414; RGS 2612; CGL 4276; s. 4, ch. 67-254; s. 4, ch. 94-170; s. 1356, ch. 95-147; s. 3, ch. 2004-273; s. 5, ch. 2011-159; s. 7, ch. 2019-67.

Note - Former s. 47.47.



§48.22 FS | CUMULATIVE TO OTHER LAWS

All provisions of this chapter are cumulative to other provisions of law or rules of court about service of process, and all other provisions about service of process are cumulative to this chapter.

History - s. 9, ch. 11829, 1927; CGL 4265; s. 7, ch. 22858, 1945; s. 4, ch. 67-254.

Note - Former ss. 47.33, 47.44.



§48.23 FS | LIS PENDENS

(1)

(a) An action in any of the state or federal courts in this state operates as a lis pendens on any real or personal property involved therein or to be affected thereby only if a notice of lis pendens is recorded in the official records of the county where the property is located and such notice has not expired pursuant to subsection (2) or been withdrawn or discharged.

(b)

1. An action that is filed for specific performance or that is not based on a duly recorded instrument has no effect, except as between the parties to the proceeding, on the title to, or on any lien upon, the real or personal property unless a notice of lis pendens has been recorded and has not expired or been withdrawn or discharged.

2. Any person acquiring for value an interest in, or lien upon, the real or personal property during the pendency of an action described in subparagraph 1., other than a party to the proceeding or the legal successor by operation of law, or personal representative, heir, or devisee of a deceased party to the proceeding, shall take such interest or lien exempt from all claims against the property that were filed in such action by the party who failed to record a notice of lis pendens or whose notice expired or was withdrawn or discharged, and from any judgment entered in the proceeding, notwithstanding the provisions of s. 695.01, as if such person had no actual or constructive notice of the proceeding or of the claims made therein or the documents forming the causes of action against the property in the proceeding.

(c)

1. A notice of lis pendens must contain the following:

a. The names of the parties.



b. The date of the institution of the action, the date of the clerk's electronic receipt, or the case number of the action.

c. The name of the court in which it is pending.

d. A description of the property involved or to be affected.

e. A statement of the relief sought as to the property.

2. In the case of any notice of lis pendens filed on the same date as the pleading upon which the notice is based, the clerk's notation of the date of receipt on the notice shall satisfy the requirement that the notice contain the date of the institution of the action.

(d) Except for the interest of persons in possession or easements of use, the recording of such notice of lis pendens, provided that during the pendency of the proceeding it has not expired pursuant to subsection (2) or been withdrawn or discharged, constitutes a bar to the enforcement against the property described in the notice of all interests and liens, including, but not limited to, federal tax liens and levies, unrecorded at the time of recording the notice unless the holder of any such unrecorded interest or lien moves to intervene in such proceedings within 30 days after the recording of the notice and the court ultimately grants the motion. If the holder of any such unrecorded interest or lien does not intervene in the proceedings and if such proceedings are prosecuted to a judicial sale of the property described in the notice, the property shall be forever discharged from all such unrecorded interests and liens. A valid recorded notice of lis pendens of such proceedings prosecuted to a judicial sale remains in effect through the recording of any instrument transferring title to the property pursuant to the final judgment unless it expires, is withdrawn, or it is otherwise discharged. If the notice of lis pendens expires or is withdrawn or discharged, the expiration, withdrawal, or discharge of the notice does not affect the validity of any unrecorded interest or lien.



(2) A notice of lis pendens is not effectual for any purpose beyond 1 year from the commencement of the action and will expire at that time, unless the relief sought is disclosed by the pending pleading to be founded on a duly recorded instrument or on a lien claimed under part I of chapter 713 against the property involved, except when the court extends the time of expiration on reasonable notice and for good cause. The court may impose such terms for the extension of time as justice requires.

(3) When the pending pleading does not show that the action is founded on a duly recorded instrument or on a lien claimed under part I of chapter 713 or when the action no longer affects the subject property, the court shall control and discharge the recorded notice of lis pendens as the court would grant and dissolve injunctions.

(4) This section applies to all actions now or hereafter pending in any state or federal courts in this state, but the period of time specified in subsection (2) does not include the period of pendency of any action in an appellate court.

History - RS 1220; GS 1649; RGS 2853; ss. 1-3, ch. 12081, 1927; CGL 4550; s. 1, ch. 24336, 1947; s. 4, ch. 67-254; s. 1, ch. 67-567; s. 1, ch. 85-308; s. 19, ch. 90-109; s. 5, ch. 93-250; s. 1, ch. 2009-39; s. 1, ch. 2019-67.

Note - Former s. 47.49.

§48.25 FS | SHORT TITLE

Sections 48.25-48.31 may be cited as the "Florida Certified Process Server Act."

History - s. 2, ch. 88-135.



§48.27 FS | CERTIFIED PROCESS SERVERS

(1) The chief judge of each judicial circuit may establish an approved list of natural persons designated as certified process servers. The chief judge may periodically add to such list the names of those natural persons who have met the requirements for certification provided for in s. 48.29. Each person whose name has been added to the approved list is subject to annual recertification and reappointment by the chief judge of a judicial circuit. The chief judge shall prescribe appropriate forms for application for inclusion on the list of certified process servers. A reasonable fee for the processing of any such application must be charged.

(2)

(a) The addition of a person's name to the list authorizes him or her to serve initial nonenforceable civil process on a person found within the circuit where the process server is certified when a civil action has been filed against such person in the circuit court or in a county court in the state. Upon filing an action in circuit or county court, a person may select from the list for the circuit where the process is to be served one or more certified process servers to serve initial nonenforceable civil process.

(b) The addition of a person's name to the list authorizes him or her to serve criminal witness subpoenas and criminal summonses on a person found within the circuit where the process server is certified. The state in any proceeding or investigation by a grand jury or any party in a criminal action, prosecution, or proceeding may select from the list for the circuit where the process is to be served one or more certified process servers to serve the subpoena or summons.

(3) Nothing herein shall be interpreted to exclude a sheriff or deputy or other person appointed by the sheriff pursuant to s. 48.021 from serving process or to exclude a person from appointment by individual motion and order to serve process in any civil action in accordance with Rule 1.070(b) of the Florida Rules of Civil Procedure.

History - s. 3, ch. 88-135; s. 5, ch. 97-96; s. 3, ch. 98-410; s. 3, ch. 2009-215.



§48.29 FS | CERTIFICATION OF PROCESS SERVERS

(1) The circuit court administrator and the clerk of the court in each county in the circuit shall maintain the list of process servers approved by the chief judge of the circuit. Such list may, from time to time, be amended or modified to add or delete a person's name in accordance with the provisions of this section or s. 48.31.

(2) A person seeking the addition of his or her name to the approved list in any circuit shall submit an application to the chief judge of the circuit or to the chief judge's designee on a form prescribed by the court. A reasonable fee for processing the application may be charged.

(3) A person applying to become a certified process server shall:

- (a) Be at least 18 years of age;
- (b) Have no mental or legal disability;
- (c) Be a permanent resident of the state;
- (d) Submit to a background investigation, which shall include the right to obtain and review the criminal record of the applicant;
- (e) Obtain and file with his or her application a certificate of good conduct, which specifies there is no pending criminal case against the applicant and that there is no record of any felony conviction, nor a record of a conviction of a misdemeanor involving moral turpitude or dishonesty, with respect to the applicant within the past 5 years;
- (f) If prescribed by the chief judge of the circuit, submit to an examination testing his or her knowledge of the laws and rules regarding the service of process. The content of the examination and the passing grade thereon, and the frequency and location at which such examination shall be offered shall be prescribed by the chief judge of the circuit. The examination, if any, shall be offered at least once annually;



(g) Execute a bond in the amount of \$5,000 with a surety company authorized to do business in this state for the benefit of any person wrongfully injured by any malfeasance, misfeasance, neglect of duty, or incompetence of the applicant, in connection with his or her duties as a process server. Such bond shall be renewable annually; and

(h) Take an oath of office that he or she will honestly, diligently, and faithfully exercise the duties of a certified process server.

(4) The chief judge of the circuit may, from time to time by administrative order, prescribe additional rules and requirements regarding the eligibility of a person to become a certified process server or to have his or her name maintained on the list of certified process servers.

(5)

(a) An applicant who completes the requirements set forth in this section and whose name the chief judge by order enters on the list of certified process servers shall be designated as a certified process server.

(b) Each certified process server shall be issued an identification card bearing his or her identification number, printed name, signature and photograph, the seal of the circuit court, and an expiration date. Each identification card shall be renewable annually upon proof of good standing and current bond.

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

(7)

(a) A person may qualify as a certified process server and have his or her name entered on the list in more than one circuit.

(b) A process server whose name is on a list of certified process servers in more than one circuit may serve process on a person found in any such circuits.



(c) A certified process server may serve foreign process in any circuit in which his or her name has been entered on the list of certified process servers for that circuit.

(8) A certified process server may charge a fee for his or her services.

History - s. 4, ch. 88-135; s. 284, ch. 95-147; s. 4, ch. 2004-273; s. 6, ch. 2011-159.



§48.31 FS | REMOVAL OF CERTIFIED PROCESS SERVERS; FALSE RETURN OF SERVICE

(1) A certified process server may be removed from the list of certified process servers for any malfeasance, misfeasance, neglect of duty, or incompetence, as provided by court rule.

(2) A certified process server must be disinterested in any process he or she serves; if the certified process server willfully and knowingly executes a false return of service, he or she is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and shall be permanently barred from serving process in this state.

History - s. 5, ch. 88-135; s. 285, ch. 95-147.



CHAPTER 57 FLORIDA STATUTES | FLORIDA

TITLE: VI CIVIL PRACTICE AND PROCEDURE

CHAPTER: 57 COURT COSTS

PART: --

SECTIONS: §57.081, §57.082, and §57.085 only

NOTE:



§57.081 COSTS | RIGHT TO PROCEED WHERE PREPAYMENT OF COSTS AND PAYMENT OF FILING FEES WAIVED

(1) Any indigent person, except a prisoner as defined in s. 57.085, who is a party or intervenor in any judicial or administrative agency proceeding or who initiates such proceeding shall receive the services of the courts, sheriffs, and clerks, with respect to such proceedings, despite his or her present inability to pay for these services. Such services are limited to filing fees; service of process; certified copies of orders or final judgments; a single photocopy of any court pleading, record, or instrument filed with the clerk; examining fees; mediation services and fees; private court-appointed counsel fees; subpoena fees and services; service charges for collecting and disbursing funds; and any other cost or service arising out of pending litigation. In any appeal from an administrative agency decision, for which the clerk is responsible for preparing the transcript, the clerk shall record the cost of preparing the transcripts and the cost for copies of any exhibits in the record. A party who has obtained a certification of indigence pursuant to s. 27.52 or s. 57.082 with respect to a proceeding is not required to prepay costs to a court, clerk, or sheriff and is not required to pay filing fees or charges for issuance of a summons.

(2) Any sheriff who, in complying with the terms of this section, expends personal funds for automotive fuel or ordinary carfare in serving the process of those qualifying under this section may requisition the board of county commissioners of the county for the actual expense, and on the submission to the board of county commissioners of appropriate proof of any such expenditure, the board of county commissioners shall pay the amount of the actual expense from the general fund of the county to the requisitioning officer.

(3) If an applicant prevails in an action, costs shall be taxed in his or her favor as provided by law and, when collected, shall be applied to pay filing fees or costs that have not been paid.

(History.—ss. 1, 2, 3, ch. 17883, 1937; CGL 1940 Supp. 4680(2); s. 15, ch. 29615, 1955; s. 1, ch. 57-251; s. 13, ch. 67-254; s. 14, ch. 73-334; s. 1, ch. 80-348; s. 18, ch. 94-348; s. 1362, ch. 95-147; s. 1, ch. 96-106; s. 9, ch. 97-107; s. 71, ch. 2003-402; s. 34, ch. 2005-236; s. 8, ch. 2009-61; s. 12, ch. 2012-100.)

(Note.—Former s. 58.09.)



§57.082 FS | DETERMINATION OF CIVIL INDIGENT STATUS

(1) APPLICATION TO THE CLERK.—A person seeking appointment of an attorney in a civil case eligible for court-appointed counsel, or seeking relief from payment of filing fees and prepayment of costs under s. 57.081, based upon an inability to pay must apply to the clerk of the court for a determination of civil indigent status using an application form developed by the Florida Clerks of Court Operations Corporation with final approval by the Supreme Court.

(a) The application must include, at a minimum, the following financial information:

1. Net income, consisting of total salary and wages, minus deductions required by law, including court-ordered support payments.

2. Other income, including, but not limited to, social security benefits, union funds, veterans' benefits, workers' compensation, other regular support from absent family members, public or private employee pensions, reemployment assistance or unemployment compensation, dividends, interest, rent, trusts, and gifts.

3. Assets, including, but not limited to, cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in a boat or a motor vehicle or in other tangible property.

4. All liabilities and debts. The application must include a signature by the applicant which attests to the truthfulness of the information provided. The application form developed by the corporation must include notice that the applicant may seek court review of a clerk's determination that the applicant is not indigent, as provided in this section.

(b) The clerk shall assist a person who appears before the clerk and requests assistance in completing the application, and the clerk shall notify the court if a person is unable to complete the application after the clerk has provided assistance.



(c) The clerk shall accept an application that is signed by the applicant and submitted on his or her behalf by a private attorney who is representing the applicant in the applicable matter.

(d) A person who seeks appointment of an attorney in a proceeding under chapter 39, at shelter hearings or during the adjudicatory process, during the judicial review process, upon the filing of a petition to terminate parental rights, or upon the filing of any appeal, or if the person seeks appointment of an attorney in a reopened proceeding, for which an indigent person is eligible for court-appointed representation must pay a \$50 application fee to the clerk for each application filed. A person is not required to pay more than one application fee per case. However, an appeal or the reopening of a proceeding shall be deemed to be a distinct case. The applicant must pay the fee within 7 days after submitting the application. If the applicant has not paid the fee within 7 days, the court shall enter an order requiring payment, and the clerk shall pursue collection under s. 28.246. The clerk shall transfer monthly all application fees collected under this paragraph to the Department of Revenue for deposit into the Indigent Civil Defense Trust Fund, to be used as appropriated by the Legislature. The clerk may retain 10 percent of application fees collected monthly for administrative costs prior to remitting the remainder to the Department of Revenue. If the person cannot pay the application fee, the clerk shall enroll the person in a payment plan pursuant to s. 28.246.

(2) DETERMINATION BY THE CLERK.—The clerk of the court shall determine whether an applicant seeking such designation is indigent based upon the information provided in the application and the criteria prescribed in this subsection.

(a)1. An applicant, including an applicant who is a minor or an adult tax-dependent person, is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services.

2. There is a presumption that the applicant is not indigent if the applicant owns, or has equity in,



any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding \$5,000.

(b) Based upon its review, the clerk shall make one of the following determinations:

1. The applicant is not indigent.
2. The applicant is indigent.

(c) If the clerk determines that the applicant is indigent, the clerk shall immediately file the determination in the case record.

(d) The duty of the clerk in determining whether an applicant is indigent is limited to receiving the application and comparing the information provided in the application to the criteria prescribed in this subsection. The determination of indigent status is a ministerial act of the clerk and may not be based on further investigation or the exercise of independent judgment by the clerk. The clerk may contract with third parties to perform functions assigned to the clerk under this section.

(e) The applicant may seek review of the clerk's determination that the applicant is not indigent in the court having jurisdiction over the matter by filing a petition to review the clerk's determination of nonindigent status, for which a filing fee may not be charged. If the applicant seeks review of the clerk's determination of indigent status, the court shall make a final determination as provided in subsection (4).

(3) APPOINTMENT OF COUNSEL ON AN INTERIM BASIS.—If the clerk of the court has not made a determination of indigent status at the time a person requests appointment of an attorney in a civil case eligible for court-appointed counsel, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint counsel on an interim basis.



(4) REVIEW OF THE CLERK'S DETERMINATION.—

(a) If the clerk of the court determines that the applicant is not indigent and the applicant seeks review of the clerk's determination, the court shall make a final determination of indigent status by reviewing the information provided in the application against the criteria prescribed in subsection (2) and by considering the following additional factors:

1. Whether paying for private counsel or other fees and costs creates a substantial hardship for the applicant or the applicant's family.
2. Whether the applicant is proceeding pro se or is represented by a private attorney for a fee or on a pro bono basis.
3. When the applicant retained private counsel.
4. The amount of any attorney's fees and who is paying the fees.
5. Any other relevant financial circumstances of the applicant or the applicant's family.

(b) Based upon its review, the court shall make one of the following determinations and shall, if appropriate, appoint counsel:

1. The applicant is not indigent.
2. The applicant is indigent.

(5) APPOINTMENT OF COUNSEL.—In appointing counsel after a determination that a person is indigent under this section, the court shall first appoint the office of criminal conflict and civil regional counsel, as provided in s. 27.511, unless specific provision is made in law for the appointment of the public defender in the particular civil proceeding. The court shall also order the person to pay the application fee under subsection (1), or enroll in a payment plan if he or she is unable to pay the fee, if the fee remains unpaid or if the person has not enrolled in a payment plan at the time the court appoints counsel. However, a person who is found to be indigent may not be refused counsel.



(6) PROCESSING CHARGE; PAYMENT PLANS.—A person who the clerk or the court determines is indigent for civil proceedings under this section shall be enrolled in a payment plan under s. 28.246 and shall be charged a one-time administrative processing charge under s. 28.24(26)(c). A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if it does not exceed 2 percent of the person's annual net income, as defined in subsection (1), divided by 12. The person may seek review of the clerk's decisions regarding a payment plan established under s. 28.246 in the court having jurisdiction over the matter. A case may not be impeded in any way, delayed in filing, or delayed in its progress, including the final hearing and order, due to nonpayment of any fees or costs by an indigent person. Filing fees waived from payment under s. 57.081 may not be included in the calculation related to a payment plan established under this section.

(7) FINANCIAL DISCREPANCIES; FRAUD; FALSE INFORMATION.—

(a) If the court learns of discrepancies between the application and the actual financial status of the person found to be indigent, the court shall determine whether the status and any relief provided as a result of that status shall be revoked. The person may be heard regarding the information learned by the court. If the court, based on the information, determines that the person is not indigent, the court shall revoke the provision of any relief under this section.

(b) If the court has reason to believe that any applicant, through fraud or misrepresentation, was improperly determined to be indigent, the matter shall be referred to the state attorney. Twenty-five percent of any amount recovered by the state attorney as reasonable value of the services rendered, including fees, charges, and costs paid by the state on the person's behalf, shall be remitted to the Department of Revenue for deposit into the Grants and Donations Trust Fund within the Justice Administrative Commission. Seventy-five percent of any amount recovered shall be remitted to the Department of Revenue for deposit into the General Revenue Fund.



(c) A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(History.—s. 35, ch. 2005-236; s. 24, ch. 2007-62; s. 27, ch. 2008-111; s. 9, ch. 2009-61; s. 21, ch. 2010-162; s. 35, ch. 2012-30.)



§57.085 FS | DEFERALL OF PREPAYMENT OF COURT COSTS AND FEES FOR INDIGENT PRISONERS

(1) For the purposes of this section, the term "prisoner" means a person who has been convicted of a crime and is incarcerated for that crime or who is being held in custody pending extradition or sentencing.

(2) When a prisoner who is intervening in or initiating a judicial proceeding seeks to defer the prepayment of court costs and fees because of indigence, the prisoner must file an affidavit of indigence with the appropriate clerk of the court. The affidavit must contain complete information about the prisoner's identity; the nature and amount of the prisoner's income; all real property owned by the prisoner; all tangible and intangible property worth more than \$100 which is owned by the prisoner; the amount of cash held by the prisoner; the balance of any checking, savings, or money market account held by the prisoner; the prisoner's dependents, including their names and ages; the prisoner's debts, including the name of each creditor and the amount owed to each creditor; and the prisoner's monthly expenses. The prisoner must certify in the affidavit whether the prisoner has been adjudicated indigent under this section, certified indigent under s. 57.081, or authorized to proceed as an indigent under 28 U.S.C. s. 1915 by a federal court. The prisoner must attach to the affidavit a photocopy of the prisoner's trust account records for the preceding 6 months or for the length of the prisoner's incarceration, whichever period is shorter. The affidavit must contain the following statements: "I am presently unable to pay court costs and fees. Under penalty of perjury, I swear or affirm that all statements in this affidavit are true and complete."

(3) Before a prisoner may receive a deferral of prepayment of any court costs and fees for an action brought under this section, the clerk of court must review the affidavit and determine the prisoner to be indigent.

(4) When the clerk has found the prisoner to be indigent but concludes the prisoner is able to pay part of the court costs and fees required by law, the court shall order the prisoner to make, prior to service of process, an initial partial payment of those court costs and fees. The initial partial payment must total at least 20 percent of the average monthly balance of the prisoner's trust account for the preceding 6 months or for the length of the prisoner's incarceration, whichever period is shorter.



(5) When the clerk has found the prisoner to be indigent, the court shall order the prisoner to make monthly payments of no less than 20 percent of the balance of the prisoner's trust account as payment of court costs and fees. When a court orders such payment, the **Department of Corrections** or the local detention facility shall place a lien on the inmate's trust account for the full amount of the court costs and fees, and shall withdraw money maintained in that trust account and forward the money, when the balance exceeds \$10, to the appropriate clerk of the court until the prisoner's court costs and fees are paid in full.

(6) Before an indigent prisoner may intervene in or initiate any judicial proceeding, the court must review the prisoner's claim to determine whether it is legally sufficient to state a cause of action for which the court has jurisdiction and may grant relief. The court shall dismiss all or part of an indigent prisoner's claim which:

(a) Fails to state a claim for which relief may be granted;

(b) Seeks monetary relief from a defendant who is immune from such relief;

(c) Seeks relief for mental or emotional injury where there has been no related allegation of a physical injury; or

(d) Is frivolous, malicious, or reasonably appears to be intended to harass one or more named defendants.

(7) A prisoner who has twice in the preceding 3 years been adjudicated indigent under this section, certified indigent under s. 57.081, or authorized to proceed as an indigent under 28 U.S.C. s. 1915 by a federal court may not be adjudicated indigent to pursue a new suit, action, claim, proceeding, or appeal without first obtaining leave of court. In a request for leave of court, the prisoner must provide a complete listing of each suit, action, claim, proceeding, or appeal brought by the prisoner or intervened in by the prisoner in any court or other adjudicatory forum in the preceding 5 years. The prisoner must attach to a request for leave of court a copy of each complaint, petition, or other document purporting to commence a lawsuit and a record of disposition of the proceeding.



(8) In any judicial proceeding in which a certificate of indigence has been issued to a prisoner, the court may at any time dismiss the prisoner's action, in whole or in part, upon a finding that:

(a) The prisoner's claim of indigence is false or misleading;

(b) The prisoner provided false or misleading information regarding another judicial or administrative proceeding in which the prisoner was a party;

(c) The prisoner failed to pay court costs and fees under this section despite having the ability to pay; or

(d) The prisoner's action or a portion of the action is frivolous or malicious.

(9) In determining whether an action is frivolous or malicious, the court may consider whether:

(a) The prisoner's claim has no arguable basis in law or fact;

(b) The prisoner's claim reasonably appears intended solely to harass a party filed against;

(c) The prisoner's claim is substantially similar to a previous claim in that it involves the same parties or arises from the same operative facts as a previous claim;

(d) The prisoner's claim has little likelihood of success on its merits; or

(e) The allegations of fact in the prisoner's claim are fanciful or not credible.

(10) This section does not apply to a criminal proceeding or a collateral criminal proceeding.

History - s. 2, ch. 96-106; s. 6, ch. 2003-1; s. 72, ch. 2003-402; s. 49, ch. 2004-265.



§57.105 FS | ATTORNEY'S FEE; SANCTIONS FOR RAISING UNSUPPORTED CLAIMS OR DEFENSES; EXCEPTIONS; SERVICE OF MOTIONS; DAMAGES FOR DELAY OF LITIGATION

(1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

(a) Was not supported by the material facts necessary to establish the claim or defense; or

(b) Would not be supported by the application of then-existing law to those material facts.

(2) At any time in any civil proceeding or action in which the moving party proves by a preponderance of the evidence that any action taken by the opposing party, including, but not limited to, the filing of any pleading or part thereof, the assertion of or response to any discovery demand, the assertion of any claim or defense, or the response to any request by any other party, was taken primarily for the purpose of unreasonable delay, the court shall award damages to the moving party for its reasonable expenses incurred in obtaining the order, which may include attorney's fees, and other loss resulting from the improper delay.

(3) Notwithstanding subsections (1) and (2), monetary sanctions may not be awarded:

(a) Under paragraph (1)(b) if the court determines that the claim or defense was initially presented to the court as a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, as it applied to the material facts, with a reasonable expectation of success.

(b) Under paragraph (1)(a) or paragraph (1)(b) against the losing party's attorney if he or she has acted in good faith, based on the representations of his or her client as to the existence of those material facts.



(c) Under paragraph (1)(b) against a represented party.

(d) On the court's initiative under subsections (1) and (2) unless sanctions are awarded before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(4) A motion by a party seeking sanctions under this section must be served but may not be filed with or presented to the court unless, within 21 days after service of the motion, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

(5) In administrative proceedings under chapter 120, an administrative law judge shall award a reasonable attorney's fee and damages to be paid to the prevailing party in equal amounts by the losing party and a losing party's attorney or qualified representative in the same manner and upon the same basis as provided in subsections (1)-(4). Such award shall be a final order subject to judicial review pursuant to s. 120.68. If the losing party is an agency as defined in s. 120.52(1), the award to the prevailing party shall be against and paid by the agency. A voluntary dismissal by a nonprevailing party does not divest the administrative law judge of jurisdiction to make the award described in this subsection.

(6) The provisions of this section are supplemental to other sanctions or remedies available under law or under court rules.

(7) If a contract contains a provision allowing attorney's fees to a party when he or she is required to take any action to enforce the contract, the court may also allow reasonable attorney's fees to the other party when that party prevails in any action, whether as plaintiff or defendant, with respect to the contract. This subsection applies to any contract entered into on or after October 1, 1988.



(8) Attorney fees may not be awarded under this section in proceedings for an injunction for protection pursuant to s. 741.30, s. 784.046, or s. 784.0485, unless the court finds by clear and convincing evidence that the petitioner knowingly made a false statement or allegation in the petition or that the respondent knowingly made a false statement or allegation in an asserted defense, with regard to a material matter as defined in s. 837.011(3).

History - (s. 1, ch. 78-275; s. 61, ch. 86-160; ss. 1, 2, ch. 88-160; s. 1, ch. 90-300; s. 316, ch. 95-147; s. 4, ch. 99-225; s. 1, ch. 2002-77; s. 9, ch. 2003-94; s. 1, ch. 2010-129; s. 4, ch. 2019-167.)



CHAPTER 68 FLORIDA STATUTES | FLORIDA

TITLE: VI CIVIL PRACTICE AND PROCEDURE

CHAPTER: 68 MISCELLANEOUS PROCEEDINGS

PART: --

SECTIONS: §68.081 through §68.093

NOTE: Includes Florida's False Claims Act



§68.081 FS | FLORIDA FALSE CLAIMS ACT; SHORT TITLE

Sections 68.081-68.092 may be cited as the "Florida False Claims Act."

History - (s. 1, ch. 94-316; s. 1, ch. 2007-236; s. 1, ch. 2013-104.)



§68.082 FS | FALSE CLAIMS AGAINST THE STATE; DEFINITIONS; LIABILITY

(1) As used in this section, the term:

(a) "Claim" means any request or demand, whether under a contract or otherwise, for money or property, regardless of whether the state has title to the money or property, that:

1. Is presented to any employee, officer, or agent of the state; or
2. Is made to a contractor, grantee, or other recipient if the state provides or has provided any portion of the money or property requested or demanded, or if the state will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.

(b) "Department" means the Department of Legal Affairs, except as specifically provided in ss. 68.083 and 68.084.

(c) "Knowing" or "knowingly" means, with respect to information, that a person:

1. Has actual knowledge of the information;
2. Acts in deliberate ignorance of the truth or falsity of the information; or
3. Acts in reckless disregard of the truth or falsity of the information.

No proof of specific intent to defraud is required. Innocent mistake shall be a defense to an action under this act.

(d) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(e) "Obligation" means an established duty, fixed or otherwise, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.



(f) "State" means the government of the state or any department, division, bureau, commission, regional planning agency, board, district, authority, agency, or other instrumentality of the state.

(2) Any person who:

(a) Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;

(b) Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;

(c) Conspires to commit a violation of this subsection;

(d) Has possession, custody, or control of property or money used or to be used by the state and knowingly delivers or causes to be delivered less than all of that money or property;

(e) Is authorized to make or deliver a document certifying receipt of property used or to be used by the state and, intending to defraud the state, makes or delivers the receipt without knowing that the information on the receipt is true;

(f) Knowingly buys or receives, as a pledge of an obligation or a debt, public property from an officer or employee of the state who may not sell or pledge the property; or

(g) Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state is liable to the state for a civil penalty of not less than \$5,500 and not more than \$11,000 and for treble the amount of damages the state sustains because of the act of that person.

(3) The court may reduce the treble damages authorized under subsection (2) if the court finds one or more of the following specific extenuating circumstances:

(a) The person committing the violation furnished the department with all information known to the person



about the violation within 30 days after the date on which the person first obtained the information;

(b) The person fully cooperated with any official investigation of the violation; or

(c) At the time the person furnished the department with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this section with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation; in which case the court shall award no less than 2 times the amount of damages sustained by the state because of the act of the person. The court shall set forth in a written order its findings and basis for reducing the treble damages award.

History - (s. 2, ch. 94-316; s. 2, ch. 2007-236; s. 2, ch. 2013-104.)



§68.083 FS | CIVIL ACTIONS FOR FALSE CLAIMS

(1) The department may diligently investigate a violation under s. 68.082. If the department finds that a person has violated or is violating s. 68.082, the department may bring a civil action under the Florida False Claims Act against the person. The Department of Financial Services may bring a civil action under this section if the action arises from an investigation by that department and the Department of Legal Affairs has not filed an action under this act.

(2) A person may bring a civil action for a violation of s. 68.082 for the person and for the affected agency. Civil actions instituted under this act shall be governed by the Florida Rules of Civil Procedure and shall be brought in the name of the State of Florida. Prior to the court unsealing the complaint under subsection (3), the action may be voluntarily dismissed by the person bringing the action only if the department gives written consent to the dismissal and its reasons for such consent.

(3) The complaint shall be identified on its face as a qui tam action and shall be filed in the circuit court of the Second Judicial Circuit, in and for Leon County. Immediately upon the filing of the complaint, a copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General, as head of the department, and on the Chief Financial Officer, as head of the Department of Financial Services, by registered mail, return receipt requested. The department, or the Department of Financial Services under the circumstances specified in subsection (4), may elect to intervene and proceed with the action, on behalf of the state, within 60 days after it receives both the complaint and the material evidence and information.

(4) If a person brings an action under subsection (2) and the action is based upon the facts underlying a pending investigation by the Department of Financial Services, the Department of Financial Services, instead of the department, may take over the action on behalf of the state. In order to take over the action, the Department of Financial Services must give the department written notification within 20 days after the action is filed that the Department of Financial Services is conducting an investigation of the facts of the action and that the Department of Financial Services, instead



of the department, will take over the action filed under subsection (2). If the Department of Financial Services takes over the action under this subsection, the word "department" as used in this act means the Department of Financial Services, and that department, for purposes of that action, shall have all rights and standing granted the department under this act.

(5) The department may, for good cause shown, request the court to extend the time during which the complaint remains under seal under subsection (2). Any such motion may be supported by affidavits or other submissions in camera. The defendant is not required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant in accordance with law.

(6) Before the expiration of the 60-day period or any extensions obtained under subsection (5), the department shall:

(a) Proceed with the action, in which case the action is conducted by the department on behalf of the state; or

(b) Notify the court that it declines to take over the action, in which case the person bringing the action has the right to conduct the action.

(7) When a person files an action under this section, no person other than the department may intervene or bring a related action based on the facts underlying the pending action.

(8)

(a) Except as otherwise provided in this subsection, the complaint and information held by the department pursuant to an investigation of a violation of s. 68.082 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Information made confidential and exempt under paragraph (a) may be disclosed by the department to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities.



(c) Information made confidential and exempt under paragraph (a) is no longer confidential and exempt once the investigation is completed, unless the information is otherwise protected by law.

(d) For purposes of this subsection, an investigation is considered complete:

1. Under subsection (1) once the department either files its own action or closes its investigation without filing an action.

2. Under subsection (2) upon the unsealing of the qui tam action or its voluntary dismissal prior to any unsealing.

History - (s. 3, ch. 94-316; s. 103, ch. 2003-261; s. 3, ch. 2007-236; s. 3, ch. 2013-104; s. 1, ch. 2013-105; s. 1, ch. 2018-75.)



§68.0831 FS | SUBPOENA

(1) As used in this section, the term "department" means the Department of Legal Affairs.

(2) Whenever the department has reason to believe that any person may be in possession, custody, or control of any documentary material or may have any information, which documentary material or information is relevant to a civil investigation authorized by s. 68.083, the department may, before the institution of a civil proceeding thereon, issue in writing and cause to be served upon the person a subpoena requiring the person to:

(a) Produce such documentary material for inspection and copying or reproduction;

(b) Answer, under oath and in writing, written interrogatories;

(c) Give sworn oral testimony concerning the documentary material or information; or

(d) Furnish any combination of such material, answers, or testimony.

(3) The subpoena shall:

(a) Be served upon the person in the manner required for service of process in this state or by certified mail showing receipt by the addressee or by the authorized agent of the addressee.

(b) State the nature of the conduct that constitutes the violation of this act and that is alleged to have occurred or to be imminent.

(c) Describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such materials to be reasonably identified.

(d) Prescribe a date and time at which the person must appear to testify, under oath or affirmation, or by which the person must answer written interrogatories or produce the documentary material for inspection or copying; however, such date shall not be earlier than 30 days after the date of service of the subpoena.



(e) Specify a place for the taking of testimony or for the submission of answers to interrogatories and identify the person who is to take custody of any documentary material. Inspection and copying of documentary material shall be carried out at the place where the documentary material is located or at such other place as may be thereafter agreed to by the person and such designated custodian. Upon written agreement between the person and the designated custodian, copies may be substituted for original documents.

(4) Such subpoena may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under:

(a) The standards applicable to subpoenas or subpoenas duces tecum issued by a court of this state in aid of a grand jury investigation; or

(b) The standards applicable to a discovery request under the Florida Rules of Civil Procedure, to the extent that the application of such standards to any such subpoena is appropriate and consistent with the provisions and purposes of this act.

(5) This section does not limit the power of the department to require the appearance of witnesses or production of documents or other tangible evidence located outside the state.

(6) Within 30 days after the service of a subpoena upon any person or at any time before the return date specified therein, whichever period is longer, the person served may file, and serve on the department, a petition for an order of the court modifying or setting aside the subpoena. Any such petition shall be filed in the circuit court of the Second Judicial Circuit in and for Leon County. The time allowed for compliance in whole or in part with the subpoena as deemed proper and ordered by the court shall not run while the petition is pending before the court. The petition shall specify each ground upon which the petitioner relies in seeking relief and may be based upon the failure of the subpoena to comply with this section or upon any



constitutional or other legal right or privilege of such person.

(7) In case of the failure of any person to comply in whole or in part with a subpoena and when such person has not filed a petition under subsection (6), the circuit court of the Second Judicial Circuit in and for Leon County, upon application of the department, may issue an order requiring compliance. The failure to obey the order of the court shall be punishable as a contempt of court.

(8) The examination of all witnesses under this section shall be conducted by the department before an officer authorized to administer oaths in this state. The testimony shall be taken stenographically or by a sound-recording device. Any person compelled to appear under a subpoena for oral testimony pursuant to this section may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, either upon the request of such person or upon counsel's own initiative, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for any such objection. If such person refuses to answer any question, the person conducting the examination may petition the circuit court as provided by subsection (11).

(9) When the testimony is fully transcribed, the person conducting the deposition shall afford the witness, and counsel, if any, a reasonable opportunity to examine the transcript, and the transcript shall be read to or by the witness, unless such examination and reading is waived by the witness. Any changes in form or substance that the witness desires to make shall be entered and identified upon the transcript by the officer or the department, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness unless the witness waives the signing in writing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after his or her being afforded a reasonable opportunity to examine it, the person conducting the examination shall sign it and state on the record the fact of the waiver, illness, absence, or refusal to sign, together with the reason, if any, given therefor. Any person required to testify or to submit documentary evidence is



entitled, on payment of reasonable costs, to procure a copy of any document produced by such person and of his or her own testimony as stenographically reported or, in the case of a deposition, as reduced to writing by or under the direction of the person taking the deposition.

(10) The department shall have the authority to stipulate to protective orders with respect to documents and information submitted in response to a subpoena under this section.

(11) The department may request that any natural person who refuses to comply with this section on the ground that the testimony or documents may incriminate him or her be ordered by the circuit court to provide the testimony or the documents. Except in a prosecution for perjury, a natural person who complies with a court order to provide testimony or documents after asserting a privilege against self-incrimination to which he or she is entitled by law may not be subject to a criminal proceeding with respect to the transaction to which he or she is required to testify or produce documents. Any natural person who fails to comply with such a court order to testify or produce documents may be adjudged in contempt and imprisoned until the time the person purges himself or herself of the contempt.

(12) While in the possession of the custodian, documentary material, answers to interrogatories, and transcripts of oral testimony shall be available, under such reasonable terms and conditions as the department shall prescribe, for examination by the person who produced such materials or answers or that person's duly authorized representative.

(13) This section does not impair the authority of the department to:

- (a) Institute a civil proceeding under s. 68.083;
- (b) Invoke the power of a court to compel the production of evidence before a grand jury; or
- (c) Maintain the confidential and exempt status of the complaint and any other information as provided in s. 68.083(8).

(14)

- (a) A person who knows or has reason to believe that a subpoena pursuant to this section is pending shall not:



1. Alter, destroy, conceal, or remove any record, document, or thing with the purpose of impairing its verity or availability in such proceeding or investigation; or

2. Make, present, or use any record, document, or thing knowing it to be false.

(b) Any natural person who violates this subsection is subject to a civil penalty of not more than \$100,000, reasonable attorney fees, and costs. Any other person who violates this subsection is subject to a civil penalty of not more than \$1 million, reasonable attorney fees, and costs.

History - (s. 4, ch. 2013-104.)



§68.084 FS | RIGHTS OF THE PARTIES IN CIVIL ACTIONS

(1) If the department, on behalf of the state, proceeds with the action, it has the primary responsibility for prosecuting the action, and is not bound by any act of the person bringing the action. The person bringing the action has the right to continue as a party to the action, subject to the limitations specified in subsection (2).

(2)

(a) The department may at any point voluntarily dismiss the action notwithstanding the objections of the person initiating the action.

(b) Subject to s. 17.04, nothing in this act shall be construed to limit the authority of the department or the qui tam plaintiff to compromise a claim brought in a complaint filed under this act if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances.

(c) Upon a showing by the department that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the department's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including, but not limited to:

1. Limiting the number of witnesses the person may call;
2. Limiting the length of the testimony of the person's witnesses;
3. Limiting the person's cross-examination of witnesses; or
4. Otherwise limiting the participation by the person in the litigation.

(d) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or



unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the department elects not to proceed with the action, the person who initiated the action has the right to conduct the action. If the Attorney General, as head of the department, or the Chief Financial Officer, as head of the Department of Financial Services, so requests, it shall be served with copies of all pleadings and motions filed in the action along with copies of all deposition transcripts at the requesting department's expense. When a person proceeds with the action, the court, without limiting the rights of the person initiating the action, may nevertheless permit the department to intervene and take over the action on behalf of the state at a later date upon showing of good cause.

(4) Regardless of whether the department proceeds with the action, upon a showing by the department that certain actions of discovery by the person initiating the action would interfere with an investigation by the state or the prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera by the department that the criminal or civil investigation or proceeding has been pursued with reasonable diligence and any proposed discovery in the civil action will interfere with an ongoing criminal or civil investigation or proceeding.

(5) Notwithstanding paragraph (2) (b), the state may elect to pursue its claim through any available alternate remedy, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as the person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.



(6) The Department of Financial Services, or the department, may intervene on its own behalf as a matter of right.

History - (s. 4, ch. 94-316; s. 104, ch. 2003-261; s. 4, ch. 2007-236; s. 5, ch. 2013-104.)



§68.085 FS | AWARDS TO PLAINTIFFS BRINGING ACTION

(1)

(a) If the department proceeds with an action brought by a person under this act, subject to the requirements of paragraph (b), the person shall receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action.

(b) If the court finds the action to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing; a legislative, administrative, inspector general, or auditor general report, hearing, audit, or investigation; or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(c) Any payment to a person under paragraph (a) or paragraph (b) shall be made from the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the department does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.



(3) Following any distributions under subsection (1) or subsection (2), the state entity injured by the submission of a false or fraudulent claim shall be awarded an amount not to exceed its compensatory damages. If the action was based on a claim of funds from the state Medicaid program, 10 percent of any remaining proceeds shall be deposited into the Operating Trust Fund to fund rewards for persons who report and provide information relating to Medicaid fraud pursuant to s. 409.9203. Any remaining proceeds, including civil penalties awarded under s. 68.082, shall be deposited in the General Revenue Fund.

(4) Regardless of whether the department proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of s. 68.082 upon which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under this section, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of s. 68.082, the person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the department to continue the action.

History - (s. 5, ch. 94-316; s. 11, ch. 95-153; s. 5, ch. 2007-236; s. 2, ch. 2009-223; s. 22, ch. 2010-162; s. 6, ch. 2013-104.)



§68.086 FS | EXPENSES; ATTORNEY FEES AND COSTS

(1) If the department initiates an action under this act or assumes control of an action brought by a person under this act, the department shall be awarded its reasonable attorney fees, expenses, and costs.

(2) If the department does not proceed with an action under this act and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorney fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(3) No liability shall be incurred by the state or the department for any expenses, attorney fees, or other costs incurred by any person in bringing or defending an action under this act.

History - (s. 6, ch. 94-316; s. 2, ch. 2009-193; s. 3, ch. 2009-223; s. 7, ch. 2013-104.)



§68.087 FS | EXEMPTIONS TO CIVIL ACTIONS

(1) No court shall have jurisdiction over an action brought under this act against a member of the Legislature, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the state government when the action was brought. For purposes of this subsection, the term "senior executive branch official" means any person employed in the executive branch of government holding a position in the Senior Management Service as defined in s. 110.402.

(2) In no event may a person bring an action under s. 68.083(2) based upon allegations or transactions that are the subject of a civil action or an administrative proceeding in which the state is already a party.

(3) The court shall dismiss an action brought under this act unless opposed by the department, if substantially the same allegations or transactions as alleged in the action were publicly disclosed:

(a) In a criminal, civil, or administrative hearing in which the state is a party;

(b) In a legislative, administrative, inspector general, or other state report, hearing, audit, or investigation; or

(c) From the news media, unless the action is brought by the department or the person bringing the action is an original source of the information. For purposes of this subsection, the term "original source" means an individual who, before a public disclosure under this subsection, has voluntarily disclosed to the department the information on which allegations or transactions in a claim are based, or who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions and has voluntarily provided the information to the department before filing an action under this section.

(4) No court shall have jurisdiction over an action where the person bringing the action under s. 68.083(2) is:

(a) Acting as an attorney for state government; or



(b) An employee or former employee of state government, and the action is based, in whole or in part, upon information obtained in the course or scope of government employment.

(5) No court shall have jurisdiction over an action where the person bringing the action under s. 68.083(2) obtained the information from an employee or former employee of state government who was not acting in the course or scope of government employment.

(6) No court shall have jurisdiction over an action brought under this act against any county or municipality.

History - (s. 7, ch. 94-316; s. 12, ch. 95-153; s. 105, ch. 2003-261; s. 8, ch. 2013-104.)



§68.088 FS | PROTECTION FOR PARTICIPATING EMPLOYEES

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this act, including investigation for initiation of, testimony for, or assistance in an action filed or to be filed under this act, shall have a cause of action under s. 112.3187.

History - (s. 8, ch. 94-316.)



§68.089 FS | LIMITATION OF ACTIONS; EFFECT OF INTERVENTIONS BY DEPARTMENT

- (1) A civil action under this act may not be brought:
 - (a) More than 6 years after the date on which the violation of s. 68.082 is committed; or
 - (b) More than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the department, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

- (2) If the department elects to intervene and proceed with an action brought under s. 68.083(2), the department may file its own complaint or amend the complaint of a person who has brought an action under s. 68.083(2) to clarify or add detail to the claims in which the department is intervening and to add any additional claims with respect to which the department contends it is entitled to relief. For statute of limitations purposes, any such pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the state arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person. This subsection applies to any actions under s. 68.083(2) pending on or filed after July 1, 2013.

History - (s. 9, ch. 94-316; s. 6, ch. 2007-236; s. 9, ch. 2013-104.)



§68.09 FS | BURDEN OF PROOF

(1) In any action brought under this act, the department or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(2) Notwithstanding any other provision of law, a final judgment or decree rendered in favor of the state or the Federal Government in any criminal proceeding concerning the conduct of the defendant that forms the basis for a civil cause of action under this act, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant in any action by the department pursuant to this act as to all matters as to which such judgment or decree would be an estoppel as if the department had been a party in the criminal proceeding.

History - (s. 10, ch. 94-316; s. 10, ch. 2013-104.)



§68.091 FS | CONSTRUCTION AND SEVERABILITY OF PROVISIONS

(1) This act shall be liberally construed to effectuate its remedial and deterrent purposes.

(2) If any provision of this act or its application to any particular person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this act.

History - (s. 11, ch. 94-316.)



§68.092 FS | DEPOSIT OF RECOVERED MONEYS

All moneys recovered by the Chief Financial Officer as head of the Department of Financial Services under s. 68.086(1) in any civil action for violation of the Florida False Claims Act shall be deposited in the Administrative Trust Fund of the Department of Financial Services.

History - (s. 13, ch. 94-316; s. 106, ch. 2003-261.)



§68.093 | FLORIDA VEXATIOUS LITIGANT LAW

(1) This section may be cited as the "Florida Vexatious Litigant Law."

(2) As used in section, the term:

(a) "Action" means a civil action governed by the Florida Rules of Civil Procedure and proceedings governed by the Florida Probate Rules, but does not include actions concerning family law matters governed by the Florida Family Law Rules of Procedure or any action in which the Florida Small Claims Rules apply.

(b) "Defendant" means any person or entity, including a corporation, association, partnership, firm, or governmental entity, against whom an action is or was commenced or is sought to be commenced.

(c) "Security" means an undertaking by a vexatious litigant to ensure payment to a defendant in an amount reasonably sufficient to cover the defendant's anticipated, reasonable expenses of litigation, including attorney's fees and taxable costs.

(d) "Vexatious litigant" means:

1. A person as defined in s. 1.01(3) who, in the immediately preceding 5-year period, has commenced, prosecuted, or maintained, pro se, five or more civil actions in any court in this state, except an action governed by the Florida Small Claims Rules, which actions have been finally and adversely determined against such person or entity; or

2. Any person or entity previously found to be a vexatious litigant pursuant to this section. An action is not deemed to be "finally and adversely determined" if an appeal in that action is pending. If an action has been commenced on behalf of a party by an attorney licensed to practice law in this state, that action is not deemed to be pro se even if the attorney later withdraws from the representation and the party does not retain new counsel.



(3) (a) In any action pending in any court of this state, including actions governed by the Florida Small Claims Rules, any defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security. The motion shall be based on the grounds, and supported by a showing, that the plaintiff is a vexatious litigant and is not reasonably likely to prevail on the merits of the action against the moving defendant.

(b) At the hearing upon any defendant's motion for an order to post security, the court shall consider any evidence, written or oral, by witness or affidavit, which may be relevant to the consideration of the motion. No determination made by the court in such a hearing shall be admissible on the merits of the action or deemed to be a determination of any issue in the action. If, after hearing the evidence, the court determines that the plaintiff is a vexatious litigant and is not reasonably likely to prevail on the merits of the action against the moving defendant, the court shall order the plaintiff to furnish security to the moving defendant in an amount and within such time as the court deems appropriate.

(c) If the plaintiff fails to post security required by an order of the court under this section, the court shall immediately issue an order dismissing the action with prejudice as to the defendant for whose benefit the security was ordered.

(d) If a motion for an order to post security is filed prior to the trial in an action, the action shall be automatically stayed and the moving defendant need not plead or otherwise respond to the complaint until 10 days after the motion is denied. If the motion is granted, the moving defendant shall respond or plead no later than 10 days after the required security has been furnished.



(4) In addition to any other relief provided in this section, the court in any judicial circuit may, on its own motion or on the motion of any party, enter a prefiling order prohibiting a vexatious litigant from commencing, pro se, any new action in the courts of that circuit without first obtaining leave of the administrative judge of that circuit. Disobedience of such an order may be punished as contempt of court by the administrative judge of that circuit. Leave of court shall be granted by the administrative judge only upon a showing that the proposed action is meritorious and is not being filed for the purpose of delay or harassment. The administrative judge may condition the filing of the proposed action upon the furnishing of security as provided in this section.

(5) The clerk of the court shall not file any new action by a vexatious litigant pro se unless the vexatious litigant has obtained an order from the administrative judge permitting such filing. If the clerk of the court mistakenly permits a vexatious litigant to file an action pro se in contravention of a prefiling order, any party to that action may file with the clerk and serve on the plaintiff and all other defendants a notice stating that the plaintiff is a pro se vexatious litigant subject to a prefiling order. The filing of such a notice shall automatically stay the litigation against all defendants to the action. The administrative judge shall automatically dismiss the action with prejudice within 10 days after the filing of such notice unless the plaintiff files a motion for leave to file the action. If the administrative judge issues an order permitting the action to be filed, the defendants need not plead or otherwise respond to the complaint until 10 days after the date of service by the plaintiff, by United States mail, of a copy of the order granting leave to file the action.

(6) The clerk of a court shall provide copies of all prefiling orders to the Clerk of the Florida Supreme Court, who shall maintain a registry of all vexatious litigants.

(7) The relief provided under this section shall be cumulative to any other relief or remedy available to a defendant under the laws of this state and the Florida Rules of Civil Procedure, including, but not limited to, the relief provided under s. 57.105.

(History.—s. 1, ch. 2000-314.)



CHAPTER 86 FLORIDA STATUTES | FLORIDA

TITLE: VI CIVIL PRACTICE AND PROCEDURE

CHAPTER: 86 DECLARATORY JUDGMENTS

PART: --

SECTIONS: §86.11 through §86.110

NOTE: Entire Chapter



§86.011 FS | JURISDICTION OF TRIAL COURT

The circuit and county courts have jurisdiction within their respective jurisdictional amounts to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed. No action or procedure is open to objection on the ground that a declaratory judgment is demanded. The court's declaration may be either affirmative or negative in form and effect and such declaration has the force and effect of a final judgment. The court may render declaratory judgments on the existence, or nonexistence:

- (1) Of any immunity, power, privilege, or right; or
- (2) Of any fact upon which the existence or nonexistence of such immunity, power, privilege, or right does or may depend, whether such immunity, power, privilege, or right now exists or will arise in the future. Any person seeking a declaratory judgment may also demand additional, alternative, coercive, subsequent, or supplemental relief in the same action.

History - (s. 1, ch. 21820, 1943; s. 2, ch. 29737, 1955; s. 38, ch. 67-254; s. 3, ch. 90-269.)

Note - (Former s. 87.01.)



§86.021 FS | POWER TO CONSTRUE

Any person claiming to be interested or who may be in doubt about his or her rights under a deed, will, contract, or other article, memorandum, or instrument in writing or whose rights, status, or other equitable or legal relations are affected by a statute, or any regulation made under statutory authority, or by municipal ordinance, contract, deed, will, franchise, or other article, memorandum, or instrument in writing may have determined any question of construction or validity arising under such statute, regulation, municipal ordinance, contract, deed, will, franchise, or other article, memorandum, or instrument in writing, or any part thereof, and obtain a declaration of rights, status, or other equitable or legal relations thereunder.

History - (s. 2, ch. 21820, 1943; s. 38, ch. 67-254; s. 458, ch. 95-147.)

Note - (Former s. 87.02.)



§86.031 FS | BEFORE BREACH

A contract may be construed either before or after there has been a breach of it.

History - (s. 3, ch. 21820, 1943; s. 38, ch. 67-254.)

Note - (Former s. 87.03.)



§86.041 FS | ACTIONS BY EXECUTORS, ADMINISTRATORS, TRUSTEES, ETC

Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, a guardianship, or the estate of a decedent, an infant, a mental incompetent, or insolvent may have a declaration of rights or equitable or legal relations to:

- (1) Ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;
- (2) Direct the executor, administrator, or trustee to refrain from doing any particular act in his or her fiduciary capacity; or
- (3) Determine any question relating to the administration of the guardianship, estate, or trust, including questions of construction of wills and other writings.

For the purpose of this section, a "mental incompetent" is one who, because of mental illness, intellectual disability, senility, excessive use of drugs or alcohol, or other mental incapacity, is incapable of managing his or her property or caring for himself or herself or both.

History - (s. 4, ch. 21820, 1943; s. 38, ch. 67-254; s. 1, ch. 88-33; s. 459, ch. 95-147; s. 3, ch. 2013-162.)

Note - (Former s. 87.04.)



§86.051 FS | ENUMERATION NOT EXCLUSIVE

The enumeration in ss. 86.021, 86.031 and 86.041 does not limit or restrict the exercise of the general powers conferred in s. 86.011 in any action where declaratory relief is sought. Any declaratory judgment rendered pursuant to this chapter may be rendered by way of anticipation with respect to any act not yet done or any event which has not yet happened, and in such case the judgment shall have the same binding effect with respect to that future act or event, and the rights or liability to arise therefrom, as if that act or event had already been done or had already happened before the judgment was rendered.

History - (s. 5, ch. 21820, 1943; s. 38, ch. 67-254.)

Note - (Former s. 87.05.)



§86.061 FS | SUPPLEMENTAL RELIEF

Further relief based on a declaratory judgment may be granted when necessary or proper. The application therefor shall be by motion to the court having jurisdiction to grant relief. If the application is sufficient, the court shall require any adverse party whose rights have been adjudicated by the declaratory judgment to show cause on reasonable notice, why further relief should not be granted forthwith.

History - (s. 7, ch. 21820, 1943; s. 38, ch. 67-254.)

Note - (Former s. 87.07.)



§86.071 FS | JURY TRIALS

When an action under this chapter concerns the determination of an issue of fact, the issue may be tried as issues of fact are tried in other civil actions in the court in which the proceeding is pending. To settle questions of fact necessary to be determined before judgment can be rendered, the court may direct their submission to a jury. When a declaration of right or the granting of further relief based thereon concerns the determination of issues of fact triable by a jury, the issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict is required or not. Neither this section nor any other section of this chapter shall be construed as requiring a jury to determine issues of fact in chancery actions.

History - (s. 8, ch. 21820, 1943; s. 38, ch. 67-254.)

Note - (Former s. 87.08.)



§86.081 FS | COSTS

The court may award costs as are equitable.

History - (s. 9, ch. 21820, 1943; s. 38, ch. 67-254.)

Note - (Former s. 87.09.)



§86.091 FS | PARTIES

When declaratory relief is sought, all persons may be made parties who have or claim any interest which would be affected by the declaration. No declaration shall prejudice the rights of persons not parties to the proceedings. In any proceeding concerning the validity of a county or municipal charter, ordinance, or franchise, such county or municipality shall be made a party and shall be entitled to be heard. If the statute, charter, ordinance, or franchise is alleged to be unconstitutional, the Attorney General or the state attorney of the judicial circuit in which the action is pending shall be served with a copy of the complaint and be entitled to be heard.

History - (s. 10, ch. 21820, 1943; s. 1, ch. 59-440; s. 38, ch. 67-254.)

Note - (Former s. 87.10.)



§86.101 FS | CONSTRUCTION OF LAW

This chapter is declared to be substantive and remedial. Its purpose is to settle and to afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations and is to be liberally administered and construed.

History - (s. 11, ch. 21820, 1943; s. 38, ch. 67-254.)

Note - (Former s. 87.11.)



§86.111 FS | EXISTENCE OF ANOTHER ADEQUATE REMEDY; EFFECT

The existence of another adequate remedy does not preclude a judgment for declaratory relief. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar. The court has power to give as full and complete equitable relief as it would have had if such proceeding had been instituted as an action in chancery.

History - (s. 12, ch. 21820, 1943; s. 2, ch. 29737, 1955; s. 38, ch. 67-254.)

Note - (Former s. 87.12.)



CHAPTER 90 FLORIDA STATUTES | FLORIDA

TITLE: VII EVIDENCE

CHAPTER: 90 EVIDENCE CODE

PART: --

SECTIONS: §90.201 through §90.902

NOTE: Pertinent Parts Only!!!



§90.201 FS | MATTERS WHICH MUST BE JUDICIALLY NOTICED

A court shall take judicial notice of:

(1) Decisional, constitutional, and public statutory law and resolutions of the Florida Legislature and the Congress of the United States.

(2) Florida rules of court that have statewide application, its own rules, and the rules of United States courts adopted by the United States Supreme Court.

(3) Rules of court of the United States Supreme Court and of the United States Courts of Appeal.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 21, 22, ch. 78-361; ss. 1, 2, ch. 78-379.



§90.202 FS | MATTERS WHICH MAY BE JUDICIALLY NOTICED

A court may take judicial notice of the following matters, to the extent that they are not embraced within s. 90.201:

(1) Special, local, and private acts and resolutions of the Congress of the United States and of the Florida Legislature.

(2) Decisional, constitutional, and public statutory law of every other state, territory, and jurisdiction of the United States.

(3) Contents of the Federal Register.

(4) Laws of foreign nations and of an organization of nations.

(5) Official actions of the legislative, executive, and judicial departments of the United States and of any state, territory, or jurisdiction of the United States.

(6) Records of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States.

(7) Rules of court of any court of this state or of any court of record of the United States or of any other state, territory, or jurisdiction of the United States.

(8) Provisions of all municipal and county charters and charter amendments of this state, provided they are available in printed copies or as certified copies.

(9) Rules promulgated by governmental agencies of this state which are published in the Florida Administrative Code or in bound written copies.

(10) Duly enacted ordinances and resolutions of municipalities and counties located in Florida, provided such ordinances and resolutions are available in printed copies or as certified copies.

(11) Facts that are not subject to dispute because they are generally known within the territorial jurisdiction of the court.

(12) Facts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned.



(13) Official seals of governmental agencies and departments of the United States and of any state, territory, or jurisdiction of the United States.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 1, ch. 77-174; ss. 3, 22, ch. 78-361; ss. 1, 2, ch. 78-379.



§90.203 FS | COMPULSORY JUDICIAL NOTICE UPON REQUEST

A court shall take judicial notice of any matter in s. 90.202 when a party requests it and:

(1) Gives each adverse party timely written notice of the request, proof of which is filed with the court, to enable the adverse party to prepare to meet the request.

(2) Furnishes the court with sufficient information to enable it to take judicial notice of the matter.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379



§90.204 FS | DETERMINATION OF PROPRIETY OF JUDICIAL NOTICE AND NATURE OF MATTER NOTICED

(1) When a court determines upon its own motion that judicial notice of a matter should be taken or when a party requests such notice and shows good cause for not complying with s. 90.203(1), the court shall afford each party reasonable opportunity to present information relevant to the propriety of taking judicial notice and to the nature of the matter noticed.

(2) In determining the propriety of taking judicial notice of a matter or the nature thereof, a court may use any source of pertinent and reliable information, whether or not furnished by a party, without regard to any exclusionary rule except a valid claim of privilege and except for the exclusions provided in s. 90.403.

(3) If a court resorts to any documentary source of information not received in open court, the court shall make the information and its source a part of the record in the action and shall afford each party reasonable opportunity to challenge such information, and to offer additional information, before judicial notice of the matter is taken.

(4) In family cases, the court may take judicial notice of any matter described in s. 90.202(6) when imminent danger to persons or property has been alleged and it is impractical to give prior notice to the parties of the intent to take judicial notice. Opportunity to present evidence relevant to the propriety of taking judicial notice under subsection (1) may be deferred until after judicial action has been taken. If judicial notice is taken under this subsection, the court shall, within 2 business days, file a notice in the pending case of the matters judicially noticed. For purposes of this subsection, the term "family cases" has the same meaning as provided in the Rules of Judicial Administration.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 2, ch. 2014-35.



§90.205 FS | DENIAL OF A REQUEST FOR JUDICIAL NOTICE

Upon request of counsel, when a court denies a request to take judicial notice of any matter, the court shall inform the parties at the earliest practicable time and shall indicate for the record that it has denied the request.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.



§90.501 FS | PRIVILEGES RECOGNIZED ONLY AS PROVIDED

Except as otherwise provided by this chapter, any other statute, or the Constitution of the United States or of the State of Florida, no person in a legal proceeding has a privilege to:

- (1) Refuse to be a witness.
- (2) Refuse to disclose any matter.
- (3) Refuse to produce any object or writing.
- (4) Prevent another from being a witness, from disclosing any matter, or from producing any object or writing.

History - s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 9, 22, ch. 78-361; ss. 1, 2, ch. 78-379.



§90.5015 FS | JOURNALIST'S PRIVILEGE

(1) DEFINITIONS. – For purposes of this section, the term:

(a) "Professional journalist" means a person regularly engaged in collecting, photographing, recording, writing, editing, reporting, or publishing news, for gain or livelihood, who obtained the information sought while working as a salaried employee of, or independent contractor for, a newspaper, news journal, news agency, press association, wire service, radio or television station, network, or news magazine. Book authors and others who are not professional journalists, as defined in this paragraph, are not included in the provisions of this section.

(b) "News" means information of public concern relating to local, statewide, national, or worldwide issues or events.

(2) PRIVILEGE. – A professional journalist has a qualified privilege not to be a witness concerning, and not to disclose the information, including the identity of any source, that the professional journalist has obtained while actively gathering news. This privilege applies only to information or eyewitness observations obtained within the normal scope of employment and does not apply to physical evidence, eyewitness observations, or visual or audio recording of crimes. A party seeking to overcome this privilege must make a clear and specific showing that:

(a) The information is relevant and material to unresolved issues that have been raised in the proceeding for which the information is sought;

(b) The information cannot be obtained from alternative sources; and

(c) A compelling interest exists for requiring disclosure of the information.

(3) DISCLOSURE. – A court shall order disclosure pursuant to subsection (2) only of that portion of the information for which the showing under subsection (2) has been made and shall support such order with clear and specific findings made after a hearing.



(4) WAIVER. – A professional journalist does not waive the privilege by publishing or broadcasting information.

(5) CONSTRUCTION. – This section must not be construed to limit any privilege or right provided to a professional journalist under law.

(6) AUTHENTICATION. – Photographs, diagrams, video recordings, audio recordings, computer records, or other business records maintained, disclosed, provided, or produced by a professional journalist, or by the employer or principal of a professional journalist, may be authenticated for admission in evidence upon a showing, by affidavit of the professional journalist, or other individual with personal knowledge, that the photograph, diagram, video recording, audio recording, computer record, or other business record is a true and accurate copy of the original, and that the copy truly and accurately reflects the observations and facts contained therein.

(7) ACCURACY OF EVIDENCE. – If the affidavit of authenticity and accuracy, or other relevant factual circumstance, causes the court to have clear and convincing doubts as to the authenticity or accuracy of the proffered evidence, the court may decline to admit such evidence.

(8) SEVERABILITY. – If any provision of this section or its application to any particular person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this section.

History - s. 1, ch. 98-48.



§90.502 FS | LAWYER-CLIENT PRIVILEGE

(1) For purposes of this section:

(a) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(b) A "client" is any person, public officer, corporation, association, or other organization or entity, either public or private, who consults a lawyer with the purpose of obtaining legal services or who is rendered legal services by a lawyer.

(c) A communication between lawyer and client is "confidential" if it is not intended to be disclosed to third persons other than:

1. Those to whom disclosure is in furtherance of the rendition of legal services to the client.
2. Those reasonably necessary for the transmission of the communication.

(2) A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications when such other person learned of the communications because they were made in the rendition of legal services to the client.

(3) The privilege may be claimed by:

- (a) The client.
- (b) A guardian or conservator of the client.
- (c) The personal representative of a deceased client.
- (d) A successor, assignee, trustee in dissolution, or any similar representative of an organization, corporation, or association or other entity, either public or private, whether or not in existence.
- (e) The lawyer, but only on behalf of the client. The lawyer's authority to claim the privilege is presumed in the absence of contrary evidence.

(4) There is no lawyer-client privilege under this section when:



(a) The services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew was a crime or fraud.

(b) A communication is relevant to an issue between parties who claim through the same deceased client.

(c) A communication is relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer, arising from the lawyer-client relationship.

(d) A communication is relevant to an issue concerning the intention or competence of a client executing an attested document to which the lawyer is an attesting witness, or concerning the execution or attestation of the document.

(e) A communication is relevant to a matter of common interest between two or more clients, or their successors in interest, if the communication was made by any of them to a lawyer retained or consulted in common when offered in a civil action between the clients or their successors in interest.

(5) Communications made by a person who seeks or receives services from the Department of Revenue under the child support enforcement program to the attorney representing the department shall be confidential and privileged as provided for in this section. Such communications shall not be disclosed to anyone other than the agency except as provided for in this section. Such disclosures shall be protected as if there were an attorney-client relationship between the attorney for the agency and the person who seeks services from the department.

(6) A discussion or activity that is not a meeting for purposes of s. 286.011 shall not be construed to waive the attorney-client privilege established in this section. This shall not be construed to constitute an exemption to either s. 119.07 or s. 286.011.

History - s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 16, ch. 92-138; s. 12, ch. 94-124; s. 1378, ch. 95-147; s. 1, ch. 2000-316.



§90.5021 FS | FIDUCIARY LAWYER-CLIENT PRIVILEGE

(1) For the purpose of this section, a client acts as a fiduciary when serving as a personal representative or a trustee as defined in ss. 731.201 and 736.0103, an administrator ad litem as described in s. 733.308, a curator as described in s. 733.501, a guardian or guardian ad litem as defined in s. 744.102, a conservator as defined in s. 710.102, or an attorney in fact as described in chapter 709.

(2) A communication between a lawyer and a client acting as a fiduciary is privileged and protected from disclosure under s. 90.502 to the same extent as if the client were not acting as a fiduciary. In applying s. 90.502 to a communication under this section, only the person or entity acting as a fiduciary is considered a client of the lawyer.

(3) This section does not affect the crime or fraud exception to the lawyer-client privilege provided in s. 90.502(4)(a).

History - s. 1, ch. 2011-183.



§90.503 FS | PSYCHOTHERAPIST-PATIENT PRIVILEGE

(1) For purposes of this section:

(a) A "psychotherapist" is:

1. A person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;

2. A person licensed or certified as a psychologist under the laws of any state or nation, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;

3. A person licensed or certified as a clinical social worker, marriage and family therapist, or mental health counselor under the laws of this state, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;

4. Treatment personnel of facilities licensed by the state pursuant to chapter 394, chapter 395, or chapter 397, of facilities designated by the Department of Children and Families pursuant to chapter 394 as treatment facilities, or of facilities defined as community mental health centers pursuant to s. 394.907(1), who are engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction; or

5. An advanced practice registered nurse licensed under s. 464.012, whose primary scope of practice is the diagnosis or treatment of mental or emotional conditions, including chemical abuse, and limited only to actions performed in accordance with part I of chapter 464.



(b) A "patient" is a person who consults, or is interviewed by, a psychotherapist for purposes of diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction.

(c) A communication between psychotherapist and patient is "confidential" if it is not intended to be disclosed to third persons other than:

1. Those persons present to further the interest of the patient in the consultation, examination, or interview.
2. Those persons necessary for the transmission of the communication.
3. Those persons who are participating in the diagnosis and treatment under the direction of the psychotherapist.

(2) A patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or treatment of the patient's mental or emotional condition, including alcoholism and other drug addiction, between the patient and the psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the psychotherapist. This privilege includes any diagnosis made, and advice given, by the psychotherapist in the course of that relationship.

(3) The privilege may be claimed by:

- (a) The patient or the patient's attorney on the patient's behalf.
- (b) A guardian or conservator of the patient.
- (c) The personal representative of a deceased patient.
- (d) The psychotherapist, but only on behalf of the patient. The authority of a psychotherapist to claim the privilege is presumed in the absence of evidence to the contrary.



(4) There is no privilege under this section:

(a) For communications relevant to an issue in proceedings to compel hospitalization of a patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has reasonable cause to believe the patient is in need of hospitalization.

(b) For communications made in the course of a court-ordered examination of the mental or emotional condition of the patient.

(c) For communications relevant to an issue of the mental or emotional condition of the patient in any proceeding in which the patient relies upon the condition as an element of his or her claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

History - s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 40, ch. 90-347; s. 1, ch. 92-57; s. 19, ch. 93-39; s. 475, ch. 95-147; s. 28, ch. 99-2; s. 5, ch. 99-8; s. 1, ch. 2006-204; s. 30, ch. 2014-19; s. 7, ch. 2018-106.



§90.5035 FS | SEXUAL ASSAULT COUNSELOR-VICTIM PRIVILEGE

(1) For purposes of this section:

(a) A "rape crisis center" is any public or private agency that offers assistance to victims of sexual assault or sexual battery and their families.

(b) A "sexual assault counselor" is any employee of a rape crisis center whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault or sexual battery.

(c) A "trained volunteer" is a person who volunteers at a rape crisis center, has completed 30 hours of training in assisting victims of sexual violence and related topics provided by the rape crisis center, is supervised by members of the staff of the rape crisis center, and is included on a list of volunteers that is maintained by the rape crisis center.

(d) A "victim" is a person who consults a sexual assault counselor or a trained volunteer for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual assault or sexual battery, an alleged sexual assault or sexual battery, or an attempted sexual assault or sexual battery.

(e) A communication between a sexual assault counselor or trained volunteer and a victim is "confidential" if it is not intended to be disclosed to third persons other than:

1. Those persons present to further the interest of the victim in the consultation, examination, or interview.
2. Those persons necessary for the transmission of the communication.
3. Those persons to whom disclosure is reasonably necessary to accomplish the purposes for which the sexual assault counselor or the trained volunteer is consulted.



(2) A victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a sexual assault counselor or trained volunteer or any record made in the course of advising, counseling, or assisting the victim. Such confidential communication or record may be disclosed only with the prior written consent of the victim. This privilege includes any advice given by the sexual assault counselor or trained volunteer in the course of that relationship.

(3) The privilege may be claimed by:

(a) The victim or the victim's attorney on his or her behalf.

(b) A guardian or conservator of the victim.

(c) The personal representative of a deceased victim.

(d) The sexual assault counselor or trained volunteer, but only on behalf of the victim. The authority of a sexual assault counselor or trained volunteer to claim the privilege is presumed in the absence of evidence to the contrary.

History - s. 1, ch. 83-284; s. 476, ch. 95-147; s. 1, ch. 2002-246.



§90.5036 FS | DOMESTIC VIOLENCE ADVOCATE-VICTIM PRIVILEGE

(1) For purposes of this section:

(a) A "domestic violence center" is any public or private agency that offers assistance to victims of domestic violence, as defined in s. 741.28, and their families.

(b) A "domestic violence advocate" means any employee or volunteer who has 30 hours of training in assisting victims of domestic violence and is an employee of or volunteer for a program for victims of domestic violence whose primary purpose is the rendering of advice, counseling, or assistance to victims of domestic violence.

(c) A "victim" is a person who consults a domestic violence advocate for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by an act of domestic violence, an alleged act of domestic violence, or an attempted act of domestic violence.

(d) A communication between a domestic violence advocate and a victim is "confidential" if it relates to the incident of domestic violence for which the victim is seeking assistance and if it is not intended to be disclosed to third persons other than:

1. Those persons present to further the interest of the victim in the consultation, assessment, or interview.
2. Those persons to whom disclosure is reasonably necessary to accomplish the purpose for which the domestic violence advocate is consulted.



(2) A victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a domestic violence advocate or any record made in the course of advising, counseling, or assisting the victim. The privilege applies to confidential communications made between the victim and the domestic violence advocate and to records of those communications only if the advocate is registered under s. 39.905 at the time the communication is made. This privilege includes any advice given by the domestic violence advocate in the course of that relationship.

(3) The privilege may be claimed by:

(a) The victim or the victim's attorney on behalf of the victim.

(b) A guardian or conservator of the victim.

(c) The personal representative of a deceased victim.

(d) The domestic violence advocate, but only on behalf of the victim. The authority of a domestic violence advocate to claim the privilege is presumed in the absence of evidence to the contrary.

History - s. 7, ch. 95-187; s. 127, ch. 98-403.



§90.504 FS | HUSBAND-WIFE PRIVILEGE

(1) A spouse has a privilege during and after the marital relationship to refuse to disclose, and to prevent another from disclosing, communications which were intended to be made in confidence between the spouses while they were husband and wife.

(2) The privilege may be claimed by either spouse or by the guardian or conservator of a spouse. The authority of a spouse, or guardian or conservator of a spouse, to claim the privilege is presumed in the absence of contrary evidence.

(3) There is no privilege under this section:

(a) In a proceeding brought by or on behalf of one spouse against the other spouse.

(b) In a criminal proceeding in which one spouse is charged with a crime committed at any time against the person or property of the other spouse, or the person or property of a child of either.

(c) In a criminal proceeding in which the communication is offered in evidence by a defendant-spouse who is one of the spouses between whom the communication was made.

History - s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 10, 22, ch. 78-361; ss. 1, 2, ch. 78-379.



§90.505 FS | PRIVILEGE WITH RESPECT TO COMMUNICATIONS TO CLERGY

(1) For the purposes of this section:

(a) A "member of the clergy" is a priest, rabbi, practitioner of Christian Science, or minister of any religious organization or denomination usually referred to as a church, or an individual reasonably believed so to be by the person consulting him or her.

(b) A communication between a member of the clergy and a person is "confidential" if made privately for the purpose of seeking spiritual counsel and advice from the member of the clergy in the usual course of his or her practice or discipline and not intended for further disclosure except to other persons present in furtherance of the communication.

(2) A person has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication by the person to a member of the clergy in his or her capacity as spiritual adviser.

(3) The privilege may be claimed by:

(a) The person.

(b) The guardian or conservator of a person.

(c) The personal representative of a deceased person.

(d) The member of the clergy, on behalf of the person. The member of the clergy's authority to do so is presumed in the absence of evidence to the contrary.

History - s. 1, ch. 76-237; s. 1, ch. 77-77; s. 1, ch. 77-174; ss. 11, 22, ch. 78-361; ss. 1, 2, ch. 78-379; s. 477, ch. 95-147.



§90.5055 FS | ACCOUNTANT-CLIENT PRIVILEGE

(1) For purposes of this section:

(a) An "accountant" is a certified public accountant or a public accountant.

(b) A "client" is any person, public officer, corporation, association, or other organization or entity, either public or private, who consults an accountant with the purpose of obtaining accounting services.

(c) A communication between an accountant and the accountant's client is "confidential" if it is not intended to be disclosed to third persons other than:

1. Those to whom disclosure is in furtherance of the rendition of accounting services to the client.
2. Those reasonably necessary for the transmission of the communication.

(2) A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications with an accountant when such other person learned of the communications because they were made in the rendition of accounting services to the client. This privilege includes other confidential information obtained by the accountant from the client for the purpose of rendering accounting advice.

(3) The privilege may be claimed by:

(a) The client.

(b) A guardian or conservator of the client.

(c) The personal representative of a deceased client.

(d) A successor, assignee, trustee in dissolution, or any similar representative of an organization, corporation, or association or other entity, either public or private, whether or not in existence.

(e) The accountant, but only on behalf of the client. The accountant's authority to claim the privilege is presumed in the absence of contrary evidence.



(4) There is no accountant-client privilege under this section when:

(a) The services of the accountant were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or should have known was a crime or fraud.

(b) A communication is relevant to an issue of breach of duty by the accountant to the accountant's client or by the client to his or her accountant.

(c) A communication is relevant to a matter of common interest between two or more clients, if the communication was made by any of them to an accountant retained or consulted in common when offered in a civil action between the clients.

History - s. 12, ch. 78-361; s. 2, ch. 78-379; s. 478, ch. 95-147.



§90.506 FS | PRIVILEGE WITH RESPECT TO TRADE SECRETS

A person has a privilege to refuse to disclose, and to prevent other persons from disclosing, a trade secret owned by that person if the allowance of the privilege will not conceal fraud or otherwise work injustice. When the court directs disclosure, it shall take the protective measures that the interests of the holder of the privilege, the interests of the parties, and the furtherance of justice require. The privilege may be claimed by the person or the person's agent or employee.

History - s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 479, ch. 95-147.



§90.507 FS | WAIVER OF PRIVILEGE BY VOLUNTARY DISCLOSURE

A person who has a privilege against the disclosure of a confidential matter or communication waives the privilege if the person, or the person's predecessor while holder of the privilege, voluntarily discloses or makes the communication when he or she does not have a reasonable expectation of privacy, or consents to disclosure of, any significant part of the matter or communication. This section is not applicable when the disclosure is itself a privileged communication.

History - s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 13, 22, ch. 78-361; ss. 1, 2, ch. 78-379; s. 480, ch. 95-147.



§90.508 FS | PRIVILEGED MATTER DISCLOSED UNDER COMPULSION OR WITHOUT OPPORTUNITY TO CLAIM PRIVILEGE

Evidence of a statement or other disclosure of privileged matter is inadmissible against the holder of the privilege if the statement or disclosure was compelled erroneously by the court or made without opportunity to claim the privilege.

History - s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.



§90.509 FS | APPLICATION OF PRIVILEGED COMMUNICATION

Nothing in this act shall abrogate a privilege for any communication which was made prior to July 1, 1979, if such communication was privileged at the time it was made.

History - s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 41, ch. 81-259.



§90.510 FS | PRIVILEGED COMMUNICATION NECESSARY TO ADVERSE PARTY

In any civil case or proceeding in which a party claims a privilege as to a communication necessary to an adverse party, the court, upon motion, may dismiss the claim for relief or the affirmative defense to which the privileged testimony would relate. In making its determination, the court may engage in an in camera inquiry into the privilege.

History - s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.



§90.608 FS | WHO MAY IMPEACH

Any party, including the party calling the witness, may attack the credibility of a witness by:

- (1) Introducing statements of the witness which are inconsistent with the witness's present testimony.
- (2) Showing that the witness is biased.
- (3) Attacking the character of the witness in accordance with the provisions of s. 90.609 or s. 90.610.
- (4) Showing a defect of capacity, ability, or opportunity in the witness to observe, remember, or recount the matters about which the witness testified.
- (5) Proof by other witnesses that material facts are not as testified to by the witness being impeached.

History - (s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 14, 22, ch. 78-361; ss. 1, 2, ch. 78-379; s. 1, ch. 90-174; s. 488, ch. 95-147.)



§90.702 FS | TESTIMONY BY EXPERTS

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:

- (1) The testimony is based upon sufficient facts or data;
- (2) The testimony is the product of reliable principles and methods; and
- (3) The witness has applied the principles and methods reliably to the facts of the case.

History - (s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 1, ch. 2013-107.)



§90.703 FS | OPINION ON ULTIMATE ISSUE

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it includes an ultimate issue to be decided by the trier of fact.

History - (s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.)



§90.704 FS | BASIS OF OPINION TESTIMONY BY EXPERTS

The facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, the expert at or before the trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence. Facts or data that are otherwise inadmissible may not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

History - (s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 495, ch. 95-147; s. 2, ch. 2013-107.)



§90.801 FS | HEARSAY; DEFINITIONS; EXCEPTIONS

(1) The following definitions apply under this chapter:

(a) A "statement" is:

1. An oral or written assertion; or
2. Nonverbal conduct of a person if it is intended by the person as an assertion.

(b) A "declarant" is a person who makes a statement.

(c) "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(2) A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is:

(a) Inconsistent with the declarant's testimony and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(b) Consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of improper influence, motive, or recent fabrication; or

(c) One of identification of a person made after perceiving the person.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 19, 22, ch. 78-361; ss. 1, 2, ch. 78-379; s. 2, ch. 81-93; s. 497, ch. 95-147.



§90.802 FS | HEARSAY RULE

Except as provided by statute, hearsay evidence is inadmissible.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.



§90.803 FS | HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL

The provision of s. 90.802 to the contrary notwithstanding, the following are not inadmissible as evidence, even though the declarant is available as a witness:

(1) SPONTANEOUS STATEMENT. – A spontaneous statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, except when such statement is made under circumstances that indicate its lack of trustworthiness.

(2) EXCITED UTTERANCE. – A statement or excited utterance relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) THEN-EXISTING MENTAL, EMOTIONAL, OR PHYSICAL CONDITION.—

(a) A statement of the declarant's then-existing state of mind, emotion, or physical sensation, including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health, when such evidence is offered to:

1. Prove the declarant's state of mind, emotion, or physical sensation at that time or at any other time when such state is an issue in the action.
2. Prove or explain acts of subsequent conduct of the declarant.

(b) However, this subsection does not make admissible:

1. An after-the-fact statement of memory or belief to prove the fact remembered or believed, unless such statement relates to the execution, revocation, identification, or terms of the declarant's will.
2. A statement made under circumstances that indicate its lack of trustworthiness.



(4) STATEMENTS FOR PURPOSES OF MEDICAL DIAGNOSIS OR TREATMENT. – Statements made for purposes of medical diagnosis or treatment by a person seeking the diagnosis or treatment, or made by an individual who has knowledge of the facts and is legally responsible for the person who is unable to communicate the facts, which statements describe medical history, past or present symptoms, pain, or sensations, or the inceptions or general character of the cause or external source thereof, insofar as reasonably pertinent to diagnosis or treatment.

(5) RECORDED RECOLLECTION. – A memorandum or record concerning a matter about which a witness once had knowledge, but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made by the witness when the matter was fresh in the witness's memory and to reflect that knowledge correctly. A party may read into evidence a memorandum or record when it is admitted, but no such memorandum or record is admissible as an exhibit unless offered by an adverse party.

(6) RECORDS OF REGULARLY CONDUCTED BUSINESS ACTIVITY. –

(a) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinion, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make such memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or as shown by a certification or declaration that complies with paragraph (c) and s. 90.902(11), unless the sources of information or other circumstances show lack of trustworthiness. The term "business" as used in this paragraph includes a business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(b) Evidence in the form of an opinion or diagnosis is inadmissible under paragraph (a) unless such opinion or diagnosis would be admissible under ss. 90.701-90.705 if the person whose opinion is recorded were to testify to the opinion directly.



(c) A party intending to offer evidence under paragraph (a) by means of a certification or declaration shall serve reasonable written notice of that intention upon every other party and shall make the evidence available for inspection sufficiently in advance of its offer in evidence to provide to any other party a fair opportunity to challenge the admissibility of the evidence. If the evidence is maintained in a foreign country, the party intending to offer the evidence must provide written notice of that intention at the arraignment or as soon after the arraignment as is practicable or, in a civil case, 60 days before the trial. A motion opposing the admissibility of such evidence must be made by the opposing party and determined by the court before trial. A party's failure to file such a motion before trial constitutes a waiver of objection to the evidence, but the court for good cause shown may grant relief from the waiver.

(7) ABSENCE OF ENTRY IN RECORDS OF REGULARLY CONDUCTED ACTIVITY. — Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, of a regularly conducted activity to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances show lack of trustworthiness.

(8) PUBLIC RECORDS AND REPORTS. — Records, reports, statements reduced to writing, or data compilations, in any form, of public offices or agencies, setting forth the activities of the office or agency, or matters observed pursuant to duty imposed by law as to matters which there was a duty to report, excluding in criminal cases matters observed by a police officer or other law enforcement personnel, unless the sources of information or other circumstances show their lack of trustworthiness. The criminal case exclusion shall not apply to an affidavit otherwise admissible under s. 316.1934 or s. 327.354.

(9) RECORDS OF VITAL STATISTICS. – Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if a report was made to a public office pursuant to requirements of law. However, nothing in this section shall be construed to make admissible any other marriage of any party to any cause of action except for the purpose of impeachment as set forth in s. 90.610.

(10) ABSENCE OF PUBLIC RECORD OR ENTRY. – Evidence, in the form of a certification in accord with s. 90.902, or in the form of testimony, that diligent search failed to disclose a record, report, statement, or data compilation or entry, when offered to prove the absence of the record, report, statement, or data compilation or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation would regularly have been made and preserved by a public office and agency.

(11) RECORDS OF RELIGIOUS ORGANIZATIONS. – Statements of births, marriages, divorces, deaths, parentage, ancestry, relationship by blood or marriage, or other similar facts of personal or family history contained in a regularly kept record of a religious organization.

(12) MARRIAGE, BAPTISMAL, AND SIMILAR CERTIFICATES. – Statements of facts contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, when such statement was certified by a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and when such certificate purports to have been issued at the time of the act or within a reasonable time thereafter.

(13) FAMILY RECORDS. – Statements of fact concerning personal or family history in family Bibles, charts, engravings in rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) RECORDS OF DOCUMENTS AFFECTING AN INTEREST IN PROPERTY. – The record of a document purporting to establish or affect an interest in property, as proof of the contents of the original recorded or filed document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorized the recording or filing of the document in the office.



(15) STATEMENTS IN DOCUMENTS AFFECTING AN INTEREST IN PROPERTY. – A statement contained in a document purporting to establish or affect an interest in property, if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) STATEMENTS IN ANCIENT DOCUMENTS.—Statements in a document in existence 20 years or more, the authenticity of which is established.

(17) MARKET REPORTS, COMMERCIAL PUBLICATIONS. – Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations if, in the opinion of the court, the sources of information and method of preparation were such as to justify their admission.

(18) ADMISSIONS. – A statement that is offered against a party and is:

(a) The party's own statement in either an individual or a representative capacity;

(b) A statement of which the party has manifested an adoption or belief in its truth;

(c) A statement by a person specifically authorized by the party to make a statement concerning the subject;

(d) A statement by the party's agent or servant concerning a matter within the scope of the agency or employment thereof, made during the existence of the relationship; or

(e) A statement by a person who was a coconspirator of the party during the course, and in furtherance, of the conspiracy. Upon request of counsel, the court shall instruct the jury that the conspiracy itself and each member's participation in it must be established by independent evidence, either before the introduction of any evidence or before evidence is admitted under this paragraph.



(19) REPUTATION CONCERNING PERSONAL OR FAMILY HISTORY. – Evidence of reputation:

(a) Among members of a person's family by blood, adoption, or marriage;

(b) Among a person's associates; or

(c) In the community, concerning a person's birth, adoption, marriage, divorce, death, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(20) REPUTATION CONCERNING BOUNDARIES OR GENERAL HISTORY. – Evidence of reputation:

(a) In a community, arising before the controversy about the boundaries of, or customs affecting lands in, the community.

(b) About events of general history which are important to the community, state, or nation where located.

(21) REPUTATION AS TO CHARACTER. – Evidence of reputation of a person's character among associates or in the community.

(22) FORMER TESTIMONY. – Former testimony given by the declarant which testimony was given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, or a person with a similar interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination; provided, however, the court finds that the testimony is not inadmissible pursuant to s. 90.402 or s. 90.403.



(23) HEARSAY EXCEPTION; STATEMENT OF CHILD VICTIM. –

(a) Unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 16 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

1. The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability. In making its determination, the court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, the reliability of the assertion, the reliability of the child victim, and any other factor deemed appropriate; and

2. The child either:

- a. Testifies; or

- b. Is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense. Unavailability shall include a finding by the court that the child's participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm, in addition to findings pursuant to s. 90.804(1).



(b) In a criminal action, the defendant shall be notified no later than 10 days before trial that a statement which qualifies as a hearsay exception pursuant to this subsection will be offered as evidence at trial. The notice shall include a written statement of the content of the child's statement, the time at which the statement was made, the circumstances surrounding the statement which indicate its reliability, and such other particulars as necessary to provide full disclosure of the statement.

(c) The court shall make specific findings of fact, on the record, as to the basis for its ruling under this subsection.

(24) HEARSAY EXCEPTION; STATEMENT OF ELDERLY PERSON OR DISABLED ADULT. -

(a) Unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by an elderly person or disabled adult, as defined in s. 825.101, describing any act of abuse or neglect, any act of exploitation, the offense of battery or aggravated battery or assault or aggravated assault or sexual battery, or any other violent act on the declarant elderly person or disabled adult, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

1. The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability. In making its determination, the court may consider the mental and physical age and maturity of the elderly person or disabled adult, the nature and duration of the abuse or offense, the relationship of the victim to the offender, the reliability of the assertion, the reliability of the elderly person or disabled adult, and any other factor deemed appropriate; and



2. The elderly person or disabled adult is unavailable as a witness, provided that there is corroborative evidence of the abuse or offense. Unavailability shall include a finding by the court that the elderly person's or disabled adult's participation in the trial or proceeding would result in a substantial likelihood of severe emotional, mental, or physical harm, in addition to findings pursuant to s. 90.804(1).

(b) In a criminal action, the defendant shall be notified no later than 10 days before the trial that a statement which qualifies as a hearsay exception pursuant to this subsection will be offered as evidence at trial. The notice shall include a written statement of the content of the elderly person's or disabled adult's statement, the time at which the statement was made, the circumstances surrounding the statement which indicate its reliability, and such other particulars as necessary to provide full disclosure of the statement.

(c) The court shall make specific findings of fact, on the record, as to the basis for its ruling under this subsection.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 1, ch. 77-174; ss. 20, 22, ch. 78-361; ss. 1, 2, ch. 78-379; s. 4, ch. 85-53; s. 11, ch. 87-224; s. 2, ch. 90-139; s. 3, ch. 90-174; s. 12, ch. 91-255; s. 498, ch. 95-147; s. 1, ch. 95-158; s. 2, ch. 96-330; s. 1, ch. 98-2; s. 2, ch. 2003-259; s. 1, ch. 2013-98; s. 1, ch. 2014-200.



§90.804 FS | HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE

(1) DEFINITION OF UNAVAILABILITY. – “Unavailability as a witness” means that the declarant:

(a) Is exempted by a ruling of a court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement;

(b) Persists in refusing to testify concerning the subject matter of the declarant’s statement despite an order of the court to do so;

(c) Has suffered a lack of memory of the subject matter of his or her statement so as to destroy the declarant’s effectiveness as a witness during the trial;

(d) Is unable to be present or to testify at the hearing because of death or because of then-existing physical or mental illness or infirmity; or

(e) Is absent from the hearing, and the proponent of a statement has been unable to procure the declarant’s attendance or testimony by process or other reasonable means.

However, a declarant is not unavailable as a witness if such exemption, refusal, claim of lack of memory, inability to be present, or absence is due to the procurement or wrongdoing of the party who is the proponent of his or her statement in preventing the witness from attending or testifying.

(2) HEARSAY EXCEPTIONS.—The following are not excluded under s. 90.802, provided that the declarant is unavailable as a witness:

(a) Former testimony.—Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.



(b) Statement under belief of impending death.—In a civil or criminal trial, a statement made by a declarant while reasonably believing that his or her death was imminent, concerning the physical cause or instrumentalities of what the declarant believed to be impending death or the circumstances surrounding impending death.

(c) Statement against interest.—A statement which, at the time of its making, was so far contrary to the declarant's pecuniary or proprietary interest or tended to subject the declarant to liability or to render invalid a claim by the declarant against another, so that a person in the declarant's position would not have made the statement unless he or she believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is inadmissible, unless corroborating circumstances show the trustworthiness of the statement.

(d) Statement of personal or family history.—A statement concerning the declarant's own birth, adoption, marriage, divorce, parentage, ancestry, or other similar fact of personal or family history, including relationship by blood, adoption, or marriage, even though the declarant had no means of acquiring personal knowledge of the matter stated.

(e) Statement by deceased or ill declarant similar to one previously admitted.—In an action or proceeding brought against the personal representative, heir at law, assignee, legatee, devisee, or survivor of a deceased person, or against a trustee of a trust created by a deceased person, or against the assignee, committee, or guardian of a mentally incompetent person, when a declarant is unavailable as provided in paragraph (1)(d), a written or oral statement made regarding the same subject matter as another statement made by the declarant that has previously been offered by an adverse party and admitted in evidence.

(f) Statement offered against a party that wrongfully caused the declarant's unavailability. — A statement offered against a party that wrongfully caused, or acquiesced in wrongfully causing, the declarant's unavailability as a witness, and did so intending that result.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 3, ch. 90-139; s. 4, ch. 90-174; s. 499, ch. 95-147; s. 2, ch. 2005-46; s. 1, ch. 2012-152.



§90.805 FS | HEARSAY WITHIN HEARSAY

Hearsay within hearsay is not excluded under s. 90.802, provided each part of the combined statements conforms with an exception to the hearsay rule as provided in s. 90.803 or s. 90.804.

History. — s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.



§90.901 FS | REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION

Authentication or identification of evidence is required as a condition precedent to its admissibility. The requirements of this section are satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

History - s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.



§90.902 FS | SELF-AUTHENTICATION

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required for:

(1) A document bearing:

(a) A seal purporting to be that of the United States or any state, district, commonwealth, territory, or insular possession thereof; the Panama Canal Zone; the Trust Territory of the Pacific Islands; or a court, political subdivision, department, officer, or agency of any of them; and

(b) A signature by the custodian of the document attesting to the authenticity of the seal.

(2) A document not bearing a seal but purporting to bear a signature of an officer or employee of any entity listed in subsection (1), affixed in the officer's or employee's official capacity.

(3) An official foreign document, record, or entry that is:

(a) Executed or attested to by a person in the person's official capacity authorized by the laws of a foreign country to make the execution or attestation; and

(b) Accompanied by a final certification, as provided herein, of the genuineness of the signature and official position of:

1. The executing person; or

2. Any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation.

The final certification may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States or a diplomatic or consular official of the foreign country assigned or accredited to the United States. When the parties receive reasonable opportunity to investigate the authenticity and accuracy of official foreign documents, the court



may order that they be treated as presumptively authentic without final certification or permit them in evidence by an attested summary with or without final certification.

(4) A copy of an official public record, report, or entry, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification by certificate complying with subsection (1), subsection (2), or subsection (3) or complying with any act of the Legislature or rule adopted by the Supreme Court.

(5) Books, pamphlets, or other publications purporting to be issued by a governmental authority.

(6) Printed materials purporting to be newspapers or periodicals.

(7) Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) Commercial papers and signatures thereon and documents relating to them, to the extent provided in the Uniform Commercial Code.

(9) Any signature, document, or other matter declared by the Legislature to be presumptively or prima facie genuine or authentic.

(10) Any document properly certified under the law of the jurisdiction where the certification is made.

(11) An original or a duplicate of evidence that would be admissible under s. 90.803(6), which is maintained in a foreign country or domestic location and is accompanied by a certification or declaration from the custodian of the records or another qualified person certifying or declaring that the record:

(a) Was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person having knowledge of those matters;



(b) Was kept in the course of the regularly conducted activity; and

(c) Was made as a regular practice in the course of the regularly conducted activity, provided that falsely making such a certification or declaration would subject the maker to criminal penalty under the laws of the foreign or domestic location in which the certification or declaration was signed.

History - s. 1, ch. 76-237; s. 1, ch. 77-77; s. 1, ch. 77-174; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 501, ch. 95-147; s. 3, ch. 2003-259.



CHAPTER 92 FLORIDA STATUTES | FLORIDA

TITLE: VII EVIDENCE

CHAPTER: 92 WITNESSES, RECORDS, AND DOCUMENTS

PART: --

SECTIONS: §92.141 through §92.525

NOTE: Pertinent Parts Only!!!



§92.141 FS | LAW ENFORCEMENT EMPLOYEES; TRAVEL EXPENSES; COMPENSATION AS WITNESS

Any employee of a law enforcement agency of a municipality or county or the state who appears as an official witness to testify at any hearing or law action in any court of this state as a direct result of his or her employment in the law enforcement agency is entitled to per diem and travel expenses at the same rate provided for state employees under s. 112.061, except that if the employee travels by privately owned vehicle he or she is entitled to such travel expenses for the actual distance traveled to and from court. In addition thereto, such employee is entitled to receive the daily witness pay, exclusive of the mileage allowance, provided by s. 92.142, except when the employee is appearing as a witness during time compensated as a part of his or her normal duties.

History.—s. 1, ch. 63-508; s. 1, ch. 67-427; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 43, ch. 81-259; s. 1, ch. 84-153; s. 505, ch. 95-147.

Note.—Former s. 90.141.



§92.142 FS | WITNESS; PAY

(1) Witnesses in all cases, civil and criminal, in all courts, now or hereafter created, and witnesses summoned before any arbitrator or general or special magistrate appointed by the court shall receive for each day's actual attendance \$5 and also 6 cents per mile for actual distance traveled to and from the courts. A witness in a criminal case required to appear in a county other than the county of his or her residence and residing more than 50 miles from the location of the trial shall be entitled to per diem and travel expenses at the same rate provided for state employees under s. 112.061, in lieu of any other witness fee.

(2) An employee of the state who is required, as a direct result of employment, to appear as an official witness to testify in the course of any action in any court of this state, or before an administrative law judge, a hearing officer, hearing examiner, or any board or commission of the state or of its agencies, instrumentalities, or political subdivisions, shall be considered to be on duty during such appearance and shall be entitled to per diem and travel expenses as provided in s. 112.061. Except as provided in s. 92.141 and as provided in this subsection, such employee shall be required to tender to the employing agency any witness fee and other expense reimbursement received by the employee for such appearance.

(3) Any witness subpoenaed to testify on behalf of the state in any action brought pursuant to s. 895.05 or chapter 542 who is required to travel outside his or her county of residence and more than 50 miles from his or her residence, or who is required to travel from out of state, shall be entitled to per diem and travel expenses at the same rate provided for state employees under s. 112.061 in lieu of any state witness fee.

History.—s. 5, ch. 3106, 1879; RS 1103; s. 1, ch. 4387, 1895; GS 1512; s. 2, ch. 5649, 1907; s. 1, ch. 6905, 1915; s. 1, ch. 7280, 1917; RGS 2712; CGL 4379; s. 1, ch. 29927, 1955; s. 8, ch. 65-483; s. 1, ch. 67-401; s. 15, ch. 73-334; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 1, ch. 78-175; s. 22, ch. 78-361; ss. 1, 2, ch. 78-379; s. 1, ch. 83-36; s. 506, ch. 95-147; s. 9, ch. 96-410; s. 59, ch. 2004-11; s. 36, ch. 2005-236; s. 9, ch. 2016-84.

Note.—Former s. 90.14.



§92.50 FS | OATHS, AFFIDAVITS, AND ACKNOWLEDGMENTS; WHO MAY TAKE OR ADMINISTER; REQUIREMENTS

(1) IN THIS STATE. – Oaths, affidavits, and acknowledgments required or authorized under the laws of this state (except oaths to jurors and witnesses in court and such other oaths, affidavits and acknowledgments as are required by law to be taken or administered by or before particular officers) may be taken or administered by or before any judge, clerk, or deputy clerk of any court of record within this state, including federal courts, or by or before any United States commissioner or any notary public within this state. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; however, when taken or administered by or before any judge, clerk, or deputy clerk of a court of record, the seal of such court may be affixed as the seal of such officer or person.

(2) IN OTHER STATES, TERRITORIES, AND DISTRICTS OF THE UNITED STATES. – Oaths, affidavits, and acknowledgments required or authorized under the laws of this state, may be taken or administered in any other state, territory, or district of the United States, by or before any judge, clerk or deputy clerk of any court of record, within such state, territory, or district, having a seal, or by or before any notary public or justice of the peace, having a seal, in such state, territory, or district; provided, however, such officer or person is authorized under the laws of such state, territory, or district to take or administer oaths, affidavits and acknowledgments. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; provided, however, when taken or administered by or before any judge, clerk, or deputy clerk of a court of record, the seal of such court may be affixed as the seal of such officer or person.

(3) IN FOREIGN COUNTRIES. – Oaths, affidavits, and acknowledgments, required or authorized by the laws of this state, may be taken or administered in any foreign country, by or before any judge or justice of a court of last resort, any notary public of such foreign country, any minister, consul general, charge d'affaires, or consul of the United States resident in such country. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of the officer or person taking or administering the same; provided,



however, when taken or administered by or before any judge or justice of a court of last resort, the seal of such court may be affixed as the seal of such judge or justice.

History.—s. 1, ch. 48, 1845; RS 1299; GS 1730; RGS 2945; CGL 4669; s. 1, ch. 23156, 1945; s. 7, ch. 24337, 1947; s. 15, ch. 73-334; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 19, ch. 2019-71.

Note.—Former s. 90.01.



§92.51 FS | OATHS, AFFIDAVITS, AND ACKNOWLEDGMENTS; TAKEN OR ADMINISTERED BY COMMISSIONED OFFICER OF UNITED STATES ARMED FORCES

(1) Oaths, affidavits, and acknowledgments required or authorized by the laws of this state may be taken or administered within or without the United States by or before any commissioned officer in active service of the Armed Forces of the United States with the rank of second lieutenant or higher in the Army, Air Force or Marine Corps or ensign or higher in the Navy or Coast Guard when the person required or authorized to make and execute the oath, affidavit, or acknowledgment is a member of the Armed Forces of the United States, the spouse of such member or a person whose duties require the person's presence with the Armed Forces of the United States.

(2) A certificate endorsed upon the instrument which shows the date of the oath, affidavit, or acknowledgment and which states in substance that the person appearing before the officer acknowledged the instrument as the person's act or made or signed the instrument under oath shall be sufficient for all intents and purposes. The instrument shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

(3) If the signature, rank, and branch of service or subdivision thereof of any commissioned officer appears upon such instrument, document or certificate no further proof of the authority of such officer so to act shall be required and such action by such commissioned officer shall be prima facie evidence that the person making such oath, affidavit or acknowledgment is within the purview of this act.

History.—ss. 1, 2, 3, ch. 61-196; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 518, ch. 95-147.

Note.—Former s. 90.011.



§92.52 FS | AFFIRMATION EQUIVALENT TO OATH

Whenever an oath shall be required by any law of this state in any proceeding, an affirmation may be substituted therefor.

History .— *RS 1300; GS 1731; RGS 2946; CGL 4670; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.*

Note .— *Former s. 90.02.*



§92.525 FS | VERIFICATION OF DOCUMENTS; PERJURY BY FALSE WRITTEN DECLARATION, PENALTY

(1) If authorized or required by law, by rule of an administrative agency, or by rule or order of court that a document be verified by a person, the verification may be accomplished in the following manner:

(a) Under oath or affirmation taken or administered before an officer authorized under s. 92.50 to administer oaths;

(b) Under oath or affirmation taken or administered by an officer authorized under s. 117.10 to administer oaths; or

(c) By the signing of the written declaration prescribed in subsection (2).

(2) A written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.

(3) A person who knowingly makes a false declaration under subsection (2) is guilty of the crime of perjury by false written declaration, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) As used in this section:

(a) The term "administrative agency" means any department or agency of the state or any county, municipality, special district, or other political subdivision.

(b) The term "document" means any writing including, without limitation, any form, application, claim, notice, tax return, inventory, affidavit, pleading, or paper.

(c) The requirement that a document be verified means that the document must be signed or executed by a person and that the person must state under oath or affirm that the facts or matters stated or recited in the document are true, or words of that import or effect.

History.—s. 12, ch. 86-201; s. 1, ch. 2015-23.



CHAPTER 110 FLORIDA STATUTES | FLORIDA

TITLE: X PUBLIC OFFICERS, EMPLOYEES, AND RECORDS

CHAPTER: 110 STATE EMPLOYMENT

PART: I GENERAL STATE EMPLOYMENT PROVISIONS

SECTIONS: §110.117 only

NOTE:



§110.117 FS | PAID HOLIDAYS

(1) The following holidays shall be paid holidays observed by all state branches and agencies:

- (a) New Year's Day.
- (b) Birthday of Martin Luther King, Jr., third Monday in January.
- (c) Memorial Day.
- (d) Independence Day.
- (e) Labor Day.
- (f) Veterans' Day, November 11.
- (g) Thanksgiving Day.
- (h) Friday after Thanksgiving.
- (i) Christmas Day.
- (j) If any of these holidays falls on Saturday, the preceding Friday shall be observed as a holiday. If any of these holidays falls on Sunday, the following Monday shall be observed as a holiday.

(2) The Governor may declare, when appropriate, a state day of mourning in observance of the death of a person in recognition of service rendered to the state or nation.

(3) Each full-time employee is entitled to one personal holiday each year. Each part-time employee is entitled to a personal holiday each year which shall be calculated proportionately to the personal holiday allowed to a full-time employee. Such personal holiday shall be credited to eligible employees on July 1 of each year to be taken prior to June 30 of the following year. Members of the teaching and research faculty of the State University System and administrative and professional positions exempted under s. 110.205(2)(d) are not eligible for this benefit.

History.—s. 20, ch. 79-190; s. 1, ch. 80-331; s. 1, ch. 88-63; s. 16, ch. 92-279; s. 55, ch. 92-326; s. 8, ch. 94-113; s. 5, ch. 96-399.



CHAPTER 112 FLORIDA STATUTES | FLORIDA

TITLE: X PUBLIC OFFICERS, EMPLOYEES, AND RECORDS

CHAPTER: 110 PUBLIC OFFICERS AND EMPLOYEES; GENERAL...

PART: I CONDITIONS OF EMPLOYMENT; RETIREMENT...

SECTIONS: §112.061 only

NOTE:



§112.061 FS | PER DIEM AND TRAVEL EXPENSES OF PUBLIC OFFICERS, EMPLOYEES, AND AUTHORIZED PERSONS; STATEWIDE TRAVEL MANAGEMENT SYSTEM

(1) LEGISLATIVE INTENT. — To prevent inequities, conflicts, inconsistencies, and lapses in the numerous laws regulating or attempting to regulate travel expenses of public officers, employees, and authorized persons in the state, it is the intent of the Legislature:

(a) To establish standard travel reimbursement rates, procedures, and limitations, with certain justifiable exceptions and exemptions, applicable to all public officers, employees, and authorized persons whose travel is authorized and paid by a public agency.

(b) To preserve the standardization established by this law:

1. The provisions of this section shall prevail over any conflicting provisions in a general law, present or future, to the extent of the conflict; but if any such general law contains a specific exemption from this section, including a specific reference to this section, such general law shall prevail, but only to the extent of the exemption.

2. The provisions of any special or local law, present or future, shall prevail over any conflicting provisions in this section, but only to the extent of the conflict.

(2) DEFINITIONS. — For the purposes of this section, the following words shall have the meanings indicated:

(a) Agency or public agency — Any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, county, city, town, village, municipality, or any other separate unit of government created pursuant to law.

(b) Agency head or head of the agency — The highest policymaking authority of a public agency, as herein defined.

(c) Officer or public officer — An individual who in the performance of his or her official duties is vested by



law with sovereign powers of government and who is either elected by the people, or commissioned by the Governor and has jurisdiction extending throughout the state, or any person lawfully serving instead of either of the foregoing two classes of individuals as initial designee or successor.

(d) Employee or public employee – An individual, whether commissioned or not, other than an officer or authorized person as defined herein, who is filling a regular or full-time authorized position and is responsible to an agency head.

(e) Authorized person –

1. A person other than a public officer or employee as defined herein, whether elected or commissioned or not, who is authorized by an agency head to incur travel expenses in the performance of official duties.

2. A person who is called upon by an agency to contribute time and services as consultant or adviser.

3. A person who is a candidate for an executive or professional position.

(f) Traveler – A public officer, public employee, or authorized person, when performing authorized travel.

(g) Travel expense, traveling expenses, necessary expenses while traveling, actual expenses while traveling, or words of similar nature – The usual ordinary and incidental expenditures necessarily incurred by a traveler.

(h) Common carrier – Train, bus, commercial airline operating scheduled flights, or rental cars of an established rental car firm.

(i) Travel day – A period of 24 hours consisting of four quarters of 6 hours each.

(j) Travel period – A period of time between the time of departure and time of return.

(k) Class A travel – Continuous travel of 24 hours or more away from official headquarters.



(l) Class B travel – Continuous travel of less than 24 hours which involves overnight absence from official headquarters.

(m) Class C travel – Travel for short or day trips where the traveler is not away from his or her official headquarters overnight.

(n) Foreign travel – Travel outside the United States.

(3) AUTHORITY TO INCUR TRAVEL EXPENSES. –

(a) All travel must be authorized and approved by the head of the agency, or his or her designated representative, from whose funds the traveler is paid. The head of the agency shall not authorize or approve such a request unless it is accompanied by a signed statement by the traveler's supervisor stating that such travel is on the official business of the state and also stating the purpose of such travel.

(b) Travel expenses of travelers shall be limited to those expenses necessarily incurred by them in the performance of a public purpose authorized by law to be performed by the agency and must be within the limitations prescribed by this section.

(c) Travel by public officers or employees serving temporarily in behalf of another agency or partly in behalf of more than one agency at the same time, or authorized persons who are called upon to contribute time and services as consultants or advisers, may be authorized by the agency head. Complete explanation and justification must be shown on the travel expense voucher or attached thereto.

(d) Travel expenses of public employees for the sole purpose of taking merit system or other job placement examinations, written or oral, shall not be allowed under any circumstances, except that upon prior written approval of the agency head or his or her designee, candidates for executive or professional positions may be allowed travel expenses pursuant to this section.



(e) Travel expenses of public officers or employees for the purpose of implementing, organizing, directing, coordinating, or administering, or supporting the implementation, organization, direction, coordination, or administration of, activities related to or involving travel to a terrorist state shall not be allowed under any circumstances. For purposes of this section, "terrorist state" is defined as any state, country, or nation designated by the United States Department of State as a state sponsor of terrorism.

(f) The agency head, or a designated representative, may pay by advancement or reimbursement, or a combination thereof, the costs of per diem of travelers for foreign travel at the current rates as specified in the federal publication "Standardized Regulations (Government Civilians, Foreign Areas)" and incidental expenses as provided in this section.

(g) A traveler who becomes sick or injured while away from his or her official headquarters and is therefore unable to perform the official business of the agency may continue to receive subsistence as provided in subsection (6) during this period of illness or injury until such time as he or she is able to perform the official business of the agency or returns to his or her official headquarters, whichever is earlier. Such subsistence may be paid when approved by the agency head or his or her designee.

(h) The State Surgeon General or a designee may authorize travel expenses incidental to the rendering of medical services for and on behalf of clients of the Department of Health. The Department of Health may establish rates lower than the rate provided in this section for these travel expenses.

(4) OFFICIAL HEADQUARTERS. – The official headquarters of an officer or employee assigned to an office shall be the city or town in which the office is located except that:

(a) The official headquarters of a person located in the field shall be the city or town nearest to the area where the majority of the person's work is performed, or such other city, town, or area as may be designated by the agency head provided that in all cases such designation



must be in the best interests of the agency and not for the convenience of the person.

(b) When any state employee is stationed in any city or town for a period of over 30 continuous workdays, such city or town shall be deemed to be the employee's official headquarters, and he or she shall not be allowed per diem or subsistence, as provided in this section, after the said period of 30 continuous workdays has elapsed, unless this period of time is extended by the express approval of the agency head or his or her designee.

(c) A traveler may leave his or her assigned post to return home overnight, over a weekend, or during a holiday, but any time lost from regular duties shall be taken as annual leave and authorized in the usual manner. The traveler shall not be reimbursed for travel expenses in excess of the established rate for per diem allowable had he or she remained at his or her assigned post. However, when a traveler has been temporarily assigned away from his or her official headquarters for an approved period extending beyond 30 days, he or she shall be entitled to reimbursement for travel expenses at the established rate of one round trip for each 30-day period actually taken to his or her home in addition to pay and allowances otherwise provided.

¹(d) A Lieutenant Governor who permanently resides outside of Leon County, may, if he or she so requests, have an appropriate facility in his or her county designated as his or her official headquarters for purposes of this section. This official headquarters may only serve as the Lieutenant Governor's personal office. The Lieutenant Governor may not use state funds to lease space in any facility for his or her official headquarters.

1. A Lieutenant Governor for whom an official headquarters is established in his or her county of residence pursuant to this paragraph is eligible for subsistence at a rate to be established by the Governor for each day or partial day that the Lieutenant Governor is at the State Capitol to conduct official state business. In addition to the subsistence allowance, a Lieutenant Governor is

eligible for reimbursement for transportation expenses as provided in subsection (7) for travel between the Lieutenant Governor's official headquarters and the State Capitol to conduct state business.

2. Payment of subsistence and reimbursement for transportation between a Lieutenant Governor's official headquarters and the State Capitol shall be made to the extent appropriated funds are available, as determined by the Governor.

3. This paragraph expires July 1, 2021.

(5) COMPUTATION OF TRAVEL TIME FOR REIMBURSEMENT. — For purposes of reimbursement and methods of calculating fractional days of travel, the following principles are prescribed:

(a) The travel day for Class A travel shall be a calendar day (midnight to midnight). The travel day for Class B travel shall begin at the same time as the travel period. For Class A and Class B travel, the traveler shall be reimbursed one-fourth of the authorized rate of per diem for each quarter, or fraction thereof, of the travel day included within the travel period. Class A and Class B travel shall include any assignment on official business outside of regular office hours and away from regular places of employment when it is considered reasonable and necessary to stay overnight and for which travel expenses are approved.

(b) A traveler shall not be reimbursed on a per diem basis for Class C travel, but shall receive subsistence as provided in this section, which allowance for meals shall be based on the following schedule:

1. Breakfast — When travel begins before 6 a.m. and extends beyond 8 a.m.

2. Lunch — When travel begins before 12 noon and extends beyond 2 p.m.

3. Dinner — When travel begins before 6 p.m. and extends beyond 8 p.m., or when travel occurs during nighttime hours due to special assignment.



No allowance shall be made for meals when travel is confined to the city or town of the official headquarters or immediate vicinity; except assignments of official business outside the traveler's regular place of employment if travel expenses are approved. The Chief Financial Officer shall establish a schedule for processing Class C travel subsistence payments at least on a monthly basis.

(6) RATES OF PER DIEM AND SUBSISTENCE ALLOWANCE. – For purposes of reimbursement rates and methods of calculation, per diem and subsistence allowances are provided as follows:

(a) All travelers shall be allowed for subsistence when traveling to a convention or conference or when traveling within or outside the state in order to conduct bona fide state business, which convention, conference, or business serves a direct and lawful public purpose with relation to the public agency served by the person attending such meeting or conducting such business, either of the following for each day of such travel at the option of the traveler:

1. Eighty dollars per diem; or
2. If actual expenses exceed \$80, the amounts permitted in paragraph (b) for subsistence, plus actual expenses for lodging at a single-occupancy rate to be substantiated by paid bills therefor.

When lodging or meals are provided at a state institution, the traveler shall be reimbursed only for the actual expenses of such lodging or meals, not to exceed the maximum provided for in this subsection.

(b) All travelers shall be allowed the following amounts for subsistence while on Class C travel on official business as provided in paragraph (5) (b) :

1. Breakfast.....\$6
2. Lunch.....\$11
3. Dinner.....\$19

(c) No one, whether traveling out of state or in state, shall be reimbursed for any meal or lodging included in



a convention or conference registration fee paid by the state.

(7) TRANSPORTATION. –

(a) All travel must be by a usually traveled route. In case a person travels by an indirect route for his or her own convenience, any extra costs shall be borne by the traveler; and reimbursement for expenses shall be based only on such charges as would have been incurred by a usually traveled route. The agency head or his or her designee shall designate the most economical method of travel for each trip, keeping in mind the following conditions:

1. The nature of the business.

2. The most efficient and economical means of travel (considering time of the traveler, impact on the productivity of the traveler, cost of transportation, and per diem or subsistence required). When it is more efficient and economical to either the traveler or the agency head, jet service offered by any airline, whether on state contract or not, may be used when the cost is within an approved threshold determined by the agency head or his or her designee.

3. The number of persons making the trip and the amount of equipment or material to be transported.

(b) The **Department of Financial Services** may provide any form it deems necessary to cover travel requests for traveling on official business and when paid by the state.

(c) Transportation by common carrier when traveling on official business and paid for personally by the traveler, shall be substantiated by a receipt therefor. Federal tax shall not be reimbursable to the traveler unless the state and other public agencies are also required by federal law to pay such tax. In the event transportation other than the most economical class as approved by the agency head is provided by a common carrier on a flight check or credit card, the charges in excess of the most economical class shall be refunded by



the traveler to the agency charged with the transportation provided in this manner.

(d)

1. The use of privately owned vehicles for official travel in lieu of publicly owned vehicles or common carriers may be authorized by the agency head or his or her designee. Whenever travel is by privately owned vehicle:

a. A traveler shall be entitled to a mileage allowance at a rate of 44.5 cents per mile; or

b. A traveler shall be entitled to the common carrier fare for such travel if determined by the agency head to be more economical.

2. Reimbursement for expenditures related to the operation, maintenance, and ownership of a vehicle shall not be allowed when privately owned vehicles are used on public business and reimbursement is made pursuant to this paragraph, except as provided in subsection (8).

3. All mileage shall be shown from point of origin to point of destination and, when possible, shall be computed on the basis of the current map of the Department of Transportation. Vicinity mileage necessary for the conduct of official business is allowable but must be shown as a separate item on the expense voucher.

(e) Transportation by chartered vehicles when traveling on official business may be authorized by the agency head when necessary or where it is to the advantage of the agency, provided the cost of such transportation does not exceed the cost of transportation by privately owned vehicle pursuant to paragraph (d).

(f) The agency head or his or her designee may grant monthly allowances in fixed amounts for use of privately owned automobiles on official business in lieu of the mileage rate provided in paragraph (d). Allowances granted pursuant to this paragraph shall be reasonable, taking into account the customary use of the automobile, the roads customarily traveled, and whether any of the



expenses incident to the operation, maintenance, and ownership of the automobile are paid from funds of the agency or other public funds. Such allowance may be changed at any time, and shall be made on the basis of a signed statement of the traveler, filed before the allowance is granted or changed, and at least annually thereafter. The statement shall show the places and distances for an average typical month's travel on official business, and the amount that would be allowed under the approved rate per mile for the travel shown in the statement, if payment had been made pursuant to paragraph (d).

(g) No contract may be entered into between a public officer or employee, or any other person, and a public agency, in which a depreciation allowance is used in computing the amount due by the agency to the individual for the use of a privately owned vehicle on official business; provided, any such existing contract shall not be impaired.

(h) No traveler shall be allowed either mileage or transportation expense when gratuitously transported by another person or when transported by another traveler who is entitled to mileage or transportation expense. However, a traveler on a private aircraft shall be reimbursed the actual amount charged and paid for the fare for such transportation up to the cost of a commercial airline ticket for the same flight, even though the owner or pilot of such aircraft is also entitled to transportation expense for the same flight under this subsection.

(8) OTHER EXPENSES. —

(a) The following incidental travel expenses of the traveler may be reimbursed:

1. Taxi fare.
2. Ferry fares; and bridge, road, and tunnel tolls.
3. Storage or parking fees.
4. Communication expense.
5. Convention registration fee while attending a convention or conference which will serve a direct



public purpose with relation to the public agency served by the person attending such meetings. A traveler may be reimbursed the actual and necessary fees for attending events which are not included in a basic registration fee that directly enhance the public purpose of the participation of the agency in the conference. Such expenses may include, but not be limited to, banquets and other meal functions. It shall be the responsibility of the traveler to substantiate that the charges were proper and necessary. However, any meals or lodging included in the registration fee will be deducted in accordance with the allowances provided in subsection (6).

(b) Other expenses which are not specifically authorized by this section may be approved by the **Department of Financial Services** pursuant to rules adopted by it. Expenses approved pursuant to this paragraph shall be reported by the **Department of Financial Services** to the Auditor General annually.

(9) RULES. —

(a) The **Department of Financial Services** shall adopt such rules, including, but not limited to, the general criteria to be used by a state agency to predetermine justification for attendance by state officers and employees and authorized persons at conventions and conferences, and prescribe such forms as are necessary to effectuate the purposes of this section. The department may also adopt rules prescribing the proper disposition and use of promotional items and rebates offered by common carriers and other entities in connection with travel at public expense; however, before adopting such rules, the department shall consult with the appropriation committees of the Legislature.

(b) Each state agency shall adopt such additional specific rules and specific criteria to be used by it to predetermine justification for attendance by state officers and employees and authorized persons at conventions and conferences, not in conflict with the rules of the **Department of Financial Services** or with the general criteria to be used by a state agency to predetermine justification for attendance by state



officers and employees and authorized persons at conventions, as may be necessary to effectuate the purposes of this section.

(c) The Department of Management Services may adopt rules to administer the provisions of this section which relate to the statewide travel management system.

(10) FRAUDULENT CLAIMS. – Claims submitted pursuant to this section shall not be required to be sworn to before a notary public or other officer authorized to administer oaths, but any claim authorized or required to be made under any provision of this section shall contain a statement that the expenses were actually incurred by the traveler as necessary travel expenses in the performance of official duties and shall be verified by a written declaration that it is true and correct as to every material matter; and any person who willfully makes and subscribes any such claim which he or she does not believe to be true and correct as to every material matter, or who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under the provisions of this section of a claim which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such claim, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Whoever shall receive an allowance or reimbursement by means of a false claim shall be civilly liable in the amount of the overpayment for the reimbursement of the public fund from which the claim was paid.

(11) TRAVEL AUTHORIZATION AND VOUCHER FORMS. –

(a) Authorization forms. – The **Department of Financial Services** shall furnish a uniform travel authorization request form which shall be used by all state officers, employees, and authorized persons when requesting approval for the performance of travel to a convention or conference. The form shall include, but not be limited to, provision for the name of each traveler, purpose of travel, period of travel, estimated cost to the state, and a statement of benefits accruing to the state by virtue of such travel. A copy of the program or agenda of the convention or conference, itemizing registration fees and any meals or lodging included in the registration fee, shall be attached to, and filed with, the copy of the travel authorization request form on



file with the agency. The form shall be signed by the traveler and by the traveler's supervisor stating that the travel is to be incurred in connection with official business of the state. The head of the agency or his or her designated representative shall not authorize or approve such request in the absence of the appropriate signatures. A copy of the travel authorization form shall be attached to, and become a part of, the support of the agency's copy of the travel voucher.

(b) Voucher forms. —

1. The **Department of Financial Services** shall furnish a uniform travel voucher form which shall be used by all state officers, employees, and authorized persons when submitting travel expense statements for approval and payment. No travel expense statement shall be approved for payment by the Chief Financial Officer unless made on the form prescribed and furnished by the department. The travel voucher form shall provide for, among other things, the purpose of the official travel and a certification or affirmation, to be signed by the traveler, indicating the truth and correctness of the claim in every material matter, that the travel expenses were actually incurred by the traveler as necessary in the performance of official duties, that per diem claimed has been appropriately reduced for any meals or lodging included in the convention or conference registration fees claimed by the traveler, and that the voucher conforms in every respect with the requirements of this section. The original copy of the executed uniform travel authorization request form shall be attached to the uniform travel voucher on file with the respective agency.

2. Statements for travel expenses incidental to the rendering of medical services for and on behalf of clients of the Department of Health shall be on forms approved by the **Department of Financial Services**.

(12) ADVANCEMENTS. — Notwithstanding any of the foregoing restrictions and limitations, an agency head or his or her designee may make, or authorize the making of, advances to cover anticipated



costs of travel to travelers. Such advancements may include the costs of subsistence and travel of any person transported in the care or custody of the traveler in the performance of his or her duties.

(13) DIRECT PAYMENT OF EXPENSES BY AGENCY.—Whenever an agency requires an employee to incur either Class A or Class B travel on emergency notice to the traveler, such traveler may request the agency to pay his or her expenses for meals and lodging directly to the vendor, and the agency may pay the vendor the actual expenses for meals and lodging during the travel period, limited to an amount not to exceed that authorized pursuant to this section. In emergency situations, the agency head or his or her designee may authorize an increase in the amount paid for a specific meal, provided that the total daily cost of meals does not exceed the total amount authorized for meals each day. The agency head or his or her designee may also grant prior approval for a state agency to make direct payments of travel expenses in other situations that result in cost savings to the state, and such cost savings shall be documented in the voucher submitted to the Chief Financial Officer for the direct payment of travel expenses. The provisions of this subsection shall not be deemed to apply to any legislator or to any employee of the Legislature.

(14) APPLICABILITY TO COUNTIES, COUNTY OFFICERS, DISTRICT SCHOOL BOARDS, SPECIAL DISTRICTS, AND METROPOLITAN PLANNING ORGANIZATIONS. —

(a) The following entities may establish rates that vary from the per diem rate provided in paragraph (6) (a), the subsistence rates provided in paragraph (6) (b), or the mileage rate provided in paragraph (7) (d) if those rates are not less than the statutorily established rates that are in effect for the 2005-2006 fiscal year:

1. The governing body of a county by the enactment of an ordinance or resolution;
2. A county constitutional officer, pursuant to s. 1(d), Art. VIII of the State Constitution, by the establishment of written policy;
3. The governing body of a district school board by the adoption of rules;
4. The governing body of a special district, as defined in s. 189.012, except those special



districts that are subject to s. 166.021(9), by the enactment of a resolution; or

5. Any metropolitan planning organization created pursuant to s. 339.175 or any other separate legal or administrative entity created pursuant to s. 339.175 of which a metropolitan planning organization is a member, by the enactment of a resolution.

(b) Rates established pursuant to paragraph (a) must apply uniformly to all travel by the county, county constitutional officer and entity governed by that officer, district school board, special district, or metropolitan planning organization.

(c) Except as otherwise provided in this subsection, counties, county constitutional officers and entities governed by those officers, district school boards, special districts, and metropolitan planning organizations, other than those subject to s. 166.021(9), remain subject to the requirements of this section.

(15) CLASS C TRAVEL. – Moneys appropriated from the State Treasury may not be used to pay per diem or subsistence related to Class C travel.

(16) STATEWIDE TRAVEL MANAGEMENT SYSTEM. –

(a) For purposes of this subsection, "statewide travel management system" means the system developed by the Department of Management Services to:

1. Collect and store information relating to public officer or employee travel information;
2. Standardize and automate agency travel management;
3. Allow for travel planning and approval, expense reporting, and reimbursement; and
4. Allow travel information queries.



(b) Each executive branch state government agency and the judicial branch must report on the statewide travel management system all public officer and employee travel information, including, but not limited to, name and position title; purpose of travel; dates and location of travel; mode of travel; confirmation from the head of the agency or designee authorization, if required; and total travel cost. Each executive branch state government agency and the judicial branch must use the statewide travel management system for purposes of travel authorization and reimbursement.

(c) Travel reports made available on the statewide travel management system may not reveal information made confidential or exempt by law.

History.—ss. 1, 3, ch. 22830, 1945; ss. 1, 2, 3, ch. 23892, 1947; ss. 1, 3, ch. 25040, 1949; ss. 1, 3, ch. 26910, 1951; s. 1, ch. 28303, 1953; s. 1, ch. 29628, 1955; s. 1, ch. 57-230; s. 1, ch. 61-183; s. 1, ch. 61-43; s. 1, ch. 63-5; s. 1, ch. 63-192; s. 1, ch. 63-122; s. 1, ch. 63-400; ss. 2, 3, ch. 67-371; ss. 1, 2, ch. 67-2206; s. 1, ch. 69-193; s. 1, ch. 69-381; ss. 12, 23, 31, 35, ch. 69-106; s. 65, ch. 71-136; s. 1, ch. 72-213; s. 1, ch. 72-217; s. 1, ch. 72-324; s. 26, ch. 72-404; s. 1, ch. 73-169; s. 1, ch. 74-15; s. 1, ch. 74-246; s. 1, ch. 74-365; ss. 1, 2, ch. 75-33; s. 1, ch. 76-166; s. 2, ch. 76-208; ss. 1, 2, ch. 76-250; s. 1, ch. 77-174; s. 1, ch. 77-231; ss. 1, 2, ch. 77-437; s. 2, ch. 78-95; s. 51, ch. 79-190; s. 1, ch. 79-205; s. 1, ch. 79-303; s. 1, ch. 79-412; ss. 1, 2, ch. 81-207; ss. 1, 2, ch. 83-307; s. 1, ch. 85-140; s. 1, ch. 87-407; s. 4, ch. 88-235; s. 12, ch. 89-291; s. 18, ch. 91-45; s. 1, ch. 94-139; s. 1403, ch. 95-147; s. 26, ch. 95-312; s. 5, ch. 96-310; s. 43, ch. 96-399; s. 23, ch. 98-136; s. 9, ch. 99-8; s. 7, ch. 99-155; s. 16, ch. 99-399; ss. 48, 53, ch. 2001-254; ss. 46, 79, ch. 2002-402; s. 2, ch. 2003-125; s. 123, ch. 2003-261; s. 49, ch. 2003-399; s. 5, ch. 2004-5; s. 32, ch. 2004-269; s. 23, ch. 2005-71; s. 12, ch. 2006-1; s. 6, ch. 2006-18; ss. 14, 53, ch. 2006-26; s. 1, ch. 2006-41; s. 3, ch. 2006-54; s. 2, ch. 2007-196; s. 6, ch. 2008-6; s. 13, ch. 2008-153; s. 2, ch. 2010-4; s. 4, ch. 2011-143; s. 58, ch. 2014-22; s. 103, ch. 2019-116; s. 6, ch. 2019-118; s. 95, ch. 2020-114.

¹*Note.*—Section 95, ch. 2020-114, amended paragraph (4)(d) “[i]n order to implement Specific Appropriations 2599 of the 2020-2021 General Appropriations Act.”

CHAPTER 112 FLORIDA STATUTES | FLORIDA

TITLE: X PUBLIC OFFICERS, EMPLOYEES, AND RECORDS

CHAPTER: 112 STATE EMPLOYMENT

PART: III CODE OF ETHICS FOR PUBLIC OFFICERS AND...

SECTIONS: §112.3143 through §112.31895

NOTE: Pertinent Parts Only!!!



§112.3143 FS | VOTING CONFLICTS

(1) As used in this section:

(a) "Principal by whom retained" means an individual or entity, other than an agency as defined in s. 112.312(2), that for compensation, salary, pay, consideration, or similar thing of value, has permitted or directed another to act for the individual or entity, and includes, but is not limited to, one's client, employer, or the parent, subsidiary, or sibling organization of one's client or employer.

(b) "Public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(c) "Relative" means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

(d) "Special private gain or loss" means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer, his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:

1. The size of the class affected by the vote.
2. The nature of the interests involved.
3. The degree to which the interests of all members of the class are affected by the vote.
4. The degree to which the officer, his or her relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.

The degree to which there is uncertainty at the time of the vote as to whether there would be any economic benefit or harm to the public officer, his or her relative, business associate, or principal and, if so, the nature or degree of the economic benefit or harm must also be considered.



(2)

(a) A state public officer may not vote on any matter that the officer knows would inure to his or her special private gain or loss. Any state public officer who abstains from voting in an official capacity upon any measure that the officer knows would inure to the officer's special private gain or loss, or who votes in an official capacity on a measure that he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained other than an agency as defined in s. 112.312(2); or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer, shall make every reasonable effort to disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. If it is not possible for the state public officer to file a memorandum before the vote, the memorandum must be filed with the person responsible for recording the minutes of the meeting no later than 15 days after the vote.

(b) A member of the Legislature may satisfy the disclosure requirements of this section by filing a disclosure form created pursuant to the rules of the member's respective house if the member discloses the information required by this subsection.

(3)

(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the



nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(b) However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357, or an officer of an independent special tax district elected on a one-acre, one-vote basis, is not prohibited from voting, when voting in said capacity.

(4) No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.

(a) Such disclosure, indicating the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, prior to the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally at the meeting when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become a public



record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(c) For purposes of this subsection, the term "participate" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.

(5) If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

(6) Whenever a public officer or former public officer is being considered for appointment or reappointment to public office, the appointing body shall consider the number and nature of the memoranda of conflict previously filed under this section by said officer.

History - (s. 6, ch. 75-208; s. 2, ch. 84-318; s. 1, ch. 84-357; s. 2, ch. 86-148; s. 5, ch. 91-85; s. 3, ch. 94-277; s. 1408, ch. 95-147; s. 43, ch. 99-2; s. 6, ch. 2013-36.)



§112.3144 FS | FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTERESTS

(1)

(a) An officer who is required by s. 8, Art. II of the State Constitution to file a full and public disclosure of his or her financial interests for any calendar or fiscal year, or any other person required by law to file a disclosure under this section, shall file that disclosure with the Florida Commission on Ethics. Additionally, an officer who is required to complete annual ethics training pursuant to s. 112.3142 must certify on his or her full and public disclosure of financial interests that he or she has completed the required training.

(b) A member of an expressway authority, transportation authority, bridge authority, toll authority, or expressway agency created pursuant to chapter 343, chapter 348, or any other general law shall comply with the applicable financial disclosure requirements of s. 8, Art. II of the State Constitution.

(c) Each member of the governing body of a large-hub commercial service airport, except for members required to comply with the financial disclosure requirements of s. 8, Art. II of the State Constitution, shall comply with the financial disclosure requirements of s. 112.3145(3). For purposes of this paragraph, the term "large-hub commercial service airport" means a publicly owned airport that has at least 1 percent of the annual passenger boardings in the United States as reported by the Federal Aviation Administration.

(2) Beginning January 1, 2022, all disclosures filed with the commission must be filed electronically through an electronic filing system that is created and maintained by the commission as provided in s. 112.31446.

(3) A person who is required, pursuant to s. 8, Art. II of the State Constitution, to file a full and public disclosure of financial interests and who has filed a full and public disclosure of financial interests for any calendar or fiscal year is not required to file a statement of financial interests pursuant to s. 112.3145(2) and (3) for the same year or for any part thereof notwithstanding any requirement



of this part. Until the electronic filing system required by subsection (2) is implemented, if an incumbent in an elective office has filed the full and public disclosure of financial interests to qualify for election to the same office or if a candidate for office holds another office subject to the annual filing requirement, the qualifying officer shall forward an electronic copy of the full and public disclosure of financial interests to the commission no later than July 1. The electronic copy of the full and public disclosure of financial interests satisfies the annual disclosure requirement of this section. A candidate who does not qualify until after the annual full and public disclosure of financial interests has been filed pursuant to this section shall file a copy of his or her disclosure with the officer before whom he or she qualifies.

(4) Beginning January 1, 2022, an incumbent in an elective office or a candidate holding another position subject to an annual filing requirement may submit a copy of the full and public disclosure of financial interests filed with the commission, or a verification or receipt of the filing, with the officer before whom he or she qualifies. A candidate not subject to an annual filing requirement does not file with the commission, but may complete and print a full and public disclosure of financial interests to file with the officer before whom he or she qualifies.

(5) For purposes of full and public disclosure under s. 8(a), Art. II of the State Constitution, the following items, if not held for investment purposes and if valued at over \$1,000 in the aggregate, may be reported in a lump sum and identified as "household goods and personal effects":

- (a) Jewelry;
- (b) Collections of stamps, guns, and numismatic properties;
- (c) Art objects;
- (d) Household equipment and furnishings;
- (e) Clothing;
- (f) Other household items; and
- (g) Vehicles for personal use.



(6)

(a) With respect to reporting, assets valued in excess of \$1,000 which the reporting individual holds jointly with another person, the amount reported shall be based on the reporting individual's legal percentage of ownership in the property. However, assets that are held jointly, with right of survivorship, must be reported at 100 percent of the value of the asset. For purposes of this subsection, a reporting individual is deemed to own a percentage of a partnership which is equal to the reporting individual's interest in the capital or equity of the partnership.

(b)

1. With respect to reporting liabilities valued in excess of \$1,000 for which the reporting individual is jointly and severally liable, the amount reported shall be based on the reporting individual's percentage of liability rather than the total amount of the liability. However, liability for a debt that is secured by property owned by the reporting individual but that is held jointly, with right of survivorship, must be reported at 100 percent of the total amount owed.

2. A separate section of the form shall be created to provide for the reporting of the amounts of joint and several liability of the reporting individual not otherwise reported in subparagraph 1.

(c) Each separate source and amount of income which exceeds \$1,000 must be identified. Beginning January 1, 2022, a federal income tax return may not be used for purposes of reporting income, and the commission may not accept a federal income tax return or a copy thereof.

(7)

(a) Beginning January 1, 2022, a filer may not include in a filing to the commission a federal income tax return or a copy thereof; a social security number; a bank, mortgage, or brokerage account number; a debit, charge, or credit card number; a personal identification number; a taxpayer identification number. If a filer includes such information in his or her filing, the information



may be made available as part of the official records of the commission available for public inspection and copying unless redaction is requested by the filer. The commission is not liable for the release of social security numbers or bank account, debit, charge, or credit card numbers included in a filing to the commission if the filer has not requested redaction of such information.

(b) The commission shall redact a filer's social security number; bank account number; debit, charge, or credit card number; or any other personal or account information that is legally protected from disclosure under state or federal law upon written notification from the filer of its inadvertent inclusion. Such notice must specify the information inadvertently included and the specific section or sections of the disclosure in which it was included.

(c) The commission must conspicuously post a notice, in substantially the following form, in the instructions for the electronic filing system specifying that:

1. Any filer submitting information through the electronic filing system may not include a federal income tax return or a copy thereof; a social security number; a bank, mortgage, or brokerage account number; a debit, charge, or credit card number; a personal identification number; or a taxpayer identification number in any filing unless required by law.

2. Information submitted through the electronic filing system may be open to public inspection and copying.

3. Any filer has a right to request that the commission redact from his or her filing any social security number, bank account number, or debit, charge, or credit card number contained in the filing. Such request must be made in writing and delivered to the commission. The request must specify the information to be redacted and the specific section or sections of the disclosure in which it was included.



(8) Forms or fields of information for compliance with the full and public disclosure requirements of s. 8, Art. II of the State Constitution shall be prescribed by the commission. The commission shall give notice of disclosure deadlines and delinquencies and distribute forms in the following manner:

(a) Not later than May 1 of each year, the commission shall prepare a current list of the names, e-mail addresses, and physical addresses of and the offices held by every person required to file full and public disclosure annually by s. 8, Art. II of the State Constitution, or other state law. Each unit of government shall assist the commission in compiling the list by providing to the commission not later than February 1 of each year the name, e-mail address, physical address, and name of the office held by such person within the respective unit of government as of December 31 of the preceding year.

(b) Not later than June 1 of each year, the commission shall distribute a copy of the form prescribed for compliance with full and public disclosure and a notice of the filing deadline to each person on the list. Beginning January 1, 2022, no paper forms will be provided. The notice required under this paragraph and instructions for electronic submission must be delivered by e-mail.

(c) Not later than August 1 of each year, the commission shall determine which persons on the list have failed to file full and public disclosure and shall send delinquency notices to such persons. Each notice must state that a grace period is in effect until September 1 of the current year. Beginning January 1, 2022, the notice required under this paragraph must be delivered by e-mail and must be redelivered on a weekly basis by e-mail as long as a person remains delinquent.

(d) Disclosures must be received by the commission not later than 5 p.m. of the due date. However, any disclosure that is postmarked by the United States Postal Service by midnight of the due date is deemed to have been filed in a timely manner, and a certificate of mailing obtained from and dated by the United States Postal Service at the time of the mailing, or a receipt from an established courier company which bears a date



on or before the due date, constitutes proof of mailing in a timely manner. Beginning January 1, 2022, upon request of the filer, the commission must provide verification to the filer that the commission has received the filed disclosure.

(e) Beginning January 1, 2022, a written declaration, as provided for under s. 92.525(2), accompanied by an electronic signature satisfies the requirement that the disclosure be sworn.

(f) Any person who is required to file full and public disclosure of financial interests and whose name is on the commission's list, and to whom notice has been sent, but who fails to timely file is assessed a fine of \$25 per day for each day late up to a maximum of \$1,500; however this \$1,500 limitation on automatic fines does not limit the civil penalty that may be imposed if the statement is filed more than 60 days after the deadline and a complaint is filed, as provided in s. 112.324. The commission must provide by rule the grounds for waiving the fine and the procedures by which each person whose name is on the list and who is determined to have not filed in a timely manner will be notified of assessed fines and may appeal. The rule must provide for and make specific the following:

1. The amount of the fine due is based upon the earliest of the following:

- a. When a statement is actually received by the office.
- b. When the statement is postmarked.
- c. When the certificate of mailing is dated.
- d. When the receipt from an established courier company is dated.

2. Upon receipt of the disclosure statement or upon accrual of the maximum penalty, whichever occurs first, the commission shall determine the amount of the fine which is due and shall notify the delinquent person. The notice must include an explanation of the appeal procedure under subparagraph 3. Such fine must be paid within 30



days after the notice of payment due is transmitted, unless appeal is made to the commission pursuant to subparagraph 3. The moneys shall be deposited into the General Revenue Fund.

3. Any reporting person may appeal or dispute a fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and is entitled to a hearing before the commission, which may waive the fine in whole or in part for good cause shown. Any such request must be in writing and received by the commission within 30 days after the notice of payment due is transmitted. In such a case, the reporting person must, within the 30-day period, notify the person designated to review the timeliness of reports in writing of his or her intention to bring the matter before the commission. For purposes of this subparagraph, "unusual circumstances" does not include the failure to monitor an e-mail account or failure to receive notice if the person has not notified the commission of a change in his or her e-mail address.

(g) Any person subject to the annual filing of full and public disclosure under s. 8, Art. II of the State Constitution, or other state law, whose name is not on the commission's list of persons required to file full and public disclosure is not subject to the fines or penalties provided in this part for failure to file full and public disclosure in any year in which the omission occurred, but nevertheless is required to file the disclosure statement.

(h) The notification requirements and fines of this subsection do not apply to candidates or to the first filing required of any person appointed to elective constitutional office or other position required to file full and public disclosure, unless the person's name is on the commission's notification list and the person received notification from the commission. The appointing official shall notify such newly appointed person of the obligation to file full and public disclosure by July 1. The notification requirements and



finest of this subsection do not apply to the final filing provided for in subsection (10).

(i) Notwithstanding any provision of chapter 120, any fine imposed under this subsection which is not waived by final order of the commission and which remains unpaid more than 60 days after the notice of payment due or more than 60 days after the commission renders a final order on the appeal must be submitted to the **Department of Financial Services** as a claim, debt, or other obligation owed to the state, and the department shall assign the collection of such fine to a collection agent as provided in s. 17.20.

(9) If a person holding public office or public employment fails or refuses to file a full and public disclosure of financial interests for any year in which the person received notice from the commission regarding the failure to file and has accrued the maximum automatic fine authorized under this section, regardless of whether the fine imposed was paid or collected, the commission shall initiate an investigation and conduct a public hearing without receipt of a complaint to determine whether the person's failure to file is willful. Such investigation and hearing must be conducted in accordance with s. 112.324. Except as provided in s. 112.324(4), if the commission determines that the person willfully failed to file a full and public disclosure of financial interests, the commission shall enter an order recommending that the officer or employee be removed from his or her public office or public employment. The commission shall forward its recommendations as provided in s. 112.324.

(10) Each person required to file full and public disclosure of financial interests shall file a final disclosure statement within 60 days after leaving his or her public position for the period between January 1 of the year in which the person leaves and the last day of office or employment, unless within the 60-day period the person takes another public position requiring financial disclosure under s. 8, Art. II of the State Constitution, or is otherwise required to file full and public disclosure for the final disclosure period. The head of the agency of each person required to file full and public disclosure for the final disclosure period shall notify such persons of their obligation to file the final disclosure and may designate a person to be



responsible for the notification requirements of this subsection.

(11)

(a) The commission shall treat an amendment to a full and public disclosure of financial interests which is filed before September 1 of the year in which the disclosure is due as part of the original filing, regardless of whether a complaint has been filed. If a complaint alleges only an immaterial, inconsequential, or de minimis error or omission, the commission may not take any action on the complaint other than notifying the filer of the complaint. The filer must be given 30 days to file an amendment to the full and public disclosure of financial interests correcting any errors. If the filer does not file an amendment to the full and public disclosure of financial interests within 30 days after the commission sends notice of the complaint, the commission may continue with proceedings pursuant to s. 112.324.

(b) For purposes of the final full and public disclosure of financial interests, the commission shall treat an amendment to a new final full and public disclosure of financial interests as part of the original filing if filed within 60 days after the original filing, regardless of whether a complaint has been filed. If, more than 60 days after a final full and public disclosure of financial interests is filed, a complaint is filed alleging a complete omission of any information required to be disclosed by this section, the commission may immediately follow the complaint procedures in s. 112.324. However, if the complaint alleges an immaterial, inconsequential, or de minimis error or omission, the commission may not take any action on the complaint, other than notifying the filer of the complaint. The filer must be given 30 days to file an amendment to the new final full and public disclosure of financial interests correcting any errors. If the filer does not file an amendment to the new final full and public disclosure of financial interests within 30 days after the commission sends notice of the complaint, the commission may continue with proceedings pursuant to s. 112.324.



(c) For purposes of this section, an error or omission is immaterial, inconsequential, or de minimis if the original filing provided sufficient information for the public to identify potential conflicts of interest. However, failure to certify completion of annual ethics training required under s. 112.3142 does not constitute an immaterial, inconsequential, or de minimis error or omission.

(12)

(a) An individual required to file a disclosure pursuant to this section may have the disclosure prepared by an attorney in good standing with The Florida Bar or by a certified public accountant licensed under chapter 473. After preparing a disclosure form, the attorney or certified public accountant must sign the form indicating that he or she prepared the form in accordance with this section and the instructions for completing and filing the disclosure forms and that, upon his or her reasonable knowledge and belief, the disclosure is true and correct. If a complaint is filed alleging a failure to disclose information required by this section, the commission shall determine whether the information was disclosed to the attorney or certified public accountant. The failure of the attorney or certified public accountant to accurately transcribe information provided by the individual required to file is not a violation of this section.

(b) An elected officer or candidate who chooses to use an attorney or a certified public accountant to prepare his or her disclosure may pay for the services of the attorney or certified public accountant from funds in an office account created pursuant to s. 106.141 or, during a year that the individual qualifies for election to public office, the candidate's campaign depository pursuant to s. 106.021.



(13) The commission shall adopt rules and forms specifying how a person who is required to file full and public disclosure of financial interests may amend his or her disclosure statement to report information that was not included on the form as originally filed. If the amendment is the subject of a complaint filed under this part, the commission and the proper disciplinary official or body shall consider as a mitigating factor when considering appropriate disciplinary action the fact that the amendment was filed before any complaint or other inquiry or proceeding, while recognizing that the public was deprived of access to information to which it was entitled.

(14) The provisions of this section constitute a revision to the schedule included in s. 8(i), Art. II of the State Constitution.

History - (s. 1, ch. 82-98; s. 3, ch. 88-358; s. 19, ch. 91-45; s. 4, ch. 94-277; s. 1409, ch. 95-147; s. 2, ch. 2000-243; s. 30, ch. 2000-258; s. 127, ch. 2003-261; s. 3, ch. 2006-275; s. 7, ch. 2013-36; s. 3, ch. 2014-183; s. 3, ch. 2019-97; s. 2, ch. 2019-169; s. 2, ch. 2020-167.)



§112.31445 FS | ELECTRONIC FILING SYSTEM; FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTERESTS

(1) As used in this section, the term "electronic filing system" means an Internet system for recording and reporting full and public disclosure of financial interests or any other form that is required pursuant to s. 112.3144.

(2) Beginning with the 2012 filing year, all full and public disclosures of financial interests filed with the commission pursuant to s. 8, Art. II of the State Constitution or s. 112.3144 must be scanned and made publicly available by the commission through a searchable Internet database.

(3) By December 1, 2015, the commission shall submit a proposal to the President of the Senate and the Speaker of the House of Representatives for a mandatory electronic filing system. The proposal must, at a minimum:

(a) Provide for access through the Internet.

(b) Establish a procedure to make filings available in a searchable format that is accessible by an individual using standard web-browsing software.

(c) Provide for direct completion of the full and public disclosure of financial interests forms as well as upload such information using software approved by the commission.

(d) Provide a secure method that prevents unauthorized access to electronic filing system functions.

(e) Provide a method for an attorney or certified public accountant licensed in this state to sign the disclosure form to indicate that he or she prepared the form in accordance with s. 112.3144 and the instructions for completing and filing the disclosure form and that, upon his or her reasonable knowledge and belief, the form is true and correct.



(f) Address whether additional statutory or rulemaking authority is necessary for implementation of the system, and must include, at a minimum, the following elements:

alternate filing procedures to be used in the event that the commission's electronic filing system is inoperable,

issuance of an electronic receipt via electronic mail indicating and verifying to the individual who submitted the full and public disclosure of financial interests form that the form has been filed, and

a determination of the feasibility and necessity of including statements of financial interests filed pursuant to s. 112.3145 in the proposed system.

History - (s. 8, ch. 2013-36.)



§112.31446 FS | ELECTRONIC FILING SYSTEM FOR FINANCIAL DISCLOSURE

(1) As used in this section, the term:

(a) "Disclosure of financial interests" or "disclosure" includes a full and public disclosure of financial interests and a final full and public disclosure of financial interests, and any amendments thereto.

(b) "Electronic filing system" means an Internet-based system for receiving, reporting, and publishing disclosures of financial interests, statements of financial interests, or any other form that is required under s. 112.3144 or s. 112.3145.

(c) "Statement of financial interests" or "statement" includes a statement of financial interests and a final statement of financial interests, and any amendments thereto.

(2) By January 1, 2022, the commission shall procure and test an electronic filing system. At a minimum, the electronic filing system must:

(a) Provide access through the Internet for the completion and submission of disclosures of financial interests, statements of financial interests, or any other form that is required under s. 112.3144 or s. 112.3145.

(b) Make filings available in a searchable format that is accessible by an individual using standard Internet-browsing software.

(c) Issue a verification or receipt that the commission has received the submitted disclosure or statement.

(d) Provide security that prevents unauthorized access to the electronic filing system's functions or data.



(e) Provide a method for an attorney or a certified public accountant licensed in this state to complete the disclosure or statement and certify that he or she prepared the disclosure or statement in accordance with s. 112.3144 or s. 112.3145 and the instructions for completing the disclosure or statement, and that, upon his or her reasonable knowledge and belief, the information on the disclosure or statement is true and correct.

(3) Each unit of government shall provide an e-mail address to any of its officers, members, or employees who must file a disclosure of financial interests or a statement of financial interests, and provide such e-mail addresses to the commission by February 1 of each year. A person required to file a disclosure of financial interests or statement of financial interests must inform the commission immediately of any change in his or her e-mail address.

(4) The commission shall provide each person required to file a disclosure of financial interests or statement of financial interests a secure log-in to the electronic filing system. Such person is responsible for protecting his or her secure log-in credentials from disclosure and is responsible for all filings submitted to the commission with such credentials, unless the person has notified the commission that his or her credentials have been compromised.

(5) If the electronic filing system is inoperable which prevents timely submission of disclosures of financial interests or statements of financial interests, as determined by the commission chair, or if the Governor has declared a state of emergency and a person required to submit a disclosure or statement resides in an area included in the state of emergency which prevents the submission of the disclosure or statement electronically, the commission chair must extend the filing deadline for submission of the disclosures or statements by the same period of time for which the system was inoperable or by 90 days for persons who reside in an area included in a state of emergency, whichever is applicable.



(6)

(a) All secure login credentials held by the commission for the purpose of allowing access to the electronic filing system are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Information entered in the electronic filing system for purposes of financial disclosure is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Information entered in the electronic filing system is no longer exempt once the disclosure of financial interests or statement of financial interests is submitted to the commission or, in the case of a candidate, filed with a qualifying officer, whichever occurs first.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

History - (s. 1, ch. 2019-40; s. 1, ch. 2019-97.)



§112.3145 FS | DISCLOSURE OF FINANCIAL INTERESTS AND CLIENTS REPRESENTED BEFORE AGENCIES

(1) For purposes of this section, unless the context otherwise requires, the term:

(a) "Local officer" means:

1. Every person who is elected to office in any political subdivision of the state, and every person who is appointed to fill a vacancy for an unexpired term in such an elective office.

2. Any appointed member of any of the following boards, councils, commissions, authorities, or other bodies of any county, municipality, school district, independent special district, or other political subdivision of the state:

a. The governing body of the political subdivision, if appointed;

b. A community college or junior college district board of trustees;

c. A board having the power to enforce local code provisions;

d. A planning or zoning board, board of adjustment, board of appeals, community redevelopment agency board, or other board having the power to recommend, create, or modify land planning or zoning within the political subdivision, except for citizen advisory committees, technical coordinating committees, and such other groups who only have the power to make recommendations to planning or zoning boards;

e. A pension board or retirement board having the power to invest pension or retirement funds or the power to make a binding determination of one's entitlement to or amount of a pension or other retirement benefit; or

f. Any other appointed member of a local government board who is required to file a



statement of financial interests by the appointing authority or the enabling legislation, ordinance, or resolution creating the board.

3. Any person holding one or more of the following positions: mayor; county or city manager; chief administrative employee of a county, municipality, or other political subdivision; county or municipal attorney; finance director of a county, municipality, or other political subdivision; chief county or municipal building code inspector; county or municipal water resources coordinator; county or municipal pollution control director; county or municipal environmental control director; county or municipal administrator, with power to grant or deny a land development permit; chief of police; fire chief; municipal clerk; district school superintendent; community college president; district medical examiner; or purchasing agent having the authority to make any purchase exceeding the threshold amount provided for in s. 287.017 for CATEGORY TWO, on behalf of any political subdivision of the state or any entity thereof.

(b) "Specified state employee" means:

1. Public counsel created by chapter 350, an assistant state attorney, an assistant public defender, a criminal conflict and civil regional counsel, an assistant criminal conflict and civil regional counsel, a full-time state employee who serves as counsel or assistant counsel to any state agency, an administrative law judge, or a hearing officer.

2. Any person employed in the office of the Governor or in the office of any member of the Cabinet if that person is exempt from the Career Service System, except persons employed in clerical, secretarial, or similar positions.

3. The State Surgeon General or each appointed secretary, assistant secretary, deputy secretary, executive director, assistant executive director, or deputy executive director of each state



department, commission, board, or council; unless otherwise provided, the division director, assistant division director, deputy director, and bureau chief of any state department or division; or any person having the power normally conferred upon such persons, by whatever title.

4. The superintendent or institute director of a state mental health institute established for training and research in the mental health field or the warden or director of any major state institution or facility established for corrections, training, treatment, or rehabilitation.

5. Business managers, purchasing agents having the power to make any purchase exceeding the threshold amount provided for in s. 287.017 for CATEGORY TWO, finance and accounting directors, personnel officers, or grants coordinators for any state agency.

6. Any person, other than a legislative assistant exempted by the presiding officer of the house by which the legislative assistant is employed, who is employed in the legislative branch of government, except persons employed in maintenance, clerical, secretarial, or similar positions.

7. Each employee of the Commission on Ethics.

(c) "State officer" means:

1. Any elected public officer, excluding those elected to the United States Senate and House of Representatives, not covered elsewhere in this part and any person who is appointed to fill a vacancy for an unexpired term in such an elective office.

2. An appointed member of each board, commission, authority, or council having statewide jurisdiction, excluding a member of an advisory body.

3. A member of the Board of Governors of the State University System or a state university board of trustees, the Chancellor and Vice Chancellors of



the State University System, and the president of a state university.

4. A member of the judicial nominating commission for any district court of appeal or any judicial circuit.

(2)

(a) A person seeking nomination or election to a state or local elective office shall file a statement of financial interests together with, and at the same time he or she files, qualifying papers. When a candidate has qualified for office prior to the deadline to file an annual statement of financial interests, the statement of financial interests that is filed with the candidate's qualifying papers shall be deemed to satisfy the annual disclosure requirement of this section. The qualifying officer must record that the statement of financial interests was timely filed. However, if a candidate does not qualify until after the annual statement of financial interests has been filed, the candidate may file a copy of his or her statement with the qualifying officer.

(b) Each state or local officer and each specified state employee shall file a statement of financial interests no later than July 1 of each year. Each state officer, local officer, and specified state employee shall file a final statement of financial interests within 60 days after leaving his or her public position for the period between January 1 of the year in which the person leaves and the last day of office or employment, unless within the 60-day period the person takes another public position requiring financial disclosure under this section or s. 8, Art. II of the State Constitution or otherwise is required to file full and public disclosure or a statement of financial interests for the final disclosure period. Each state or local officer who is appointed and each specified state employee who is employed shall file a statement of financial interests within 30 days from the date of appointment or, in the case of a specified state employee, from the date on which the employment begins, except that any person whose appointment is subject to confirmation by the Senate shall file prior to confirmation hearings or



within 30 days from the date of appointment, whichever comes first.

(c) Beginning January 1, 2023, an incumbent in an elective office or a candidate holding another position subject to an annual filing requirement may submit a copy of the statement of financial interests filed with the commission, or a verification or receipt of the filing, with the officer before whom he or she qualifies. A candidate not subject to an annual filing requirement does not file with the commission, but may complete and print a statement of financial interests to file with the officer before whom he or she qualifies.

(d) State officers and specified state employees shall file their statements of financial interests with the commission. Local officers shall file their statements of financial interests with the supervisor of elections of the county in which they permanently reside. Local officers who do not permanently reside in any county in the state shall file their statements of financial interests with the supervisor of elections of the county in which their agency maintains its headquarters. Persons seeking to qualify as candidates for local public office shall file their statements of financial interests with the officer before whom they qualify.

(e) Beginning January 1, 2023, all statements filed with the commission must be filed electronically through an electronic filing system that is created and maintained by the commission as provided in s. 112.31446.

(3) The statement of financial interests for state officers, specified state employees, local officers, and persons seeking to qualify as candidates for state or local office shall be filed even if the reporting person holds no financial interests requiring disclosure in a particular category, in which case that section of the statement shall be marked "not applicable." Otherwise, the statement of financial interests must include the information under paragraph (a) or paragraph (b). The reporting person must indicate on the statement whether he or she is using the reporting method under paragraph (a) or paragraph (b). Beginning January 1, 2023, only the reporting method specified under paragraph (b) may be used.



(a)

1. All sources of income in excess of 5 percent of the gross income received during the disclosure period by the person in his or her own name or by any other person for his or her use or benefit, excluding public salary. However, this shall not be construed to require disclosure of a business partner's sources of income. The person reporting shall list such sources in descending order of value with the largest source first;

2. All sources of income to a business entity in excess of 10 percent of the gross income of a business entity in which the reporting person held a material interest and from which he or she received an amount which was in excess of 10 percent of his or her gross income during the disclosure period and which exceeds \$1,500. The period for computing the gross income of the business entity is the fiscal year of the business entity which ended on, or immediately prior to, the end of the disclosure period of the person reporting;

3. The location or description of real property in this state, except for residences and vacation homes, owned directly or indirectly by the person reporting, when such person owns in excess of 5 percent of the value of such real property, and a general description of any intangible personal property worth in excess of 10 percent of such person's total assets. For the purposes of this paragraph, indirect ownership does not include ownership by a spouse or minor child; and

4. Every individual liability that equals more than the reporting person's net worth; or

(b)

1. All sources of gross income in excess of \$2,500 received during the disclosure period by the person in his or her own name or by any other person for his or her use or benefit, excluding public salary. However, this shall not be construed to require disclosure of a business partner's sources of



income. The person reporting shall list such sources in descending order of value with the largest source first;

2. All sources of income to a business entity in excess of 10 percent of the gross income of a business entity in which the reporting person held a material interest and from which he or she received gross income exceeding \$5,000 during the disclosure period. The period for computing the gross income of the business entity is the fiscal year of the business entity which ended on, or immediately prior to, the end of the disclosure period of the person reporting;

3. The location or description of real property in this state, except for residence and vacation homes, owned directly or indirectly by the person reporting, when such person owns in excess of 5 percent of the value of such real property, and a general description of any intangible personal property worth in excess of \$10,000. For the purpose of this paragraph, indirect ownership does not include ownership by a spouse or minor child; and

4. Every liability in excess of \$10,000.

(4)

(a) Beginning January 1, 2023, a filer may not include in a filing to the commission a federal income tax return or a copy of thereof; a social security number; a bank, mortgage, or brokerage account number; a debit, charge, or credit card number; a personal identification number; a taxpayer identification number. If a filer includes such information in his or her filing, the information may be made available as part of the official records of the commission available for public inspection and copying unless redaction is requested by the filer. The commission is not liable for the release of social security numbers, bank account numbers, or debit, charge, or credit card numbers included in a filing to the commission if the filer has not requested redaction of the information.



(b) The commission shall redact a filer's social security number; bank account number; debit, charge, or credit card number; or any other personal or account information that is legally protected from disclosure under state or federal law upon written notification from the filer of its inadvertent inclusion. Such notice must specify the information inadvertently included and the specific section or sections of the statement in which it was included.

(c) The commission must conspicuously post a notice, in substantially the following form, in the instructions for the electronic filing system specifying that:

1. Any filer submitting information through the electronic filing system may not include a federal income tax return or a copy thereof; a social security number; a bank, mortgage, or brokerage account number; a debit, charge, or credit card number; a personal identification number; or a taxpayer identification number in any filing unless required by law.

2. Information submitted through the electronic filing system may be open to public inspection and copying.

3. Any filer has a right to request that the commission redact from his or her filing any social security number, bank account number, or debit, charge, or credit card number contained in the filing. Such request must be made in writing and delivered to the commission. The request must specify the information to be redacted and the specific section or sections of the disclosure in which it was included.

(5) An officer who is required to complete annual ethics training pursuant to s. 112.3142 must certify on his or her statement of financial interests that he or she has completed the required training.

(6) Each elected constitutional officer, state officer, local officer, and specified state employee shall file a quarterly report of the names of clients represented for a fee or commission, except for appearances in ministerial matters,



before agencies at his or her level of government. For the purposes of this part, agencies of government shall be classified as state-level agencies or agencies below state level. Each local officer shall file such report with the supervisor of elections of the county in which the officer is principally employed or is a resident. Each state officer, elected constitutional officer, and specified state employee shall file such report with the commission. The report shall be filed only when a reportable representation is made during the calendar quarter and shall be filed no later than the last day of each calendar quarter, for the previous calendar quarter. Representation before any agency shall be deemed to include representation by such officer or specified state employee or by any partner or associate of the professional firm of which he or she is a member and of which he or she has actual knowledge. For the purposes of this subsection, the term "representation before any agency" does not include appearances before any court or the Deputy Chief Judge of Compensation Claims or judges of compensation claims or representations on behalf of one's agency in one's official capacity. Such term does not include the preparation and filing of forms and applications merely for the purpose of obtaining or transferring a license based on a quota or a franchise of such agency or a license or operation permit to engage in a profession, business, or occupation, so long as the issuance or granting of such license, permit, or transfer does not require substantial discretion, a variance, a special consideration, or a certificate of public convenience and necessity.

(7) Each elected constitutional officer and each candidate for such office, any other public officer required pursuant to s. 8, Art. II of the State Constitution to file a full and public disclosure of his or her financial interests, and each state officer, local officer, specified state employee, and candidate for elective public office who is or was during the disclosure period an officer, director, partner, proprietor, or agent, other than a resident agent solely for service of process, of, or owns or owned during the disclosure period a material interest in, any business entity which is granted a privilege to operate in this state shall disclose such facts as a part of the disclosure form filed pursuant to s. 8, Art. II of the State Constitution or this section, as applicable. The statement shall give the name, address, and principal



business activity of the business entity and shall state the position held with such business entity or the fact that a material interest is owned and the nature of that interest.

(8) Forms for compliance with the disclosure requirements of this section and a current list of persons subject to disclosure shall be created by the commission and provided to each supervisor of elections. The commission and each supervisor of elections shall give notice of disclosure deadlines and delinquencies and distribute forms in the following manner:

(a)

1. Not later than May 1 of each year, the commission shall prepare a current list of the names, e-mail addresses, and physical addresses of, and the offices or positions held by, every state officer, local officer, and specified employee. Each unit of government shall assist the commission in compiling the list by providing to the commission not later than February 1 of each year the name, e-mail address, physical address, and name of agency of, and the office or position held by, each state officer, local officer, or specified state employee within the respective unit of government as of December 31 of the preceding year.

2. Not later than May 15 of each year, the commission shall provide each supervisor of elections with a current list of all local officers required to file with such supervisor of elections.

(b) Not later than June 1 of each year, the commission and each supervisor of elections, as appropriate, shall distribute a copy of the form prescribed for compliance with subsection (3) and a notice of all applicable disclosure forms and filing deadlines to each person required to file a statement of financial interests. Beginning January 1, 2023, no paper forms will be provided. The notice required under this paragraph and instructions for electronic submission must be delivered by e-mail.

(c) Not later than August 1 of each year, the commission and each supervisor of elections shall determine which



persons required to file a statement of financial interests in their respective offices have failed to do so and shall send delinquency notices to these persons. Each notice must state that a grace period is in effect until September 1 of the current year; that no investigative or disciplinary action based upon the delinquency will be taken by the agency head or commission if the statement is filed by September 1 of the current year; that, if the statement is not filed by September 1 of the current year, a fine of \$25 for each day late will be imposed, up to a maximum penalty of \$1,500; for notices distributed by a supervisor of elections, that he or she is required by law to notify the commission of the delinquency; and that, if upon the filing of a sworn complaint the commission finds that the person has failed to timely file the statement within 60 days after September 1 of the current year, such person will also be subject to the penalties provided in s. 112.317. Beginning January 1, 2023, notice required under this paragraph must be delivered by e-mail and must be redelivered on a weekly basis by e-mail as long as the person remains delinquent.

(d) No later than November 15 of each year, the supervisor of elections in each county shall certify to the commission a list of the names and addresses of, and the offices or positions held by, all persons who have failed to timely file the required statements of financial interests. The certification must include the earliest of the dates described in subparagraph (g)1. The certification shall be on a form prescribed by the commission and shall indicate whether the supervisor of elections has provided the disclosure forms and notice as required by this subsection to all persons named on the delinquency list.

(e) Statements must be received by the commission not later than 5 p.m. of the due date. However, any statement that is postmarked by the United States Postal Service by midnight of the due date is deemed to have been filed in a timely manner, and a certificate of mailing obtained from and dated by the United States Postal Service at the time of the mailing, or a receipt from an established courier company which bears a date on or before the due date, constitutes proof of mailing in a timely manner.



Beginning January 1, 2023, upon request of the filer, the commission must provide verification to the filer that the commission has received the filed statement.

(f) Beginning January 1, 2023, the statement must be accompanied by a declaration as provided in s. 92.525(2) and an electronic acknowledgment thereof.

(g) Any person who is required to file a statement of financial interests and whose name is on the commission's list, and to whom notice has been sent, but who fails to timely file is assessed a fine of \$25 per day for each day late up to a maximum of \$1,500; however, this \$1,500 limitation on automatic fines does not limit the civil penalty that may be imposed if the statement is filed more than 60 days after the deadline and a complaint is filed, as provided in s. 112.324. The commission must provide by rule the grounds for waiving the fine and procedures by which each person whose name is on the list and who is determined to have not filed in a timely manner will be notified of assessed fines and may appeal. The rule must provide for and make specific the following:

1. The amount of the fine due is based upon the earliest of the following:

- a. When a statement is actually received by the office.
- b. When the statement is postmarked.
- c. When the certificate of mailing is dated.
- d. When the receipt from an established courier company is dated.

2. For a specified state employee or a state officer, upon receipt of the disclosure statement by the commission or upon accrual of the maximum penalty, whichever occurs first, and for a local officer upon receipt by the commission of the certification from the local officer's supervisor of elections pursuant to paragraph (d), the commission shall determine the amount of the fine which is due and shall notify the delinquent person. The notice must include an explanation of



the appeal procedure under subparagraph 3. The fine must be paid within 30 days after the notice of payment due is transmitted, unless appeal is made to the commission pursuant to subparagraph 3. The moneys are to be deposited into the General Revenue Fund.

3. Any reporting person may appeal or dispute a fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and is entitled to a hearing before the commission, which may waive the fine in whole or in part for good cause shown. Any such request must be in writing and received by the commission within 30 days after the notice of payment due is transmitted. In such a case, the reporting person must, within the 30-day period, notify the person designated to review the timeliness of reports in writing of his or her intention to bring the matter before the commission. For purposes of this subparagraph, the term "unusual circumstances" does not include the failure to monitor an e-mail account or failure to receive notice if the person has not notified the commission of a change in his or her e-mail address.

(h) Any state officer, local officer, or specified employee whose name is not on the list of persons required to file an annual statement of financial interests is not subject to the penalties provided in s. 112.317 or the fine provided in this section for failure to timely file a statement of financial interests in any year in which the omission occurred, but nevertheless is required to file the disclosure statement.

(i) The notification requirements and fines of this subsection do not apply to candidates or to the first or final filing required of any state officer, specified employee, or local officer as provided in paragraph (2) (b).

(j) Notwithstanding any provision of chapter 120, any fine imposed under this subsection which is not waived by final order of the commission and which remains unpaid more than 60 days after the notice of payment due or more than 60 days after the commission renders a final



order on the appeal must be submitted to the **Department of Financial Services** as a claim, debt, or other obligation owed to the state, and the department shall assign the collection of such a fine to a collection agent as provided in s. 17.20.

(9)

(a) The appointing official or body shall notify each newly appointed local officer, state officer, or specified state employee, not later than the date of appointment, of the officer's or employee's duty to comply with the disclosure requirements of this section. The agency head of each employing agency shall notify each newly employed local officer or specified state employee, not later than the day of employment, of the officer's or employee's duty to comply with the disclosure requirements of this section. The appointing official or body or employing agency head may designate a person to be responsible for the notification requirements of this paragraph.

(b) The agency head of the agency of each local officer, state officer, or specified state employee who is required to file a statement of financial interests for the final disclosure period shall notify such persons of their obligation to file the final disclosure and may designate a person to be responsible for the notification requirements of this paragraph.

(c) If a person holding public office or public employment fails or refuses to file an annual statement of financial interests for any year in which the person received notice from the commission regarding the failure to file and has accrued the maximum automatic fine authorized under this section, regardless of whether the fine imposed was paid or collected, the commission shall initiate an investigation and conduct a public hearing without receipt of a complaint to determine whether the person's failure to file is willful. Such investigation and hearing must be conducted in accordance with s. 112.324. Except as provided in s. 112.324(4), if the commission determines that the person willfully failed to file a statement of financial interests, the commission shall enter an order recommending that the officer or employee be removed



from his or her public office or public employment. The commission shall forward its recommendation as provided in s. 112.324.

(10) A public officer who has filed a disclosure for any calendar or fiscal year shall not be required to file a second disclosure for the same year or any part thereof, notwithstanding any requirement of this act, except that any public officer who qualifies as a candidate for public office shall file a copy of the disclosure with the officer before whom he or she qualifies as a candidate at the time of qualification.

(11)

(a) The commission shall treat an amendment to an annual statement of financial interests which is filed before September 1 of the year in which the statement is due as part of the original filing, regardless of whether a complaint has been filed. If a complaint alleges only an immaterial, inconsequential, or de minimis error or omission, the commission may not take any action on the complaint other than notifying the filer of the complaint. The filer must be given 30 days to file an amendment to the statement of financial interests correcting any errors. If the filer does not file an amendment to the statement of financial interests within 30 days after the commission sends notice of the complaint, the commission may continue with proceedings pursuant to s. 112.324.

(b) For purposes of the final statement of financial interests, the commission shall treat an amendment to a final statement of financial interests as part of the original filing, if filed within 60 days of the original filing regardless of whether a complaint has been filed. If, more than 60 days after a final statement of financial interests is filed, a complaint is filed alleging a complete omission of any information required to be disclosed by this section, the commission may immediately follow the complaint procedures in s. 112.324. However, if the complaint alleges an immaterial, inconsequential, or de minimis error or omission, the commission may not take any action on the complaint other than notifying the filer of the complaint. The filer must be given 30 days to file an



amendment to the final statement of financial interests correcting any errors. If the filer does not file an amendment to the final statement of financial interests within 30 days after the commission sends notice of the complaint, the commission may continue with proceedings pursuant to s. 112.324.

(c) For purposes of this section, an error or omission is immaterial, inconsequential, or de minimis if the original filing provided sufficient information for the public to identify potential conflicts of interest. However, failure to certify completion of annual ethics training required under s. 112.3142 does not constitute an immaterial, inconsequential, or de minimis error or omission.

(12)

(a) An individual required to file a statement pursuant to this section may have the statement prepared by an attorney in good standing with The Florida Bar or by a certified public accountant licensed under chapter 473. After preparing a statement form, the attorney or certified public accountant must sign the form indicating that he or she prepared the form in accordance with this section and the instructions for completing and filing the disclosure forms and that, upon his or her reasonable knowledge and belief, the disclosure is true and correct. If a complaint is filed alleging a failure to disclose information required by this section, the commission shall determine whether the information was disclosed to the attorney or certified public accountant. The failure of the attorney or certified public accountant to accurately transcribe information provided by the individual who is required to file the statement does not constitute a violation of this section.

(b) An elected officer or candidate who chooses to use an attorney or a certified public accountant to prepare his or her statement may pay for the services of the attorney or certified public accountant from funds in an office account created pursuant to s. 106.141 or, during a year that the individual qualifies for election to public office, the candidate's campaign depository pursuant to s. 106.021.



(13) The commission shall adopt rules and forms specifying how a state officer, local officer, or specified state employee may amend his or her statement of financial interests to report information that was not included on the form as originally filed. If the amendment is the subject of a complaint filed under this part, the commission and the proper disciplinary official or body shall consider as a mitigating factor when considering appropriate disciplinary action the fact that the amendment was filed before any complaint or other inquiry or proceeding, while recognizing that the public was deprived of access to information to which it was entitled.

History - (s. 5, ch. 74-177; ss. 2, 6, ch. 75-196; s. 2, ch. 76-18; s. 1, ch. 77-174; s. 63, ch. 77-175; s. 54, ch. 79-40; s. 3, ch. 82-98; s. 2, ch. 83-128; ss. 2, 5, ch. 83-282; s. 3, ch. 84-318; s. 1, ch. 88-316; s. 1, ch. 90-169; s. 5, ch. 90-502; s. 27, ch. 91-46; s. 6, ch. 91-85; s. 6, ch. 91-292; ss. 5, 13, ch. 94-277; s. 3, ch. 94-340; s. 1410, ch. 95-147; s. 14, ch. 96-410; s. 31, ch. 97-286; s. 17, ch. 99-399; s. 2, ch. 2000-161; s. 3, ch. 2000-243; s. 31, ch. 2000-258; s. 23, ch. 2000-372; s. 3, ch. 2001-91; s. 2, ch. 2001-282; s. 128, ch. 2003-261; s. 4, ch. 2006-275; s. 12, ch. 2007-217; s. 7, ch. 2008-6; s. 9, ch. 2013-36; s. 4, ch. 2014-183; s. 4, ch. 2019-97.)



§112.31455 FS | COLLECTION METHODS FOR UNPAID AUTOMATIC FINES FOR FAILURE TO TIMELY FILE DISCLOSURE OF FINANCIAL INTERESTS

(1) Before referring any unpaid fine accrued pursuant to s. 112.3144(8) or s. 112.3145(8) to the **Department of Financial Services**, the commission shall attempt to determine whether the individual owing such a fine is a current public officer or current public employee. If so, the commission may notify the Chief Financial Officer or the governing body of the appropriate county, municipality, district school board, or special district of the total amount of any fine owed to the commission by such individual.

(a) After receipt and verification of the notice from the commission, the Chief Financial Officer or the governing body of the county, municipality, district school board, or special district shall begin withholding the lesser of 10 percent or the maximum amount allowed under federal law from any salary-related payment. The withheld payments shall be remitted to the commission until the fine is satisfied.

(b) The Chief Financial Officer or the governing body of the county, municipality, district school board, or special district may retain an amount of each withheld payment, as provided in s. 77.0305, to cover the administrative costs incurred under this section.

(2) If the commission determines that the individual who is the subject of an unpaid fine accrued pursuant to s. 112.3144(8) or s. 112.3145(8) is no longer a public officer or public employee or if the commission is unable to determine whether the individual is a current public officer or public employee, the commission may, 6 months after the order becomes final, seek garnishment of any wages to satisfy the amount of the fine, or any unpaid portion thereof, pursuant to chapter 77. Upon recording the order imposing the fine with the clerk of the circuit court, the order shall be deemed a judgment for purposes of garnishment pursuant to chapter 77.

(3) The commission may refer unpaid fines to the appropriate collection agency, as directed by the Chief Financial Officer, to utilize any collection methods provided by law. Except as expressly limited by this section, any other collection methods authorized by law are allowed.



(4) Action may be taken to collect any unpaid fine imposed by ss. 112.3144 and 112.3145 within 20 years after the date the final order is rendered.

History - (s. 10, ch. 2013-36; s. 10, ch. 2015-2; s. 3, ch. 2018-5; s. 5, ch. 2019-97; s. 19, ch. 2020-2.)



§112.3146 FS | PUBLIC RECORDS

The statements required by ss. 112.313, 112.3145, 112.3148, and 112.3149 shall be public records within the meaning of s. 119.01.

History - (s. 6, ch. 74-177; s. 6, ch. 90-502; s. 7, ch. 91-85.)



§112.3187 FS | ADVERSE ACTIONS AGAINST EMPLOYEE FOR DISCLOSING INFORMATION OF SPECIFIED NATURE PROHIBITED; EMPLOYEE REMEDY AND RELIEF

(1) SHORT TITLE. — Sections 112.3187-112.31895 may be cited as the “Whistle-blower’s Act.”

(2) LEGISLATIVE INTENT. — It is the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employer or independent contractor that create a substantial and specific danger to the public’s health, safety, or welfare. It is further the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against any person who discloses information to an appropriate agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee.

(3) DEFINITIONS. — As used in this act, unless otherwise specified, the following words or terms shall have the meanings indicated:

(a) “Agency” means any state, regional, county, local, or municipal government entity, whether executive, judicial, or legislative; any official, officer, department, division, bureau, commission, authority, or political subdivision therein; or any public school, community college, or state university.

(b) “Employee” means a person who performs services for, and under the control and direction of, or contracts with, an agency or independent contractor for wages or other remuneration.

(c) “Adverse personnel action” means the discharge, suspension, transfer, or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment by an agency or independent contractor.

(d) “Independent contractor” means a person, other than an agency, engaged in any business and who enters into a contract, including a provider agreement, with an agency.



(e) "Gross mismanagement" means a continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct which may have a substantial adverse economic impact.

(4) ACTIONS PROHIBITED. –

(a) An agency or independent contractor shall not dismiss, discipline, or take any other adverse personnel action against an employee for disclosing information pursuant to the provisions of this section.

(b) An agency or independent contractor shall not take any adverse action that affects the rights or interests of a person in retaliation for the person's disclosure of information under this section.

(c) The provisions of this subsection shall not be applicable when an employee or person discloses information known by the employee or person to be false.

(5) NATURE OF INFORMATION DISCLOSED. – The information disclosed under this section must include:

(a) Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare.

(b) Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.

(6) TO WHOM INFORMATION DISCLOSED. – The information disclosed under this section must be disclosed to any agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act, including, but not limited to, the Office of the Chief Inspector General, an agency inspector general or the employee designated as agency inspector general under s. 112.3189(1) or inspectors general under s. 20.055, the Florida Commission on Human Relations, and the whistle-blower's hotline created under s. 112.3189. However, for disclosures concerning a local governmental entity, including any regional, county, or municipal entity, special



district, community college district, or school district or any political subdivision of any of the foregoing, the information must be disclosed to a chief executive officer as defined in s. 447.203(9) or other appropriate local official.

(7) EMPLOYEES AND PERSONS PROTECTED. – This section protects employees and persons who disclose information on their own initiative in a written and signed complaint; who are requested to participate in an investigation, hearing, or other inquiry conducted by any agency or federal government entity; who refuse to participate in any adverse action prohibited by this section; or who initiate a complaint through the whistle-blower's hotline or the hotline of the Medicaid Fraud Control Unit of the Department of Legal Affairs; or employees who file any written complaint to their supervisory officials or employees who submit a complaint to the Chief Inspector General in the Executive Office of the Governor, to the employee designated as agency inspector general under s. 112.3189(1), or to the Florida Commission on Human Relations. The provisions of this section may not be used by a person while he or she is under the care, custody, or control of the state correctional system or, after release from the care, custody, or control of the state correctional system, with respect to circumstances that occurred during any period of incarceration. No remedy or other protection under ss. 112.3187-112.31895 applies to any person who has committed or intentionally participated in committing the violation or suspected violation for which protection under ss. 112.3187-112.31895 is being sought.

(8) REMEDIES. –

(a) Any employee of or applicant for employment with any state agency, as the term "state agency" is defined in s. 216.011, who is discharged, disciplined, or subjected to other adverse personnel action, or denied employment, because he or she engaged in an activity protected by this section may file a complaint, which complaint must be made in accordance with s. 112.31895. Upon receipt of notice from the Florida Commission on Human Relations of termination of the investigation, the complainant may elect to pursue the administrative remedy available under s. 112.31895 or bring a civil action within 180 days after receipt of the notice.

(b) Within 60 days after the action prohibited by this section, any local public employee protected by this section may file a complaint with the appropriate local



governmental authority, if that authority has established by ordinance an administrative procedure for handling such complaints or has contracted with the Division of Administrative Hearings under s. 120.65 to conduct hearings under this section. The administrative procedure created by ordinance must provide for the complaint to be heard by a panel of impartial persons appointed by the appropriate local governmental authority. Upon hearing the complaint, the panel must make findings of fact and conclusions of law for a final decision by the local governmental authority. Within 180 days after entry of a final decision by the local governmental authority, the public employee who filed the complaint may bring a civil action in any court of competent jurisdiction. If the local governmental authority has not established an administrative procedure by ordinance or contract, a local public employee may, within 180 days after the action prohibited by this section, bring a civil action in a court of competent jurisdiction. For the purpose of this paragraph, the term "local governmental authority" includes any regional, county, or municipal entity, special district, community college district, or school district or any political subdivision of any of the foregoing.

(c) Any other person protected by this section may, after exhausting all available contractual or administrative remedies, bring a civil action in any court of competent jurisdiction within 180 days after the action prohibited by this section.

(9) RELIEF. – In any action brought under this section, the relief must include the following:

(a) Reinstatement of the employee to the same position held before the adverse action was commenced, or to an equivalent position or reasonable front pay as alternative relief.

(b) Reinstatement of the employee's full fringe benefits and seniority rights, as appropriate.

(c) Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the adverse action.



(d) Payment of reasonable costs, including attorney's fees, to a substantially prevailing employee, or to the prevailing employer if the employee filed a frivolous action in bad faith.

(e) Issuance of an injunction, if appropriate, by a court of competent jurisdiction.

(f) Temporary reinstatement to the employee's former position or to an equivalent position, pending the final outcome on the complaint, if an employee complains of being discharged in retaliation for a protected disclosure and if a court of competent jurisdiction or the Florida Commission on Human Relations, as applicable under s. 112.31895, determines that the disclosure was not made in bad faith or for a wrongful purpose or occurred after an agency's initiation of a personnel action against the employee which includes documentation of the employee's violation of a disciplinary standard or performance deficiency. This paragraph does not apply to an employee of a municipality.

(10) DEFENSES. — It shall be an affirmative defense to any action brought pursuant to this section that the adverse action was predicated upon grounds other than, and would have been taken absent, the employee's or person's exercise of rights protected by this section.

(11) EXISTING RIGHTS. — Sections 112.3187-112.31895 do not diminish the rights, privileges, or remedies of an employee under any other law or rule or under any collective bargaining agreement or employment contract; however, the election of remedies in s. 447.401 also applies to whistle-blower actions.

History. — ss. 1, 2, 3, 4, 5, 6, 7, 8, ch. 86-233; s. 1, ch. 91-285; s. 12, ch. 92-316; s. 1, ch. 93-57; s. 702, ch. 95-147; s. 1, ch. 95-153; s. 15, ch. 96-410; s. 20, ch. 99-333; s. 2, ch. 2002-400.



§112.3188 FS | CONFIDENTIALITY OF INFORMATION GIVEN TO THE CHIEF INSPECTOR GENERAL, INTERNAL AUDITORS, INSPECTORS GENERAL, LOCAL CHIEF EXECUTIVE OFFICERS, OR OTHER APPROPRIATE LOCAL OFFICIALS

(1) The name or identity of any individual who discloses in good faith to the Chief Inspector General or an agency inspector general, a local chief executive officer, or other appropriate local official information that alleges that an employee or agent of an agency or independent contractor:

(a) Has violated or is suspected of having violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare; or

(b) Has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty may not be disclosed to anyone other than a member of the Chief Inspector General's, agency inspector general's, internal auditor's, local chief executive officer's, or other appropriate local official's staff without the written consent of the individual, unless the Chief Inspector General, internal auditor, agency inspector general, local chief executive officer, or other appropriate local official determines that: the disclosure of the individual's identity is necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime; or the disclosure is unavoidable and absolutely necessary during the course of the audit, evaluation, or investigation.

(2)

(a) Except as specifically authorized by s. 112.3189, all information received by the Chief Inspector General or an agency inspector general or information produced or derived from fact-finding or other investigations conducted by the Florida Commission on Human Relations or the Department of Law Enforcement is confidential and exempt from s. 119.07(1) if the information is being received or derived from allegations as set forth in paragraph (1)(a) or paragraph (1)(b), and an investigation is active.



(b) All information received by a local chief executive officer or appropriate local official or information produced or derived from fact-finding or investigations conducted pursuant to the administrative procedure established by ordinance by a local government as authorized by s. 112.3187(8)(b) is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the information is being received or derived from allegations as set forth in paragraph (1)(a) or paragraph (1)(b) and an investigation is active.

(c) Information deemed confidential under this section may be disclosed by the Chief Inspector General, agency inspector general, local chief executive officer, or other appropriate local official receiving the information if the recipient determines that the disclosure of the information is absolutely necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime. Information disclosed under this subsection may be disclosed only to persons who are in a position to prevent the danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime based on the disclosed information.

1. An investigation is active under this section if:

a. It is an ongoing investigation or inquiry or collection of information and evidence and is continuing with a reasonable, good faith anticipation of resolution in the foreseeable future; or

b. All or a portion of the matters under investigation or inquiry are active criminal intelligence information or active criminal investigative information as defined in s. 119.011.

2. Notwithstanding sub-subparagraph 1.a., an investigation ceases to be active when:



a. The written report required under s. 112.3189(9) has been sent by the Chief Inspector General to the recipients named in s. 112.3189(9);

b. It is determined that an investigation is not necessary under s. 112.3189(5); or

c. A final decision has been rendered by the local government or by the Division of Administrative Hearings pursuant to s. 112.3187(8)(b).

3. Notwithstanding paragraphs (a), (b), and this paragraph, information or records received or produced under this section which are otherwise confidential under law or exempt from disclosure under chapter 119 retain their confidentiality or exemption.

4. Any person who willfully and knowingly discloses information or records made confidential under this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History. — s. 6, ch. 90-247; s. 1, ch. 91-150; s. 3, ch. 91-285; s. 2, ch. 93-57; s. 1, ch. 95-136; s. 2, ch. 95-153; s. 1, ch. 95-166; ss. 36, 37, ch. 96-406; s. 21, ch. 99-333.

¹*Note.* — As amended by s. 1, ch. 95-166, s. 2, ch. 95-153, and s. 36, ch. 96-406; this version of paragraph (2)(a) was also amended by s. 21, ch. 99-333. For a description of multiple acts in the same session affecting a statutory provision, see preface to the Florida Statutes, “Statutory Construction.” This section was also amended by s. 1, ch. 95-136, and s. 37, ch. 96-406, and that version reads:

112.3188 Confidentiality of information given to the Chief Inspector General and agency inspectors general. —

(1) The identity of any individual who discloses in good faith to the Chief Inspector General or an agency inspector general information that alleges that an employee or agent of an agency or independent contractor has violated or is suspected of having violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public’s health, safety, or welfare or has committed or is suspected of having committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross



neglect of duty is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall not be disclosed to anyone other than a member of the Chief Inspector General's or agency inspector general's staff without the written consent of the individual, unless the Chief Inspector General or agency inspector general determines that:

(a) The disclosure of the individual's identity is necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime, provided that such information is disclosed only to persons who are in a position to prevent the danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime;

(b) The disclosure of the individual's identity is unavoidable and absolutely necessary during the course of the inquiry or investigation; or

(c) The disclosure of the individual's identity is authorized as a result of the individual consenting in writing to attach general comments signed by such individual to the final report required pursuant to s. 112.3189(6)(b).

(2)

(a) Except as specifically authorized by s. 112.3189 and except as provided in subsection (1), all information received by the Chief Inspector General or an agency inspector general or information produced or derived from fact-finding or other investigations conducted by the Department of Legal Affairs, the Office of the Public Counsel, or the Department of Law Enforcement is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution for an initial period of not more than 30 days during which time a determination is made whether an investigation is required pursuant to s. 112.3189(5)(a) and, if an investigation is determined to be required, until the investigation is closed or ceases to be active. For the purposes of this subsection, an investigation is active while such investigation is being conducted with a reasonable good faith belief that it may lead to the filing of administrative, civil, or criminal charges. An investigation does not cease to be active so long as the Chief Inspector General or the agency inspector general is proceeding with reasonable dispatch and



there is a good faith belief that action may be initiated by the Chief Inspector General or agency inspector general or other administrative or law enforcement agency. Except for active criminal intelligence or criminal investigative information as defined in s. 119.011, and except as otherwise provided in this section, all information obtained pursuant to this subsection shall become available to the public when the investigation is closed or ceases to be active. An investigation is closed or ceases to be active when the final report required pursuant to s. 112.3189(9) has been sent by the Chief Inspector General to the recipients specified in s. 112.3189(9)(c).

(b) Information deemed confidential under this subsection may be disclosed by the Chief Inspector General or agency inspector general receiving the information if the Chief Inspector General or agency inspector general determines that the disclosure of the information is absolutely necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime, and such information may be disclosed only to persons who are in a position to prevent the danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime based on the disclosed information.

(3) Information or records obtained under this section which are otherwise confidential under law or exempt from disclosure shall retain their confidentiality or exemption.

(4) Any person who willfully and knowingly discloses information or records made confidential under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.



§112.3189 FS | INVESTIGATIVE PROCEDURES UPON RECEIPT OF WHISTLE-BLOWER INFORMATION FROM CERTAIN STATE EMPLOYEES

(1) This section only applies to the disclosure of information as described in s. 112.3187(5) by an employee or former employee of, or an applicant for employment with, a state agency, as the term "state agency" is defined in s. 216.011, to the Office of the Chief Inspector General of the Executive Office of the Governor or to the agency inspector general. If an agency does not have an inspector general, the head of the state agency, as defined in s. 216.011, shall designate an employee to receive information described in s. 112.3187(5). For purposes of this section and s. 112.3188 only, the employee designated by the head of the state agency shall be deemed an agency inspector general.

(2) To facilitate the receipt of information described in subsection (1), the Chief Inspector General shall maintain an in-state toll-free whistle-blower's hotline and shall circulate among the various state agencies an advisory for all employees which indicates the existence of the toll-free number and its purpose and provides an address to which written whistle-blower information may be forwarded.

(3) When a person alleges information described in s. 112.3187(5), the Chief Inspector General or agency inspector general actually receiving such information shall within 20 days of receiving such information determine:

(a) Whether the information disclosed is the type of information described in s. 112.3187(5).

(b) Whether the source of the information is a person who is an employee or former employee of, or an applicant for employment with, a state agency, as defined in s. 216.011.

(c) Whether the information actually disclosed demonstrates reasonable cause to suspect that an employee or agent of an agency or independent contractor has violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare, or has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty.



(4) If the Chief Inspector General or agency inspector general under subsection (3) determines that the information disclosed is not the type of information described in s. 112.3187(5), or that the source of the information is not a person who is an employee or former employee of, or an applicant for employment with, a state agency, as defined in s. 216.011, or that the information disclosed does not demonstrate reasonable cause to suspect that an employee or agent of an agency or independent contractor has violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare, or has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty, the Chief Inspector General or agency inspector general shall notify the complainant of such fact and copy and return, upon request of the complainant, any documents and other materials that were provided by the complainant.

(5)

(a) If the Chief Inspector General or agency inspector general under subsection (3) determines that the information disclosed is the type of information described in s. 112.3187(5), that the source of the information is from a person who is an employee or former employee of, or an applicant for employment with, a state agency, as defined in s. 216.011, and that the information disclosed demonstrates reasonable cause to suspect that an employee or agent of an agency or independent contractor has violated any federal, state, or local law, rule, or regulation, thereby creating a substantial and specific danger to the public's health, safety, or welfare, or has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty, the Chief Inspector General or agency inspector general making such determination shall then conduct an investigation, unless the Chief Inspector General or the agency inspector general determines, within 30 days after receiving the allegations from the complainant, that such investigation is unnecessary. For purposes of this subsection, the Chief Inspector General or the agency inspector general shall consider the following factors, but is not limited to only the following factors, when deciding whether the investigation is not necessary:



1. The gravity of the disclosed information compared to the time and expense of an investigation.
2. The potential for an investigation to yield recommendations that will make state government more efficient and effective.
3. The benefit to state government to have a final report on the disclosed information.
4. Whether the alleged whistle-blower information primarily concerns personnel practices that may be investigated under chapter 110.
5. Whether another agency may be conducting an investigation and whether any investigation under this section could be duplicative.
6. The time that has elapsed between the alleged event and the disclosure of the information.

(b) If the Chief Inspector General or agency inspector general determines under paragraph (a) that an investigation is not necessary, the Chief Inspector General or agency inspector general making such determination shall:

1. Copy and return, upon request of the complainant, any documents and other materials provided by the individual who made the disclosure.
2. Inform in writing the head of the state agency for the agency inspector general making the determination that the investigation is not necessary and the individual who made the disclosure of the specific reasons why an investigation is not necessary and why the disclosure will not be further acted on under this section.

(6) The agency inspector general may conduct an investigation pursuant to paragraph (5)(a) only if the person transmitting information to the agency inspector general is an employee or former employee of, or an applicant for employment with, the agency inspector general's agency. The agency inspector general shall:



(a) Conduct an investigation with respect to the information and any related matters.

(b) Submit to the complainant and the Chief Inspector General, within 60 days after the date on which a determination to conduct an investigation is made under paragraph (5)(a), a final written report that sets forth the agency inspector general's findings, conclusions, and recommendations, except as provided under subsection (11). The complainant shall be advised in writing by the agency head that the complainant may submit to the Chief Inspector General and agency inspector general comments on the final report within 20 days of the date of the report and that such comments will be attached to the final report.

(7) If the Chief Inspector General decides an investigation should be conducted pursuant to paragraph (5)(a), the Chief Inspector General shall either:

(a) Promptly transmit to the appropriate head of the state agency the information with respect to which the determination to conduct an investigation was made, and such agency head shall conduct an investigation and submit to the Chief Inspector General a final written report that sets forth the agency head's findings, conclusions, and recommendations; or

(b)

1. Conduct an investigation with respect to the information and any related matters; and

2. Submit to the complainant within 60 days after the date on which a determination to conduct an investigation is made under paragraph (5)(a), a final written report that sets forth the Chief Inspector General's findings, conclusions, and recommendations, except as provided under subsection (11). The complainant shall be advised in writing by the Chief Inspector General that the complainant may submit to the Chief Inspector General comments on the final report within 20 days of the date of the report and that such comments will be attached to the final report.



(c) The Chief Inspector General may require an agency head to conduct an investigation under paragraph (a) only if the information was transmitted to the Chief Inspector General by:

1. An employee or former employee of, or an applicant for employment with, the agency that the information concerns; or
2. An employee who obtained the information in connection with the performance of the employee's duties and responsibilities.

(8) Final reports required under this section must be reviewed and signed by the person responsible for conducting the investigation (agency inspector general, agency head, or Chief Inspector General) and must include:

- (a) A summary of the information with respect to which the investigation was initiated.
- (b) A description of the conduct of the investigation.
- (c) A summary of any evidence obtained from the investigation.
- (d) A listing of any violation or apparent violation of any law, rule, or regulation.
- (e) A description of any action taken or planned as a result of the investigation, such as:
 1. A change in an agency rule, regulation, or practice.
 2. The restoration of an aggrieved employee.
 3. A disciplinary action against an employee.
 4. The referral to the Department of Law Enforcement of any evidence of a criminal violation.

(9)

(a) A report required of the agency head under paragraph (7) (a) shall be submitted to the Chief Inspector General and the complainant within 60 days after the agency head receives the complaint from the Chief Inspector General, except as provided under subsection (11). The



complainant shall be advised in writing by the agency head that the complainant may submit to the Chief Inspector General comments on the report within 20 days of the date of the report and that such comments will be attached to the final report.

(b) Upon receiving a final report required under this section, the Chief Inspector General shall review the report and determine whether the report contains the information required by subsection (8). If the report does not contain the information required by subsection (8), the Chief Inspector General shall determine why and note the reasons on an addendum to the final report.

(c) The Chief Inspector General shall transmit any final report under this section, any comments provided by the complainant, and any appropriate comments or recommendations by the Chief Inspector General to the Governor, the Legislative Auditing Committee, the investigating agency, and the Chief Financial Officer.

(d) If the Chief Inspector General does not receive the report of the agency head within the time prescribed in paragraph (a), the Chief Inspector General may conduct the investigation in accordance with paragraph (7) (b) or request that another agency inspector general conduct the investigation in accordance with subsection (6) and shall report the complaint to the Governor, to the Joint Legislative Auditing Committee, and to the investigating agency, together with a statement noting the failure of the agency head to file the required report.

(10) For any time period set forth in subsections (3), (6), (7), and (9), such time period may be extended in writing by the Chief Inspector General for good cause shown.

(11) If an investigation under this section produces evidence of a criminal violation, the report shall not be transmitted to the complainant, and the agency head or agency inspector general shall notify the Chief Inspector General and the Department of Law Enforcement.

History.— s. 13, ch. 92-316; s. 3, ch. 93-57; s. 129, ch. 2003-261; s. 17, ch. 2011-34.



§112.31895 FS | INVESTIGATIVE PROCEDURES IN RESPONSE TO PROHIBITED PERSONNEL ACTIONS

(1) COMPLAINT. —

(a) If a disclosure under s. 112.3187 includes or results in alleged retaliation by an employer, the employee or former employee of, or applicant for employment with, a state agency, as defined in s. 216.011, that is so affected may file a complaint alleging a prohibited personnel action, which complaint must be made by filing a written complaint with the Office of the Chief Inspector General in the Executive Office of the Governor or the Florida Commission on Human Relations, no later than 60 days after the prohibited personnel action.

(b) Within 5 working days after receiving a complaint under this section, the office or officer receiving the complaint shall acknowledge receipt of the complaint and provide copies of the complaint and any other preliminary information available concerning the disclosure of information under s. 112.3187 to each of the other parties named in paragraph (a), which parties shall each acknowledge receipt of such copies to the complainant.

(2) FACT FINDING. — The Florida Commission on Human Relations shall:

(a) Receive any allegation of a personnel action prohibited by s. 112.3187, including a proposed or potential action, and conduct informal fact finding regarding any allegation under this section, to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel action under s. 112.3187 has occurred, is occurring, or is to be taken.

(b) Within 180 days after receiving the complaint, provide the agency head and the complainant with a fact-finding report that may include recommendations to the parties or proposed resolution of the complaint. The fact-finding report shall be presumed admissible in any subsequent or related administrative or judicial review.



(3) CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION. —

(a) The Florida Commission on Human Relations, in accordance with this act and for the sole purpose of this act, is empowered to:

1. Receive and investigate complaints from employees alleging retaliation by state agencies, as the term "state agency" is defined in s. 216.011.
2. Protect employees and applicants for employment with such agencies from prohibited personnel practices under s. 112.3187.
3. Petition for stays and petition for corrective actions, including, but not limited to, temporary reinstatement.
4. Recommend disciplinary proceedings pursuant to investigation and appropriate agency rules and procedures.
5. Coordinate with the Chief Inspector General in the Executive Office of the Governor and the Florida Commission on Human Relations to receive, review, and forward to appropriate agencies, legislative entities, or the Department of Law Enforcement disclosures of a violation of any law, rule, or regulation, or disclosures of gross mismanagement, malfeasance, misfeasance, nonfeasance, neglect of duty, or gross waste of public funds.
6. Review rules pertaining to personnel matters issued or proposed by the Department of Management Services, the Public Employees Relations Commission, and other agencies, and, if the Florida Commission on Human Relations finds that any rule or proposed rule, on its face or as implemented, requires the commission of a prohibited personnel practice, provide a written comment to the appropriate agency.
7. Investigate, request assistance from other governmental entities, and, if appropriate, bring



actions concerning, allegations of retaliation by state agencies under subparagraph 1.

8. Administer oaths, examine witnesses, take statements, issue subpoenas, order the taking of depositions, order responses to written interrogatories, and make appropriate motions to limit discovery, pursuant to investigations under subparagraph 1.

9. Intervene or otherwise participate, as a matter of right, in any appeal or other proceeding arising under this section before the Public Employees Relations Commission or any other appropriate agency, except that the Florida Commission on Human Relations must comply with the rules of the commission or other agency and may not seek corrective action or intervene in an appeal or other proceeding without the consent of the person protected under ss. 112.3187-112.31895.

10. Conduct an investigation, in the absence of an allegation, to determine whether reasonable grounds exist to believe that a prohibited action or a pattern of prohibited action has occurred, is occurring, or is to be taken.

(b) Within 15 days after receiving a complaint that a person has been discharged from employment allegedly for disclosing protected information under s. 112.3187, the Florida Commission on Human Relations shall review the information and determine whether temporary reinstatement is appropriate under s. 112.3187(9)(f). If the Florida Commission on Human Relations so determines, it shall apply for an expedited order from the appropriate agency or circuit court for the immediate reinstatement of the employee who has been discharged subsequent to the disclosure made under s. 112.3187, pending the issuance of the final order on the complaint.

(c) The Florida Commission on Human Relations shall notify a complainant of the status of the investigation and any action taken at such times as the commission considers appropriate.



(d) If the Florida Commission on Human Relations is unable to conciliate a complaint within 35 days after providing the agency head and complainant with the fact-finding report, the Florida Commission on Human Relations shall terminate the investigation. Upon termination of any investigation, the Florida Commission on Human Relations shall notify the complainant and the agency head of the termination of the investigation, providing a summary of relevant facts found during the investigation and the reasons for terminating the investigation. A written statement under this paragraph is presumed admissible as evidence in any judicial or administrative proceeding but is not admissible without the consent of the complainant.

(e)

1. The Florida Commission on Human Relations may request an agency or circuit court to order a stay, on such terms as the court requires, of any personnel action for 45 days if the Florida Commission on Human Relations determines that reasonable grounds exist to believe that a prohibited personnel action has occurred, is occurring, or is to be taken. The Florida Commission on Human Relations may request that such stay be extended for appropriate periods of time.

2. If, in connection with any investigation, the Florida Commission on Human Relations determines that reasonable grounds exist to believe that a prohibited action has occurred, is occurring, or is to be taken which requires corrective action, the Florida Commission on Human Relations shall report the determination together with any findings or recommendations to the agency head and may report that determination and those findings and recommendations to the Governor and the Chief Financial Officer. The Florida Commission on Human Relations may include in the report recommendations for corrective action to be taken.

3. If, after 35 days, the agency does not implement the recommended action, the Florida Commission on Human Relations shall terminate the investigation and notify the complainant of the right to appeal



under subsection (4), or may petition the agency for corrective action under this subsection.

4. If the Florida Commission on Human Relations finds, in consultation with the individual subject to the prohibited action, that the agency has implemented the corrective action, the commission shall file such finding with the agency head, together with any written comments that the individual provides, and terminate the investigation.

(f) If the Florida Commission on Human Relations finds that there are no reasonable grounds to believe that a prohibited personnel action has occurred, is occurring, or is to be taken, the commission shall terminate the investigation.

(g)

1. If, in connection with any investigation under this section, it is determined that reasonable grounds exist to believe that a criminal violation has occurred which has not been previously reported, the Florida Commission on Human Relations shall report this determination to the Department of Law Enforcement and to the state attorney having jurisdiction over the matter.

2. If an alleged criminal violation has been reported, the Florida Commission on Human Relations shall confer with the Department of Law Enforcement and the state attorney before proceeding with the investigation of the prohibited personnel action and may defer the investigation pending completion of the criminal investigation and proceedings. The Florida Commission on Human Relations shall inform the complainant of the decision to defer the investigation and, if appropriate, of the confidentiality of the investigation.



(h) If, in connection with any investigation under this section, the Florida Commission on Human Relations determines that reasonable grounds exist to believe that a violation of a law, rule, or regulation has occurred, other than a criminal violation or a prohibited action under this section, the commission may report such violation to the head of the agency involved. Within 30 days after the agency receives the report, the agency head shall provide to the commission a certification that states that the head of the agency has personally reviewed the report and indicates what action has been or is to be taken and when the action will be completed.

(i) During any investigation under this section, disciplinary action may not be taken against any employee of a state agency, as the term "state agency" is defined in s. 216.011, for reporting an alleged prohibited personnel action that is under investigation, or for reporting any related activity, or against any employee for participating in an investigation without notifying the Florida Commission on Human Relations.

(j) The Florida Commission on Human Relations may also petition for an award of reasonable attorney's fees and expenses from a state agency, as the term "state agency" is defined in s. 216.011, pursuant to s. 112.3187(9).

(4) RIGHT TO APPEAL. —

(a) Not more than 21 days after receipt of a notice of termination of the investigation from the Florida Commission on Human Relations, the complainant may file, with the Public Employees Relations Commission, a complaint against the employer-agency regarding the alleged prohibited personnel action. The Public Employees Relations Commission shall have jurisdiction over such complaints under ss. 112.3187 and 447.503(4) and (5).

(b) Judicial review of any final order of the commission shall be as provided in s. 120.68.

History. — s. 14, ch. 92-316; s. 4, ch. 93-57; s. 703, ch. 95-147; s. 22, ch. 99-333; s. 130, ch. 2003-261; s. 7, ch. 2020-153.



CHAPTER 119 FLORIDA STATUTES | FLORIDA

TITLE: X PUBLIC OFFICERS, EMPLOYEES, AND RECORDS

CHAPTER: 119 PUBLIC RECORDS

PART: --

SECTIONS: §119.01 through §119.15

NOTE: Entire Chapter



§119.01 FS | GENERAL STATE POLICY ON PUBLIC RECORDS

(1) It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.

(2)

(a) Automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law.

(b) When designing or acquiring an electronic recordkeeping system, an agency must consider whether such system is capable of providing data in some common format such as, but not limited to, the American Standard Code for Information Interchange.

(c) An agency may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records that are online or stored in an electronic recordkeeping system used by the agency.

(d) Subject to the restrictions of copyright and trade secret laws and public records exemptions, agency use of proprietary software must not diminish the right of the public to inspect and copy a public record.

(e) Providing access to public records by remote electronic means is an additional method of access that agencies should strive to provide to the extent feasible. If an agency provides access to public records by remote electronic means, such access should be provided in the most cost-effective and efficient manner available to the agency providing the information.

(f) Each agency that maintains a public record in an electronic recordkeeping system shall provide to any person, pursuant to this chapter, a copy of any public record in that system which is not exempted by law from



public disclosure. An agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium, and the agency may charge a fee in accordance with this chapter. For the purpose of satisfying a public records request, the fee to be charged by an agency if it elects to provide a copy of a public record in a medium not routinely used by the agency, or if it elects to compile information not routinely developed or maintained by the agency or that requires a substantial amount of manipulation or programming, must be in accordance with s. 119.07(4).

(3) If public funds are expended by an agency in payment of dues or membership contributions for any person, corporation, foundation, trust, association, group, or other organization, all the financial, business, and membership records of that person, corporation, foundation, trust, association, group, or other organization which pertain to the public agency are public records and subject to the provisions of s. 119.07.

History — s. 1, ch. 5942, 1909; RGS 424; CGL 490; s. 1, ch. 73-98; s. 2, ch. 75-225; s. 2, ch. 83-286; s. 4, ch. 86-163; ss. 1, 5, ch. 95-296; s. 2, ch. 2004-335; s. 1, ch. 2005-251.



§119.011 FS | DEFINITIONS

As used in this chapter, the term:

(1) "Actual cost of duplication" means the cost of the material and supplies used to duplicate the public record, but does not include labor cost or overhead cost associated with such duplication.

(2) "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(3)

(a) "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

(b) "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

(c) "Criminal intelligence information" and "criminal investigative information" shall not include:

1. The time, date, location, and nature of a reported crime.
2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h) or (o).
3. The time, date, and location of the incident and of the arrest.
4. The crime charged.



5. Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h) or (m), and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1) until released at trial if it is found that the release of such information would:

- a. Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and
- b. Impair the ability of a state attorney to locate or prosecute a codefendant.

6. Informations and indictments except as provided in s. 905.26.

(d) The word "active" shall have the following meaning:

1. Criminal intelligence information shall be considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.

2. Criminal investigative information shall be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

In addition, criminal intelligence and criminal investigative information shall be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation.



- (4) "Criminal justice agency" means:
- (a) Any law enforcement agency, court, or prosecutor;
 - (b) Any other agency charged by law with criminal law enforcement duties;
 - (c) Any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or
 - (d) The Department of Corrections.
- (5) "Custodian of public records" means the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.
- (6) "Data processing software" means the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs.
- (7) "Duplicated copies" means new copies produced by duplicating, as defined in s. 283.30.
- (8) "Exemption" means a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), s. 286.011, or s. 24, Art. I of the State Constitution.
- (9) "Information technology resources" means data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training.
- (10) "Paratransit" has the same meaning as provided in s. 427.011.



(11) "Proprietary software" means data processing software that is protected by copyright or trade secret laws.

(12) "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(13) "Redact" means to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information.

(14) "Sensitive," for purposes of defining agency-produced software that is sensitive, means only those portions of data processing software, including the specifications and documentation, which are used to:

(a) Collect, process, store, and retrieve information that is exempt from s. 119.07(1);

(b) Collect, process, store, and retrieve financial management information of the agency, such as payroll and accounting records; or

(c) Control and direct access authorizations and security measures for automated systems.

(15) "Utility" means a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

History.—s. 1, ch. 67-125; s. 2, ch. 73-98; s. 3, ch. 75-225; ss. 1, 2, ch. 79-187; s. 8, ch. 85-53; s. 1, ch. 88-188; s. 5, ch. 93-404; s. 5, ch. 93-405; s. 5, ch. 95-207; s. 6, ch. 95-296; s. 10, ch. 95-398; s. 40, ch. 96-406; s. 2, ch. 97-90; s. 3, ch. 2004-335; s. 43, ch. 2005-251; s. 1, ch. 2008-57; s. 1, ch. 2016-95; s. 1, ch. 2017-11; s. 2, ch. 2018-2.



§119.021 FS | CUSTODIAL REQUIREMENTS; MAINTENANCE, PRESERVATION, AND RETENTION OF PUBLIC RECORDS

(1) Public records shall be maintained and preserved as follows:

(a) All public records should be kept in the buildings in which they are ordinarily used.

(b) Insofar as practicable, a custodian of public records of vital, permanent, or archival records shall keep them in fireproof and waterproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use.

(c)

1. Record books should be copied or repaired, renovated, or rebound if worn, mutilated, damaged, or difficult to read.

2. Whenever any state, county, or municipal records are in need of repair, restoration, or rebinding, the head of the concerned state agency, department, board, or commission; the board of county commissioners of such county; or the governing body of such municipality may authorize that such records be removed from the building or office in which such records are ordinarily kept for the length of time required to repair, restore, or rebind them.

3. Any public official who causes a record book to be copied shall attest and certify under oath that the copy is an accurate copy of the original book. The copy shall then have the force and effect of the original.

(2)

(a) The Division of Library and Information Services of the Department of State shall adopt rules to establish retention schedules and a disposal process for public records.



(b) Each agency shall comply with the rules establishing retention schedules and disposal processes for public records which are adopted by the records and information management program of the division.

(c) Each public official shall systematically dispose of records no longer needed, subject to the consent of the records and information management program of the division in accordance with s. 257.36.

(d) The division may ascertain the condition of public records and shall give advice and assistance to public officials to solve problems related to the preservation, creation, filing, and public accessibility of public records in their custody. Public officials shall assist the division by preparing an inclusive inventory of categories of public records in their custody. The division shall establish a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the division shall, subject to the availability of necessary space, staff, and other facilities for such purposes, make space available in its records center for the filing of semicurrent records so scheduled and in its archives for noncurrent records of permanent value, and shall render such other assistance as needed, including the microfilming of records so scheduled.

(3) Agency final orders rendered before July 1, 2015, that were indexed or listed pursuant to s. 120.53, and agency final orders rendered on or after July 1, 2015, that must be listed or copies of which must be transmitted to the Division of Administrative Hearings pursuant to s. 120.53, have continuing legal significance; therefore, notwithstanding any other provision of this chapter or any provision of chapter 257, each agency shall permanently maintain records of such orders pursuant to the applicable rules of the Department of State.



(4)

(a) Whoever has custody of any public records shall deliver, at the expiration of his or her term of office, to his or her successor or, if there be none, to the records and information management program of the Division of Library and Information Services of the Department of State, all public records kept or received by him or her in the transaction of official business.

(b) Whoever is entitled to custody of public records shall demand them from any person having illegal possession of them, who must forthwith deliver the same to him or her. Any person unlawfully possessing public records must within 10 days deliver such records to the lawful custodian of public records unless just cause exists for failing to deliver such records.

History.—s. 2, ch. 67-125; s. 3, ch. 83-286; s. 753, ch. 95-147; s. 5, ch. 2004-335; s. 1, ch. 2015-155.



§119.035 FS | OFFICERS-ELECT

(1) It is the policy of this state that the provisions of this chapter apply to officers-elect upon their election to public office. Such officers-elect shall adopt and implement reasonable measures to ensure compliance with the public records obligations set forth in this chapter.

(2) Public records of an officer-elect shall be maintained in accordance with the policies and procedures of the public office to which the officer has been elected.

(3) If an officer-elect, individually or as part of a transition process, creates or uses an online or electronic communication or recordkeeping system, all public records maintained on such system shall be preserved so as not to impair the ability of the public to inspect or copy such public records.

(4) Upon taking the oath of office, the officer-elect shall, as soon as practicable, deliver to the person or persons responsible for records and information management in such office all public records kept or received in the transaction of official business during the period following election to public office.

(5) As used in this section, the term "officer-elect" means the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

History.—s. 1, ch. 2012-25.



§119.07 FS | INSPECTION AND COPYING OF RECORDS; PHOTOGRAPHING PUBLIC RECORDS; FEES; EXEMPTIONS

(1)

(a) Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

(b) A custodian of public records or a person having custody of public records may designate another officer or employee of the agency to permit the inspection and copying of public records, but must disclose the identity of the designee to the person requesting to inspect or copy public records.

(c) A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.

(d) A person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying.

(e) If the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.

(f) If requested by the person seeking to inspect or copy the record, the custodian of public records shall state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.



(g) In any civil action in which an exemption to this section is asserted, if the exemption is alleged to exist under or by virtue of s. 119.071(1)(d) or (f), (2)(d), (e), or (f), or (4)(c), the public record or part thereof in question shall be submitted to the court for an inspection in camera. If an exemption is alleged to exist under or by virtue of s. 119.071(2)(c), an inspection in camera is discretionary with the court. If the court finds that the asserted exemption is not applicable, it shall order the public record or part thereof in question to be immediately produced for inspection or copying as requested by the person seeking such access.

(h) Even if an assertion is made by the custodian of public records that a requested record is not a public record subject to public inspection or copying under this subsection, the requested record shall, nevertheless, not be disposed of for a period of 30 days after the date on which a written request to inspect or copy the record was served on or otherwise made to the custodian of public records by the person seeking access to the record. If a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian of public records may not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.

(i) The absence of a civil action instituted for the purpose stated in paragraph (g) does not relieve the custodian of public records of the duty to maintain the record as a public record if the record is in fact a public record subject to public inspection and copying under this subsection and does not otherwise excuse or exonerate the custodian of public records from any unauthorized or unlawful disposition of such record.

(2)

(a) As an additional means of inspecting or copying public records, a custodian of public records may provide access to public records by remote electronic means, provided exempt or confidential information is not disclosed.



(b) The custodian of public records shall provide safeguards to protect the contents of public records from unauthorized remote electronic access or alteration and to prevent the disclosure or modification of those portions of public records which are exempt or confidential from subsection (1) or s. 24, Art. I of the State Constitution.

(c) Unless otherwise required by law, the custodian of public records may charge a fee for remote electronic access, granted under a contractual arrangement with a user, which fee may include the direct and indirect costs of providing such access. Fees for remote electronic access provided to the general public shall be in accordance with the provisions of this section.

(3)

(a) Any person shall have the right of access to public records for the purpose of making photographs of the record while such record is in the possession, custody, and control of the custodian of public records.

(b) This subsection applies to the making of photographs in the conventional sense by use of a camera device to capture images of public records but excludes the duplication of microfilm in the possession of the clerk of the circuit court where a copy of the microfilm may be made available by the clerk.

(c) Photographing public records shall be done under the supervision of the custodian of public records, who may adopt and enforce reasonable rules governing the photographing of such records.

(d) Photographing of public records shall be done in the room where the public records are kept. If, in the judgment of the custodian of public records, this is impossible or impracticable, photographing shall be done in another room or place, as nearly adjacent as possible to the room where the public records are kept, to be determined by the custodian of public records. Where provision of another room or place for photographing is required, the expense of providing the same shall be paid by the person desiring to photograph the public record pursuant to paragraph (4) (e).



(4) The custodian of public records shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law. If a fee is not prescribed by law, the following fees are authorized:

(a)

1. Up to 15 cents per one-sided copy for duplicated copies of not more than 14 inches by 8 1/2 inches;
2. No more than an additional 5 cents for each two-sided copy; and
3. For all other copies, the actual cost of duplication of the public record.

(b) The charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with their duplication.

(c) An agency may charge up to \$1 per copy for a certified copy of a public record.

(d) If the nature or volume of public records requested to be inspected or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

(e)

1. Where provision of another room or place is necessary to photograph public records, the expense of providing the same shall be paid by the person desiring to photograph the public records.
2. The custodian of public records may charge the person making the photographs for supervision services at a rate of compensation to be agreed



upon by the person desiring to make the photographs and the custodian of public records. If they fail to agree as to the appropriate charge, the charge shall be determined by the custodian of public records.

(5) When ballots are produced under this section for inspection or examination, no persons other than the supervisor of elections or the supervisor's employees shall touch the ballots. If the ballots are being examined before the end of the contest period in s. 102.168, the supervisor of elections shall make a reasonable effort to notify all candidates by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.

(6) An exemption contained in this chapter or in any other general or special law shall not limit the access of the Auditor General, the Office of Program Policy Analysis and Government Accountability, or any state, county, municipal, university, board of community college, school district, or special district internal auditor to public records when such person states in writing that such records are needed for a properly authorized audit, examination, or investigation. Such person shall maintain the exempt or confidential status of that public record and shall be subject to the same penalties as the custodian of that record for public disclosure of such record.

(7) An exemption from this section does not imply an exemption from s. 286.011. The exemption from s. 286.011 must be expressly provided.

(8) The provisions of this section are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution or in collateral postconviction proceedings. This section may not be used by any inmate as the basis for failing to timely litigate any postconviction action.

(9) After receiving a request to inspect or copy a record, an agency may not respond to that request by filing an action for declaratory relief against the requester to determine whether the record is a public record as defined by s.



119.011, or the status of the record as confidential or exempt from the provisions of subsection (1).

History.— s. 7, ch. 67-125; s. 4, ch. 75-225; s. 2, ch. 77-60; s. 2, ch. 77-75; s. 2, ch. 77-94; s. 2, ch. 77-156; s. 2, ch. 78-81; ss. 2, 4, 6, ch. 79-187; s. 2, ch. 80-273; s. 1, ch. 81-245; s. 1, ch. 82-95; s. 36, ch. 82-243; s. 6, ch. 83-215; s. 2, ch. 83-269; s. 1, ch. 83-286; s. 5, ch. 84-298; s. 1, ch. 85-18; s. 1, ch. 85-45; s. 1, ch. 85-73; s. 1, ch. 85-86; s. 7, ch. 85-152; s. 1, ch. 85-177; s. 4, ch. 85-301; s. 2, ch. 86-11; s. 1, ch. 86-21; s. 1, ch. 86-109; s. 2, ch. 87-399; s. 2, ch. 88-188; s. 1, ch. 88-384; s. 1, ch. 89-29; s. 7, ch. 89-55; s. 1, ch. 89-80; s. 1, ch. 89-275; s. 2, ch. 89-283; s. 2, ch. 89-350; s. 1, ch. 89-531; s. 1, ch. 90-43; s. 63, ch. 90-136; s. 2, ch. 90-196; s. 4, ch. 90-211; s. 24, ch. 90-306; ss. 22, 26, ch. 90-344; s. 116, ch. 90-360; s. 78, ch. 91-45; s. 11, ch. 91-57; s. 1, ch. 91-71; s. 1, ch. 91-96; s. 1, ch. 91-130; s. 1, ch. 91-149; s. 1, ch. 91-219; s. 1, ch. 91-288; ss. 43, 45, ch. 92-58; s. 90, ch. 92-152; s. 59, ch. 92-289; s. 217, ch. 92-303; s. 1, ch. 93-87; s. 2, ch. 93-232; s. 3, ch. 93-404; s. 4, ch. 93-405; s. 4, ch. 94-73; s. 1, ch. 94-128; s. 3, ch. 94-130; s. 67, ch. 94-164; s. 1, ch. 94-176; s. 1419, ch. 95-147; ss. 1, 3, ch. 95-170; s. 4, ch. 95-207; s. 1, ch. 95-320; ss. 1, 2, 3, 5, 6, 7, 8, 9, 11, 12, 14, 15, 16, 18, 19, 20, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, ch. 95-398; s. 1, ch. 95-399; s. 121, ch. 95-418; s. 3, ch. 96-178; s. 1, ch. 96-230; s. 5, ch. 96-268; s. 4, ch. 96-290; s. 41, ch. 96-406; s. 18, ch. 96-410; s. 1, ch. 97-185; s. 1, ch. 98-9; s. 7, ch. 98-137; s. 1, ch. 98-255; s. 1, ch. 98-259; s. 128, ch. 98-403; s. 2, ch. 99-201; s. 27, ch. 2000-164; s. 54, ch. 2000-349; s. 1, ch. 2001-87; s. 1, ch. 2001-108; s. 1, ch. 2001-249; s. 29, ch. 2001-261; s. 33, ch. 2001-266; s. 1, ch. 2001-364; s. 1, ch. 2002-67; ss. 1, 3, ch. 2002-257; s. 2, ch. 2002-391; s. 11, ch. 2003-1; s. 1, ch. 2003-100; ss. 1, 2, ch. 2003-110; s. 1, ch. 2003-137; ss. 1, 2, ch. 2003-157; ss. 1, 2, ch. 2004-9; ss. 1, 2, ch. 2004-32; ss. 1, 2, ch. 2004-62; ss. 1, 3, ch. 2004-95; s. 7, ch. 2004-335; ss. 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, ch. 2005-251; s. 74, ch. 2005-277; s. 1, ch. 2007-39; ss. 2, 4, ch. 2007-251; s. 1, ch. 2021-173.



§119.0701 FS | CONTRACTS; PUBLIC RECORDS; REQUEST FOR CONTRACTOR RECORDS; CIVIL ACTION

(1) DEFINITIONS. - For purposes of this section, the term:

(a) "Contractor" means an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2).

(b) "Public agency" means a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law.

(2) CONTRACT REQUIREMENTS. - In addition to other contract requirements provided by law, each public agency contract for services entered into or amended on or after July 1, 2016, must include:

(a) The following statement, in substantially the following form, identifying the contact information of the public agency's custodian of public records in at least 14-point boldfaced type:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (telephone number, e-mail address, and mailing address) .

(b) A provision that requires the contractor to comply with public records laws, specifically to:

1. Keep and maintain public records required by the public agency to perform the service.

2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.



3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

(3) REQUEST FOR RECORDS; NONCOMPLIANCE. —

(a) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

(b) If a contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

(c) A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10.



(4) CIVIL ACTION. —

(a) If a civil action is filed against a contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:

1. The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and

2. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.

(b) A notice complies with subparagraph (a)2. if it is sent to the public agency's custodian of public records and to the contractor at the contractor's address listed on its contract with the public agency or to the contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(c) A contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

History.—s. 1, ch. 2013-154; s. 1, ch. 2016-20.



§119.071 FS | GENERAL EXEMPTIONS FROM INSPECTION OR COPYING OF PUBLIC RECORDS

(1) AGENCY ADMINISTRATION. —

(a) Examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. A person who has taken such an examination has the right to review his or her own completed examination.

(b)

1. For purposes of this paragraph, “competitive solicitation” means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.

2. Sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.

3. If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

(c) Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or



any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d)

1. A public record that was prepared by an agency attorney (including an attorney employed or retained by the agency or employed or retained by another public officer or agency to protect or represent the interests of the agency having custody of the record) or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the conclusion of the litigation or adversarial administrative proceedings. For purposes of capital collateral litigation as set forth in s. 27.7001, the Attorney General's office is entitled to claim this exemption for those public records prepared for direct appeal as well as for all capital collateral litigation after direct appeal until execution of sentence or imposition of a life sentence.

2. This exemption is not waived by the release of such public record to another public employee or officer of the same agency or any person consulted by the agency attorney. When asserting the right to withhold a public record pursuant to this paragraph, the agency shall identify the potential parties to any such criminal or civil litigation or adversarial administrative proceedings. If a court finds that the document or other record has been improperly withheld under this paragraph, the party seeking access to such document or record shall be awarded reasonable attorney's fees and costs in addition to any other remedy ordered by the court.



(e) Any videotape or video signal that, under an agreement with an agency, is produced, made, or received by, or is in the custody of, a federally licensed radio or television station or its agent is exempt from s. 119.07(1).

(f) Agency-produced data processing software that is sensitive is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The designation of agency-produced software as sensitive does not prohibit an agency head from sharing or exchanging such software with another public agency.

(g)

1. United States Census Bureau address information, including maps showing structure location points, agency records that verify addresses, and agency records that identify address errors or omissions, which is held by an agency pursuant to the Local Update of Census Addresses Program authorized under 13 U.S.C. s. 16, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Such information may be released to another agency or governmental entity in the furtherance of its duties and responsibilities under the Local Update of Census Addresses Program.

3. An agency performing duties and responsibilities under the Local Update of Census Addresses Program shall have access to any other confidential or exempt information held by another agency if such access is necessary in order to perform its duties and responsibilities under the program.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

(h)

1. Information relating to communications services locations, project proposals, and challenges



submitted to the Department of Economic Opportunity under s. 288.9962 or pursuant to a federal broadband access grant program implemented by the Department of Economic Opportunity is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if such information is not otherwise publicly available and the release of such information would reveal:

- a. The location or capacity of communications network facilities;
- b. Communications network areas, including geographical maps indicating actual or proposed locations of network infrastructure or facilities;
- c. The features, functions, and capabilities of communications network infrastructure and facilities;
- d. Security, including cybersecurity, of the design, construction, and operation of the communications network and associated services and products;
- e. Specific customer locations; or
- f. Sources of funding or in-kind contributions for a project.

2. This exemption does not apply to any required functions of the department under s. 288.9962 relating to publishing a description of the proposed unserved areas to be served and the proposed broadband Internet speeds of the areas to be served as provided by the applicant and approved by the department.

3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.



(2) AGENCY INVESTIGATIONS. –

(a) All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Whenever criminal intelligence information or criminal investigative information held by a non-Florida criminal justice agency is available to a Florida criminal justice agency only on a confidential or similarly restricted basis, the Florida criminal justice agency may obtain and use such information in accordance with the conditions imposed by the providing agency.

(c)

1. Active criminal intelligence information and active criminal investigative information are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2.

a. A request made by a law enforcement agency to inspect or copy a public record that is in the custody of another agency and the custodian's response to the request, and any information that would identify whether a law enforcement agency has requested or received that public record are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, during the period in which the information constitutes active criminal intelligence information or active criminal investigative information.

b. The law enforcement agency that made the request to inspect or copy a public record shall give notice to the custodial agency when the criminal intelligence information or criminal investigative information is no longer active so that the request made by the law enforcement agency, the custodian's response to the request, and information that would identify whether the law enforcement



agency had requested or received that public record are available to the public.

c. This exemption is remedial in nature, and it is the intent of the Legislature that the exemption be applied to requests for information received before, on, or after the effective date of this paragraph.

(d) Any information revealing surveillance techniques or procedures or personnel is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Any comprehensive inventory of state and local law enforcement resources compiled pursuant to part I, chapter 23, and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to an emergency, as defined in s. 252.34, are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and unavailable for inspection, except by personnel authorized by a state or local law enforcement agency, the office of the Governor, the Department of Legal Affairs, the Department of Law Enforcement, or the Division of Emergency Management as having an official need for access to the inventory or comprehensive policies or plans.

(e) Any information revealing the substance of a confession of a person arrested is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the criminal case is finally determined by adjudication, dismissal, or other final disposition.

(f) Any information revealing the identity of a confidential informant or a confidential source is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(g)

1. All complaints and other records in the custody of any agency which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital



status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding.

a. This exemption does not affect any function or activity of the Florida Commission on Human Relations.

b. Any state or federal agency that is authorized to have access to such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties.

2. If an alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(h)

1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or



(g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(i) Any criminal intelligence information or criminal investigative information that reveals the personal assets of the victim of a crime, other than property stolen or destroyed during the commission of the crime, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(j)



1. Any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Any information not otherwise held confidential or exempt from s. 119.07(1) which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, upon written request by the victim, which must include official verification that an applicable crime has occurred. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this section.

2.

a. Any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in chapter 800 or in s. 794.011, s. 827.071, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, or s. 847.0145, which reveals that minor's identity, including, but not limited to, the minor's face; the minor's home, school, church, or employment telephone number; the minor's home, school, church, or employment address; the name of the minor's school, church, or place of employment; or the personal assets of the minor; and which identifies that minor as the victim of a crime described in this subparagraph, held by a law enforcement agency, is confidential and exempt from s.



119.07(1) and s. 24(a), Art. I of the State Constitution. Any governmental agency that is authorized to have access to such statements by any provision of law shall be granted such access in the furtherance of the agency's statutory duties, notwithstanding the provisions of this section.

b. A public employee or officer who has access to a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in chapter 800 or in s. 794.011, s. 827.071, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, or s. 847.0145 may not willfully and knowingly disclose videotaped information that reveals the minor's identity to a person who is not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, or a person specified in an order entered by the court having jurisdiction of the alleged offense. A person who violates this provision commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(k) A complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint, either personally or by mail, that the agency has either:

1. Concluded the investigation with a finding not to proceed with disciplinary action or file charges; or
2. Concluded the investigation with a finding to proceed with disciplinary action or file charges.

(1)



1. As used in this paragraph, the term:
 - a. "Body camera" means a portable electronic recording device that is worn on a law enforcement officer's body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.
 - b. "Law enforcement officer" has the same meaning as provided in s. 943.10.
 - c. "Personal representative" means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.
2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:
 - a. Is taken within the interior of a private residence;
 - b. Is taken within the interior of a facility that offers health care, mental health care, or social services; or
 - c. Is taken in a place that a reasonable person would expect to be private.
3. Notwithstanding subparagraph 2., a body camera recording, or a portion thereof, may be disclosed by a law enforcement agency:
 - a. In furtherance of its official duties and responsibilities; or



b. To another governmental agency in the furtherance of its official duties and responsibilities.

4. Notwithstanding subparagraph 2., a body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:

a. To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person's presence in the recording;

b. To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person's presence in the recording;

c. To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place.

d. Pursuant to a court order.

(I) In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court shall consider whether:

(A) Disclosure is necessary to advance a compelling interest;

(B) The recording contains information that is otherwise exempt or confidential and exempt under the law;

(C) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;



(D) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;

(E) Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;

(F) Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;

(G) The recording could be redacted to protect privacy interests; and

(H) There is good cause to disclose all or portions of a recording.

(II) In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording shall be given reasonable notice of hearings and shall be given an opportunity to participate.

5. A law enforcement agency must retain a body camera recording for at least 90 days.

6. The exemption provided in subparagraph 2. applies retroactively.

7. This exemption does not supersede any other public records exemption that existed before or is created after the effective date of this exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt.

(m) Criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder, as described in s. 782.04, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 2 years after the date on which the



murder is observed by the witness. A criminal justice agency may disclose such information:

1. In the furtherance of its official duties and responsibilities.
2. To assist in locating or identifying the witness if the agency believes the witness to be missing or endangered.
3. To another governmental agency for use in the performance of its official duties and responsibilities.
4. To the parties in a pending criminal prosecution as required by law.

(n) Personal identifying information of the alleged victim in an allegation of sexual harassment or the victim of sexual harassment is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if such information identifies that person as an alleged victim or as a victim of sexual harassment. Confidentiality may be waived in writing by the alleged victim or the victim. Such information may be disclosed to another governmental entity in the furtherance of its official duties and responsibilities. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

(o) The address of a victim of an incident of mass violence is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this paragraph, the term "incident of mass violence" means an incident in which four or more people, not including the perpetrator, are severely injured or killed by an intentional and indiscriminate act of violence of another. For purposes of this paragraph, the term "victim" means a person killed or injured during an incident of mass violence, not including the perpetrator.

(p)

1. As used in this paragraph, the term:



a. "Killing of a law enforcement officer who was acting in accordance with his or her official duties" means all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.

b. "Killing of a minor" means all acts or events that cause or otherwise relate to the death of a victim who has not yet reached the age of 18 at the time of the death, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of the death of a victim under the age of 18, events that depict a victim under the age of 18 being killed, or events that depict the body of a victim under the age of 18 who has been killed.

c. "Killing of a victim of mass violence" means events that depict either a victim being killed or the body of a victim killed in an incident in which three or more persons, not including the perpetrator, are killed by the perpetrator of an intentional act of violence.

2.

a. A photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that a surviving spouse of the decedent may view and copy any such photograph or video recording or listen to or copy any such audio recording. If there is no surviving spouse, the surviving parents shall have access to such records. If there is no surviving spouse or parent, the adult children shall have



access to such records. Nothing in this sub-subparagraph precludes a surviving spouse, parent, or adult child of the victim from sharing or publicly releasing such photograph or video or audio recording.

b. A photograph or video or audio recording that depicts or records the killing of a minor is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that a surviving parent of the deceased minor may view and copy any such photograph or video recording or listen to or copy any such audio recording. Nothing in this sub-subparagraph precludes a surviving parent of the victim from sharing or publicly releasing such photograph or video or audio recording.

3.

a. The deceased's surviving relative, with whom authority rests to obtain such records, may designate in writing an agent to obtain such records.

b. Notwithstanding subparagraph 2., a local governmental entity, or a state or federal agency, in furtherance of its official duties, pursuant to a written request, may view or copy a photograph or video recording or may listen to or copy an audio recording of the killing of a law enforcement officer who was acting in accordance with his or her official duties, the killing of a victim of mass violence, or the killing of a minor, and, unless otherwise required in the performance of its duties, the identity of the deceased shall remain confidential and exempt.

c. The custodian of the record, or his or her designee, may not permit any other person to view or copy such photograph or video recording or listen to or copy such audio recording without a court order.



4.

a. The court, upon a showing of good cause, may issue an order authorizing any person to view or copy a photograph or video recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties, the killing of a victim of mass violence, or the killing of a minor, or to listen to or copy an audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties, the killing of a victim of mass violence, or the killing of a minor, and may prescribe any restrictions or stipulations that the court deems appropriate.

b. In determining good cause, the court shall consider:

(I) Whether such disclosure is necessary for the public evaluation of governmental performance;

(II) The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and

(III) The availability of similar information in other public records, regardless of form.

c. In all cases, the viewing, copying, listening to, or other handling of a photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties, the killing of a victim of mass violence, or the killing of a minor must be under the direct supervision of the custodian of the record or his or her designee.

5.



a. A surviving spouse shall be given reasonable notice of a petition filed with the court to view or copy a photograph or video recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence, or to listen to or copy any such audio recording, a copy of such petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter. If there is no surviving spouse, such notice must be given to the parents of the deceased and, if there is no surviving parent, to the adult children of the deceased.

b. A surviving parent must be given reasonable notice of a petition filed with the court to view or copy a photograph or video recording that depicts or records the killing of a minor or to listen to or copy any such audio recording; a copy of such petition; and reasonable notice of the opportunity to be present and heard at any hearing on the matter.

6.

a. Any custodian of a photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties, the killing of a victim of mass violence, or the killing of a minor who willfully and knowingly violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. Any person who willfully and knowingly violates a court order issued pursuant to this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.



c. A criminal or administrative proceeding is exempt from this paragraph but, unless otherwise exempted, is subject to all other provisions of chapter 119; however, this paragraph does not prohibit a court in a criminal or administrative proceeding upon good cause shown from restricting or otherwise controlling the disclosure of a killing, crime scene, or similar photograph or video or audio recording in the manner prescribed in this paragraph.

7. The exemption in this paragraph shall be given retroactive application and shall apply to all photographs or video or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties, the killing of a victim of mass violence, or the killing of a minor, regardless of whether the killing of the person occurred before, on, or after May 23, 2019. However, nothing in this paragraph is intended to, nor may be construed to, overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of this act, which restrict or limit access to any photographs or video or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties, the killing of a victim of mass violence, or the killing of a minor.

8. This paragraph applies only to such photographs and video and audio recordings held by an agency.

9. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

(q)

1. As used in this paragraph, the term:



a. "Conviction integrity unit" means a unit within a state attorney's office established for the purpose of reviewing plausible claims of actual innocence.

b. "Conviction integrity unit reinvestigation information" means information or materials generated during a new investigation by a conviction integrity unit following the unit's formal written acceptance of an applicant's case. The term does not include:

(I) Information, materials, or records generated by a state attorney's office during an investigation done for the purpose of responding to motions made pursuant to Rule 3.800, Rule 3.850, or Rule 3.853, Florida Rules of Criminal Procedure, or any other collateral proceeding.

(II) Petitions by applicants to the conviction integrity unit.

(III) Criminal investigative information generated before the commencement of a conviction integrity unit investigation which is not otherwise exempt from this section.

2. Conviction integrity unit reinvestigation information is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for a reasonable period of time during an active, ongoing, and good faith investigation of a claim of actual innocence in a case that previously resulted in the conviction of the accused person and until the claim is no longer capable of further investigation. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

(r)

1. As used in this paragraph, the term:



a. "DNA record" means all information associated with the collection and analysis of a person's DNA sample, including the distinguishing characteristics collectively referred to as a DNA profile, and includes a single nucleotide polymorphism and a whole genome sequencing DNA profile.

b. "Genetic genealogy" means the use of DNA testing in combination with traditional genealogical methods to infer relationships between persons and determine ancestry.

c. "Investigative genetic genealogy" means the application of genetic genealogy and law enforcement investigative techniques to develop investigative leads in unsolved violent crimes and provide investigative leads as to the identity of unidentified human remains and living unidentified missing persons.

d. "Investigative genetic genealogy information and materials" means the information, records, and DNA records created or collected by or on behalf of a law enforcement agency conducting investigative genetic genealogy research, and includes the names and personal identifying information of persons identified through the use of genealogy databases, traditional genealogical methods, or other investigative means. The term does not include the name or personal identifying information of:

(I) The donor of a biological sample attributable to a perpetrator; or

(II) A person identified through investigative genetic genealogy who is a witness to or has personal knowledge related to the crime under investigation.

e. "Traditional genealogical methods" means the use of genealogical databases and



historical records to trace the family lineage of a person.

2. Investigative genetic genealogy information and materials are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. Notwithstanding subparagraph 2., a law enforcement agency:

a. May disclose investigative genetic genealogy information and materials in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.

b. Shall disclose investigative genetic genealogy information and materials pursuant to a court order for furtherance of a criminal prosecution. If a court orders the disclosure of such information and materials, the recipient of the information and materials must maintain the confidential and exempt status of the information and materials and may only publicly disclose the information and materials as necessary for purposes of a criminal prosecution as determined by the court.

4. The exemption in this paragraph applies to investigative genetic genealogy information and materials held by an agency before, on, or after July 1, 2023.

5. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

(3) SECURITY AND FIRESAFETY. —

(a)

1. As used in this paragraph, the term “security or firesafety system plan” includes all:



- a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security or firesafety of the facility or revealing security or firesafety systems;
- b. Threat assessments conducted by any agency or any private entity;
- c. Threat response plans;
- d. Emergency evacuation plans;
- e. Sheltering arrangements; or
- f. Manuals for security or firesafety personnel, emergency equipment, or security or firesafety training.

2. A security or firesafety system plan or portion thereof for:

- a. Any property owned by or leased to the state or any of its political subdivisions; or
- b. Any privately owned or leased property held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption is remedial in nature, and it is the intent of the Legislature that this exemption apply to security or firesafety system plans held by an agency before, on, or after April 6, 2018.

3. Information made confidential and exempt by this paragraph may be disclosed:

- a. To the property owner or leaseholder;
- b. In furtherance of the official duties and responsibilities of the agency holding the information;
- c. To another local, state, or federal agency in furtherance of that agency's official duties and responsibilities; or



d. Upon a showing of good cause before a court of competent jurisdiction.

(b)

1. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed:

a. To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;

b. To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by an agency; or

c. Upon a showing of good cause before a court of competent jurisdiction.

4. The entities or persons receiving such information shall maintain the exempt status of the information.

(c)

1. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and



final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, health care facility, or hotel or motel development, which records are held by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to any such records held by an agency before, on, or after the effective date of this act.

3. This paragraph does not apply to comprehensive plans or site plans, or amendments thereto, which are submitted for approval or which have been approved under local land development regulations, local zoning regulations, or development-of-regional-impact review.

4. As used in this paragraph, the term:

a. "Attractions and recreation facility" means any sports, entertainment, amusement, or recreation facility, including, but not limited to, a sports arena, stadium, racetrack, tourist attraction, amusement park, or pari-mutuel facility that:

(I) For single-performance facilities:

(A) Provides single-performance facilities; or

(B) Provides more than 10,000 permanent seats for spectators.

(II) For serial-performance facilities:

(A) Provides parking spaces for more than 1,000 motor vehicles; or

(B) Provides more than 4,000 permanent seats for spectators.

b. "Entertainment or resort complex" means a theme park comprised of at least 25 acres of land with permanent exhibitions and a variety



of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owners or operators of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity includes an area within a 5-mile radius of the theme park complex.

c. "Industrial complex" means any industrial, manufacturing, processing, distribution, warehousing, or wholesale facility or plant, as well as accessory uses and structures, under common ownership that:

(I) Provides onsite parking for more than 250 motor vehicles;

(II) Encompasses 500,000 square feet or more of gross floor area; or

(III) Occupies a site of 100 acres or more, but excluding wholesale facilities or plants that primarily serve or deal onsite with the general public.

d. "Retail and service development" means any retail, service, or wholesale business establishment or group of establishments which deals primarily with the general public onsite and is operated under one common property ownership, development plan, or management that:

(I) Encompasses more than 400,000 square feet of gross floor area; or

(II) Provides parking spaces for more than 2,500 motor vehicles.

e. "Office development" means any office building or park operated under common



ownership, development plan, or management that encompasses 300,000 or more square feet of gross floor area.

f. "Health care facility" means a hospital, ambulatory surgical center, nursing home, hospice, or intermediate care facility for the developmentally disabled.

g. "Hotel or motel development" means any hotel or motel development that accommodates 350 or more units.

(d) Information relating to the Nationwide Public Safety Broadband Network established pursuant to 47 U.S.C. ss. 1401 et seq., held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if release of such information would reveal:

1. The design, development, construction, deployment, and operation of network facilities;
2. Network coverage, including geographical maps indicating actual or proposed locations of network infrastructure or facilities;
3. The features, functions, and capabilities of network infrastructure and facilities;
4. The features, functions, and capabilities of network services provided to first responders, as defined in s. 112.1815, and other network users;
5. The design, features, functions, and capabilities of network devices provided to first responders and other network users; or
6. Security, including cybersecurity, of the design, construction, and operation of the network and associated services and products.

(e)

1.
 - a. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict



the structural elements of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication services, or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. Geographical maps indicating the actual or proposed locations of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio services, or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, or public safety radio communication system infrastructure or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency, and geographical maps indicating actual or proposed locations of 911, E911, or public safety radio communication system infrastructure or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency, before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed:

a. To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;



b. To a licensed architect, engineer, or contractor who is performing work on or related to the 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication services, or other 911, E911, or public safety radio communication structures or facilities owned and operated by an agency; or

c. Upon a showing of good cause before a court of competent jurisdiction.

4. The entities or persons receiving such information must maintain the exempt status of the information.

5. For purposes of this paragraph, the term "public safety radio" is defined as the means of communication between and among 911 public safety answering points, dispatchers, and first responder agencies using those portions of the radio frequency spectrum designated by the Federal Communications Commission under 47 C.F.R. part 90 for public safety purposes.

6. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

(4) AGENCY PERSONNEL INFORMATION. –

(a)

1. The social security numbers of all current and former agency employees which are held by the employing agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. The social security numbers of current and former agency employees may be disclosed by the employing agency:



a. If disclosure of the social security number is expressly required by federal or state law or a court order.

b. To another agency or governmental entity if disclosure of the social security number is necessary for the receiving agency or entity to perform its duties and responsibilities.

c. If the current or former agency employee expressly consents in writing to the disclosure of his or her social security number.

(b)

1. Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such information may be disclosed if the person to whom the information pertains or the person's legal representative provides written permission or pursuant to court order.

2.

a. Personal identifying information of a dependent child of a current or former officer or employee of an agency, which dependent child is insured by an agency group insurance plan, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this exemption, "dependent child" has the same meaning as in s. 409.2554.

b. This exemption is remedial in nature and applies to such personal identifying information held by an agency before, on, or after the effective date of this exemption.

(c) Any information revealing undercover personnel of any criminal justice agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d)



1. For purposes of this paragraph, the term:
 - a. "Home addresses" means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.
 - b. "Judicial assistant" means a court employee assigned to the following class codes: 8140, 8150, 8310, and 8320.
 - c. "Telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.
 - a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day



care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

c. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the



names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges, and of current judicial assistants; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges and of current judicial assistants; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges and of current judicial assistants are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.



g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of



birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

k. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.



l. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; and the names and locations of schools and day care facilities attended by the children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

m. The home addresses, telephone numbers, dates of birth, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

n. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt



from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

p. The home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

q. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401; the names, home addresses, telephone numbers, dates of birth, and places of employment of



the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

r. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

s. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this sub-subparagraph, the term "addiction treatment facility" means a county government, or agency thereof, that is licensed pursuant to s. 397.401 and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26).



t. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(2) and fulfills the screening requirement of s. 39.3035(3), and the members of a Child Protection Team as described in s. 39.303 whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or to provide services as part of a multidisciplinary case review team; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel and members; and the names and locations of schools and day care facilities attended by the children of such personnel and members are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

u. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former staff and domestic violence advocates, as defined in s. 90.5036(1)(b), of domestic violence centers certified by the Department of Children and Families under chapter 39; the names, home addresses, telephone numbers, places of employment, dates of birth, and photographs of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

v. The home addresses, telephone numbers, dates of birth, and photographs of current or former inspectors or investigators of the Department of Agriculture and Consumer Services; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of



current or former inspectors or investigators; and the names and locations of schools and day care facilities attended by the children of current or former inspectors or investigators are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. must maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written and notarized request for maintenance of the exemption to the custodial agency. The request must state under oath the statutory basis for the individual's exemption request and confirm the individual's status as a party eligible for exempt status.

4.

a. A county property appraiser, as defined in s. 192.001(3), or a county tax collector, as defined in s. 192.001(4), who receives a written and notarized request for maintenance of the exemption pursuant to subparagraph 3. must comply by removing the name of the individual with exempt status and the instrument number or Official Records book and page number identifying the property with the exempt status from all publicly available records maintained by the property appraiser or tax collector. For written requests received on or before July 1, 2021, a county property appraiser or county tax collector must comply with this sub-subparagraph by October 1, 2021. A county property appraiser or county tax collector may not remove the



street address, legal description, or other information identifying real property within the agency's records so long as a name or personal information otherwise exempt from inspection and copying pursuant to this section is not associated with the property or otherwise displayed in the public records of the agency.

b. Any information restricted from public display, inspection, or copying under sub-subparagraph a. must be provided to the individual whose information was removed.

5. An officer, an employee, a justice, a judge, or other person specified in subparagraph 2. may submit a written request for the release of his or her exempt information to the custodial agency. The written request must be notarized and must specify the information to be released and the party authorized to receive the information. Upon receipt of the written request, the custodial agency must release the specified information to the party authorized to receive such information.

6. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

7. Information made exempt under this paragraph may be disclosed pursuant to s. 28.2221 to a title insurer authorized pursuant to s. 624.401 and its affiliates as defined in s. 624.10; a title insurance agent or title insurance agency as defined in s. 626.841(1) or (2), respectively; or an attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

8. The exempt status of a home address contained in the Official Records is maintained only during the period when a protected party resides at the dwelling location. Upon conveyance of real property after October 1, 2021, and when such real property no longer constitutes a protected party's home address as defined in sub-subparagraph 1.a., the protected party must submit a written request to



release the removed information to the county recorder. The written request to release the removed information must be notarized, must confirm that a protected party's request for release is pursuant to a conveyance of his or her dwelling location, and must specify the Official Records book and page, instrument number, or clerk's file number for each document containing the information to be released.

9. Upon the death of a protected party as verified by a certified copy of a death certificate or court order, any party can request the county recorder to release a protected decedent's removed information unless there is a related request on file with the county recorder for continued removal of the decedent's information or unless such removal is otherwise prohibited by statute or by court order. The written request to release the removed information upon the death of a protected party must attach the certified copy of a death certificate or court order and must be notarized, must confirm the request for release is due to the death of a protected party, and must specify the Official Records book and page number, instrument number, or clerk's file number for each document containing the information to be released. A fee may not be charged for the release of any document pursuant to such request.

10. Except as otherwise expressly provided in this paragraph, this paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

(e)

1. As used in this paragraph, the term "law enforcement geolocation information" means information collected using a global positioning system or another mapping, locational, or directional information system that allows tracking of the location or movement of a law enforcement officer or a law enforcement vehicle.



2. Law enforcement geolocation information held by a law enforcement agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such information held by an agency before, on, or after the effective date of the exemption. This exemption does not apply to uniform traffic citations, crash reports, homicide reports, arrest reports, incident reports, or any other official reports issued by an agency which contain law enforcement geolocation information.

3. A law enforcement agency shall disclose law enforcement geolocation information in the following instances:

a. Upon a request from a state or federal law enforcement agency;

b. When a person files a petition with the circuit court in the jurisdiction where the agency having custody of the requested law enforcement geolocation information is located specifying the reasons for requesting such information and the court, upon a showing of good cause, issues an order authorizing the release of the law enforcement geolocation information. In all cases in which the court releases law enforcement geolocation information under this sub-subparagraph, such information must be viewed or copied under the direct supervision of the custodian of the record or his or her designee; or

c. When law enforcement geolocation information is requested for use in a criminal, civil, or administrative proceeding. This sub-subparagraph does not prohibit a court in such a criminal, civil, or administrative proceeding, upon a showing of good cause, from restricting or otherwise controlling the disclosure of such information.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and



shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

(5) OTHER PERSONAL INFORMATION. –

(a)

1.

a. The Legislature acknowledges that the social security number was never intended to be used for business purposes but was intended to be used solely for the administration of the federal Social Security System. The Legislature is further aware that over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

b. The Legislature recognizes that the social security number can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual.

c. The Legislature intends to monitor the use of social security numbers held by agencies in order to maintain a balanced public policy.

2.

a. An agency may not collect an individual's social security number unless the agency has stated in writing the purpose for its collection and unless it is:

(I) Specifically authorized by law to do so; or

(II) Imperative for the performance of that agency's duties and responsibilities as prescribed by law.

b. An agency shall identify in writing the specific federal or state law governing the



collection, use, or release of social security numbers for each purpose for which the agency collects the social security number, including any authorized exceptions that apply to such collection, use, or release. Each agency shall ensure that the collection, use, or release of social security numbers complies with the specific applicable federal or state law.

c. Social security numbers collected by an agency may not be used by that agency for any purpose other than the purpose provided in the written statement.

3. An agency collecting an individual's social security number shall provide that individual with a copy of the written statement required in subparagraph 2. The written statement also shall state whether collection of the individual's social security number is authorized or mandatory under federal or state law.

4. Each agency shall review whether its collection of social security numbers is in compliance with subparagraph 2. If the agency determines that collection of a social security number is not in compliance with subparagraph 2., the agency shall immediately discontinue the collection of social security numbers for that purpose.

5. Social security numbers held by an agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to social security numbers held by an agency before, on, or after the effective date of this exemption. This exemption does not supersede any federal law prohibiting the release of social security numbers or any other applicable public records exemption for social security numbers existing prior to May 13, 2002, or created thereafter.

6. Social security numbers held by an agency may be disclosed if any of the following apply:



a. The disclosure of the social security number is expressly required by federal or state law or a court order.

b. The disclosure of the social security number is necessary for the receiving agency or governmental entity to perform its duties and responsibilities.

c. The individual expressly consents in writing to the disclosure of his or her social security number.

d. The disclosure of the social security number is made to comply with the USA Patriot Act of 2001, Pub. L. No. 107-56, or Presidential Executive Order 13224.

e. The disclosure of the social security number is made to a commercial entity for the permissible uses set forth in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq.; the Fair Credit Reporting Act, 15 U.S.C. ss. 1681 et seq.; or the Financial Services Modernization Act of 1999, 15 U.S.C. ss. 6801 et seq., provided that the authorized commercial entity complies with the requirements of this paragraph.

f. The disclosure of the social security number is for the purpose of the administration of health benefits for an agency employee or his or her dependents.

g. The disclosure of the social security number is for the purpose of the administration of a pension fund administered for the agency employee's retirement fund, deferred compensation plan, or defined contribution plan.

h. The disclosure of the social security number is for the purpose of the administration of the Uniform Commercial Code by the office of the Secretary of State.



7.

a. For purposes of this subsection, the term:

(I) "Commercial activity" means the permissible uses set forth in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq.; the Fair Credit Reporting Act, 15 U.S.C. ss. 1681 et seq.; or the Financial Services Modernization Act of 1999, 15 U.S.C. ss. 6801 et seq., or verification of the accuracy of personal information received by a commercial entity in the normal course of its business, including identification or prevention of fraud or matching, verifying, or retrieving information. It does not include the display or bulk sale of social security numbers to the public or the distribution of such numbers to any customer that is not identifiable by the commercial entity.

(II) "Commercial entity" means any corporation, partnership, limited partnership, proprietorship, sole proprietorship, firm, enterprise, franchise, or association that performs a commercial activity in this state.

b. An agency may not deny a commercial entity engaged in the performance of a commercial activity access to social security numbers, provided the social security numbers will be used only in the performance of a commercial activity and provided the commercial entity makes a written request for the social security numbers. The written request must:

(I) Be verified as provided in s. 92.525;

(II) Be legibly signed by an authorized officer, employee, or agent of the commercial entity;



(III) Contain the commercial entity's name, business mailing and location addresses, and business telephone number; and

(IV) Contain a statement of the specific purposes for which it needs the social security numbers and how the social security numbers will be used in the performance of a commercial activity, including the identification of any specific federal or state law that permits such use.

c. An agency may request any other information reasonably necessary to verify the identity of a commercial entity requesting the social security numbers and the specific purposes for which the numbers will be used.

8.

a. Any person who makes a false representation in order to obtain a social security number pursuant to this paragraph, or any person who willfully and knowingly violates this paragraph, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

b. Any public officer who violates this paragraph commits a noncriminal infraction, punishable by a fine not exceeding \$500 per violation.

9. Any affected person may petition the circuit court for an order directing compliance with this paragraph.

(b) Bank account numbers and debit, charge, and credit card numbers held by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to bank account numbers and debit, charge, and credit card numbers held by an agency before, on, or after the effective date of this exemption.



(c)

1. For purposes of this paragraph, the term:
 - a. "Child" means any person younger than 18 years of age.
 - b. "Government-sponsored recreation program" means a program for which an agency assumes responsibility for a child participating in that program, including, but not limited to, after-school programs, athletic programs, nature programs, summer camps, or other recreational programs.
2. Information that would identify or locate a child who participates in a government-sponsored recreation program is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
3. Information that would identify or locate a parent or guardian of a child who participates in a government-sponsored recreation program is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
4. This exemption applies to records held before, on, or after the effective date of this exemption.

(d) All records supplied by a telecommunications company, as defined by s. 364.02, to an agency which contain the name, address, and telephone number of subscribers are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(e) Any information provided to an agency for the purpose of forming ridesharing arrangements, which information reveals the identity of an individual who has provided his or her name for ridesharing, as defined in s. 341.031, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(f)

1. The following information held by the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency is confidential and



exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Medical history records and information related to health or property insurance provided by an applicant for or a participant in a federal, state, or local housing assistance program.

b. Property photographs and personal identifying information of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster.

2. Governmental entities or their agents shall have access to such confidential and exempt records and information for the purpose of auditing federal, state, or local housing programs or housing assistance programs.

3. Such confidential and exempt records and information may be used in any administrative or judicial proceeding, provided such records are kept confidential and exempt unless otherwise ordered by a court.

4. Sub-subparagraph 1.b. is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

(g) Biometric identification information held by an agency before, on, or after the effective date of this exemption is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. As used in this paragraph, the term "biometric identification information" means:

1. Any record of friction ridge detail;
2. Fingerprints;
3. Palm prints; and
4. Footprints.

(h)



1. Personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency before, on, or after the effective date of this exemption.

3. Confidential and exempt personal identifying information shall be disclosed:

a. With the express written consent of the applicant or recipient or the legally authorized representative of such applicant or recipient;

b. In a medical emergency, but only to the extent that is necessary to protect the health or life of the applicant or recipient;

c. By court order upon a showing of good cause; or

d. To another agency in the performance of its duties and responsibilities.

(i)

1. For purposes of this paragraph, "identification and location information" means the:

a. Home address, telephone number, and photograph of a current or former United States attorney, assistant United States attorney, judge of the United States Courts of Appeal, United States district judge, or United States magistrate;

b. Home address, telephone number, photograph, and place of employment of the spouse or child of such attorney, judge, or magistrate; and

c. Name and location of the school or day care facility attended by the child of such attorney, judge, or magistrate.



2. Identification and location information held by an agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if such attorney, judge, or magistrate submits to an agency that has custody of the identification and location information:

a. A written request to exempt such information from public disclosure; and

b. A written statement that he or she has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public.

(j) Any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information held by an agency before, on, or after the effective date of this exemption.

History.— s. 4, ch. 75-225; ss. 2, 3, 4, 6, ch. 79-187; s. 1, ch. 82-95; s. 1, ch. 83-286; s. 5, ch. 84-298; s. 1, ch. 85-18; s. 1, ch. 85-45; s. 1, ch. 85-86; s. 4, ch. 85-301; s. 2, ch. 86-11; s. 1, ch. 86-21; s. 1, ch. 86-109; s. 2, ch. 88-188; s. 1, ch. 88-384; s. 1, ch. 89-80; s. 63, ch. 90-136; s. 4, ch. 90-211; s. 78, ch. 91-45; s. 1, ch. 91-96; s. 1, ch. 91-149; s. 90, ch. 92-152; s. 1, ch. 93-87; s. 2, ch. 93-232; s. 3, ch. 93-404; s. 4, ch. 93-405; s. 1, ch. 94-128; s. 3, ch. 94-130; s. 1, ch. 94-176; s. 1419, ch. 95-147; ss. 1, 3, ch. 95-170; s. 4, ch. 95-207; s. 1, ch. 95-320; ss. 3, 5, 6, 7, 8, 9, 11, 12, 14, 15, 16, 18, 20, 25, 29, 31, 32, 33, 34, ch. 95-398; s. 3, ch. 96-178; s. 41, ch. 96-406; s. 18, ch. 96-410; s. 1, ch. 98-9; s. 7, ch. 98-137; s. 1, ch. 98-259; s. 2, ch. 99-201; s. 27, ch. 2000-164; s. 1, ch. 2001-249; s. 29, ch. 2001-261; s. 1, ch. 2001-361; s. 1, ch. 2001-364; s. 1, ch. 2002-67; ss. 1, 3, ch. 2002-256; s. 1, ch. 2002-257; ss. 2, 3, ch. 2002-391; s. 11, ch. 2003-1; s. 1, ch. 2003-16; s. 1, ch. 2003-100; s. 1, ch. 2003-137; ss. 1, 2, ch. 2003-157; ss. 1, 2, ch. 2004-9; ss. 1, 2, ch. 2004-32; ss. 1, 3, ch. 2004-95; s. 7, ch. 2004-335; s. 4, ch. 2005-213; s. 41, ch. 2005-236; ss. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, ch. 2005-251; s. 14, ch. 2006-1; s. 1, ch. 2006-158; s. 1, ch. 2006-180; s. 1, ch. 2006-181; s. 1, ch. 2006-211; s. 1, ch. 2006-212; s. 13, ch. 2006-224; s. 1, ch. 2006-284; s. 1, ch. 2006-285; s. 1, ch. 2007-93; s. 1, ch. 2007-95; s. 1, ch. 2007-250; s. 1, ch. 2007-251; s. 1, ch. 2008-41; s. 2, ch. 2008-57; s. 1, ch. 2008-145; ss. 1, 3, ch. 2008-234; s. 1, ch. 2009-104; ss. 1, 2, ch. 2009-150; s. 1, ch. 2009-169; ss. 1, 2, ch. 2009-235; s. 1, ch. 2009-237; s. 1, ch. 2010-71; s. 1, ch. 2010-171; s. 1, ch. 2011-83; s. 1, ch. 2011-85; s. 1, ch. 2011-115; s. 1, ch. 2011-140; s. 48, ch. 2011-142; s. 1, ch. 2011-201; s. 1, ch. 2011-202; s. 1, ch. 2012-149; s. 1, ch. 2012-214; s. 1, ch. 2012-216; s. 1, ch. 2013-



69; s. 119, ch. 2013-183; s. 1, ch. 2013-220; s. 1, ch. 2013-243; s. 1, ch. 2013-248; s. 1, ch. 2014-72; s. 1, ch. 2014-94; s. 1, ch. 2014-105; s. 1, ch. 2014-172; s. 1, ch. 2015-37; s. 1, ch. 2015-41; s. 1, ch. 2015-86; s. 1, ch. 2015-146; s. 1, ch. 2016-6; s. 1, ch. 2016-27; s. 1, ch. 2016-49; s. 1, ch. 2016-159; s. 1, ch. 2016-164; s. 1, ch. 2016-178; s. 1, ch. 2016-214; s. 2, ch. 2017-11; s. 1, ch. 2017-53; s. 1, ch. 2017-66; s. 1, ch. 2017-96; s. 1, ch. 2017-103; s. 1, ch. 2018-2; s. 1, ch. 2018-53; s. 1, ch. 2018-60; s. 1, ch. 2018-64; s. 1, ch. 2018-77; s. 8, ch. 2018-110; s. 1, ch. 2018-117; s. 1, ch. 2018-146; s. 1, ch. 2018-147; s. 26, ch. 2019-3; s. 1, ch. 2019-12; s. 1, ch. 2019-28; ss. 1, 3, ch. 2019-46; s. 1, ch. 2020-13; s. 1, ch. 2020-34; s. 1, ch. 2020-170; s. 1, ch. 2020-183; s. 1, ch. 2021-48; s. 1, ch. 2021-52; s. 1, ch. 2021-105; s. 30, ch. 2021-170; s. 1, ch. 2021-182; s. 3, ch. 2021-215; s. 1, ch. 2022-88; s. 1, ch. 2022-107; s. 1, ch. 2022-172; s. 1, ch. 2023-44; s. 1, ch. 2023-75; s. 1, ch. 2023-107; s. 1, ch. 2023-119; s. 1, ch. 2023-131; s. 1, ch. 2023-153; s. 1, ch. 2023-177; s. 1, ch. 2023-235; s. 1, ch. 2023-264.

Note .—

A. Additional exemptions from the application of this section appear in the General Index to the Florida Statutes under the heading “Public Records.”

B. Portions former ss. 119.07(6), 119.072, and 119.0721; subparagraph (2)(g)1. former s. 119.0711(1); paragraph (2)(p) former s. 406.136.



§119.0711 FS | EXECUTIVE BRANCH AGENCY EXEMPTIONS FROM INSPECTION OR COPYING OF PUBLIC RECORDS

When an agency of the executive branch of state government seeks to acquire real property by purchase or through the exercise of the power of eminent domain, all appraisals, other reports relating to value, offers, and counteroffers must be in writing and are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until execution of a valid option contract or a written offer to sell that has been conditionally accepted by the agency, at which time the exemption shall expire. The agency shall not finally accept the offer for a period of 30 days in order to allow public review of the transaction. The agency may give conditional acceptance to any option or offer subject only to final acceptance by the agency after the 30-day review period. If a valid option contract is not executed, or if a written offer to sell is not conditionally accepted by the agency, then the exemption shall expire at the conclusion of the condemnation litigation of the subject property. An agency of the executive branch may exempt title information, including names and addresses of property owners whose property is subject to acquisition by purchase or through the exercise of the power of eminent domain, from s. 119.07(1) and s. 24(a), Art. I of the State Constitution to the same extent as appraisals, other reports relating to value, offers, and counteroffers. For the purpose of this subsection, the term "option contract" means an agreement of an agency of the executive branch of state government to purchase real property subject to final agency approval. This subsection has no application to other exemptions from s. 119.07(1) which are contained in other provisions of law and shall not be construed to be an express or implied repeal thereof.

History.— s. 1, ch. 85-18; s. 1, ch. 86-21; s. 1, ch. 89-29; ss. 19, 25, ch. 95-398; s. 7, ch. 2004-335; ss. 30, 31, ch. 2005-251; s. 1, ch. 2008-145.

Note.—

A. Additional exemptions from the application of this section appear in the General Index to the Florida Statutes under the heading "Public Records."

B. Former s. 119.07(6)(n), (q).



§119.0712 FS | EXECUTIVE BRANCH AGENCY-SPECIFIC EXEMPTIONS FROM INSPECTION OR COPYING OF PUBLIC RECORDS

(1) DEPARTMENT OF HEALTH. – All personal identifying information contained in records relating to an individual's personal health or eligibility for health-related services held by the Department of Health is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in this subsection. Information made confidential and exempt by this subsection shall be disclosed:

(a) With the express written consent of the individual or the individual's legally authorized representative.

(b) In a medical emergency, but only to the extent necessary to protect the health or life of the individual.

(c) By court order upon a showing of good cause.

(d) To a health research entity, if the entity seeks the records or data pursuant to a research protocol approved by the department, maintains the records or data in accordance with the approved protocol, and enters into a purchase and data-use agreement with the department, the fee provisions of which are consistent with s. 119.07(4). The department may deny a request for records or data if the protocol provides for intrusive follow-back contacts, has not been approved by a human studies institutional review board, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement must restrict the release of any information that would permit the identification of persons, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data. Copies of records or data issued pursuant to this paragraph remain the property of the department.

(2) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES. –

(a) For purposes of this subsection, the term "motor vehicle record" means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor



vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles.

(b) Personal information, including highly restricted personal information as defined in 18 U.S.C. s. 2725, contained in a motor vehicle record is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq. Such information may be released only as authorized by that act; however, information received pursuant to that act may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.

(c) E-mail addresses collected by the Department of Highway Safety and Motor Vehicles pursuant to s. 319.40(3), s. 320.95(2), or s. 322.08(10) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies retroactively.

(d)

1. Emergency contact information contained in a motor vehicle record is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Without the express consent of the person to whom such emergency contact information applies, the emergency contact information contained in a motor vehicle record may be released only to:

a. Law enforcement agencies for purposes of contacting those listed in the event of an emergency.

b. A receiving facility, hospital, or licensed detoxification or addictions receiving facility pursuant to s. 394.463(2)(a) or s. 397.6772(1)(a) for the sole purpose of informing a patient's emergency contacts of the patient's whereabouts.

(e) Any person who uses or releases any information contained in the Driver and Vehicle Information Database for a purpose not specifically authorized by law commits a noncriminal infraction, punishable by a fine not exceeding \$2,000.



(f)

1. Secure login credentials held by the Department of Highway Safety and Motor Vehicles are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to secure login credentials held by the department before, on, or after the effective date of the exemption. For purposes of this subparagraph, the term "secure login credentials" means information held by the department for purposes of authenticating a user logging into a user account on a computer, a computer system, a computer network, or an electronic device; an online user account accessible over the Internet, whether through a mobile device, a website, or any other electronic means; or information used for authentication or password recovery.

2. Internet protocol addresses, geolocation data, and other information held by the Department of Highway Safety and Motor Vehicles which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal, are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such information held by the department before, on, or after the effective date of the exemption. For purposes of this subparagraph, the term "public-facing portal" means a web portal or computer application accessible by the public over the Internet, whether through a mobile device, website, or other electronic means, which is established for administering chapter 319, chapter 320, chapter 322, chapter 328, or any other provision of law conferring duties upon the department.

3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.



(3) OFFICE OF FINANCIAL REGULATION. — The following information held by the Office of Financial Regulation before, on, or after July 1, 2011, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Any information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.

(b) Any information that is received or developed by the office as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency. The office may obtain and use the information in accordance with the conditions imposed by the joint or multiagency agreement. This exemption does not apply to information obtained or developed by the office that would otherwise be available for public inspection if the office had conducted an independent examination or investigation under Florida law.

(4) DEPARTMENT OF MILITARY AFFAIRS. — Information held by the Department of Military Affairs that is stored in a United States Department of Defense system of records, transmitted using a United States Department of Defense network or communications device, or pertaining to the United States Department of Defense, pursuant to 10 U.S.C. s. 394, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Any information not made exempt by this subsection may be disclosed only after the department makes any redactions in accordance with applicable federal and state laws. This exemption applies to information made exempt by this subsection which is held by the department before, on, or after the effective date of the exemption. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

History.—s. 1, ch. 97-185; s. 1, ch. 2001-108; ss. 1, 2, ch. 2004-62; s. 7, ch. 2004-335; ss. 32, 33, ch. 2005-251; s. 1, ch. 2006-199; s. 1, ch. 2007-94; ss. 1, 2, ch. 2009-153; s. 1, ch. 2011-88; s. 7,



ch. 2013-18; s. 1, ch. 2015-32; s. 9, ch. 2016-10; s. 1, ch. 2016-28; s. 1, ch. 2020-48; s. 1, ch. 2021-86; s. 1, ch. 2021-129; s. 1, ch. 2021-236; s. 1, ch. 2022-36.

Note .—

A. Additional exemptions from the application of this section appear in the General Index to the Florida Statutes under the heading “Public Records.”

B. Former s. 119.07(6)(aa), (cc).



§119.0713 FS | LOCAL GOVERNMENT AGENCY EXEMPTIONS FROM INSPECTION OR COPYING OF PUBLIC RECORDS

(1) All complaints and other records in the custody of any unit of local government which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, marital status, sale or rental of housing, the provision of brokerage services, or the financing of housing are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding. This provision does not affect any function or activity of the Florida Commission on Human Relations. Any state or federal agency that is authorized to access such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties. This subsection does not modify or repeal any special or local act.

(2)

(a) As used in this subsection, the term "unit of local government" means a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate or politic authorized or created by general or special law.

(b) The audit report of an internal auditor and the investigative report of the inspector general prepared for or on behalf of a unit of local government becomes a public record when the audit or investigation becomes final. An audit or investigation becomes final when the audit report or investigative report is presented to the unit of local government. Audit workpapers and notes related to such audit and information received, produced, or derived from an investigation are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the audit or investigation is complete and the audit report becomes final or when the investigation is no longer active. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.



(3) Any data, record, or document used directly or solely by a municipally owned utility to prepare and submit a bid relative to the sale, distribution, or use of any service, commodity, or tangible personal property to any customer or prospective customer is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption commences when a municipal utility identifies in writing a specific bid to which it intends to respond. This exemption no longer applies after the contract for sale, distribution, or use of the service, commodity, or tangible personal property is executed, a decision is made not to execute such contract, or the project is no longer under active consideration. The exemption in this subsection includes the bid documents actually furnished in response to the request for bids. However, the exemption for the bid documents submitted no longer applies after the bids are opened by the customer or prospective customer.

(4)

(a) Proprietary confidential business information means information, regardless of form or characteristics, which is held by an electric utility that is subject to this chapter, is intended to be and is treated by the entity that provided the information to the electric utility as private in that the disclosure of the information would cause harm to the entity providing the information or its business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes:

1. Trade secrets, as defined in s. 688.002.
2. Internal auditing controls and reports of internal auditors.
3. Security measures, systems, or procedures.
4. Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the electric utility to contract for goods or services on favorable terms.



5. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

(b) Proprietary confidential business information held by an electric utility that is subject to this chapter in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d) or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) All proprietary confidential business information described in paragraph (b) shall be retained for 1 year after the due diligence review has been completed and the electric utility has decided whether or not to participate in the project.

(5)

(a) The following information held by a utility owned or operated by a unit of local government is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Information related to the security of the technology, processes, or practices of a utility owned or operated by a unit of local government that are designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access, which information, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.

2. Information related to the security of existing or proposed information technology systems or industrial control technology systems of a utility owned or operated by a unit of local government, which, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.



3. Customer meter-derived data and billing information in increments less than one billing cycle.

(b) This exemption applies to such information held by a utility owned or operated by a unit of local government before, on, or after the effective date of this exemption.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

History.— s. 1, ch. 86-21; s. 24, ch. 95-398; s. 1, ch. 95-399; s. 1, ch. 96-230; s. 1, ch. 2001-87; ss. 1, 2, ch. 2003-110; s. 7, ch. 2004-335; ss. 34, 35, 36, ch. 2005-251; ss. 3, 5, ch. 2008-57; s. 1, ch. 2011-87; s. 1, ch. 2013-143; s. 1, ch. 2016-47; s. 2, ch. 2016-95; s. 1, ch. 2018-120; s. 1, ch. 2019-38.

Note.—

A. Additional exemptions from the application of this section appear in the General Index to the Florida Statutes under the heading “Public Records.”

B. Former s. 119.07(6)(p), (y), (z), (hh).



§119.0714 FS | COURT FILES; COURT RECORDS; OFFICIAL RECORDS

(1) COURT FILES. – Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:

(a) A public record that was prepared by an agency attorney or prepared at the attorney's express direction as provided in s. 119.071(1)(d).

(b) Data processing software as provided in s. 119.071(1)(f).

(c) Any information revealing surveillance techniques or procedures or personnel as provided in s. 119.071(2)(d).

(d) Any comprehensive inventory of state and local law enforcement resources, and any comprehensive policies or plans compiled by a criminal justice agency, as provided in s. 119.071(2)(d).

(e) Any information revealing the substance of a confession of a person arrested as provided in s. 119.071(2)(e).

(f) Any information revealing the identity of a confidential informant or confidential source as provided in s. 119.071(2)(f).

(g) Any information revealing undercover personnel of any criminal justice agency as provided in s. 119.071(4)(c).

(h) Criminal intelligence information or criminal investigative information that is confidential and exempt as provided in s. 119.071(2)(h) or (m).

(i) Social security numbers as provided in s. 119.071(5)(a).

(j) Bank account numbers and debit, charge, and credit card numbers as provided in s. 119.071(5)(b).



(k)

1. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued before July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution only upon request by an individual named in the petition as a respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, or electronic transmission or in person to the clerk of the court. A fee may not be charged for such request.

3. Any information that can be used to identify a petitioner or respondent in a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking, and any affidavits, notice of hearing, and temporary injunction, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the respondent has been personally served with a copy of the petition for injunction, affidavits, notice of hearing, and temporary injunction.



(1) Personal identifying information and annuity contract numbers of a payee of a structured settlement as defined in s. 626.99296(2) and the names of family members, dependents, and beneficiaries of such payee contained within a court file relating to a proceeding for the approval of the transfer of structured settlement payment rights under s. 626.99296. Such information shall remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution during the pendency of the transfer proceeding and for 6 months after the final court order approving, or not approving, the transferee's application. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

(2) COURT RECORDS. —

(a) Until January 1, 2012, if a social security number or a bank account, debit, charge, or credit card number is included in a court file, such number may be included as part of the court record available for public inspection and copying unless redaction is requested by the holder of such number or by the holder's attorney or legal guardian.

(b) A request for redaction must be a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, electronic transmission, or in person to the clerk of the court. The clerk of the court does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.

(c) A fee may not be charged for the redaction of a social security number or a bank account, debit, charge, or credit card number pursuant to such request.

(d) The clerk of the court has no liability for the inadvertent release of social security numbers, or bank account, debit, charge, or credit card numbers, unknown to the clerk of the court in court records filed on or before January 1, 2012.



(e)

1. The clerk of the court must keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.

2. Section 119.071(5)(a)7. and 8. does not apply to the clerks of the court with respect to court records.

(f) A request for maintenance of a public records exemption in s. 119.071(4)(d)2. made pursuant to s. 119.071(4)(d)3. must specify the document type, name, identification number, and page number of the court record that contains the exempt information.

(g) The clerk of the court is not liable for the release of information that is required by the Florida Rules of Judicial Administration to be identified by the filer as confidential if the filer fails to make the required identification of the confidential information to the clerk of the court.

(3) OFFICIAL RECORDS. – A person who prepares or files a record for recording in the official records as provided in chapter 28 may not include in that record a social security number or a bank account, debit, charge, or credit card number unless otherwise expressly required by law.

(a) If a social security number or a bank account, debit, charge, or credit card number is included in an official record, such number may be made available as part of the official records available for public inspection and copying unless redaction is requested by the holder of such number or by the holder's attorney or legal guardian.

1. If such record is in electronic format, on January 1, 2011, and thereafter, the county recorder must use his or her best effort, as provided in paragraph (d), to keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and to keep complete bank account, debit, charge, and credit card numbers



exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.

2. Section 119.071(5)(a)7. and 8. does not apply to the county recorder with respect to official records.

(b) The holder of a social security number or a bank account, debit, charge, or credit card number, or the holder's attorney or legal guardian, may request that a county recorder redact from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically available to the public, his or her social security number or bank account, debit, charge, or credit card number contained in that official record.

1. A request for redaction must be a signed, legibly written request and must be delivered by mail, facsimile, electronic transmission, or in person to the county recorder. The request must specify the identification page number of the record that contains the number to be redacted.

2. The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.

3. A fee may not be charged for redacting a social security number or a bank account, debit, charge, or credit card number.

(c) A county recorder shall immediately and conspicuously post signs throughout his or her offices for public viewing, and shall immediately and conspicuously post on any Internet website or remote electronic site made available by the county recorder and used for the ordering or display of official records or images or copies of official records, a notice stating, in substantially similar form, the following:

1. On or after October 1, 2002, any person preparing or filing a record for recordation in the official records may not include a social security number or



a bank account, debit, charge, or credit card number in such document unless required by law.

2. Any person has a right to request a county recorder to remove from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically available to the general public, any social security number contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder. The request must specify the identification page number that contains the social security number to be redacted. A fee may not be charged for the redaction of a social security number pursuant to such a request.

(d) If the county recorder accepts or stores official records in an electronic format, the county recorder must use his or her best efforts to redact all social security numbers and bank account, debit, charge, or credit card numbers from electronic copies of the official record. The use of an automated program for redaction is deemed to be the best effort in performing the redaction and is deemed in compliance with the requirements of this subsection.

(e) The county recorder is not liable for the inadvertent release of social security numbers, or bank account, debit, charge, or credit card numbers, filed with the county recorder.

(f) A request for maintenance of a public records exemption in s. 119.071(4)(d)2. made pursuant to s. 119.071(4)(d)3. must specify the document type, name, identification number, and page number of the official record that contains the exempt information.



History.— s. 2, ch. 79-187; s. 1, ch. 83-286; s. 5, ch. 84-298; s. 1, ch. 85-86; s. 1, ch. 86-109; s. 2, ch. 88-188; s. 26, ch. 90-344; s. 36, ch. 95-398; s. 7, ch. 2004-335; s. 2, ch. 2005-251; s. 2, ch. 2007-251; s. 5, ch. 2008-234; s. 2, ch. 2009-237; s. 23, ch. 2010-162; s. 4, ch. 2011-83; s. 7, ch. 2013-109; s. 3, ch. 2017-11; s. 1, ch. 2017-14; s. 1, ch. 2017-133; s. 1, ch. 2019-39; s. 1, ch. 2022-125.

Note.— *Subsection (1) former s. 119.07(6).*



§119.0715 FS | TRADE SECRETS HELD BY AN AGENCY

(1) DEFINITION – “Trade secret” has the same meaning as in s. 688.002.

(2) PUBLIC RECORD EXEMPTION – A trade secret held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) AGENCY ACCESS – An agency may disclose a trade secret to an officer or employee of another agency or governmental entity whose use of the trade secret is within the scope of his or her lawful duties and responsibilities.

(4) LIABILITY – An agency employee who, while acting in good faith and in the performance of his or her duties, releases a record containing a trade secret pursuant to this chapter is not liable, civilly or criminally, for such release.

(5) OPEN GOVERNMENT SUNSET REVIEW – This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

History.—s. 1, ch. 2021-223.



§119.0725 FS | AGENCY CYBERSECURITY INFORMATION; PUBLIC RECORDS EXEMPTION; PUBLIC MEETINGS EXEMPTION

(1) As used in this section, the term:

(a) "Breach" means unauthorized access of data in electronic form containing personal information. Good faith access of personal information by an employee or agent of an agency does not constitute a breach, provided that the information is not used for a purpose unrelated to the business or subject to further unauthorized use.

(b) "Critical infrastructure" means existing and proposed information technology and operational technology systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health, or public safety.

(c) "Cybersecurity" has the same meaning as in s. 282.0041.

(d) "Data" has the same meaning as in s. 282.0041.

(e) "Incident" means a violation or imminent threat of violation, whether such violation is accidental or deliberate, of information technology resources, security, policies, or practices. As used in this paragraph, the term "imminent threat of violation" means a situation in which the agency has a factual basis for believing that a specific incident is about to occur.

(f) "Information technology" has the same meaning as in s. 282.0041.

(g) "Operational technology" means the hardware and software that cause or detect a change through the direct monitoring or control of physical devices, systems, processes, or events.

(2) The following information held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of information technology



systems, operational technology systems, or data of an agency.

(b) Information relating to critical infrastructure.

(c) Cybersecurity incident information reported pursuant to s. 282.318 or s. 282.3185.

(d) Network schematics, hardware and software configurations, or encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, if the disclosure of such information would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include an agency's existing or proposed information technology systems.

(3) Any portion of a meeting that would reveal information made confidential and exempt under subsection (2) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. An exempt portion of a meeting may not be off the record and must be recorded and transcribed. The recording and transcript are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) The public records exemptions contained in this section apply to information held by an agency before, on, or after July 1, 2022.

(5)

(a) Information made confidential and exempt pursuant to this section shall be made available to a law enforcement agency, the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Florida Digital Service within the Department of Management Services, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General.

(b) Such confidential and exempt information may be disclosed by an agency in the furtherance of its official



duties and responsibilities or to another agency or governmental entity in the furtherance of its statutory duties and responsibilities.

(6) Agencies may report information about cybersecurity incidents in the aggregate.

(7) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

History.— s. 1, ch. 2022-221.



§119.084 FS | COPYRIGHT OF DATA PROCESSING SOFTWARE CREATED BY GOVERNMENTAL AGENCIES; SALE PRICE AND LICENSING FEE

(1) As used in this section, "agency" has the same meaning as in s. 119.011(2), except that the term does not include any private agency, person, partnership, corporation, or business entity.

(2) An agency is authorized to acquire and hold a copyright for data processing software created by the agency and to enforce its rights pertaining to such copyright, provided that the agency complies with the requirements of this subsection.

(a) An agency that has acquired a copyright for data processing software created by the agency may sell or license the copyrighted data processing software to any public agency or private person. The agency may establish a price for the sale and a licensing fee for the use of such data processing software that may be based on market considerations. However, the prices or fees for the sale or licensing of copyrighted data processing software to an individual or entity solely for application to information maintained or generated by the agency that created the copyrighted data processing software shall be determined pursuant to s. 119.07(4).

(b) Proceeds from the sale or licensing of copyrighted data processing software shall be deposited by the agency into a trust fund for the agency's appropriate use for authorized purposes. Counties, municipalities, and other political subdivisions of the state may designate how such sale and licensing proceeds are to be used.

(c) The provisions of this subsection are supplemental to, and shall not supplant or repeal, any other provision of law that authorizes an agency to acquire and hold copyrights.

History.— s. 1, ch. 2001-251; s. 9, ch. 2004-335; s. 1, ch. 2006-286.



§119.092 FS | REGISTRATION BY FEDERAL EMPLOYER'S REGISTRATION NUMBER

Each state agency which registers or licenses corporations, partnerships, or other business entities shall include, within its numbering system, the federal employer's identification number of each corporation, partnership, or other business entity registered or licensed by it. Any state agency may maintain a dual numbering system in which the federal employer's identification number or the state agency's own number is the primary identification number; however, the records of such state agency shall be designed in such a way that the record of any business entity is subject to direct location by the federal employer's identification number. The Department of State shall keep a registry of federal employer's identification numbers of all business entities, registered with the Division of Corporations, which registry of numbers may be used by all state agencies.

History.—s. 1, ch. 77-148; s. 9, ch. 2018-110.



§119.10 FS | VIOLATION OF CHAPTER; PENALTIES

(1) Any public officer who:

(a) Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Knowingly violates the provisions of s. 119.07(1) is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who willfully and knowingly violates:

(a) Any of the provisions of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Section 119.105 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.— s. 10, ch. 67-125; s. 74, ch. 71-136; s. 5, ch. 85-301; s. 2, ch. 2001-271; s. 11, ch. 2004-335.



§119.105 FS | PROTECTION OF VICTIMS OF CRIMES OR ACCIDENTS

Police reports are public records except as otherwise made exempt or confidential. Every person is allowed to examine nonexempt or nonconfidential police reports. A person who comes into possession of exempt or confidential information contained in police reports may not use that information for any commercial solicitation of the victims or relatives of the victims of the reported crimes or accidents and may not knowingly disclose such information to any third party for the purpose of such solicitation during the period of time that information remains exempt or confidential. This section does not prohibit the publication of such information to the general public by any news media legally entitled to possess that information or the use of such information for any other data collection or analysis purposes by those entitled to possess that information.

History.—s. 1, ch. 90-280; s. 2, ch. 2003-411; s. 12, ch. 2004-335.



§119.11 FS | ACCELERATED HEARING; IMMEDIATE COMPLIANCE

(1) Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.

(2) Whenever a court orders an agency to open its records for inspection in accordance with this chapter, the agency shall comply with such order within 48 hours, unless otherwise provided by the court issuing such order, or unless the appellate court issues a stay order within such 48-hour period.

(3) A stay order shall not be issued unless the court determines that there is a substantial probability that opening the records for inspection will result in significant damage.

(4) Upon service of a complaint, counterclaim, or cross-claim in a civil action brought to enforce the provisions of this chapter, the custodian of the public record that is the subject matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the public record sought to be inspected and examined, notwithstanding the applicability of an exemption or the assertion that the requested record is not a public record subject to inspection and examination under s. 119.07(1), until the court directs otherwise. The person who has custody of such public record may, however, at any time permit inspection of the requested record as provided in s. 119.07(1) and other provisions of law.

History.—s. 5, ch. 75-225; s. 2, ch. 83-214; s. 6, ch. 84-298.



§119.12 FS | ATTORNEY FEES

(1) If a civil action is filed against an agency to enforce the provisions of this chapter, the court shall assess and award the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency if the court determines that:

(a) The agency unlawfully refused to permit a public record to be inspected or copied; and

(b) The complainant provided written notice identifying the public record request to the agency's custodian of public records at least 5 business days before filing the civil action, except as provided under subsection (2). The notice period begins on the day the written notice of the request is received by the custodian of public records, excluding Saturday, Sunday, and legal holidays, and runs until 5 business days have elapsed.

(2) The complainant is not required to provide written notice of the public record request to the agency's custodian of public records as provided in paragraph (1)(b) if the agency does not prominently post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested and on the agency's website, if the agency has a website.

(3) The court shall determine whether the complainant requested to inspect or copy a public record or participated in the civil action for an improper purpose. If the court determines there was an improper purpose, the court may not assess and award the reasonable costs of enforcement, including reasonable attorney fees, to the complainant, and shall assess and award against the complainant and to the agency the reasonable costs, including reasonable attorney fees, incurred by the agency in responding to the civil action. For purposes of this subsection, the term "improper purpose" means a request to inspect or copy a public record or to participate in the civil action primarily to cause a violation of this chapter or for a frivolous purpose.

(4) This section does not create a private right of action authorizing the award of monetary damages for a person who brings an action to enforce the provisions of this chapter.



Payments by the responsible agency may include only the reasonable costs of enforcement, including reasonable attorney fees, directly attributable to a civil action brought to enforce the provisions of this chapter.

History.—s. 5, ch. 75-225; s. 7, ch. 84-298; s. 13, ch. 2004-335; s. 1, ch. 2017-21.



§119.15 FS | LEGISLATIVE REVIEW OF EXEMPTIONS FROM PUBLIC MEETING AND PUBLIC RECORDS REQUIREMENTS

(1) This section may be cited as the "Open Government Sunset Review Act."

(2) This section provides for the review and repeal or reenactment of an exemption from s. 24, Art. I of the State Constitution and s. 119.07(1) or s. 286.011. This act does not apply to an exemption that:

(a) Is required by federal law; or

(b) Applies solely to the Legislature or the State Court System.

(3) In the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, the exemption shall be repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

(4)

(a) A law that enacts a new exemption or substantially amends an existing exemption must state that the record or meeting is:

1. Exempt from s. 24, Art. I of the State Constitution;

2. Exempt from s. 119.07(1) or s. 286.011; and

3. Repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.

(b) For purposes of this section, an exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

(c) This section is not intended to repeal an exemption that has been amended following legislative review before the scheduled repeal of the exemption if the exemption is not substantially amended as a result of the review.



(5)

(a) By June 1 in the year before the repeal of an exemption under this section, the Office of Legislative Services shall certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

(b) An exemption that is not identified and certified to the President of the Senate and the Speaker of the House of Representatives is not subject to legislative review and repeal under this section. If the office fails to certify an exemption that it subsequently determines should have been certified, it shall include the exemption in the following year's certification after that determination.

(6)

(a) As part of the review process, the Legislature shall consider the following:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?



(b) An exemption may be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(7) Records made before the date of a repeal of an exemption under this section may not be made public unless otherwise provided by law. In deciding whether the records shall be made public, the Legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exemption of the type specified in subparagraph (6) (b)2. or subparagraph (6) (b)3. would occur if the records were made public.



(8) Notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

History.—s. 2, ch. 95-217; s. 25, ch. 98-136; s. 37, ch. 2005-251; s. 15, ch. 2006-1; s. 5, ch. 2012-51.



CHAPTER 120 FLORIDA STATUTES | FLORIDA

TITLE: X PUBLIC OFFICERS, EMPLOYEES, AND RECORDS

CHAPTER: 120 ADMINISTRATIVE PROCEDURE ACT

PART: --

SECTIONS: §120.50 through §120.82

NOTE: Entire Chapter



§120.50 FS | EXCEPTION TO APPLICATION OF CHAPTER

This chapter shall not apply to:

- (1) The Legislature.
- (2) The courts.

History - (s. 1, ch. 74-310; s. 3, ch. 77-468; s. 1, ch. 78-162.)



§120.51 FS | SHORT TITLE

This chapter may be known and cited as the "Administrative Procedure Act."

History - (s. 1, ch. 74-310.)



§120.515 FS | DECLARATION OF POLICY

This chapter provides uniform procedures for the exercise of specified authority. This chapter does not limit or impinge upon the assignment of executive power under Article IV of the State Constitution or the legal authority of an appointing authority to direct and supervise those appointees serving at the pleasure of the appointing authority. For purposes of this chapter, adherence to the direction and supervision of an appointing authority does not constitute delegation or transfer of statutory authority assigned to the appointee.

History - (s. 7, ch. 2012-116.)



§120.52 FS | DEFINITIONS

As used in this act:

(1) "Agency" means the following officers or governmental entities if acting pursuant to powers other than those derived from the constitution:

(a) The Governor; each state officer and state department, and each departmental unit described in s. 20.04; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional planning agency; a multicounty special district, but only if a majority of its governing board is comprised of nonelected persons; educational units; and each entity described in chapters 163, 373, 380, and 582 and s. 186.504.

(b) Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county.

(c) Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to this chapter by general or special law or existing judicial decisions.

This definition does not include a municipality or legal entity created solely by a municipality; a legal entity or agency created in whole or in part pursuant to part II of chapter 361; a metropolitan planning organization created pursuant to s. 339.175; a separate legal or administrative entity created pursuant to s. 339.175 of which a metropolitan planning organization is a member; an expressway authority pursuant to chapter 348 or any transportation authority or commission under chapter 343 or chapter 349; or a legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), unless any party to such agreement is otherwise an agency as defined in this subsection.

(2) "Agency action" means the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any denial of a request made under s. 120.54(7).



(3) "Agency head" means the person or collegial body in a department or other governmental unit statutorily responsible for final agency action. An agency head appointed by and serving at the pleasure of an appointing authority remains subject to the direction and supervision of the appointing authority, but actions taken by the agency head as authorized by statute are official acts.

(4) "Committee" means the Administrative Procedures Committee.

(5) "Division" means the Division of Administrative Hearings. Any document filed with the division by a party represented by an attorney shall be filed by electronic means through the division's website. Any document filed with the division by a party not represented by an attorney shall, whenever possible, be filed by electronic means through the division's website.

(6) "Educational unit" means a local school district, a community college district, the Florida School for the Deaf and the Blind, or a state university when the university is acting pursuant to statutory authority derived from the Legislature.

(7) "Final order" means a written final decision which results from a proceeding under s. 120.56, s. 120.565, s. 120.569, s. 120.57, s. 120.573, or s. 120.574 which is not a rule, and which is not excepted from the definition of a rule, and which has been filed with the agency clerk, and includes final agency actions which are affirmative, negative, injunctive, or declaratory in form. A final order includes all materials explicitly adopted in it. The clerk shall indicate the date of filing on the order.

(8) "Invalid exercise of delegated legislative authority" means action that goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:

(a) The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter;

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;



(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;

(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;

(e) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or

(f) The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.

(9) "Law implemented" means the language of the enabling statute being carried out or interpreted by an agency through rulemaking.

(10) "License" means a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.



(11) "Licensing" means the agency process respecting the issuance, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license or imposition of terms for the exercise of a license.

(12) "Official reporter" means the publication in which an agency publishes final orders, the index to final orders, and the list of final orders which are listed rather than published.

(13) "Party" means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding.

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(d) Any county representative, agency, department, or unit funded and authorized by state statute or county ordinance to represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the representative, agency, department, or unit to represent the class of interested persons. The authorizing resolution shall apply to a specific proceeding and to appeals and ancillary proceedings thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

The term "party" does not include a member government of a regional water supply authority or a governmental or quasi-judicial board or commission established by local ordinance or special or general law where the governing membership of such board or commission is shared with, in whole or in part, or appointed by a member government of a regional water supply authority in proceedings under s. 120.569, s. 120.57, or s. 120.68, to the extent that an interlocal agreement under ss. 163.01 and 373.713 exists in which the member government has agreed that its substantial interests are not affected by the proceedings or that it is to be bound by alternative dispute resolution in lieu of participating in the proceedings. This exclusion applies only to those particular types of disputes or controversies, if any, identified in an interlocal agreement.

(14) "Person" means any person described in s. 1.01, any unit of government in or outside the state, and any agency described in subsection (1).

(15) "Recommended order" means the official recommendation of an administrative law judge assigned by the division or of any other duly authorized presiding officer, other than an agency head or member of an agency head, for the final disposition of a proceeding under ss. 120.569 and 120.57.

(16) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. The term does not include:

(a) Internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum.

(b) Legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with an agency action.

(c) The preparation or modification of:

1. Agency budgets.



2. Statements, memoranda, or instructions to state agencies issued by the Chief Financial Officer or Comptroller as chief fiscal officer of the state and relating or pertaining to claims for payment submitted by state agencies to the Chief Financial Officer or Comptroller.

3. Contractual provisions reached as a result of collective bargaining.

4. Memoranda issued by the Executive Office of the Governor relating to information resources management.

(17) "Rulemaking authority" means statutory language that explicitly authorizes or requires an agency to adopt, develop, establish, or otherwise create any statement coming within the definition of the term "rule."

(18) "Small city" means any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census.

(19) "Small county" means any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

(20) "Unadopted rule" means an agency statement that meets the definition of the term "rule," but that has not been adopted pursuant to the requirements of s. 120.54.

(21) "Variance" means a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. Any variance shall conform to the standards for variances outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5).

(22) "Waiver" means a decision by an agency not to apply all or part of a rule to a person who is subject to the rule. Any waiver shall conform to the standards for waivers outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5).



History.—s. 1, ch. 74-310; s. 1, ch. 75-191; s. 1, ch. 76-131; s. 1, ch. 77-174; s. 12, ch. 77-290; s. 2, ch. 77-453; s. 1, ch. 78-28; s. 1, ch. 78-425; s. 1, ch. 79-20; s. 55, ch. 79-40; s. 1, ch. 79-299; s. 2, ch. 81-119; s. 1, ch. 81-180; s. 7, ch. 82-180; s. 1, ch. 83-78; s. 2, ch. 83-273; s. 10, ch. 84-170; s. 15, ch. 85-80; s. 1, ch. 85-168; s. 2, ch. 87-385; s. 1, ch. 88-367; s. 1, ch. 89-147; s. 1, ch. 91-46; s. 9, ch. 92-166; s. 50, ch. 92-279; s. 55, ch. 92-326; s. 3, ch. 96-159; s. 1, ch. 97-176; s. 2, ch. 97-286; s. 1, ch. 98-402; s. 64, ch. 99-245; s. 2, ch. 99-379; s. 895, ch. 2002-387; s. 1, ch. 2003-94; s. 138, ch. 2003-261; s. 7, ch. 2003-286; s. 3, ch. 2007-196; s. 13, ch. 2007-217; s. 2, ch. 2008-104; s. 1, ch. 2009-85; s. 1, ch. 2009-187; s. 10, ch. 2010-5; s. 2, ch. 2010-205; s. 7, ch. 2011-208; s. 8, ch. 2012-116; s. 14, ch. 2013-173.



§120.525 FS | MEETINGS, HEARINGS, AND WORKSHOPS

(1) Except in the case of emergency meetings, each agency shall give notice of public meetings, hearings, and workshops by publication in the Florida Administrative Register and on the agency's website not less than 7 days before the event. The notice shall include a statement of the general subject matter to be considered.

(2) An agenda shall be prepared by the agency in time to ensure that a copy of the agenda may be received at least 7 days before the event by any person in the state who requests a copy and who pays the reasonable cost of the copy. The agenda, along with any meeting materials available in electronic form excluding confidential and exempt information, shall be published on the agency's website. The agenda shall contain the items to be considered in order of presentation. After the agenda has been made available, a change shall be made only for good cause, as determined by the person designated to preside, and stated in the record. Notification of such change shall be at the earliest practicable time.

(3) If an agency finds that an immediate danger to the public health, safety, or welfare requires immediate action, the agency may hold an emergency public meeting and give notice of such meeting by any procedure that is fair under the circumstances and necessary to protect the public interest, if:

(a) The procedure provides at least the procedural protection given by other statutes, the State Constitution, or the United States Constitution.

(b) The agency takes only that action necessary to protect the public interest under the emergency procedure.

(c) The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.



(4) For purposes of establishing a quorum at meetings of regional planning councils that cover three or more counties, a voting member who appears via telephone, real-time videoconferencing, or similar real-time electronic or video communication that is broadcast publicly at the meeting location may be counted toward the quorum requirement if at least one-third of the voting members of the regional planning council are physically present at the meeting location. A member must provide oral, written, or electronic notice of his or her intent to appear via telephone, real-time videoconferencing, or similar real-time electronic or video communication to the regional planning council at least 24 hours before the scheduled meeting.

History - (s. 4, ch. 96-159; s. 3, ch. 2009-187; s. 3, ch. 2013-14; s. 1, ch. 2020-122.)



§120.53 FS | MAINTENANCE OF AGENCY FINAL ORDERS

(1) In addition to maintaining records contained in s. 119.021(3), each agency shall also electronically transmit a certified text-searchable copy of each agency final order listed in subsection (2) rendered on or after July 1, 2015, to a centralized electronic database of agency final orders maintained by the division. The database must allow users to research and retrieve the full texts of agency final orders by:

- (a) The name of the agency that issued the final order.
- (b) The date the final order was issued.
- (c) The type of final order.
- (d) The subject of the final order.
- (e) Terms contained in the text of the final order.

(2) The agency final orders that must be electronically transmitted to the centralized electronic database include:

- (a) Each final order resulting from a proceeding under s. 120.57 or s. 120.573.
- (b) Each final order rendered pursuant to s. 120.57(4) which contains a statement of agency policy that may be the basis of future agency decisions or that may otherwise contain a statement of precedential value.
- (c) Each declaratory statement issued by an agency.
- (d) Each final order resulting from a proceeding under s. 120.56 or s. 120.574.

(3) Each agency shall maintain a list of all final orders rendered pursuant to s. 120.57(4) that are not required to be electronically transmitted to the centralized electronic database because they do not contain statements of agency policy or statements of precedential value. The list must include the name of the parties to the proceeding and the number assigned to the final order.



(4) Each final order, whether rendered by the agency or the division, that must be electronically transmitted to the centralized electronic database or maintained on a list pursuant to subsection (3) must be electronically transmitted to the database or added to the list within 90 days after the final order is rendered. Each final order that must be electronically transmitted to the database or added to the list must have attached a copy of the complete text of any materials incorporated by reference; however, if the quantity of the materials incorporated makes attachment of the complete text of the materials impractical, the final order may contain a statement of the location of such materials and the manner in which the public may inspect or obtain copies of the materials incorporated by reference.

(5) Nothing in this section relieves an agency from its responsibility for maintaining a subject matter index of final orders rendered before July 1, 2015, and identifying the location of the subject matter index on the agency's website. In addition, an agency may electronically transmit to the centralized electronic database certified copies of all of the final orders that were rendered before July 1, 2015, which were required to be in the subject matter index. The centralized electronic database constitutes the official compilation of administrative final orders rendered on or after July 1, 2015, for each agency.

History.—s. 1, ch. 74-310; s. 2, ch. 75-191; s. 2, ch. 76-131; s. 2, ch. 79-299; s. 1, ch. 81-296; s. 2, ch. 81-309; s. 8, ch. 83-92; s. 34, ch. 83-217; s. 3, ch. 83-273; s. 1, ch. 84-203; s. 77, ch. 85-180; s. 2, ch. 87-100; s. 2, ch. 88-384; s. 44, ch. 90-136; s. 35, ch. 90-302; s. 2, ch. 91-30; s. 79, ch. 91-45; s. 1, ch. 91-191; s. 1, ch. 92-166; s. 143, ch. 92-279; s. 55, ch. 92-326; s. 757, ch. 95-147; s. 5, ch. 96-159; s. 2, ch. 96-423; s. 2, ch. 97-176; s. 3, ch. 2008-104; s. 2, ch. 2015-155.



§120.533 FS | COORDINATION OF THE TRANSMITTAL, INDEXING, AND LISTING OF AGENCY FINAL ORDERS BY DEPARTMENT OF STATE

The Department of State shall:

(1) Coordinate the transmittal, indexing, management, preservation, and availability of agency final orders that must be transmitted, indexed, or listed pursuant to s. 120.53.

(2) Provide guidelines for indexing agency final orders. More than one system for indexing may be approved by the Department of State, including systems or methods in use, or proposed for use, by an agency. More than one system may be approved for use by a single agency as best serves the needs of that agency and the public.

(3) Provide for storage and retrieval systems to be maintained by agencies pursuant to s. 120.53(5) for indexing, and making available agency final orders by subject matter. The Department of State may authorize more than one system, including systems in use by an agency. Storage and retrieval systems that may be used by an agency include, without limitation, a designated reporter or reporters, a microfilming system, an automated system, or any other system considered appropriate by the Department of State.

(4) Provide standards and guidelines for the certification and electronic transmittal of copies of agency final orders to the division, as required under s. 120.53, and, to protect the integrity and authenticity of information publicly accessible through the electronic database, coordinate and provide standards and guidelines to ensure the security of copies of agency final orders transmitted and maintained in the electronic database by the division under s. 120.53(1).

(5) For each agency, determine which final orders must be indexed or transmitted.

(6) Require each agency to report to the department concerning which types or categories of agency orders establish precedent for each agency.



(7) Adopt rules as necessary to administer its responsibilities under this section, which shall be binding on all agencies including the division acting in the capacity of official compiler of administrative final orders under s. 120.53, notwithstanding s. 120.65. The Department of State may provide for an alternative official compiler to manage and operate the division's database and related services if the Administration Commission determines that the performance of the division as official compiler is unsatisfactory.

History.—s. 9, ch. 91-30; s. 1, ch. 91-191; s. 7, ch. 96-159; s. 3, ch. 2015-155.



§120.536 FS | RULEMAKING AUTHORITY; REPEAL; CHALLENGE

(1) A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.

(2) Unless otherwise expressly provided by law:

(a) The repeal of one or more provisions of law implemented by a rule that on its face implements only the provision or provisions repealed and no other provision of law nullifies the rule. Whenever notice of the nullification of a rule under this subsection is received from the committee or otherwise, the Department of State shall remove the rule from the Florida Administrative Code as of the effective date of the law effecting the nullification and update the historical notes for the code to show the rule repealed by operation of law.

(b) The repeal of one or more provisions of law implemented by a rule that on its face implements the provision or provisions repealed and one or more other provisions of law nullifies the rule or applicable portion of the rule to the extent that it implements the repealed law. The agency having authority to repeal or amend the rule shall, within 180 days after the effective date of the repealing law, publish a notice of rule development identifying all portions of rules affected by the repealing law, and if no notice is timely published the operation of each rule implementing a repealed provision of law shall be suspended until such notice is published.



(c) The repeal of one or more provisions of law that, other than as provided in paragraph (a) or paragraph (b), causes a rule or portion of a rule to be of uncertain enforceability requires the Department of State to treat the rule as provided by s. 120.555. A rule shall be considered to be of uncertain enforceability under this paragraph if the division notifies the Department of State that a rule or a portion of the rule has been invalidated in a division proceeding based upon a repeal of law, or the committee gives written notification to the Department of State and the agency having power to amend or repeal the rule that a law has been repealed creating doubt about whether the rule is still in full force and effect.

(3) The Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section. Not later than 30 days after the date of filing the petition if the agency is headed by an individual, or not later than 45 days if the agency is headed by a collegial body, the agency shall initiate rulemaking proceedings to repeal the rule, or portion thereof, or deny the petition, giving a written statement of its reasons for the denial.

(4) Nothing in this section shall be construed to change the legal status of a rule that has otherwise been judicially or administratively determined to be invalid.

History.—s. 9, ch. 96-159; s. 3, ch. 99-379; s. 15, ch. 2000-151; s. 15, ch. 2005-2; s. 4, ch. 2008-104; s. 1, ch. 2012-31.



§120.54 FS | RULEMAKING

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES. —

(a) Rulemaking is not a matter of agency discretion. Each agency statement defined as a rule by s. 120.52 shall be adopted by the rulemaking procedure provided by this section as soon as feasible and practicable.

1. Rulemaking shall be presumed feasible unless the agency proves that:

a. The agency has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rulemaking; or

b. Related matters are not sufficiently resolved to enable the agency to address a statement by rulemaking.

2. Rulemaking shall be presumed practicable to the extent necessary to provide fair notice to affected persons of relevant agency procedures and applicable principles, criteria, or standards for agency decisions unless the agency proves that:

a. Detail or precision in the establishment of principles, criteria, or standards for agency decisions is not reasonable under the circumstances; or

b. The particular questions addressed are of such a narrow scope that more specific resolution of the matter is impractical outside of an adjudication to determine the substantial interests of a party based on individual circumstances.

(b) Whenever an act of the Legislature is enacted which requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be drafted and formally proposed as provided in this section within the times provided in s. 120.74(4) and (5).



(c) No statutory provision shall be delayed in its implementation pending an agency's adoption of implementing rules unless there is an express statutory provision prohibiting its application until the adoption of implementing rules.

(d) In adopting rules, all agencies must, among the alternative approaches to any regulatory objective and to the extent allowed by law, choose the alternative that does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

(e) No agency has inherent rulemaking authority, nor has any agency authority to establish penalties for violation of a rule unless the Legislature, when establishing a penalty, specifically provides that the penalty applies to rules.

(f) An agency may adopt rules authorized by law and necessary to the proper implementation of a statute prior to the effective date of the statute, but the rules may not be effective until the statute upon which they are based is effective. An agency may not adopt retroactive rules, including retroactive rules intended to clarify existing law, unless that power is expressly authorized by statute.

(g) Each rule adopted shall contain only one subject.

(h) In rulemaking proceedings, the agency may recognize any material which may be judicially noticed, and it may provide that materials so recognized be incorporated into the record of the proceeding. Before the record of any proceeding is completed, all parties shall be provided a list of these materials and given a reasonable opportunity to examine them and offer written comments or written rebuttal.

(i)

1. A rule may incorporate material by reference but only as the material exists on the date the rule is adopted. For purposes of the rule, changes in the material are not effective unless the rule is amended to incorporate the changes.



2. An agency rule that incorporates by specific reference another rule of that agency automatically incorporates subsequent amendments to the referenced rule unless a contrary intent is clearly indicated in the referencing rule. A notice of amendments to a rule that has been incorporated by specific reference in other rules of that agency must explain the effect of those amendments on the referencing rules.

3. In rules adopted after December 31, 2010, material may not be incorporated by reference unless:

a. The material has been submitted in the prescribed electronic format to the Department of State and the full text of the material can be made available for free public access through an electronic hyperlink from the rule making the reference in the Florida Administrative Code; or

b. The agency has determined that posting the material on the Internet for purposes of public examination and inspection would constitute a violation of federal copyright law, in which case a statement to that effect, along with the address of locations at the Department of State and the agency at which the material is available for public inspection and examination, must be included in the notice required by subparagraph (3) (a)1.

4. A rule may not be amended by reference only. Amendments must set out the amended rule in full in the same manner as required by the State Constitution for laws.



5. Notwithstanding any contrary provision in this section, when an adopted rule of the Department of Environmental Protection or a water management district is incorporated by reference in the other agency's rule to implement a provision of part IV of chapter 373, subsequent amendments to the rule are not effective as to the incorporating rule unless the agency incorporating by reference notifies the committee and the Department of State of its intent to adopt the subsequent amendment, publishes notice of such intent in the Florida Administrative Register, and files with the Department of State a copy of the amended rule incorporated by reference. Changes in the rule incorporated by reference are effective as to the other agency 20 days after the date of the published notice and filing with the Department of State. The Department of State shall amend the history note of the incorporating rule to show the effective date of such change. Any substantially affected person may, within 14 days after the date of publication of the notice of intent in the Florida Administrative Register, file an objection to rulemaking with the agency. The objection shall specify the portions of the rule incorporated by reference to which the person objects and the reasons for the objection. The agency shall not have the authority under this subparagraph to adopt those portions of the rule specified in such objection. The agency shall publish notice of the objection and of its action in response in the next available issue of the Florida Administrative Register.

6. The Department of State may adopt by rule requirements for incorporating materials pursuant to this paragraph.

(j) A rule published in the Florida Administrative Code must be indexed by the Department of State within 90 days after the rule is filed. The Department of State shall by rule establish procedures for indexing rules.



(k) An agency head may delegate the authority to initiate rule development under subsection (2); however, rulemaking responsibilities of an agency head under subparagraph (3)(a)1., subparagraph (3)(e)1., or subparagraph (3)(e)6. may not be delegated or transferred.

(2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING. –

(a) Except when the intended action is the repeal of a rule, agencies shall provide notice of the development of proposed rules by publication of a notice of rule development in the Florida Administrative Register before providing notice of a proposed rule as required by paragraph (3)(a). The notice of rule development shall indicate the subject area to be addressed by rule development, provide a short, plain explanation of the purpose and effect of the proposed rule, cite the specific legal authority for the proposed rule, and include the preliminary text of the proposed rules, if available, or a statement of how a person may promptly obtain, without cost, a copy of any preliminary draft, if available.

(b) All rules should be drafted in readable language. The language is readable if:

1. It avoids the use of obscure words and unnecessarily long or complicated constructions; and
2. It avoids the use of unnecessary technical or specialized language that is understood only by members of particular trades or professions.

(c) An agency may hold public workshops for purposes of rule development. An agency must hold public workshops, including workshops in various regions of the state or the agency's service area, for purposes of rule development if requested in writing by any affected person, unless the agency head explains in writing why a workshop is unnecessary. The explanation is not final agency action subject to review pursuant to ss. 120.569 and 120.57. The failure to provide the explanation when required may be a material error in procedure pursuant to s. 120.56(1)(c). When a workshop or public hearing is



held, the agency must ensure that the persons responsible for preparing the proposed rule are available to explain the agency's proposal and to respond to questions or comments regarding the rule being developed. The workshop may be facilitated or mediated by a neutral third person, or the agency may employ other types of dispute resolution alternatives for the workshop that are appropriate for rule development. Notice of a rule development workshop shall be by publication in the Florida Administrative Register not less than 14 days prior to the date on which the workshop is scheduled to be held and shall indicate the subject area which will be addressed; the agency contact person; and the place, date, and time of the workshop.

(d)

1. An agency may use negotiated rulemaking in developing and adopting rules. The agency should consider the use of negotiated rulemaking when complex rules are being drafted or strong opposition to the rules is anticipated. The agency should consider, but is not limited to considering, whether a balanced committee of interested persons who will negotiate in good faith can be assembled, whether the agency is willing to support the work of the negotiating committee, and whether the agency can use the group consensus as the basis for its proposed rule. Negotiated rulemaking uses a committee of designated representatives to draft a mutually acceptable proposed rule.

2. An agency that chooses to use the negotiated rulemaking process described in this paragraph shall publish in the Florida Administrative Register a notice of negotiated rulemaking that includes a listing of the representative groups that will be invited to participate in the negotiated rulemaking process. Any person who believes that his or her interest is not adequately represented may apply to participate within 30 days after publication of the notice. All meetings of the negotiating committee shall be noticed and open to the public pursuant to the provisions of this



chapter. The negotiating committee shall be chaired by a neutral facilitator or mediator.

3. The agency's decision to use negotiated rulemaking, its selection of the representative groups, and approval or denial of an application to participate in the negotiated rulemaking process are not agency action. Nothing in this subparagraph is intended to affect the rights of an affected person to challenge a proposed rule developed under this paragraph in accordance with s. 120.56(2).

(3) ADOPTION PROCEDURES. –

(a) Notices. –

1. Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action; the full text of the proposed rule or amendment and a summary thereof; a reference to the grant of rulemaking authority pursuant to which the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented or interpreted. The notice must include a summary of the agency's statement of the estimated regulatory costs, if one has been prepared, based on the factors set forth in s. 120.541(2); a statement that any person who wishes to provide the agency with information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by s. 120.541(1), must do so in writing within 21 days after publication of the notice; and a statement as to whether, based on the statement of the estimated regulatory costs or other information expressly relied upon and described by the agency if no statement of regulatory costs is required, the proposed rule is expected to require legislative ratification pursuant to s. 120.541(3). The notice must state the procedure for requesting a public hearing on the proposed rule. Except when the intended action is the repeal of a rule, the notice



must include a reference both to the date on which and to the place where the notice of rule development that is required by subsection (2) appeared.

2. The notice shall be published in the Florida Administrative Register not less than 28 days prior to the intended action. The proposed rule shall be available for inspection and copying by the public at the time of the publication of notice.

3. The notice shall be mailed to all persons named in the proposed rule and to all persons who, at least 14 days prior to such mailing, have made requests of the agency for advance notice of its proceedings. The agency shall also give such notice as is prescribed by rule to those particular classes of persons to whom the intended action is directed.

4. The adopting agency shall file with the committee, at least 21 days prior to the proposed adoption date, a copy of each rule it proposes to adopt; a copy of any material incorporated by reference in the rule; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of any statement of estimated regulatory costs that has been prepared pursuant to s. 120.541; a statement of the extent to which the proposed rule relates to federal standards or rules on the same subject; and the notice required by subparagraph 1.

(b) Special matters to be considered in rule adoption.—

1. Statement of estimated regulatory costs. — Before the adoption, amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541. However, an agency must prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541, if:

a. The proposed rule will have an adverse impact on small business; or



b. The proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after the implementation of the rule.

2. Small businesses, small counties, and small cities. –

a. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined by s. 288.703 and the impact of the rule on small counties or small cities as defined by s. 120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define "small business" to include businesses employing more than 200 persons, may define "small county" to include those with populations of more than 75,000, and may define "small city" to include those with populations of more than 10,000, if it finds that such a definition is necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

(I) Establishing less stringent compliance or reporting requirements in the rule.

(II) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements.



(III) Consolidating or simplifying the rule's compliance or reporting requirements.

(IV) Establishing performance standards or best management practices to replace design or operational standards in the rule.

(V) Exempting small businesses, small counties, or small cities from any or all requirements of the rule.

b.

(I) If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph a., the agency shall send written notice of the rule to the rules ombudsman in the Executive Office of the Governor at least 28 days before the intended action.

(II) Each agency shall adopt those regulatory alternatives offered by the rules ombudsman in the Executive Office of the Governor and provided to the agency no later than 21 days after the rules ombudsman's receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. When regulatory alternatives are offered by the rules ombudsman in the Executive Office of the Governor, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days.

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, before rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed



written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days after the filing of such notice, the agency shall send a copy of such notice to the rules ombudsman in the Executive Office of the Governor.

(c) Hearings. —

1. If the intended action concerns any rule other than one relating exclusively to procedure or practice, the agency shall, on the request of any affected person received within 21 days after the date of publication of the notice of intended agency action, give affected persons an opportunity to present evidence and argument on all issues under consideration. The agency may schedule a public hearing on the rule and, if requested by any affected person, shall schedule a public hearing on the rule. When a public hearing is held, the agency must ensure that staff are available to explain the agency's proposal and to respond to questions or comments regarding the rule. If the agency head is a board or other collegial body created under s. 20.165(4) or s. 20.43(3)(g), and one or more requested public hearings is scheduled, the board or other collegial body shall conduct at least one of the public hearings itself and may not delegate this responsibility without the consent of those persons requesting the public hearing. Any material pertinent to the issues under consideration submitted to the agency within 21 days after the date of publication of the notice or submitted to the agency between the date of publication of the notice and the end of the final public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

2. Rulemaking proceedings shall be governed solely by the provisions of this section unless a person timely asserts that the person's substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to



protect those interests. If the agency determines that the rulemaking proceeding is not adequate to protect the person's interests, it shall suspend the rulemaking proceeding and convene a separate proceeding under the provisions of ss. 120.569 and 120.57. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed.

(d) Modification or withdrawal of proposed rules. –

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the rule has not been changed from the rule as previously filed with the committee, or contains only technical changes, the adopting agency shall file a notice to that effect with the committee at least 7 days prior to filing the rule for adoption. Any change, other than a technical change that does not affect the substance of the rule, must be supported by the record of public hearings held on the rule, must be in response to written material submitted to the agency within 21 days after the date of publication of the notice of intended agency action or submitted to the agency between the date of publication of the notice and the end of the final public hearing, or must be in response to a proposed objection by the committee. In addition, when any change is made in a proposed rule, other than a technical change, the adopting agency shall provide a copy of a notice of change by certified mail or actual delivery to any person who requests it in writing no later than 21 days after the notice required in paragraph (a). The agency shall file the notice of change with the committee, along with the reasons for the change, and provide the notice of change to persons requesting it, at least 21 days prior to filing the rule for adoption. The notice of change shall be published in the Florida Administrative Register at least 21 days prior to filing the rule for adoption. This subparagraph does not apply to emergency rules adopted pursuant to subsection (4).



2. After the notice required by paragraph (a) and prior to adoption, the agency may withdraw the rule in whole or in part.

3. After adoption and before the rule becomes effective, a rule may be modified or withdrawn only in the following circumstances:

a. When the committee objects to the rule;

b. When a final order, which is not subject to further appeal, is entered in a rule challenge brought pursuant to s. 120.56 after the date of adoption but before the rule becomes effective pursuant to subparagraph (e)6.;

c. If the rule requires ratification, when more than 90 days have passed since the rule was filed for adoption without the Legislature ratifying the rule, in which case the rule may be withdrawn but may not be modified; or

d. When the committee notifies the agency that an objection to the rule is being considered, in which case the rule may be modified to extend the effective date by not more than 60 days.

4. The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published, shall notify those persons described in subparagraph (a)3. in accordance with the requirements of that subparagraph, and shall notify the Department of State if the rule is required to be filed with the Department of State.

5. After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

(e) Filing for final adoption; effective date. -

1. If the adopting agency is required to publish its rules in the Florida Administrative Code, the agency, upon approval of the agency head, shall file with the Department of State three certified



copies of the rule it proposes to adopt; one copy of any material incorporated by reference in the rule, certified by the agency; a summary of the rule; a summary of any hearings held on the rule; and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required by this subparagraph, in the office of the agency head, and such rules shall be open to the public.

2. A rule may not be filed for adoption less than 28 days or more than 90 days after the notice required by paragraph (a), until 21 days after the notice of change required by paragraph (d), until 14 days after the final public hearing, until 21 days after a statement of estimated regulatory costs required under s. 120.541 has been provided to all persons who submitted a lower cost regulatory alternative and made available to the public, or until the administrative law judge has rendered a decision under s. 120.56(2), whichever applies. When a required notice of change is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. The term "public hearing" includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under s. 120.56(2) is filed, the period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with



the clerk or until 60 days after subsequent judicial review is complete.

3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been complied with, that all statutory rulemaking requirements have been met, and that there is no administrative determination pending on the rule.

4. At the time a rule is filed, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee. The department shall reject any rule that is not filed within the prescribed time limits; that does not comply with all statutory rulemaking requirements and rules of the department; upon which an agency has not responded in writing to all material and timely written inquiries or written comments; upon which an administrative determination is pending; or which does not include a statement of estimated regulatory costs, if required.

5. If a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule shall withdraw the rule and give notice of its action in the next available issue of the Florida Administrative Register.

6. The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the notice required by subparagraph (a)1., on a date required by statute, or upon ratification by the Legislature pursuant to s. 120.541(3). Rules not required to be filed with the Department of State shall become effective when adopted by the agency head, on a later date specified by rule or statute, or upon ratification by the Legislature pursuant to s. 120.541(3). If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the



adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

For the purposes of this paragraph, the term "administrative determination" does not include subsequent judicial review.

(4) EMERGENCY RULES. —

(a) If an agency finds that an immediate danger to the public health, safety, or welfare requires emergency action, the agency may adopt any rule necessitated by the immediate danger. The agency may adopt a rule by any procedure which is fair under the circumstances if:

1. The procedure provides at least the procedural protection given by other statutes, the State Constitution, or the United States Constitution.

2. The agency takes only that action necessary to protect the public interest under the emergency procedure.

3. The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. In any event, notice of emergency rules, other than those of educational units or units of government with jurisdiction in only one or a part of one county, including the full text of the rules, shall be published in the first available issue of the Florida Administrative Register and provided to the committee along with any material incorporated by reference in the rules. The agency's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.

(b) Rules pertaining to the public health, safety, or welfare shall include rules pertaining to perishable agricultural commodities or rules pertaining to the



interpretation and implementation of the requirements of chapters 97-102 and chapter 105 of the Election Code.

(c) An emergency rule adopted under this subsection shall not be effective for a period longer than 90 days and shall not be renewable, except when the agency has initiated rulemaking to adopt rules addressing the subject of the emergency rule and either:

1. A challenge to the proposed rules has been filed and remains pending; or
2. The proposed rules are awaiting ratification by the Legislature pursuant to s. 120.541(3).

Nothing in this paragraph prohibits the agency from adopting a rule or rules identical to the emergency rule through the rulemaking procedures specified in subsection (3).

(d) Subject to applicable constitutional and statutory provisions, an emergency rule becomes effective immediately on filing, or on a date less than 20 days thereafter if specified in the rule, if the adopting agency finds that such effective date is necessary because of immediate danger to the public health, safety, or welfare.

(5) UNIFORM RULES. -

(a)

1. By July 1, 1997, the Administration Commission shall adopt one or more sets of uniform rules of procedure which shall be reviewed by the committee and filed with the Department of State. Agencies must comply with the uniform rules by July 1, 1998. The uniform rules shall establish procedures that comply with the requirements of this chapter. On filing with the department, the uniform rules shall be the rules of procedure for each agency subject to this chapter unless the Administration Commission grants an exception to the agency under this subsection.

2. An agency may seek exceptions to the uniform rules of procedure by filing a petition with the Administration Commission. The Administration Commission shall approve exceptions to the extent



necessary to implement other statutes, to the extent necessary to conform to any requirement imposed as a condition precedent to receipt of federal funds or to permit persons in this state to receive tax benefits under federal law, or as required for the most efficient operation of the agency as determined by the Administration Commission. The reasons for the exceptions shall be published in the Florida Administrative Register.

3. Agency rules that provide exceptions to the uniform rules shall not be filed with the department unless the Administration Commission has approved the exceptions. Each agency that adopts rules that provide exceptions to the uniform rules shall publish a separate chapter in the Florida Administrative Code that delineates clearly the provisions of the agency's rules that provide exceptions to the uniform rules and specifies each alternative chosen from among those authorized by the uniform rules. Each chapter shall be organized in the same manner as the uniform rules.

(b) The uniform rules of procedure adopted by the commission pursuant to this subsection shall include, but are not limited to:

1. Uniform rules for the scheduling of public meetings, hearings, and workshops.

2. Uniform rules for use by each state agency that provide procedures for conducting public meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such public meetings, hearings, and workshops, in person and by means of communications media technology. The rules shall provide that all evidence, testimony, and argument presented shall be afforded equal consideration, regardless of the method of communication. If a public meeting, hearing, or workshop is to be conducted by means of communications media technology, or if attendance may be provided by such means, the notice shall so state. The notice for public meetings, hearings, and workshops utilizing communications media technology shall state how persons interested in attending may do so



and shall name locations, if any, where communications media technology facilities will be available. Nothing in this paragraph shall be construed to diminish the right to inspect public records under chapter 119. Limiting points of access to public meetings, hearings, and workshops subject to the provisions of s. 286.011 to places not normally open to the public shall be presumed to violate the right of access of the public, and any official action taken under such circumstances is void and of no effect. Other laws relating to public meetings, hearings, and workshops, including penal and remedial provisions, shall apply to public meetings, hearings, and workshops conducted by means of communications media technology, and shall be liberally construed in their application to such public meetings, hearings, and workshops. As used in this subparagraph, "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

3. Uniform rules of procedure for the filing of notice of protests and formal written protests. The Administration Commission may prescribe the form and substantive provisions of a required bond.

4. Uniform rules of procedure for the filing of petitions for administrative hearings pursuant to s. 120.569 or s. 120.57. Such rules shall require the petition to include:

a. The identification of the petitioner, including the petitioner's e-mail address, if any, for the transmittal of subsequent documents by electronic means.

b. A statement of when and how the petitioner received notice of the agency's action or proposed action.

c. An explanation of how the petitioner's substantial interests are or will be affected by the action or proposed action.



d. A statement of all material facts disputed by the petitioner or a statement that there are no disputed facts.

e. A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action.

f. A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes.

g. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the proposed action.

5. Uniform rules for the filing of request for administrative hearing by a respondent in agency enforcement and disciplinary actions. Such rules shall require a request to include:

a. The name, address, e-mail address, and telephone number of the party making the request and the name, address, and telephone number of the party's counsel or qualified representative upon whom service of pleadings and other papers shall be made;

b. A statement that the respondent is requesting an administrative hearing and disputes the material facts alleged by the petitioner, in which case the respondent shall identify those material facts that are in dispute, or that the respondent is requesting an administrative hearing and does not dispute the material facts alleged by the petitioner; and

c. A reference by file number to the administrative complaint that the party has received from the agency and the date on which the agency pleading was received.



The agency may provide an election-of-rights form for the respondent's use in requesting a hearing, so long as any form provided by the agency calls for the information in sub-subparagraphs a. through c. and does not impose any additional requirements on a respondent in order to request a hearing, unless such requirements are specifically authorized by law.

6. Uniform rules of procedure for the filing and prompt disposition of petitions for declaratory statements. The rules shall also describe the contents of the notices that must be published in the Florida Administrative Register under s. 120.565, including any applicable time limit for the filing of petitions to intervene or petitions for administrative hearing by persons whose substantial interests may be affected.

7. Provision of a method by which each agency head shall provide a description of the agency's organization and general course of its operations. The rules shall require that the statement concerning the agency's organization and operations be published on the agency's website.

8. Uniform rules establishing procedures for granting or denying petitions for variances and waivers pursuant to s. 120.542.

(6) ADOPTION OF FEDERAL STANDARDS. – Notwithstanding any contrary provision of this section, in the pursuance of state implementation, operation, or enforcement of federal programs, an agency is empowered to adopt rules substantively identical to regulations adopted pursuant to federal law, in accordance with the following procedures:

(a) The agency shall publish notice of intent to adopt a rule pursuant to this subsection in the Florida Administrative Register at least 21 days prior to filing the rule with the Department of State. The agency shall provide a copy of the notice of intent to adopt a rule to the committee at least 21 days prior to the date of filing with the Department of State. Prior to filing the rule with the Department of State, the agency shall consider any written comments received within 14 days after the date of publication of the notice of intent to adopt a rule. The rule shall be adopted upon filing with



the Department of State. Substantive changes from the rules as noticed shall require republishing of notice as required in this subsection.

(b) Any rule adopted pursuant to this subsection shall become effective upon the date designated by the agency in the notice of intent to adopt a rule; however, no such rule shall become effective earlier than the effective date of the substantively identical federal regulation.

(c) Any substantially affected person may, within 14 days after the date of publication of the notice of intent to adopt a rule, file an objection to rulemaking with the agency. The objection shall specify the portions of the proposed rule to which the person objects and the specific reasons for the objection. The agency shall not proceed pursuant to this subsection to adopt those portions of the proposed rule specified in an objection, unless the agency deems the objection to be frivolous, but may proceed pursuant to subsection (3). An objection to a proposed rule, which rule in no material respect differs from the requirements of the federal regulation upon which it is based, is deemed to be frivolous.

(d) Whenever any federal regulation adopted as an agency rule pursuant to this subsection is declared invalid or is withdrawn, revoked, repealed, remanded, or suspended, the agency shall, within 60 days thereafter, publish a notice of repeal of the substantively identical agency rule in the Florida Administrative Register. Such repeal is effective upon publication of the notice. Whenever any federal regulation adopted as an agency rule pursuant to this subsection is substantially amended, the agency may adopt the amended regulation as a rule. If the amended regulation is not adopted as a rule within 180 days after the effective date of the amended regulation, the original rule is deemed repealed and the agency shall publish a notice of repeal of the original agency rule in the next available Florida Administrative Register.

(e) Whenever all or part of any rule proposed for adoption by the agency is substantively identical to a regulation adopted pursuant to federal law, such rule



shall be written in a manner so that the rule specifically references the regulation whenever possible.

(7) PETITION TO INITIATE RULEMAKING. —

(a) Any person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by this chapter. The petition shall specify the proposed rule and action requested. Not later than 30 calendar days following the date of filing a petition, the agency shall initiate rulemaking proceedings under this chapter, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

(b) If the petition filed under this subsection is directed to an unadopted rule, the agency shall, not later than 30 days following the date of filing a petition, initiate rulemaking, or provide notice in the Florida Administrative Register that the agency will hold a public hearing on the petition within 30 days after publication of the notice. The purpose of the public hearing is to consider the comments of the public directed to the agency rule which has not been adopted by the rulemaking procedures or requirements of this chapter, its scope and application, and to consider whether the public interest is served adequately by the application of the rule on a case-by-case basis, as contrasted with its adoption by the rulemaking procedures or requirements set forth in this chapter.

(c) If the agency does not initiate rulemaking or otherwise comply with the requested action within 30 days after the public hearing provided for in paragraph (b), the agency shall publish in the Florida Administrative Register a statement of its reasons for not initiating rulemaking or otherwise complying with the requested action and of any changes it will make in the scope or application of the unadopted rule. The agency shall file the statement with the committee. The committee shall forward a copy of the statement to the substantive committee with primary oversight jurisdiction of the agency in each house of the Legislature. The committee or the committee with primary



oversight jurisdiction may hold a hearing directed to the statement of the agency. The committee holding the hearing may recommend to the Legislature the introduction of legislation making the rule a statutory standard or limiting or otherwise modifying the authority of the agency.

(d) If the agency initiates rulemaking after the public hearing provided for in paragraph (b), the agency shall publish a notice of rule development within 30 days after the hearing and file a notice of proposed rule within 180 days after the notice of rule development unless, before the 180th day, the agency publishes in the Florida Administrative Register a statement explaining its reasons for not having filed the notice. If rulemaking is initiated under this paragraph, the agency may not rely on the unadopted rule unless the agency publishes in the Florida Administrative Register a statement explaining why rulemaking under paragraph (1)(a) is not feasible or practicable until the conclusion of the rulemaking proceeding.

(8) RULEMAKING RECORD. – In all rulemaking proceedings the agency shall compile a rulemaking record. The record shall include, if applicable, copies of:

- (a) All notices given for the proposed rule.
- (b) Any statement of estimated regulatory costs for the rule.
- (c) A written summary of hearings on the proposed rule.
- (d) The written comments and responses to written comments as required by this section and s. 120.541.
- (e) All notices and findings made under subsection (4).
- (f) All materials filed by the agency with the committee under subsection (3).
- (g) All materials filed with the Department of State under subsection (3).
- (h) All written inquiries from standing committees of the Legislature concerning the rule.



Each state agency shall retain the record of rulemaking as long as the rule is in effect. When a rule is no longer in effect, the record may be destroyed pursuant to the records-retention schedule developed under s. 257.36(6).

History.—s. 1, ch. 74-310; s. 3, ch. 75-191; s. 3, ch. 76-131; ss. 1, 2, ch. 76-276; s. 1, ch. 77-174; s. 13, ch. 77-290; s. 3, ch. 77-453; s. 2, ch. 78-28; s. 2, ch. 78-425; s. 7, ch. 79-3; s. 3, ch. 79-299; s. 69, ch. 79-400; s. 5, ch. 80-391; s. 1, ch. 81-309; s. 2, ch. 83-351; s. 1, ch. 84-173; s. 2, ch. 84-203; s. 7, ch. 85-104; s. 1, ch. 86-30; s. 3, ch. 87-385; s. 36, ch. 90-302; ss. 2, 4, 7, ch. 92-166; s. 63, ch. 93-187; s. 758, ch. 95-147; s. 6, ch. 95-295; s. 10, ch. 96-159; s. 6, ch. 96-320; s. 9, ch. 96-370; s. 3, ch. 97-176; s. 3, ch. 98-200; s. 4, ch. 99-379; s. 9, ch. 2001-75; s. 2, ch. 2003-94; s. 50, ch. 2005-278; s. 3, ch. 2006-82; ss. 5, 6, ch. 2008-104; s. 7, ch. 2008-149; s. 4, ch. 2009-187; ss. 1, 5, ch. 2010-279; HJR 9-A, 2010 Special Session A; s. 49, ch. 2011-142; s. 8, ch. 2011-208; s. 1, ch. 2011-225; s. 2, ch. 2012-27; s. 1, ch. 2012-63; s. 4, ch. 2013-14; s. 13, ch. 2013-15; s. 1, ch. 2015-162; s. 1, ch. 2016-116.



§120.541 FS | STATEMENT OF ESTIMATED REGULATORY COSTS

(1)

(a) Within 21 days after publication of the notice required under s. 120.54(3)(a), a substantially affected person may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The proposal may include the alternative of not adopting any rule if the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If such a proposal is submitted, the 90-day period for filing the rule is extended 21 days. Upon the submission of the lower cost regulatory alternative, the agency shall prepare a statement of estimated regulatory costs as provided in subsection (2), or shall revise its prior statement of estimated regulatory costs, and either adopt the alternative or provide a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(b) If a proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within 1 year after the implementation of the rule, the agency shall prepare a statement of estimated regulatory costs as required by s. 120.54(3)(b).

(c) The agency shall revise a statement of estimated regulatory costs if any change to the rule made under s. 120.54(3)(d) increases the regulatory costs of the rule.

(d) At least 21 days before filing the rule for adoption, an agency that is required to revise a statement of estimated regulatory costs shall provide the statement to the person who submitted the lower cost regulatory alternative and to the committee and shall provide notice on the agency's website that it is available to the public.



(e) Notwithstanding s. 120.56(1)(c), the failure of the agency to prepare a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative as provided in this subsection is a material failure to follow the applicable rulemaking procedures or requirements set forth in this chapter.

(f) An agency's failure to prepare a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative may not be raised in a proceeding challenging the validity of a rule pursuant to s. 120.52(8)(a) unless:

1. Raised in a petition filed no later than 1 year after the effective date of the rule; and
2. Raised by a person whose substantial interests are affected by the rule's regulatory costs.

(g) A rule that is challenged pursuant to s. 120.52(8)(f) may not be declared invalid unless:

1. The issue is raised in an administrative proceeding within 1 year after the effective date of the rule;
2. The challenge is to the agency's rejection of a lower cost regulatory alternative offered under paragraph (a) or s. 120.54(3)(b)2.b.; and
3. The substantial interests of the person challenging the rule are materially affected by the rejection.

(2) A statement of estimated regulatory costs shall include:

(a) An economic analysis showing whether the rule directly or indirectly:

1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule;



2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; or

3. Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.

(b) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

(d) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

(e) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.



(f) Any additional information that the agency determines may be useful.

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(3) If the adverse impact or regulatory costs of the rule exceed any of the criteria established in paragraph (2)(a), the rule shall be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

(4) Subsection (3) does not apply to the adoption of:¹

(a) Federal standards pursuant to s. 120.54(6).

(b) Triennial updates of and amendments to the Florida Building Code which are expressly authorized by s. 553.73.

(c) Triennial updates of and amendments to the Florida Fire Prevention Code which are expressly authorized by s. 633.202.

(5) For purposes of subsections (2) and (3), adverse impacts and regulatory costs likely to occur within 5 years after implementation of the rule include adverse impacts and regulatory costs estimated to occur within 5 years after the effective date of the rule. However, if any provision of the rule is not fully implemented upon the effective date of the rule, the adverse impacts and regulatory costs associated with such provision must be adjusted to include any additional adverse impacts and regulatory costs estimated to occur within 5 years after implementation of such provision.



History - (s. 11, ch. 96-159; s. 4, ch. 97-176; ss. 2, 5, ch. 2010-279; HJR 9-A, 2010 Special Session A; s. 1, ch. 2011-222; s. 2, ch. 2011-225; s. 92, ch. 2013-183; s. 1, ch. 2016-232.)

¹ **Note** - (As amended by s. 92, ch. 2013-183, which amended subsection (4) as amended by s. 1, ch. 2011-222. Section 2, ch. 2011-225, also amended subsection (4), and the language of that version conflicted with the version by s. 1, ch. 2011-222. As amended by s. 2, ch. 2011-225, subsection (4) reads:

(4) This section does not apply to the adoption of emergency rules pursuant to s. 120.54(4) or the adoption of federal standards pursuant to s. 120.54(6).)



§120.542 FS | VARIANCES AND WAIVERS

(1) Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation. A public employee is not a person subject to regulation under this section for the purpose of petitioning for a variance or waiver to a rule that affects that public employee in his or her capacity as a public employee. Agencies are authorized to grant variances and waivers to requirements of their rules consistent with this section and with rules adopted under the authority of this section. An agency may limit the duration of any grant of a variance or waiver or otherwise impose conditions on the grant only to the extent necessary for the purpose of the underlying statute to be achieved. This section does not authorize agencies to grant variances or waivers to statutes or to rules required by the Federal Government for the agency's implementation or retention of any federally approved or delegated program, except as allowed by the program or when the variance or waiver is also approved by the appropriate agency of the Federal Government. This section is supplemental to, and does not abrogate, the variance and waiver provisions in any other statute.

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.



(3) The Governor and Cabinet, sitting as the Administration Commission, shall adopt uniform rules of procedure pursuant to the requirements of s. 120.54(5) establishing procedures for granting or denying petitions for variances and waivers. The uniform rules shall include procedures for the granting, denying, or revoking of emergency and temporary variances and waivers. Such provisions may provide for expedited timeframes, waiver of or limited public notice, and limitations on comments on the petition in the case of such temporary or emergency variances and waivers.

(4) Agencies shall advise persons of the remedies available through this section and shall provide copies of this section, the uniform rules on variances and waivers, and, if requested, the underlying statute, to persons who inquire about the possibility of relief from rule requirements.

(5) A person who is subject to regulation by an agency rule may file a petition with that agency, with a copy to the committee, requesting a variance or waiver from the agency's rule. In addition to any requirements mandated by the uniform rules, each petition shall specify:

(a) The rule from which a variance or waiver is requested.

(b) The type of action requested.

(c) The specific facts that would justify a waiver or variance for the petitioner.

(d) The reason why the variance or the waiver requested would serve the purposes of the underlying statute.

(6) Within 15 days after receipt of a petition for variance or waiver, an agency shall provide notice of the petition to the Department of State, which shall publish notice of the petition in the first available issue of the Florida Administrative Register. The notice shall contain the name of the petitioner, the date the petition was filed, the rule number and nature of the rule from which variance or waiver is sought, and an explanation of how a copy of the petition can be obtained. The uniform rules shall provide a means for interested persons to provide comments on the petition.



(7) Except for requests for emergency variances or waivers, within 30 days after receipt of a petition for a variance or waiver, an agency shall review the petition and request submittal of all additional information that the agency is permitted by this section to require. Within 30 days after receipt of such additional information, the agency shall review it and may request only that information needed to clarify the additional information or to answer new questions raised by or directly related to the additional information. If the petitioner asserts that any request for additional information is not authorized by law or by rule of the affected agency, the agency shall proceed, at the petitioner's written request, to process the petition.

(8) An agency shall grant or deny a petition for variance or waiver within 90 days after receipt of the original petition, the last item of timely requested additional material, or the petitioner's written request to finish processing the petition. A petition not granted or denied within 90 days after receipt of a completed petition is deemed approved. A copy of the order granting or denying the petition shall be filed with the committee and shall contain a statement of the relevant facts and reasons supporting the agency's action. The agency shall provide notice of the disposition of the petition to the Department of State, which shall publish the notice in the next available issue of the Florida Administrative Register. The notice shall contain the name of the petitioner, the date the petition was filed, the rule number and nature of the rule from which the waiver or variance is sought, a reference to the place and date of publication of the notice of the petition, the date of the order denying or approving the variance or waiver, the general basis for the agency decision, and an explanation of how a copy of the order can be obtained. The agency's decision to grant or deny the petition shall be supported by competent substantial evidence and is subject to ss. 120.569 and 120.57. Any proceeding pursuant to ss. 120.569 and 120.57 in regard to a variance or waiver shall be limited to the agency action on the request for the variance or waiver, except that a proceeding in regard to a variance or waiver may be consolidated with any other proceeding authorized by this chapter.

(9) Each agency shall maintain a record of the type and disposition of each petition, including temporary or emergency variances and waivers, filed pursuant to this section.

History.—s. 12, ch. 96-159; s. 5, ch. 97-176; s. 37, ch. 2010-102; s. 5, ch. 2013-14.



§120.545 FS | COMMITTEE REVIEW OF AGENCY RULES

(1) As a legislative check on legislatively created authority, the committee shall examine each proposed rule, except for those proposed rules exempted by s. 120.81(1)(e) and (2), and its accompanying material, and each emergency rule, and may examine any existing rule, for the purpose of determining whether:

(a) The rule is an invalid exercise of delegated legislative authority.

(b) The statutory authority for the rule has been repealed.

(c) The rule reiterates or paraphrases statutory material.

(d) The rule is in proper form.

(e) The notice given prior to its adoption was sufficient to give adequate notice of the purpose and effect of the rule.

(f) The rule is consistent with expressed legislative intent pertaining to the specific provisions of law which the rule implements.

(g) The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law which the rule implements.

(h) The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule.

(i) The rule could be made less complex or more easily comprehensible to the general public.

(j) The rule's statement of estimated regulatory costs complies with the requirements of s. 120.541 and whether the rule does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

(k) The rule will require additional appropriations.



(1) If the rule is an emergency rule, there exists an emergency justifying the adoption of such rule, the agency is within its statutory authority, and the rule was adopted in compliance with the requirements and limitations of s. 120.54(4).

(2) The committee may request from an agency such information as is reasonably necessary for examination of a rule as required by subsection (1). The committee shall consult with legislative standing committees having jurisdiction over the subject areas. If the committee objects to a rule, the committee shall, within 5 days after the objection, certify that fact to the agency whose rule has been examined and include with the certification a statement detailing its objections with particularity. The committee shall notify the Speaker of the House of Representatives and the President of the Senate of any objection to an agency rule concurrent with certification of that fact to the agency. Such notice shall include a copy of the rule and the statement detailing the committee's objections to the rule.

(3) Within 30 days after receipt of the objection, if the agency is headed by an individual, or within 45 days after receipt of the objection, if the agency is headed by a collegial body, the agency shall:

(a) If the rule is not yet in effect:

1. File notice pursuant to s. 120.54(3)(d) of only such modifications as are necessary to address the committee's objection;
2. File notice pursuant to s. 120.54(3)(d) of withdrawal of the rule; or
3. Notify the committee in writing that it refuses to modify or withdraw the rule.

(b) If the rule is in effect:

1. File notice pursuant to s. 120.54(3)(a), without prior notice of rule development, to amend the rule to address the committee's objection;
2. File notice pursuant to s. 120.54(3)(a) to repeal the rule; or



3. Notify the committee in writing that the agency refuses to amend or repeal the rule.

(c) If the objection is to the statement of estimated regulatory costs:

1. Prepare a corrected statement of estimated regulatory costs, give notice of the availability of the corrected statement in the first available issue of the Florida Administrative Register, and file a copy of the corrected statement with the committee; or

2. Notify the committee that it refuses to prepare a corrected statement of estimated regulatory costs.

(4) Failure of the agency to respond to a committee objection to a rule that is not yet in effect within the time prescribed in subsection (3) constitutes withdrawal of the rule in its entirety. In this event, the committee shall notify the Department of State that the agency, by its failure to respond to a committee objection, has elected to withdraw the rule. Upon receipt of the committee's notice, the Department of State shall publish a notice to that effect in the next available issue of the Florida Administrative Register. Upon publication of the notice, the rule shall be stricken from the files of the Department of State and the files of the agency.

(5) Failure of the agency to respond to a committee objection to a rule that is in effect within the time prescribed in subsection (3) constitutes a refusal to amend or repeal the rule.

(6) Failure of the agency to respond to a committee objection to a statement of estimated regulatory costs within the time prescribed in subsection (3) constitutes a refusal to prepare a corrected statement of estimated regulatory costs.



(7) If the committee objects to a rule and the agency refuses to modify, amend, withdraw, or repeal the rule, the committee shall file with the Department of State a notice of the objection, detailing with particularity the committee's objection to the rule. The Department of State shall publish this notice in the Florida Administrative Register. If the rule is published in the Florida Administrative Code, a reference to the committee's objection and to the issue of the Florida Administrative Register in which the full text thereof appears shall be recorded in a history note.

(8)

(a) If the committee objects to a rule, or portion of a rule, and the agency fails to initiate administrative action to modify, amend, withdraw, or repeal the rule consistent with the objection within 60 days after the objection, or thereafter fails to proceed in good faith to complete such action, the committee may submit to the President of the Senate and the Speaker of the House of Representatives a recommendation that legislation be introduced to address the committee's objection.

(b)

1. If the committee votes to recommend the introduction of legislation to address the committee's objection, the committee shall, within 5 days after this determination, certify that fact to the agency whose rule or proposed rule has been examined. The committee may request that the agency temporarily suspend the rule or suspend the adoption of the proposed rule, pending consideration of proposed legislation during the next regular session of the Legislature.

2. Within 30 days after receipt of the certification, if the agency is headed by an individual, or within 45 days after receipt of the certification, if the agency is headed by a collegial body, the agency shall:

a. Temporarily suspend the rule or suspend the adoption of the proposed rule; or



b. Notify the committee in writing that the agency refuses to temporarily suspend the rule or suspend the adoption of the proposed rule.

3. If the agency elects to temporarily suspend the rule or suspend the adoption of the proposed rule, the agency shall give notice of the suspension in the Florida Administrative Register. The rule or the rule adoption process shall be suspended upon publication of the notice. An agency may not base any agency action on a suspended rule or suspended proposed rule, or portion of such rule, prior to expiration of the suspension. A suspended rule or suspended proposed rule, or portion of such rule, continues to be subject to administrative determination and judicial review as provided by law.

4. Failure of an agency to respond to committee certification within the time prescribed by subparagraph 2. constitutes a refusal to suspend the rule or to suspend the adoption of the proposed rule.

(c) The committee shall prepare proposed legislation to address the committee's objection in accordance with the rules of the Senate and the House of Representatives for prefiling and introduction in the next regular session of the Legislature. The proposed legislation shall be presented to the President of the Senate and the Speaker of the House of Representatives with the committee recommendation.

(d) If proposed legislation addressing the committee's objection fails to become law, any temporary agency suspension shall expire.

History - (s. 4, ch. 76-131; s. 1, ch. 77-174; s. 6, ch. 80-391; s. 3, ch. 81-309; s. 4, ch. 87-385; s. 8, ch. 92-166; s. 20, ch. 95-280; s. 14, ch. 96-159; s. 16, ch. 2000-151; s. 18, ch. 2008-4; s. 7, ch. 2008-104; s. 6, ch. 2013-14.)



§120.55 FS | PUBLICATION

(1) The Department of State shall:

(a)

1. Through a continuous revision and publication system, compile and publish electronically, on a website managed by the department, the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; however, the department shall retain responsibility for the code as provided in this section. The electronic publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication



in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. The department shall allow adopted rules and material incorporated by reference to be filed in electronic form as prescribed by department rule. When a rule is filed for adoption with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

(b) Electronically publish on a website managed by the department a continuous revision and publication entitled the "Florida Administrative Register," which shall serve as the official publication and must contain:



1. All notices required by s. 120.54(2) and (3)(a), showing the text of all rules proposed for consideration.
2. All notices of public meetings, hearings, and workshops conducted in accordance with s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.
3. A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules.
4. Notice of petitions for declaratory statements or administrative determinations.
5. A summary of each objection to any rule filed by the Administrative Procedures Committee.
6. A list of rules filed for adoption in the previous 7 days.
7. A list of all rules filed for adoption pending legislative ratification under s. 120.541(3). A rule shall be removed from the list once notice of ratification or withdrawal of the rule is received.
8. Any other material required or authorized by law or deemed useful by the department.

The department may contract with a publishing firm for a printed publication of the Florida Administrative Register and make copies available on an annual subscription basis.

(c) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing.

(d) Charge each agency using the Florida Administrative Register a space rate to cover the costs related to the Florida Administrative Register and the Florida Administrative Code.

(e) Maintain a permanent record of all notices published in the Florida Administrative Register.



(2) The Florida Administrative Register website must allow users to:

(a) Search for notices by type, publication date, rule number, word, subject, and agency.

(b) Search a database that makes available all notices published on the website for a period of at least 5 years.

(c) Subscribe to an automated e-mail notification of selected notices to be sent out before or concurrently with publication of the electronic Florida Administrative Register. Such notification must include in the text of the e-mail a summary of the content of each notice.

(d) View agency forms and other materials submitted to the department in electronic form and incorporated by reference in proposed rules.

(e) Comment on proposed rules.

(3) Publication of material required by paragraph (1)(b) on the Florida Administrative Register website does not preclude publication of such material on an agency's website or by other means.

(4) Each agency shall provide copies of its rules upon request, with citations to the grant of rulemaking authority and the specific law implemented for each rule.

(5) Each agency that provides an e-mail notification service to inform licensees or other registered recipients of notices shall use that service to notify recipients of each notice required under s. 120.54(2) and (3) and provide Internet links to the appropriate rule page on the Secretary of State's website or Internet links to an agency website that contains the proposed rule or final rule.

(6) Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative Register or elsewhere, shall include, along with the rule, the name of the person or persons originating such rule, the name of the agency head who approved the rule, and the date upon which the rule was approved.



(7) Access to the Florida Administrative Register website and its contents, including the e-mail notification service, shall be free for the public.

(8)

(a) All fees and moneys collected by the Department of State under this chapter shall be deposited in the Records Management Trust Fund for the purpose of paying for costs incurred by the department in carrying out this chapter.

(b) The unencumbered balance in the Records Management Trust Fund for fees collected pursuant to this chapter may not exceed \$300,000 at the beginning of each fiscal year, and any excess shall be transferred to the General Revenue Fund.

(9) The failure to comply with this section may not be raised in a proceeding challenging the validity of a rule pursuant to s. 120.52 (8) (a).

History - (s. 1, ch. 74-310; s. 1, ch. 75-107; s. 4, ch. 75-191; s. 5, ch. 76-131; s. 1, ch. 77-174; s. 4, ch. 77-453; s. 3, ch. 78-425; s. 4, ch. 79-299; s. 7, ch. 80-391; s. 4, ch. 81-309; s. 1, ch. 82-19; s. 1, ch. 82-47; s. 3, ch. 83-351; s. 3, ch. 84-203; s. 17, ch. 87-224; s. 1, ch. 87-322; s. 20, ch. 91-45; s. 15, ch. 96-159; s. 896, ch. 2002-387; s. 5, ch. 2004-235; s. 14, ch. 2004-335; s. 4, ch. 2006-82; ss. 8, 9, ch. 2008-104; ss. 11, 12, ch. 2010-5; s. 2, ch. 2012-63; s. 2, ch. 2016-116.)



§120.555 FS | SUMMARY REMOVAL OF PUBLISHED RULES NO LONGER IN FORCE AND EFFECT

When, as part of the continuous revision system authorized in s. 120.55(1)(a)1. or as otherwise provided by law, the Department of State is in doubt whether a rule published in the official version of the Florida Administrative Code is still in full force and effect, the procedure in this section shall be employed.

(1) The Department of State shall submit to the head of the agency with authority to repeal or amend the rule, if any, or if no such agency can be identified, to the Governor, a written request for a statement as to whether the rule is still in full force and effect. A copy of the request shall be promptly delivered to the committee and to the Attorney General. The Department of State shall publish a notice of the request together with a copy of the request in the Florida Administrative Register next available after delivery of the request to the head of the agency or the Governor.

(2) No later than 90 days after the date the notice required in subsection (1) is published, the agency or the Governor, notified pursuant to subsection (1), shall file a written response with the Department of State stating whether the rule is in full force and effect and under the jurisdiction of an agency with full authority to amend or repeal the rule. Failure to respond timely under this subsection constitutes an acknowledgment by the agency or the Governor that the rule is no longer in effect and is subject to summary repeal under this section.

(3) The Department of State shall publish a notice of the agency's or Governor's timely response or the acknowledgment determined under subsection (2) in the Florida Administrative Register next available after receipt of the response or the expiration of the response period, whichever occurs first.



(4) If the response states that the rule is no longer in effect, or if no response is filed timely with the Department of State, the notice required in subsection (3) shall also give notice of the following:

(a) Based on the agency's or Governor's written response or the acknowledgment determined under subsection (2), the rule will be repealed summarily pursuant to this section and removed from the Florida Administrative Code.

(b) Any objection to the summary repeal under this section must be filed as a petition challenging a proposed rule under s. 120.56 and must be filed no later than 21 days after the date the notice is published in the Florida Administrative Register.

(c) For purposes only of challenging a summary repeal under this section, the agency with current authority to repeal the rule under s. 120.54 shall be named as the respondent in the petition and shall be the proper party in interest. In such circumstances, the Department of State shall not be named as a party in a petition filed under paragraph (b) and this paragraph.

(d) If no agency currently has authority to repeal the rule under s. 120.54, the Department of State shall be named as the respondent in a petition filed under paragraph (b) and this paragraph. The Attorney General shall represent the Department of State in all proceedings under this paragraph.

(5) Upon the expiration of the 21-day period to file an objection to a notice of summary repeal published pursuant to subsection (4), if no timely objection is filed, or, if a timely objection is filed, on the date a decision finding the rule is no longer in effect becomes final, the Department of State shall update the Florida Administrative Code to remove the rule and shall provide historical notes identifying the manner in which the rule ceased to have effect, including the summary repeal pursuant to this section.

History - (s. 2, ch. 2012-31; s. 7, ch. 2013-14.)



§120.56 FS | CHALLENGES TO RULES

(1) GENERAL PROCEDURES. —

(a) Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

(b) The petition challenging the validity of a proposed or adopted rule under this section must state:

1. The particular provisions alleged to be invalid and a statement of the facts or grounds for the alleged invalidity.

2. Facts sufficient to show that the petitioner is substantially affected by the challenged adopted rule or would be substantially affected by the proposed rule.

(c) The petition shall be filed by electronic means with the division which shall, immediately upon filing, forward by electronic means copies to the agency whose rule is challenged, the Department of State, and the committee. Within 10 days after receiving the petition, the division director shall, if the petition complies with paragraph (b), assign an administrative law judge who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties or for good cause shown. Evidence of good cause includes, but is not limited to, written notice of an agency's decision to modify or withdraw the proposed rule or a written notice from the chair of the committee stating that the committee will consider an objection to the rule at its next scheduled meeting. The failure of an agency to follow the applicable rulemaking procedures or requirements set forth in this chapter shall be presumed to be material; however, the agency may rebut this presumption by showing that the substantial interests of the petitioner and the fairness of the proceedings have not been impaired.

(d) Within 30 days after the hearing, the administrative law judge shall render a decision and state the reasons



for his or her decision in writing. The division shall forthwith transmit by electronic means copies of the administrative law judge's decision to the agency, the Department of State, and the committee.

(e) Hearings held under this section shall be de novo in nature. The standard of proof shall be the preponderance of the evidence. Hearings shall be conducted in the same manner as provided by ss. 120.569 and 120.57, except that the administrative law judge's order shall be final agency action. The petitioner and the agency whose rule is challenged shall be adverse parties. Other substantially affected persons may join the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings. Failure to proceed under this section does not constitute failure to exhaust administrative remedies.

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS. –

(a) A petition alleging the invalidity of a proposed rule shall be filed within 21 days after the date of publication of the notice required by s. 120.54(3)(a); within 10 days after the final public hearing is held on the proposed rule as provided by s. 120.54(3)(e)2.; within 20 days after the statement of estimated regulatory costs or revised statement of estimated regulatory costs, if applicable, has been prepared and made available as provided in s. 120.541(1)(d); or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). The petitioner has the burden to prove by a preponderance of the evidence that the petitioner would be substantially affected by the proposed rule. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. A person who is not substantially affected by the proposed rule as initially noticed, but who is substantially affected by the rule as a result of a change, may challenge any provision of the resulting proposed rule.

(b) The administrative law judge may declare the proposed rule wholly or partly invalid. Unless the decision of the administrative law judge is reversed on appeal, the proposed rule or provision of a proposed



rule declared invalid shall not be adopted. After a petition for administrative determination has been filed, the agency may proceed with all other steps in the rulemaking process, including the holding of a factfinding hearing. In the event part of a proposed rule is declared invalid, the adopting agency may, in its sole discretion, withdraw the proposed rule in its entirety. The agency whose proposed rule has been declared invalid in whole or part shall give notice of the decision in the first available issue of the Florida Administrative Register.

(c) When any substantially affected person seeks determination of the invalidity of a proposed rule pursuant to this section, the proposed rule is not presumed to be valid or invalid.

(3) CHALLENGING RULES IN EFFECT; SPECIAL PROVISIONS. –

(a) A petition alleging the invalidity of an existing rule may be filed at any time during which the rule is in effect. The petitioner has the burden of proving by a preponderance of the evidence that the existing rule is an invalid exercise of delegated legislative authority as to the objections raised.

(b) The administrative law judge may declare all or part of a rule invalid. The rule or part thereof declared invalid shall become void when the time for filing an appeal expires. The agency whose rule has been declared invalid in whole or part shall give notice of the decision in the Florida Administrative Register in the first available issue after the rule has become void.

(4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED RULES; SPECIAL PROVISIONS. –

(a) Any person substantially affected by an agency statement that is an unadopted rule may seek an administrative determination that the statement violates s. 120.54(1)(a). The petition shall include the text of the statement or a description of the statement and shall state facts sufficient to show that the statement constitutes an unadopted rule.

(b) The administrative law judge may extend the hearing date beyond 30 days after assignment of the case for



good cause. Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3), such notice shall automatically operate as a stay of proceedings pending adoption of the statement as a rule. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings pending rulemaking shall remain in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule.

(c) If a hearing is held and the petitioner proves the allegations of the petition, the agency shall have the burden of proving that rulemaking is not feasible or not practicable under s. 120.54(1)(a).

(d) The administrative law judge may determine whether all or part of a statement violates s. 120.54(1)(a). The decision of the administrative law judge shall constitute a final order. The division shall transmit a copy of the final order to the Department of State and the committee. The Department of State shall publish notice of the final order in the first available issue of the Florida Administrative Register.

(e) If an administrative law judge enters a final order that all or part of an unadopted rule violates s. 120.54(1)(a), the agency must immediately discontinue all reliance upon the unadopted rule or any substantially similar statement as a basis for agency action.

(f) If proposed rules addressing the challenged unadopted rule are determined to be an invalid exercise of delegated legislative authority as defined in s. 120.52(8)(b)-(f), the agency must immediately discontinue reliance upon the unadopted rule and any substantially similar statement until rules addressing the subject are properly adopted, and the administrative law judge shall enter a final order to that effect.

(g) All proceedings to determine a violation of s. 120.54(1)(a) shall be brought pursuant to this subsection. A proceeding pursuant to this subsection may be consolidated with a proceeding under subsection (3) or under any other section of this chapter. This



paragraph does not prevent a party whose substantial interests have been determined by an agency action from bringing a proceeding pursuant to s. 120.57(1)(e).

(5) CHALLENGING EMERGENCY RULES; SPECIAL PROVISIONS. — Challenges to the validity of an emergency rule shall be subject to the following time schedules in lieu of those established by paragraphs (1)(c) and (d). Within 7 days after receiving the petition, the division director shall, if the petition complies with paragraph (1)(b), assign an administrative law judge, who shall conduct a hearing within 14 days, unless the petition is withdrawn. The administrative law judge shall render a decision within 14 days after the hearing.

History - (s. 1, ch. 74-310; s. 5, ch. 75-191; s. 6, ch. 76-131; s. 1, ch. 77-174; s. 4, ch. 78-425; s. 759, ch. 95-147; s. 16, ch. 96-159; s. 6, ch. 97-176; s. 5, ch. 99-379; s. 3, ch. 2003-94; s. 5, ch. 2006-82; ss. 10, 11, ch. 2008-104; ss. 3, 5, ch. 2010-279; HJR 9-A, 2010 Special Session A; s. 10, ch. 2011-208; s. 3, ch. 2011-225; s. 8, ch. 2013-14; s. 3, ch. 2016-116.)



§120.565 FS | DECLARATORY STATEMENT BY AGENCIES

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Register and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Register. Agency disposition of petitions shall be final agency action.

History.—s. 6, ch. 75-191; s. 7, ch. 76-131; s. 5, ch. 78-425; s. 5, ch. 79-299; s. 760, ch. 95-147; s. 17, ch. 96-159; s. 9, ch. 2013-14.



§120.569 | DECISIONS WHICH AFFECT SUBSTANTIAL INTEREST

(1) The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. 120.573 or s. 120.574. Unless waived by all parties, s. 120.57(1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, s. 120.57(2) applies in all other cases. If a disputed issue of material fact arises during a proceeding under s. 120.57(2), then, unless waived by all parties, the proceeding under s. 120.57(2) shall be terminated and a proceeding under s. 120.57(1) shall be conducted. Parties shall be notified of any order, including a final order. Unless waived, a copy of the order shall be delivered or mailed to each party or the party's attorney of record at the address of record. Each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review; and shall state the time limits which apply.

(2)(a) Except for any proceeding conducted as prescribed in s. 120.56, a petition or request for a hearing under this section shall be filed with the agency. If the agency requests an administrative law judge from the division, it shall so notify the division by electronic means through the division's website within 15 days after receipt of the petition or request. A request for a hearing shall be granted or denied within 15 days after receipt. On the request of any agency, the division shall assign an administrative law judge with due regard to the expertise required for the particular matter. The referring agency shall take no further action with respect to a proceeding under s. 120.57(1), except as a party litigant, as long as the division has jurisdiction over the proceeding under s. 120.57(1). Any party may request the disqualification of the administrative law judge by filing an affidavit with the division prior to the taking of evidence at a hearing, stating the grounds with particularity.

(b) All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days; however, the 14-day notice requirement may be waived with the consent of all parties. The notice shall include:



1. A statement of the time, place, and nature of the hearing.

2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b). Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable. This paragraph does not eliminate the availability of equitable tolling as a defense to the untimely filing of a petition.

(d) The agency may refer a petition to the division for the assignment of an administrative law judge only if the petition is in substantial compliance with the requirements of paragraph (c).



(e) All pleadings, motions, or other papers filed in the proceeding must be signed by the party, the party's attorney, or the party's qualified representative. The signature constitutes a certificate that the person has read the pleading, motion, or other paper and that, based upon reasonable inquiry, it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay, or for frivolous purpose or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the presiding officer shall impose upon the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

(f) The presiding officer has the power to swear witnesses and take their testimony under oath, to issue subpoenas, and to effect discovery on the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure, including the imposition of sanctions, except contempt. However, no presiding officer has the authority to issue any subpoena or order directing discovery to any member or employee of the Legislature when the subpoena or order commands the production of documents or materials or compels testimony relating to the legislative duties of the member or employee. Any subpoena or order directing discovery directed to a member or an employee of the Legislature shall show on its face that the testimony sought does not relate to legislative duties.

(g) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath.



(h) Documentary evidence may be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

(i) When official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material.

(j) A party shall be permitted to conduct cross-examination when testimony is taken or documents are made a part of the record.

(k)1. Any person subject to a subpoena may, before compliance and on timely petition, request the presiding officer having jurisdiction of the dispute to invalidate the subpoena on the ground that it was not lawfully issued, is unreasonably broad in scope, or requires the production of irrelevant material.

2. A party may seek enforcement of a subpoena, order directing discovery, or order imposing sanctions issued under the authority of this chapter by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the subpoena or order resides. A failure to comply with an order of the court shall result in a finding of contempt of court. However, no person shall be in contempt while a subpoena is being challenged under subparagraph 1. The court may award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the court order whenever the court determines that such an award should be granted under the Florida Rules of Civil Procedure.



3. Any public employee subpoenaed to appear at an agency proceeding shall be entitled to per diem and travel expenses at the same rate as that provided for state employees under s. 112.061 if travel away from such public employee's headquarters is required. All other witnesses appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as is provided in civil actions in circuit courts of this state. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement, and in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

(l) Unless the time period is waived or extended with the consent of all parties, the final order in a proceeding which affects substantial interests must be in writing and include findings of fact, if any, and conclusions of law separately stated, and it must be rendered within 90 days:

1. After the hearing is concluded, if conducted by the agency;
2. After a recommended order is submitted to the agency and mailed to all parties, if the hearing is conducted by an administrative law judge; or
3. After the agency has received the written and oral material it has authorized to be submitted, if there has been no hearing.

(m) Findings of fact, if set forth in a manner which is no more than mere tracking of the statutory language, must be accompanied by a concise and explicit statement of the underlying facts of record which support the findings.

(n) If an agency head finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, it shall recite with particularity the facts underlying such finding in the final order, which shall be appealable or enjoinable from the date rendered.



(o) On the request of any party, the administrative law judge shall enter an initial scheduling order to facilitate the just, speedy, and inexpensive determination of the proceeding. The initial scheduling order shall establish a discovery period, including a deadline by which all discovery shall be completed, and the date by which the parties shall identify expert witnesses and their opinions. The initial scheduling order also may require the parties to meet and file a joint report by a date certain.

(p) For any proceeding arising under chapter 373, chapter 378, or chapter 403, if a nonapplicant petitions as a third party to challenge an agency's issuance of a license, permit, or conceptual approval, the order of presentation in the proceeding is for the permit applicant to present a prima facie case demonstrating entitlement to the license, permit, or conceptual approval, followed by the agency. This demonstration may be made by entering into evidence the application and relevant material submitted to the agency in support of the application, and the agency's staff report or notice of intent to approve the permit, license, or conceptual approval. Subsequent to the presentation of the applicant's prima facie case and any direct evidence submitted by the agency, the petitioner initiating the action challenging the issuance of the license, permit, or conceptual approval has the burden of ultimate persuasion and has the burden of going forward to prove the case in opposition to the license, permit, or conceptual approval through the presentation of competent and substantial evidence. The permit applicant and agency may on rebuttal present any evidence relevant to demonstrating that the application meets the conditions for issuance. Notwithstanding subsection (1), this paragraph applies to proceedings under s. 120.574.

(History.—s. 18, ch. 96-159; s. 7, ch. 97-176; s. 4, ch. 98-200; s. 4, ch. 2003-94; s. 6, ch. 2006-82; s. 14, ch. 2008-104; s. 11, ch. 2011-208; s. 10, ch. 2011-225.)



§120.57 FS | ADDITIONAL PROCEDURES FOR PARTICULAR CASES

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.

(a) Except as provided in ss. 120.80 and 120.81, an administrative law judge assigned by the division shall conduct all hearings under this subsection, except for hearings before agency heads or a member thereof. If the administrative law judge assigned to a hearing becomes unavailable, the division shall assign another administrative law judge who shall use any existing record and receive any additional evidence or argument, if any, which the new administrative law judge finds necessary.

(b) All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to the presiding officer's recommended order, and to be represented by counsel or other qualified representative. When appropriate, the general public may be given an opportunity to present oral or written communications. If the agency proposes to consider such material, then all parties shall be given an opportunity to cross-examine or challenge or rebut the material.

(c) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(d) Notwithstanding s. 120.569(2)(g), similar fact evidence of other violations, wrongs, or acts is admissible when relevant to prove a material fact in issue, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity. When the state in an administrative proceeding intends to offer evidence of other acts or offenses under this paragraph, the state shall furnish to the party whose substantial interests are being determined and whose other acts or offenses will be the subject of such evidence, no fewer than 10 days before



commencement of the proceeding, a written statement of the acts or offenses it intends to offer, describing them and the evidence the state intends to offer with particularity. Notice is not required for evidence of acts or offenses which is used for impeachment or on rebuttal.

(e)

1. An agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. This subparagraph does not preclude application of valid adopted rules and applicable provisions of law to the facts.

2. In a matter initiated as a result of agency action proposing to determine the substantial interests of a party, the party's timely petition for hearing may challenge the proposed agency action based on a rule that is an invalid exercise of delegated legislative authority or based on an alleged unadopted rule. For challenges brought under this subparagraph:

a. The challenge may be pled as a defense using the procedures set forth in s. 120.56(1)(b).

b. Section 120.56(3)(a) applies to a challenge alleging that a rule is an invalid exercise of delegated legislative authority.

c. Section 120.56(4)(c) applies to a challenge alleging an unadopted rule.

d. This subparagraph does not preclude the consolidation of any proceeding under s. 120.56 with any proceeding under this paragraph.

3. Notwithstanding subparagraph 1., if an agency demonstrates that the statute being implemented directs it to adopt rules, that the agency has not had time to adopt those rules because the requirement was so recently enacted, and that the agency has initiated rulemaking and is proceeding



expeditiously and in good faith to adopt the required rules, then the agency's action may be based upon those unadopted rules if the administrative law judge determines that rulemaking is neither feasible nor practicable and the unadopted rules would not constitute an invalid exercise of delegated legislative authority if adopted as rules. An unadopted rule shall not be presumed valid. The agency must demonstrate that the unadopted rule:

a. Is within the powers, functions, and duties delegated by the Legislature or, if the agency is operating pursuant to authority vested in the agency by the State Constitution, is within that authority;

b. Does not enlarge, modify, or contravene the specific provisions of law implemented;

c. Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency;

d. Is not arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational;

e. Is not being applied to the substantially affected party without due notice; and

f. Does not impose excessive regulatory costs on the regulated person, county, or city.

4. The recommended and final orders in any proceeding shall be governed by paragraphs (k) and (l), except that the administrative law judge's determination regarding an unadopted rule under subparagraph 1. or subparagraph 2. shall not be rejected by the agency unless the agency first determines from a review of the complete record, and states with particularity in the order, that such determination is clearly erroneous or does not comply with essential requirements of law. In any proceeding for review under s. 120.68, if the court



finds that the agency's rejection of the determination regarding the unadopted rule does not comport with this subparagraph, the agency action shall be set aside and the court shall award to the prevailing party the reasonable costs and a reasonable attorney fee for the initial proceeding and the proceeding for review.

5. A petitioner may pursue a separate, collateral challenge under s. 120.56 even if an adequate remedy exists through a proceeding under this section. The administrative law judge may consolidate the proceedings.

(f) The record in a case governed by this subsection shall consist only of:

1. All notices, pleadings, motions, and intermediate rulings.
2. Evidence admitted.
3. Those matters officially recognized.
4. Proffers of proof and objections and rulings thereon.
5. Proposed findings and exceptions.
6. Any decision, opinion, order, or report by the presiding officer.
7. All staff memoranda or data submitted to the presiding officer during the hearing or prior to its disposition, after notice of the submission to all parties, except communications by advisory staff as permitted under s. 120.66(1), if such communications are public records.
8. All matters placed on the record after an ex parte communication.
9. The official transcript.

(g) The agency shall accurately and completely preserve all testimony in the proceeding, and, on the request of any party, it shall make a full or partial transcript available at no more than actual cost.



(h) Any party to a proceeding in which an administrative law judge has final order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order. A summary final order shall consist of findings of fact, if any, conclusions of law, a disposition or penalty, if applicable, and any other information required by law to be contained in the final order.

(i) When, in any proceeding conducted pursuant to this subsection, a dispute of material fact no longer exists, any party may move the administrative law judge to relinquish jurisdiction to the agency. An order relinquishing jurisdiction shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with supporting and opposing affidavits, if any, that no genuine issue as to any material fact exists. If the administrative law judge enters an order relinquishing jurisdiction, the agency may promptly conduct a proceeding pursuant to subsection (2), if appropriate, but the parties may not raise any issues of disputed fact that could have been raised before the administrative law judge. An order entered by an administrative law judge relinquishing jurisdiction to the agency based upon a determination that no genuine dispute of material fact exists, need not contain findings of fact, conclusions of law, or a recommended disposition or penalty.

(j) Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute, and shall be based exclusively on the evidence of record and on matters officially recognized.

(k) The presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and



recommended disposition or penalty, if applicable, and any other information required by law to be contained in the final order. All proceedings conducted under this subsection shall be de novo. The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

(l) The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

(m) If a recommended order is submitted to an agency, the agency shall provide a copy of its final order and any exceptions to the division within 15 days after the order is filed with the agency clerk.



(n) Notwithstanding any law to the contrary, when statutes or rules impose conflicting time requirements for the scheduling of expedited hearings or issuance of recommended or final orders, the director of the division shall have the authority to set the proceedings for the orderly operation of this chapter.

(2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which subsection (1) does not apply:

(a) The agency shall:

1. Give reasonable notice to affected persons of the action of the agency, whether proposed or already taken, or of its decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.

2. Give parties or their counsel the option, at a convenient time and place, to present to the agency or hearing officer written or oral evidence in opposition to the action of the agency or to its refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction.

3. If the objections of the parties are overruled, provide a written explanation within 7 days.

(b) An agency may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority.

(c) The record shall only consist of:

1. The notice and summary of grounds.

2. Evidence received.

3. All written statements submitted.

4. Any decision overruling objections.

5. All matters placed on the record after an ex parte communication.

6. The official transcript.



7. Any decision, opinion, order, or report by the presiding officer.

(3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO CONTRACT SOLICITATION OR AWARD.—Agencies subject to this chapter shall use the uniform rules of procedure, which provide procedures for the resolution of protests arising from the contract solicitation or award process. Such rules shall at least provide that:

(a) The agency shall provide notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase by electronic posting. This notice shall contain the following statement: "Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, Florida Statutes."

(b) Any person who is adversely affected by the agency decision or intended decision shall file with the agency a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, proposals, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within 72 hours after the posting of the solicitation. The formal written protest shall be filed within 10 days after the date the notice of protest is filed. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this chapter. The formal written protest shall state with particularity the facts and law upon which the protest is based. Saturdays, Sundays, and state holidays shall be excluded in the computation of the 72-hour time periods provided by this paragraph.

(c) Upon receipt of the formal written protest that has been timely filed, the agency shall stop the solicitation or contract award process until the subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the



solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(d)

1. The agency shall provide an opportunity to resolve the protest by mutual agreement between the parties within 7 days, excluding Saturdays, Sundays, and state holidays, after receipt of a formal written protest.

2. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and state holidays, after receipt of the formal written protest, and if there is no disputed issue of material fact, an informal proceeding shall be conducted pursuant to subsection (2) and applicable agency rules before a person whose qualifications have been prescribed by rules of the agency.

3. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and state holidays, after receipt of the formal written protest, and if there is a disputed issue of material fact, the agency shall refer the protest to the division by electronic means through the division's website for proceedings under subsection (1).

(e) Upon receipt of a formal written protest referred pursuant to this subsection, the director of the division shall expedite the hearing and assign an administrative law judge who shall commence a hearing within 30 days after the receipt of the formal written protest by the division and enter a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript by the administrative law judge, whichever is later. Each party shall be allowed 10 days in which to submit written exceptions to the recommended order. A final order shall be entered by the agency within 30 days of the entry of a recommended order. The provisions of this paragraph may be waived upon stipulation by all parties.



(f) In a protest to an invitation to bid or request for proposals procurement, no submissions made after the bid or proposal opening which amend or supplement the bid or proposal shall be considered. In a protest to an invitation to negotiate procurement, no submissions made after the agency announces its intent to award a contract, reject all replies, or withdraw the solicitation which amend or supplement the reply shall be considered. Unless otherwise provided by statute, the burden of proof shall rest with the party protesting the proposed agency action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge shall conduct a de novo proceeding to determine whether the agency's proposed action is contrary to the agency's governing statutes, the agency's rules or policies, or the solicitation specifications. The standard of proof for such proceedings shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended agency action to reject all bids, proposals, or replies, the standard of review by an administrative law judge shall be whether the agency's intended action is illegal, arbitrary, dishonest, or fraudulent.

(g) For purposes of this subsection, the definitions in s. 287.012 apply.

(4) INFORMAL DISPOSITION.—Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order.

(5) APPLICABILITY.—This section does not apply to agency investigations preliminary to agency action.

History.—s. 1, ch. 74-310; s. 7, ch. 75-191; s. 8, ch. 76-131; s. 1, ch. 77-174; s. 5, ch. 77-453; ss. 6, 11, ch. 78-95; s. 6, ch. 78-425; s. 8, ch. 79-7; s. 7, ch. 80-95; s. 4, ch. 80-289; s. 57, ch. 81-259; s. 2, ch. 83-78; s. 9, ch. 83-216; s. 2, ch. 84-173; s. 4, ch. 84-203; ss. 1, 2, ch. 86-108; s. 44, ch. 87-6; ss. 1, 2, ch. 87-54; s. 5, ch. 87-385; s. 1, ch. 90-283; s. 4, ch. 91-30; s. 1, ch. 91-191; s. 22, ch. 92-315; s. 7, ch. 94-218; s. 1420, ch. 95-147; s. 1, ch. 95-328; s. 19, ch. 96-159; s. 1, ch. 96-423; s. 8, ch. 97-176; s. 5, ch. 98-200; s. 3, ch. 98-279; s. 47, ch. 99-2; s. 6, ch. 99-379; s. 2, ch. 2002-207; s. 5, ch. 2003-94; s. 7, ch. 2006-82; s. 12, ch. 2008-104; s. 12, ch. 2011-208; s. 4, ch. 2016-116.



§120.573 FS | MEDIATION OF DISPUTES

Each announcement of an agency action that affects substantial interests shall advise whether mediation of the administrative dispute for the type of agency action announced is available and that choosing mediation does not affect the right to an administrative hearing. If the agency and all parties to the administrative action agree to mediation, in writing, within 10 days after the time period stated in the announcement for election of an administrative remedy under ss. 120.569 and 120.57, the time limitations imposed by ss. 120.569 and 120.57 shall be tolled to allow the agency and parties to mediate the administrative dispute. The mediation shall be concluded within 60 days of such agreement unless otherwise agreed by the parties. The mediation agreement shall include provisions for mediator selection, the allocation of costs and fees associated with mediation, and the mediating parties' understanding regarding the confidentiality of discussions and documents introduced during mediation. If mediation results in settlement of the administrative dispute, the agency shall enter a final order incorporating the agreement of the parties. If mediation terminates without settlement of the dispute, the agency shall notify the parties in writing that the administrative hearing processes under ss. 120.569 and 120.57 are resumed.

History - (s. 20, ch. 96-159; s. 9, ch. 97-176.)



§120.574 FS | SUMMARY HEARING

(1)

(a) Within 5 business days following the division's receipt of a petition or request for hearing, the division shall issue and serve on all original parties an initial order that assigns the case to a specific administrative law judge and provides general information regarding practice and procedure before the division. The initial order shall also contain a statement advising the addressees that a summary hearing is available upon the agreement of all parties under subsection (2) and briefly describing the expedited time sequences, limited discovery, and final order provisions of the summary procedure.

(b) Within 15 days after service of the initial order, any party may file with the division a motion for summary hearing in accordance with subsection (2). If all original parties agree, in writing, to the summary proceeding, the proceeding shall be conducted within 30 days of the agreement, in accordance with the provisions of subsection (2).

(c) Intervenors in the proceeding shall be governed by the decision of the original parties regarding whether the case will proceed in accordance with the summary hearing process and shall not have standing to challenge that decision.

(d) If a motion for summary hearing is not filed within 15 days after service of the division's initial order, the matter shall proceed in accordance with ss. 120.569 and 120.57.

(2) In any case to which this subsection is applicable, the following procedures apply:

(a) Motions shall be limited to the following:

1. A motion in opposition to the petition.



2. A motion requesting discovery beyond the informal exchange of documents and witness lists described in paragraph (b). Upon a showing of necessity, additional discovery may be permitted in the discretion of the administrative law judge, but only if it can be completed not later than 5 days prior to the final hearing.

3. A motion for continuance of the final hearing date.

4. A motion requesting a prehearing conference, or the administrative law judge may require a prehearing conference, for the purpose of identifying: the legal and factual issues to be considered at the final hearing; the names and addresses of witnesses who may be called to testify at the final hearing; documentary evidence that will be offered at the final hearing; the range of penalties that may be imposed upon final hearing; and any other matter that the administrative law judge determines would expedite resolution of the proceeding. The prehearing conference may be held by telephone conference call.

5. During or after any preliminary hearing or conference, any party or the administrative law judge may suggest that the case is no longer appropriate for summary disposition. Following any argument requested by the parties, the administrative law judge may enter an order referring the case back to the formal adjudicatory process described in s. 120.57(1), in which event the parties shall proceed accordingly.

(b) Not later than 5 days prior to the final hearing, the parties shall furnish to each other copies of documentary evidence and lists of witnesses who may testify at the final hearing.

(c) All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, and to be represented by counsel or other qualified representative.



(d) The record in a case governed by this subsection shall consist only of:

1. All notices, pleadings, motions, and intermediate rulings.
2. Evidence received.
3. A statement of matters officially recognized.
4. Proffers of proof and objections and rulings thereon.
5. Matters placed on the record after an ex parte communication.
6. The written decision of the administrative law judge presiding at the final hearing.
7. The official transcript of the final hearing.

(e) The agency shall accurately and completely preserve all testimony in the proceeding and, upon request by any party, shall make a full or partial transcript available at no more than actual cost.

(f) The decision of the administrative law judge shall be rendered within 30 days after the conclusion of the final hearing or the filing of the transcript thereof, whichever is later. The administrative law judge's decision, which shall be final agency action subject to judicial review under s. 120.68, shall include the following:

1. Findings of fact based exclusively on the evidence of record and matters officially recognized.
2. Conclusions of law.
3. Imposition of a fine or penalty, if applicable.
4. Any other information required by law or rule to be contained in a final order.

History - (s. 21, ch. 96-159; s. 10, ch. 97-176; s. 11, ch. 2000-158; s. 10, ch. 2000-336.)



§120.595 FS | ATTORNEY'S FEES

(1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION 120.57(1). –

(a) The provisions of this subsection are supplemental to, and do not abrogate, other provisions allowing the award of fees or costs in administrative proceedings.

(b) The final order in a proceeding pursuant to s. 120.57(1) shall award reasonable costs and a reasonable attorney's fee to the prevailing party only where the nonprevailing adverse party has been determined by the administrative law judge to have participated in the proceeding for an improper purpose.

(c) In proceedings pursuant to s. 120.57(1), and upon motion, the administrative law judge shall determine whether any party participated in the proceeding for an improper purpose as defined by this subsection. In making such determination, the administrative law judge shall consider whether the nonprevailing adverse party has participated in two or more other such proceedings involving the same prevailing party and the same project as an adverse party and in which such two or more proceedings the nonprevailing adverse party did not establish either the factual or legal merits of its position, and shall consider whether the factual or legal position asserted in the instant proceeding would have been cognizable in the previous proceedings. In such event, it shall be rebuttably presumed that the nonprevailing adverse party participated in the pending proceeding for an improper purpose.

(d) In any proceeding in which the administrative law judge determines that a party participated in the proceeding for an improper purpose, the recommended order shall so designate and shall determine the award of costs and attorney's fees.

(e) For the purpose of this subsection:



1. "Improper purpose" means participation in a proceeding pursuant to s. 120.57(1) primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation, licensing, or securing the approval of an activity.
2. "Costs" has the same meaning as the costs allowed in civil actions in this state as provided in chapter 57.
3. "Nonprevailing adverse party" means a party that has failed to have substantially changed the outcome of the proposed or final agency action which is the subject of a proceeding. In the event that a proceeding results in any substantial modification or condition intended to resolve the matters raised in a party's petition, it shall be determined that the party having raised the issue addressed is not a nonprevailing adverse party. The recommended order shall state whether the change is substantial for purposes of this subsection. In no event shall the term "nonprevailing party" or "prevailing party" be deemed to include any party that has intervened in a previously existing proceeding to support the position of an agency.

(2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION 120.56(2). – If the appellate court or administrative law judge declares a proposed rule or portion of a proposed rule invalid pursuant to s. 120.56(2), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that its actions were substantially justified or special circumstances exist which would make the award unjust. An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency. If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney's fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(e). No award of attorney's fees as provided by this subsection shall exceed \$50,000.



(3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION 120.56(3) AND (5). – If the appellate court or administrative law judge declares a rule or portion of a rule invalid pursuant to s. 120.56(3) or (5), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that its actions were substantially justified or special circumstances exist which would make the award unjust. An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency. If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney's fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(e). No award of attorney's fees as provided by this subsection shall exceed \$50,000.

(4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION 120.56(4). –

(a) If the appellate court or administrative law judge determines that all or part of an agency statement violates s. 120.54(1)(a), or that the agency must immediately discontinue reliance on the statement and any substantially similar statement pursuant to s. 120.56(4)(f), a judgment or order shall be entered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that the statement is required by the Federal Government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds.

(b) Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3)(a), such notice shall automatically operate as a stay of proceedings pending rulemaking. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings under this paragraph remains in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. The administrative law judge shall award reasonable costs and reasonable attorney's fees accrued by the petitioner



prior to the date the notice was published, unless the agency proves to the administrative law judge that it did not know and should not have known that the statement was an unadopted rule. Attorneys' fees and costs under this paragraph and paragraph (a) shall be awarded only upon a finding that the agency received notice that the statement may constitute an unadopted rule at least 30 days before a petition under s. 120.56(4) was filed and that the agency failed to publish the required notice of rulemaking pursuant to s. 120.54(3) that addresses the statement within that 30-day period. Notice to the agency may be satisfied by its receipt of a copy of the s. 120.56(4) petition, a notice or other paper containing substantially the same information, or a petition filed pursuant to s. 120.54(7). An award of attorney's fees as provided by this paragraph may not exceed \$50,000.

(c) Notwithstanding the provisions of chapter 284, an award shall be paid from the budget entity of the secretary, executive director, or equivalent administrative officer of the agency, and the agency shall not be entitled to payment of an award or reimbursement for payment of an award under any provision of law.

(d) If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and attorney's fees against a party if the appellate court or administrative law judge determines that the party participated in the proceedings for an improper purpose as defined in paragraph (1)(e) or that the party or the party's attorney knew or should have known that a claim was not supported by the material facts necessary to establish the claim or would not be supported by the application of then-existing law to those material facts.

(5) APPEALS. — When there is an appeal, the court in its discretion may award reasonable attorney's fees and reasonable costs to the prevailing party if the court finds that the appeal was frivolous, meritless, or an abuse of the appellate process, or that the agency action which precipitated the appeal was a gross abuse of the agency's discretion. Upon review of agency action that precipitates an



appeal, if the court finds that the agency improperly rejected or modified findings of fact in a recommended order, the court shall award reasonable attorney's fees and reasonable costs to a prevailing appellant for the administrative proceeding and the appellate proceeding.

(6) OTHER SECTIONS NOT AFFECTED. - Other provisions, including ss. 57.105 and 57.111, authorize the award of attorney's fees and costs in administrative proceedings. Nothing in this section shall affect the availability of attorney's fees and costs as provided in those sections.

History - (s. 25, ch. 96-159; s. 11, ch. 97-176; s. 48, ch. 99-2; s. 6, ch. 2003-94; s. 13, ch. 2008-104; s. 3, ch. 2017-3.)



§120.60 FS | LICENSING

(1) Upon receipt of a license application, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. An agency may not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within this 30-day period. The agency may establish by rule the time period for submitting any additional information requested by the agency. For good cause shown, the agency shall grant a request for an extension of time for submitting the additional information. If the applicant believes the agency's request for additional information is not authorized by law or rule, the agency, at the applicant's request, shall proceed to process the application. An application is complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired. An application for a license must be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. The 90-day time period is tolled by the initiation of a proceeding under ss. 120.569 and 120.57. Any application for a license which is not approved or denied within the 90-day or shorter time period, within 15 days after conclusion of a public hearing held on the application, or within 45 days after a recommended order is submitted to the agency and the parties, whichever action and timeframe is latest and applicable, is considered approved unless the recommended order recommends that the agency deny the license. Subject to the satisfactory completion of an examination if required as a prerequisite to licensure, any license that is considered approved shall be issued and may include such reasonable conditions as are authorized by law. Any applicant for licensure seeking to claim licensure by default under this subsection shall notify the agency clerk of the licensing agency, in writing, of the intent to rely upon the default license provision of this subsection, and may not take any action based upon the default license until after receipt of such notice by the agency clerk.



(2) If an applicant seeks a license for an activity that is exempt from licensure, the agency shall notify the applicant and return any tendered application fee within 30 days after receipt of the original application.

(3) Each applicant shall be given written notice, personally or by mail, that the agency intends to grant or deny, or has granted or denied, the application for license. The notice must state with particularity the grounds or basis for the issuance or denial of the license, except when issuance is a ministerial act. Unless waived, a copy of the notice shall be delivered or mailed to each party's attorney of record and to each person who has made a written request for notice of agency action. Each notice must inform the recipient of the basis for the agency decision, inform the recipient of any administrative hearing pursuant to ss. 120.569 and 120.57 or judicial review pursuant to s. 120.68 which may be available, indicate the procedure that must be followed, and state the applicable time limits. The issuing agency shall certify the date the notice was mailed or delivered, and the notice and the certification must be filed with the agency clerk.

(4) When a licensee has made timely and sufficient application for the renewal of a license which does not automatically expire by statute, the existing license shall not expire until the application for renewal has been finally acted upon by the agency or, in case the application is denied or the terms of the license are limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(5) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the entry of a final order, the agency has served, by personal service or certified mail, an administrative complaint which affords reasonable notice to the licensee of facts or conduct which warrant the intended action and unless the licensee has been given an adequate opportunity to request a proceeding pursuant to ss. 120.569 and 120.57. When personal service cannot be made and the certified mail notice is returned undelivered, the agency shall cause a short, plain notice to the licensee to be published once each week for 4 consecutive weeks in a newspaper published in the county of the licensee's last known address as it appears on the records of the agency. If no newspaper is published in that county, the notice may be



published in a newspaper of general circulation in that county.

(6) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the agency may take such action by any procedure that is fair under the circumstances if:

(a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;

(b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and

(c) The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57 shall also be promptly instituted and acted upon.

(7) No agency shall include as a condition of approval of any license any provision that is based upon a statement, policy, or guideline of another agency unless the statement, policy, or guideline is within the jurisdiction of the other agency. The other agency shall identify for the licensing agency the specific legal authority for each such statement, policy, or guideline. The licensing agency must provide the licensee with an opportunity to challenge the condition as invalid. If the licensing agency bases a condition of approval or denial of the license upon the statement, policy, or guideline of the other agency, any party to an administrative proceeding that arises from the approval with conditions or denial of the license may require the other agency to join as a party in determining the validity of the condition.



History - (s. 1, ch. 74-310; s. 10, ch. 76-131; s. 1, ch. 77-174; ss. 6, 9, ch. 77-453; s. 57, ch. 78-95; s. 8, ch. 78-425; s. 1, ch. 79-142; s. 6, ch. 79-299; s. 2, ch. 81-180; s. 6, ch. 84-203; s. 2, ch. 84-265; s. 1, ch. 85-82; s. 14, ch. 90-51; s. 762, ch. 95-147; s. 26, ch. 96-159; s. 326, ch. 96-410; s. 12, ch. 97-176; s. 7, ch. 2003-94; ss. 4, 5, ch. 2010-279; HJR 9-A, 2010 Special Session A; s. 10, ch. 2012-212.)



§120.62 FS | AGENCY INVESTIGATIONS

(1) Every person who responds to a request or demand by any agency or representative thereof for written data or an oral statement shall be entitled to a transcript or recording of his or her oral statement at no more than cost.

(2) Any person compelled to appear, or who appears voluntarily, before any presiding officer or agency in an investigation or in any agency proceeding has the right, at his or her own expense, to be accompanied, represented, and advised by counsel or by other qualified representatives.

History - (s. 1, ch. 74-310; s. 763, ch. 95-147; s. 28, ch. 96-159.)



§120.63 FS | EXEMPTION FROM ACT

(1) Upon application of any agency, the Administration Commission may exempt any process or proceeding governed by this act from one or more requirements of this act:

(a) When the agency head has certified that the requirement would conflict with any provision of federal law or rules with which the agency must comply;

(b) In order to permit persons in the state to receive tax benefits or federal funds under any federal law; or

(c) When the commission has found that conformity with the requirements of the part or parts of this act for which exemption is sought would be so inconvenient or impractical as to defeat the purpose of the agency proceeding involved or the purpose of this act and would not be in the public interest in light of the nature of the intended action and the enabling act or other laws affecting the agency.

(2) The commission may not exempt an agency from any requirement of this act pursuant to this section until it establishes alternative procedures to achieve the agency's purpose which shall be consistent, insofar as possible, with the intent and purpose of the act.

(a) Prior to the granting of any exemption authorized by this section, the commission shall hold a public hearing after notice given as provided in s. 120.525. Upon the conclusion of the hearing, the commission, through the Executive Office of the Governor, shall issue an order specifically granting or denying the exemption and specifying any processes or proceedings exempted and the extent of the exemption; transmit to the committee and to the Department of State a copy of the petition, a certified copy of the order granting or denying the petition, and a copy of any alternative procedures prescribed; and give notice of the petition and the commission's response in the Florida Administrative Register.



(b) An exemption and any alternative procedure prescribed shall terminate 90 days following adjournment sine die of the then-current or next regular legislative session after issuance of the exemption order, or upon the effective date of any subsequent legislation incorporating the exemption or any partial exemption related thereto, whichever is earlier. The exemption granted by the commission shall be renewable upon the same or similar facts not more than once. Such renewal shall terminate as would an original exemption.

History - (s. 1, ch. 74-310; s. 11, ch. 76-131; s. 1, ch. 77-53; s. 8, ch. 77-453; s. 87, ch. 79-190; s. 7, ch. 79-299; s. 70, ch. 79-400; s. 58, ch. 81-259; s. 29, ch. 96-159; s. 10, ch. 2013-14.)



§120.65 FS | ADMINISTRATIVE LAW JUDGES

(1) The Division of Administrative Hearings within the Department of Management Services shall be headed by a director who shall be appointed by the Administration Commission and confirmed by the Senate. The director, who shall also serve as the chief administrative law judge, and any deputy chief administrative law judge must possess the same minimum qualifications as the administrative law judges employed by the division. The Deputy Chief Judge of Compensation Claims must possess the minimum qualifications established in s. 440.45(2) and shall report to the director. The division shall be a separate budget entity, and the director shall be its agency head for all purposes. The Department of Management Services shall provide administrative support and service to the division to the extent requested by the director. The division shall not be subject to control, supervision, or direction by the Department of Management Services in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

(2) The director has the right to appeal actions by the Executive Office of the Governor that affect amendments to the division's approved operating budget or any personnel actions pursuant to chapter 216 to the Administration Commission, which shall decide such issue by majority vote. The appropriations committees may advise the Administration Commission on the issue. If the President of the Senate and the Speaker of the House of Representatives object in writing to the effects of the appeal, the appeal may be affirmed by the affirmative vote of two-thirds of the commission members present.

(3) Each state agency as defined in chapter 216 and each political subdivision shall make its facilities available, at a time convenient to the provider, for use by the division in conducting proceedings pursuant to this chapter.

(4) The division shall employ administrative law judges to conduct hearings required by this chapter or other law. Any person employed by the division as an administrative law judge must have been a member of The Florida Bar in good standing for the preceding 5 years.



(5) If the division cannot furnish a division administrative law judge promptly in response to an agency request, the director shall designate in writing a qualified full-time employee of an agency other than the requesting agency to conduct the hearing. The director shall have the discretion to designate such a hearing officer who is located in that part of the state where the parties and witnesses reside.

(6) The division is authorized to provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this section.

(7) Rules promulgated by the division may authorize any reasonable sanctions except contempt for violation of the rules of the division or failure to comply with a reasonable order issued by an administrative law judge, which is not under judicial review.

(8) Not later than February 1 of each year, the division shall issue a written report to the Administrative Procedures Committee and the Administration Commission, including at least the following information:

(a) A summary of the extent and effect of agencies' utilization of administrative law judges, court reporters, and other personnel in proceedings under this chapter.

(b) Recommendations for change or improvement in the Administrative Procedure Act or any agency's practice or policy with respect thereto.

(c) Recommendations as to those types of cases or disputes which should be conducted under the summary hearing process described in s. 120.574.

(d) A report regarding each agency's compliance with the filing requirement in s. 120.57(1)(m).



(9) The division shall be reimbursed for administrative law judge services and travel expenses by the following entities: water management districts, regional planning councils, school districts, community colleges, the Division of Florida Colleges, state universities, the Board of Governors of the State University System, the State Board of Education, the Florida School for the Deaf and the Blind, and the Commission for Independent Education. These entities shall contract with the division to establish a contract rate for services and provisions for reimbursement of administrative law judge travel expenses and video teleconferencing expenses attributable to hearings conducted on behalf of these entities. The contract rate must be based on a total-cost-recovery methodology.

History - (s. 1, ch. 74-310; s. 9, ch. 75-191; s. 14, ch. 76-131; s. 9, ch. 78-425; s. 46, ch. 79-190; s. 1, ch. 86-297; s. 46, ch. 87-6; s. 25, ch. 87-101; s. 54, ch. 88-1; s. 30, ch. 88-277; s. 51, ch. 92-279; s. 23, ch. 92-315; s. 55, ch. 92-326; s. 764, ch. 95-147; s. 31, ch. 96-159; s. 13, ch. 97-176; s. 38, ch. 2000-371; s. 4, ch. 2001-91; s. 1, ch. 2004-247; s. 8, ch. 2006-82; s. 14, ch. 2007-217; s. 8, ch. 2009-228; s. 8, ch. 2013-18.)



§120.651 FS | DESIGNATION OF TWO ADMINISTRATIVE LAW JUDGES TO PRESIDE OVER ACTIONS INVOLVING DEPARTMENT OR BOARDS

The Division of Administrative Hearings shall designate at least two administrative law judges who shall specifically preside over actions involving the Department of Health or boards within the Department of Health. Each designated administrative law judge must be a member of The Florida Bar in good standing and must have legal, managerial, or clinical experience in issues related to health care or have attained board certification in health care law from The Florida Bar.

History - (s. 32, ch. 2003-416.)



§120.655 FS | WITHHOLDING FUNDS TO PAY FOR ADMINISTRATIVE LAW JUDGE SERVICES TO SCHOOL BOARDS

If a district school board fails to make a timely payment for the services provided by an administrative law judge of the Division of Administrative Hearings as provided annually in the General Appropriations Act, the Commissioner of Education shall withhold, from any general revenue funds the district is eligible to receive, an amount sufficient to pay for the administrative law judge's services. The commissioner shall transfer the amount withheld to the Division of Administrative Hearings in payment of such services.

History - (s. 1, ch. 92-121; s. 32, ch. 96-159.)



§120.66 FS | EX PARTE COMMUNICATIONS

(1) In any proceeding under ss. 120.569 and 120.57, no ex parte communication relative to the merits, threat, or offer of reward shall be made to the agency head, after the agency head has received a recommended order, or to the presiding officer by:

(a) An agency head or member of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter.

(b) A party to the proceeding, the party's authorized representative or counsel, or any person who, directly or indirectly, would have a substantial interest in the proposed agency action.

Nothing in this subsection shall apply to advisory staff members who do not testify on behalf of the agency in the proceeding or to any rulemaking proceedings under s. 120.54.

(2) A presiding officer, including an agency head or designee, who is involved in the decisional process and who receives an ex parte communication in violation of subsection (1) shall place on the record of the pending matter all written communications received, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall also advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, if such party requests the opportunity for rebuttal within 10 days after notice of such communication. The presiding officer may, if necessary to eliminate the effect of an ex parte communication, withdraw from the proceeding, in which case the entity that appointed the presiding officer shall assign a successor.

(3) Any person who makes an ex parte communication prohibited by subsection (1), and any presiding officer, including an agency head or designee, who fails to place in the record any such communication, is in violation of this act and may be assessed a civil penalty not to exceed \$500 or be subjected to other disciplinary action.

History.—s. 1, ch. 74-310; s. 10, ch. 75-191; s. 12, ch. 76-131; s. 1, ch. 77-174; s. 10, ch. 78-425; s. 765, ch. 95-147; s. 33, ch. 96-159; s. 14, ch. 97-176.



§120.665 FS | DISQUALIFICATION OF AGENCY PERSONNEL

(1) Notwithstanding the provisions of s. 112.3143, any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding. If the disqualified individual was appointed, the appointing power may appoint a substitute to serve in the matter from which the individual is disqualified. If the individual is an elected official, the Governor may appoint a substitute to serve in the matter from which the individual is disqualified. However, if a quorum remains after the individual is disqualified, it shall not be necessary to appoint a substitute.

(2) Any agency action taken by a duly appointed substitute for a disqualified individual shall be as conclusive and effective as if agency action had been taken by the agency as it was constituted prior to any substitution.

History - (s. 1, ch. 74-310; s. 12, ch. 78-425; s. 2, ch. 83-329; s. 767, ch. 95-147; s. 34, ch. 96-159; s. 18, ch. 2013-36.)

Note - (Former s. 120.71.)



§120.68 FS | JUDICIAL REVIEW

(1)

(a) A party who is adversely affected by final agency action is entitled to judicial review.

(b) A preliminary, procedural, or intermediate order of the agency or of an administrative law judge of the Division of Administrative Hearings is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2)

(a) Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law. All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the rendition of the order being appealed. If the appeal is of an order rendered in a proceeding initiated under s. 120.56, the agency whose rule is being challenged shall transmit a copy of the notice of appeal to the committee.

(b) When proceedings under this chapter are consolidated for final hearing and the parties to the consolidated proceeding seek review of final or interlocutory orders in more than one district court of appeal, the courts of appeal are authorized to transfer and consolidate the review proceedings. The court may transfer such appellate proceedings on its own motion, upon motion of a party to one of the appellate proceedings, or by stipulation of the parties to the appellate proceedings. In determining whether to transfer a proceeding, the court may consider such factors as the interrelationship of the parties and the proceedings, the desirability of avoiding inconsistent results in related matters, judicial economy, and the burden on the parties of reproducing the record for use in multiple appellate courts.

(3) The filing of the petition does not itself stay enforcement of the agency decision, but if the agency decision has the effect of suspending or revoking a license, supersedeas shall



be granted as a matter of right upon such conditions as are reasonable, unless the court, upon petition of the agency, determines that a supersedeas would constitute a probable danger to the health, safety, or welfare of the state. The agency also may grant a stay upon appropriate terms, but, whether or not the action has the effect of suspending or revoking a license, a petition to the agency for a stay is not a prerequisite to a petition to the court for supersedeas. In any event the court shall specify the conditions, if any, upon which the stay or supersedeas is granted.

(4) Judicial review of any agency action shall be confined to the record transmitted and any additions made thereto in accordance with paragraph (7) (a).

(5) The record for judicial review shall be compiled in accordance with the Florida Rules of Appellate Procedure.

(6)

(a) The reviewing court's decision may be mandatory, prohibitory, or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may:

1. Order agency action required by law; order agency exercise of discretion when required by law; set aside agency action; remand the case for further agency proceedings; or decide the rights, privileges, obligations, requirements, or procedures at issue between the parties; and
2. Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

(b) If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(7) The court shall remand a case to the agency for further proceedings consistent with the court's decision or set aside agency action, as appropriate, when it finds that:



(a) There has been no hearing prior to agency action and the reviewing court finds that the validity of the action depends upon disputed facts;

(b) The agency's action depends on any finding of fact that is not supported by competent, substantial evidence in the record of a hearing conducted pursuant to ss. 120.569 and 120.57; however, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact;

(c) The fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure;

(d) The agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action; or

(e) The agency's exercise of discretion was:

1. Outside the range of discretion delegated to the agency by law;

2. Inconsistent with agency rule;

3. Inconsistent with officially stated agency policy or a prior agency practice, if deviation therefrom is not explained by the agency; or

4. Otherwise in violation of a constitutional or statutory provision; but the court shall not substitute its judgment for that of the agency on an issue of discretion.

(8) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency's action.



(9) A petition challenging an agency rule as an invalid exercise of delegated legislative authority shall not be instituted pursuant to this section, except to review an order entered pursuant to a proceeding under s. 120.56 or s. 120.57(1)(e)1. or (2)(b) or an agency's findings of immediate danger, necessity, and procedural fairness prerequisite to the adoption of an emergency rule pursuant to s. 120.54(4), unless the sole issue presented by the petition is the constitutionality of a rule and there are no disputed issues of fact.

(10) If an administrative law judge's final order depends on any fact found by the administrative law judge, the court shall not substitute its judgment for that of the administrative law judge as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside the final order of the administrative law judge or remand the case to the administrative law judge, if it finds that the final order depends on any finding of fact that is not supported by competent substantial evidence in the record of the proceeding.

History.—s. 1, ch. 74-310; s. 13, ch. 76-131; s. 38, ch. 77-104; s. 1, ch. 77-174; s. 11, ch. 78-425; s. 4, ch. 84-173; s. 7, ch. 87-385; s. 36, ch. 90-302; s. 6, ch. 91-30; s. 1, ch. 91-191; s. 10, ch. 92-166; s. 35, ch. 96-159; s. 15, ch. 97-176; s. 8, ch. 2003-94; s. 5, ch. 2016-116.



§120.69 FS | ENFORCEMENT OF AGENCY ACTION

(1) Except as otherwise provided by statute:

(a) Any agency may seek enforcement of an action by filing a petition for enforcement, as provided in this section, in the circuit court where the subject matter of the enforcement is located.

(b) A petition for enforcement of any agency action may be filed by any substantially interested person who is a resident of the state. However, no such action may be commenced:

1. Prior to 60 days after the petitioner has given notice of the violation of the agency action to the head of the agency concerned, the Attorney General, and any alleged violator of the agency action.

2. If an agency has filed, and is diligently prosecuting, a petition for enforcement.

(c) A petition for enforcement filed by a nongovernmental person shall be in the name of the State of Florida on the relation of the petitioner, and the doctrines of res judicata and collateral estoppel shall apply.

(d) In an action brought under paragraph (b), the agency whose action is sought to be enforced, if not a party, may intervene as a matter of right.

(2) A petition for enforcement may request declaratory relief; temporary or permanent equitable relief; any fine, forfeiture, penalty, or other remedy provided by statute; any combination of the foregoing; or, in the absence of any other specific statutory authority, a fine not to exceed \$1,000.

(3) After the court has rendered judgment on a petition for enforcement, no other petition shall be filed or adjudicated against the same agency action, on the basis of the same transaction or occurrence, unless expressly authorized on remand. The doctrines of res judicata and collateral estoppel shall apply, and the court shall make such orders as are necessary to avoid multiplicity of actions.

(4) In all enforcement proceedings:



(a) If enforcement depends on any facts other than those appearing in the record, the court may ascertain such facts under procedures set forth in s. 120.68(7)(a).

(b) If one or more petitions for enforcement and a petition for review involving the same agency action are pending at the same time, the court considering the review petition may order all such actions transferred to and consolidated in one court. Each party shall be under an affirmative duty to notify the court when it becomes aware of multiple proceedings.

(c) Should any party willfully fail to comply with an order of the court, the court shall punish that party in accordance with the law applicable to contempt committed by a person in the trial of any other action.

(5) In any enforcement proceeding the respondent may assert as a defense the invalidity of any relevant statute, the inapplicability of the administrative determination to respondent, compliance by the respondent, the inappropriateness of the remedy sought by the agency, or any combination of the foregoing. In addition, if the petition for enforcement is filed during the time within which the respondent could petition for judicial review of the agency action, the respondent may assert the invalidity of the agency action.

(6) Notwithstanding any other provision of this section, upon receipt of evidence that an alleged violation of an agency's action presents an imminent and substantial threat to the public health, safety, or welfare, the agency may bring suit for immediate temporary relief in an appropriate circuit court, and the granting of such temporary relief shall not have res judicata or collateral estoppel effect as to further relief sought under a petition for enforcement relating to the same violation.

(7) In any final order on a petition for enforcement the court may award to the prevailing party all or part of the costs of litigation and reasonable attorney's fees and expert witness fees, whenever the court determines that such an award is appropriate.

History - (s. 1, ch. 74-310; s. 766, ch. 95-147; s. 36, ch. 96-159.)



§120.695 FS | NOTICE OF NONCOMPLIANCE; DESIGNATION OF MINOR VIOLATION OF RULES

(1) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established by the Legislature. Fines and other penalties may be provided in order to assure compliance; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance with an agency's rules. It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it.

(2)

(a) Each agency shall issue a notice of noncompliance as a first response to a minor violation of a rule. A "notice of noncompliance" is a notification by the agency charged with enforcing the rule issued to the person or business subject to the rule. A notice of noncompliance may not be accompanied with a fine or other disciplinary penalty. It must identify the specific rule that is being violated, provide information on how to comply with the rule, and specify a reasonable time for the violator to comply with the rule. A rule is agency action that regulates a business, occupation, or profession, or regulates a person operating a business, occupation, or profession, and that, if not complied with, may result in a disciplinary penalty.

(b) Each agency shall review all of its rules and designate those for which a violation would be a minor violation and for which a notice of noncompliance must be the first enforcement action taken against a person or business subject to regulation. A violation of a rule is a minor violation if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm.

(c)



1. No later than June 30, 2017, and after such date within 3 months after any request of the rules ombudsman in the Executive Office of the Governor, each agency shall review its rules and certify to the President of the Senate, the Speaker of the House of Representatives, the committee, and the rules ombudsman those rules that have been designated as rules the violation of which would be a minor violation under paragraph (b), consistent with the legislative intent stated in subsection (1).

2. Beginning July 1, 2017, each agency shall:

a. Publish all rules that the agency has designated as rules the violation of which would be a minor violation, either as a complete list on the agency's website or by incorporation of the designations in the agency's disciplinary guidelines adopted as a rule.

b. Ensure that all investigative and enforcement personnel are knowledgeable about the agency's designations under this section.

3. For each rule filed for adoption, the agency head shall certify whether any part of the rule is designated as a rule the violation of which would be a minor violation and shall update the listing required by sub-subparagraph 2.a.

(d) The Governor or the Governor and Cabinet, as appropriate, may evaluate the review and designation effects of each agency subject to the direction and supervision of such authority and may direct a different designation than that applied by such agency.

(e) Notwithstanding s. 120.52(1)(a), this section does not apply to:

1. The **Department of Corrections**;
2. Educational units;
3. The regulation of law enforcement personnel; or
4. The regulation of teachers.



(f) Designation pursuant to this section is not subject to challenge under this chapter.

History - (s. 1, ch. 95-402; s. 6, ch. 2016-116.)



§120.72 FS | LEGISLATIVE INTENT; REFERENCES TO CHAPTER 120 OR PORTIONS THEREOF

Unless expressly provided otherwise, a reference in any section of the Florida Statutes to chapter 120 or to any section or sections or portion of a section of chapter 120 includes, and shall be understood as including, all subsequent amendments to chapter 120 or to the referenced section or sections or portions of a section.

History - (s. 3, ch. 74-310; s. 1, ch. 76-207; s. 1, ch. 77-174; s. 57, ch. 78-95; s. 13, ch. 78-425; s. 38, ch. 96-159.)



§120.73 FS | CIRCUIT COURT PROCEEDINGS; DECLARATORY JUDGMENTS

Nothing in this chapter shall be construed to repeal any provision of the Florida Statutes which grants the right to a proceeding in the circuit court in lieu of an administrative hearing or to divest the circuit courts of jurisdiction to render declaratory judgments under the provisions of chapter 86.

History - (s. 11, ch. 75-191; s. 14, ch. 78-425.)



§120.74 FS | AGENCY ANNUAL RELEMAKING AND REGULATORY PLAN

(1) REGULATORY PLAN. — By October 1 of each year, each agency shall prepare a regulatory plan.

(a) The plan must include a listing of each law enacted or amended during the previous 12 months which creates or modifies the duties or authority of the agency. If the Governor or the Attorney General provides a letter to the committee stating that a law affects all or most agencies, the agency may exclude the law from its plan. For each law listed by an agency under this paragraph, the plan must state:

1. Whether the agency must adopt rules to implement the law.

2. If rulemaking is necessary to implement the law:

a. Whether a notice of rule development has been published and, if so, the citation to such notice in the Florida Administrative Register.

b. The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a).

3. If rulemaking is not necessary to implement the law, a concise written explanation of the reasons why the law may be implemented without rulemaking.

(b) The plan must also include a listing of each law not otherwise listed pursuant to paragraph (a) which the agency expects to implement by rulemaking before the following July 1, except emergency rulemaking. For each law listed under this paragraph, the plan must state whether the rulemaking is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules.

(c) The plan must include any desired update to the prior year's regulatory plan or supplement published pursuant to subsection (7). If, in a prior year, a law was identified under this paragraph or under subparagraph (a)1. as a law requiring rulemaking to implement but a notice of proposed rule has not been published:



1. The agency shall identify and again list such law, noting the applicable notice of rule development by citation to the Florida Administrative Register; or

2. If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency shall identify such law, reference the citation to the applicable notice of rule development in the Florida Administrative Register, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

(d) The plan must include a certification executed on behalf of the agency by both the agency head, or, if the agency head is a collegial body, the presiding officer; and the individual acting as principal legal advisor to the agency head. The certification must:

1. Verify that the persons executing the certification have reviewed the plan.

2. Verify that the agency regularly reviews all of its rules and identify the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.

(2) PUBLICATION AND DELIVERY TO THE COMMITTEE. —

(a) By October 1 of each year, each agency shall:

1. Publish its regulatory plan on its website or on another state website established for publication of administrative law records. A clearly labeled hyperlink to the current plan must be included on the agency's primary website homepage.

2. Electronically deliver to the committee a copy of the certification required in paragraph (1)(d).

3. Publish in the Florida Administrative Register a notice identifying the date of publication of the agency's regulatory plan. The notice must include a hyperlink or website address providing direct access to the published plan.



(b) To satisfy the requirements of paragraph (a), a board established under s. 20.165(4), and any other board or commission receiving administrative support from the Department of Business and Professional Regulation, may coordinate with the Department of Business and Professional Regulation, and a board established under s. 20.43(3)(g) may coordinate with the Department of Health, for inclusion of the board's or commission's plan and notice of publication in the coordinating department's plan and notice and for the delivery of the required documentation to the committee.

(c) A regulatory plan prepared under subsection (1) and any regulatory plan published under this chapter before July 1, 2014, shall be maintained at an active website for 10 years after the date of initial publication on the agency's website or another state website.

(3) DEPARTMENT REVIEW OF BOARD PLAN. – By October 15 of each year:

(a) For each board established under s. 20.165(4) and any other board or commission receiving administrative support from the Department of Business and Professional Regulation, the Department of Business and Professional Regulation shall file with the committee a certification that the department has reviewed each board's and commission's regulatory plan. A certification may relate to more than one board or commission.

(b) For each board established under s. 20.43(3)(g), the Department of Health shall file with the committee a certification that the department has reviewed the board's regulatory plan. A certification may relate to more than one board.

(4) DEADLINE FOR RULE DEVELOPMENT. – By November 1 of each year, each agency shall publish a notice of rule development under s. 120.54(2) for each law identified in the agency's regulatory plan pursuant to subparagraph (1)(a)1. for which rulemaking is necessary to implement but for which the agency did not report the publication of a notice of rule development under subparagraph (1)(a)2.



(5) DEADLINE TO PUBLISH PROPOSED RULE. – For each law for which implementing rulemaking is necessary as identified in the agency’s plan pursuant to subparagraph (1)(a)1. or subparagraph (1)(c)1., the agency shall publish a notice of proposed rule pursuant to s. 120.54(3)(a) by April 1 of the year following the deadline for the regulatory plan. This deadline may be extended if the agency publishes a notice of extension in the Florida Administrative Register identifying each rulemaking proceeding for which an extension is being noticed by citation to the applicable notice of rule development as published in the Florida Administrative Register. The agency shall include a concise statement in the notice of extension identifying any issues that are causing the delay in rulemaking. An extension shall expire on October 1 after the April 1 deadline, provided that the regulatory plan due on October 1 may further extend the rulemaking proceeding by identification pursuant to subparagraph (1)(c)1. or conclude the rulemaking proceeding by identification pursuant to subparagraph (1)(c)2. A published regulatory plan may be corrected at any time to accomplish the purpose of extending or concluding an affected rulemaking proceeding and is deemed corrected as of the October 1 due date. Upon publication of a correction, the agency shall publish in the Florida Administrative Register a notice of the date of the correction identifying the affected rulemaking proceeding by applicable citation to the Florida Administrative Register.

(6) CERTIFICATIONS. – Each agency shall file a certification with the committee upon compliance with subsection (4) and upon filing a notice under subsection (5) of either a deadline extension or a regulatory plan correction. A certification may relate to more than one notice or contemporaneous act. The date or dates of compliance shall be noted in each certification.



(7) SUPPLEMENTING THE REGULATORY PLAN. – After publication of the regulatory plan, the agency shall supplement the plan within 30 days after a bill becomes a law if the law is enacted before the next regular session of the Legislature and the law substantively modifies the agency’s specifically delegated legal duties, unless the law affects all or most state agencies as identified by letter to the committee from the Governor or the Attorney General. The supplement must include the information required in paragraph (1)(a) and shall be published as required in subsection (2), but no certification or delivery to the committee is required. The agency shall publish in the Florida Administrative Register notice of publication of the supplement, and include a hyperlink on its website or web address for direct access to the published supplement. For each law reported in the supplement, if rulemaking is necessary to implement the law, the agency shall publish a notice of rule development by the later of the date provided in subsection (4) or 60 days after the bill becomes a law, and a notice of proposed rule shall be published by the later of the date provided in subsection (5) or 120 days after the bill becomes a law. The proposed rule deadline may be extended to the following October 1 by notice as provided in subsection (5). If such proposed rule has not been filed by October 1, a law included in a supplement shall also be included in the next annual plan pursuant to subsection (1).

(8) FAILURE TO COMPLY. – If an agency fails to comply with a requirement of paragraph (2)(a) or subsection (5), within 15 days after written demand from the committee or from the chair of any other legislative committee, the agency shall deliver a written explanation of the reasons for noncompliance to the committee, the President of the Senate, the Speaker of the House of Representatives, and the chair of any legislative committee requesting the explanation of the reasons for noncompliance.

(9) EDUCATIONAL UNITS. – This section does not apply to educational units.

History - s. 46, ch. 96-399; s. 16, ch. 97-176; s. 9, ch. 2006-82; s. 15, ch. 2008-104; s. 8, ch. 2008-149; s. 4, ch. 2011-225; s. 20, ch. 2014-17; s. 2, ch. 2014-39; s. 2, ch. 2015-162.



§120.80 FS | EXCEPTIONS AND SPECIAL REQUIREMENTS; AGENCIES

(1) DIVISION OF ADMINISTRATIVE HEARINGS. –

(a) Division as a party. – Notwithstanding s. 120.57(1)(a), a hearing in which the division is a party may not be conducted by an administrative law judge assigned by the division. An attorney assigned by the Administration Commission shall be the hearing officer.

(b) Workers' compensation. – Notwithstanding s. 120.52(1), a judge of compensation claims, in adjudicating matters under chapter 440, is not an agency or part of an agency for purposes of this chapter.

(2) DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES. –

(a) Marketing orders under chapter 527, chapter 573, or chapter 601 are not rules.

(b) Notwithstanding s. 120.57(1)(a), hearings held by the Department of Agriculture and Consumer Services pursuant to chapter 601 need not be conducted by an administrative law judge assigned by the division.

(3) OFFICE OF FINANCIAL REGULATION. –

(a) Notwithstanding s. 120.60(1), in proceedings for the issuance, denial, renewal, or amendment of a license or approval of a merger pursuant to title XXXVIII:

1.

a. The Office of Financial Regulation of the Financial Services Commission shall have published in the Florida Administrative Register notice of the application within 21 days after receipt.

b. Within 21 days after publication of notice, any person may request a hearing. Failure to request a hearing within 21 days after notice constitutes a waiver of any right to a hearing. The Office of Financial Regulation or an applicant may request a hearing at any time prior to the issuance of a final order. Hearings shall be conducted pursuant to ss. 120.569 and 120.57, except that the Financial



Services Commission shall by rule provide for participation by the general public.

2. Should a hearing be requested as provided by sub-subparagraph 1.b., the applicant or licensee shall publish at its own cost a notice of the hearing in a newspaper of general circulation in the area affected by the application. The Financial Services Commission may by rule specify the format and size of the notice.

3. Notwithstanding s. 120.60(1), and except as provided in subparagraph 4., an application for license for a new bank, new trust company, new credit union, new savings and loan association, or new licensed family trust company must be approved or denied within 180 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions. An application for such a license or for acquisition of such control which is not approved or denied within the 180-day period or within 30 days after conclusion of a public hearing on the application, whichever is later, shall be deemed approved subject to the satisfactory completion of conditions required by statute as a prerequisite to license and approval of insurance of accounts for a new bank, a new savings and loan association, a new credit union, or a new licensed family trust company by the appropriate insurer.

4. In the case of an application for license to establish a new bank, trust company, or capital stock savings association in which a foreign national proposes to own or control 10 percent or more of any class of voting securities, and in the case of an application by a foreign national for approval to acquire control of a bank, trust company, or capital stock savings association, the Office of Financial Regulation shall request that a public hearing be conducted pursuant to ss. 120.569 and 120.57. Notice of such hearing shall be published by the applicant as provided in subparagraph 2. The failure of such foreign national to appear personally at the hearing shall



be grounds for denial of the application. Notwithstanding s. 120.60(1) and subparagraph 3., every application involving a foreign national shall be approved or denied within 1 year after receipt of the original application or any timely requested additional information or the correction of any errors or omissions, or within 30 days after the conclusion of the public hearing on the application, whichever is later.

(b) In any application for a license or merger pursuant to title XXXVIII which is referred by the agency to the division for hearing, the administrative law judge shall complete and submit to the agency and to all parties a written report consisting of findings of fact and rulings on evidentiary matters. The agency shall allow each party at least 10 days in which to submit written exceptions to the report.

(4) DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION. –

(a) Business regulation. – The Division of Pari-mutuel Wagering is exempt from the hearing and notice requirements of ss. 120.569 and 120.57(1)(a), but only for stewards, judges, and boards of judges when the hearing is to be held for the purpose of the imposition of fines or suspensions as provided by rules of the Division of Pari-mutuel Wagering, but not for revocations, and only upon violations of subparagraphs 1.-6. The Division of Pari-mutuel Wagering shall adopt rules establishing alternative procedures, including a hearing upon reasonable notice, for the following violations:

1. Horse riding, harness riding, greyhound interference, and jai alai game actions in violation of chapter 550.

2. Application and usage of drugs and medication to horses, greyhounds, and jai alai players in violation of chapter 550.

3. Maintaining or possessing any device which could be used for the injection or other infusion of a prohibited drug to horses, greyhounds, and jai alai players in violation of chapter 550.



4. Suspensions under reciprocity agreements between the Division of Pari-mutuel Wagering and regulatory agencies of other states.

5. Assault or other crimes of violence on premises licensed for pari-mutuel wagering.

6. Prearranging the outcome of any race or game.

(b) Professional regulation. – Notwithstanding s. 120.57(1)(a), formal hearings may not be conducted by the Secretary of Business and Professional Regulation or a board or member of a board within the Department of Business and Professional Regulation for matters relating to the regulation of professions, as defined by chapter 455.

(5) FLORIDA LAND AND WATER ADJUDICATORY COMMISSION. – Notwithstanding the provisions of s. 120.57(1)(a), when the Florida Land and Water Adjudicatory Commission receives a notice of appeal pursuant to s. 380.07, the commission shall notify the division within 60 days after receipt of the notice of appeal if the commission elects to request the assignment of an administrative law judge.

(6) DEPARTMENT OF LAW ENFORCEMENT. – Law enforcement policies and procedures of the Department of Law Enforcement which relate to the following are not rules as defined by this chapter:

(a) The collection, management, and dissemination of active criminal intelligence information and active criminal investigative information; management of criminal investigations; and management of undercover investigations and the selection, assignment, and fictitious identity of undercover personnel.

(b) The recruitment, management, identity, and remuneration of confidential informants or sources.

(c) Surveillance techniques, the selection of surveillance personnel, and electronic surveillance, including court-ordered and consensual interceptions of communication conducted pursuant to chapter 934.

(d) The safety and release of hostages.



(e) The provision of security and protection to public figures.

(f) The protection of witnesses.

(7) DEPARTMENT OF CHILDREN AND FAMILIES. – Notwithstanding s. 120.57(1)(a), hearings conducted within the Department of Children and Families in the execution of those social and economic programs administered by the former Division of Family Services of the former Department of Health and Rehabilitative Services prior to the reorganization effected by chapter 75-48, Laws of Florida, need not be conducted by an administrative law judge assigned by the division.

(8) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES. –

(a) Driver licenses. –

1. Notwithstanding s. 120.57(1)(a), hearings regarding driver licensing pursuant to chapter 322 need not be conducted by an administrative law judge assigned by the division.

2. Notwithstanding s. 120.60(5), cancellation, suspension, or revocation of a driver license shall be by personal delivery to the licensee or by first-class mail as provided in s. 322.251.

(b) Wrecker operators. – Notwithstanding s. 120.57(1)(a), hearings held by the Division of the Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles to deny, suspend, or remove a wrecker operator from participating in the wrecker rotation system established by s. 321.051 need not be conducted by an administrative law judge assigned by the division. These hearings shall be held by a hearing officer appointed by the director of the Division of the Florida Highway Patrol.

(9) OFFICE OF INSURANCE REGULATION. – Notwithstanding s. 120.60(1), every application for a certificate of authority as required by s. 624.401 shall be approved or denied within 180 days after receipt of the original application. Any application for a certificate of authority which is not approved or denied within the 180-day period, or within 30 days after conclusion of a public hearing held on the application, shall be deemed approved, subject to the



satisfactory completion of conditions required by statute as a prerequisite to licensure.

(10) DEPARTMENT OF ECONOMIC OPPORTUNITY. –

(a) Notwithstanding s. 120.54, the rulemaking provisions of this chapter do not apply to reemployment assistance appeals referees.

(b) Notwithstanding s. 120.54(5), the uniform rules of procedure do not apply to appeal proceedings conducted under chapter 443 by the Reemployment Assistance Appeals Commission, special deputies, or reemployment assistance appeals referees.

(c) Notwithstanding s. 120.57(1)(a), hearings under chapter 443 may not be conducted by an administrative law judge assigned by the division, but instead shall be conducted by the Reemployment Assistance Appeals Commission in reemployment assistance appeals, reemployment assistance appeals referees, and the Department of Economic Opportunity or its special deputies under s. 443.141.

(11) NATIONAL GUARD. – Notwithstanding s. 120.52(16), the enlistment, organization, administration, equipment, maintenance, training, and discipline of the militia, National Guard, organized militia, and unorganized militia, as provided by s. 2, Art. X of the State Constitution, are not rules as defined by this chapter.

(12) PUBLIC EMPLOYEES RELATIONS COMMISSION. –

(a) Notwithstanding s. 120.57(1)(a), hearings within the jurisdiction of the Public Employees Relations Commission need not be conducted by an administrative law judge assigned by the division.

(b) Section 120.60 does not apply to certification of employee organizations pursuant to s. 447.307.

(13) FLORIDA PUBLIC SERVICE COMMISSION. –

(a) Agency statements that relate to cost-recovery clauses, factors, or mechanisms implemented pursuant to chapter 366, relating to public utilities, are exempt from the provisions of s. 120.54(1)(a).



(b) Notwithstanding ss. 120.569 and 120.57, a hearing on an objection to proposed action of the Florida Public Service Commission may only address the issues in dispute. Issues in the proposed action which are not in dispute are deemed stipulated.

(c) The Florida Public Service Commission is exempt from the time limitations in s. 120.60(1) when issuing a license.

(d) Notwithstanding the provisions of this chapter, in implementing the Telecommunications Act of 1996, Pub. L. No. 104-104, the Public Service Commission is authorized to employ procedures consistent with that act.

(e) Notwithstanding the provisions of this chapter, s. 350.128, or s. 364.381, appellate jurisdiction for Public Service Commission decisions that implement the Telecommunications Act of 1996, Pub. L. No. 104-104, shall be consistent with the provisions of that act.

(f) Notwithstanding any provision of this chapter, all public utilities and companies regulated by the Public Service Commission shall be entitled to proceed under the interim rate provisions of chapter 364 or the procedures for interim rates contained in chapter 74-195, Laws of Florida, or as otherwise provided by law.

(14) DEPARTMENT OF REVENUE. —

(a) Assessments. — An assessment of tax, penalty, or interest by the Department of Revenue is not a final order as defined by this chapter. Assessments by the Department of Revenue shall be deemed final as provided in the statutes and rules governing the assessment and collection of taxes.

(b) Taxpayer contest proceedings. —

1. In any administrative proceeding brought pursuant to this chapter as authorized by s. 72.011(1), the taxpayer shall be designated the "petitioner" and the Department of Revenue shall be designated the "respondent," except that for actions contesting an assessment or denial of refund under chapter 207, the Department of Highway Safety and Motor Vehicles shall be designated the

“respondent,” and for actions contesting an assessment or denial of refund under chapters 210, 550, 561, 562, 563, 564, and 565, the Department of Business and Professional Regulation shall be designated the “respondent.”

2. In any such administrative proceeding, the applicable department’s burden of proof, except as otherwise specifically provided by general law, shall be limited to a showing that an assessment has been made against the taxpayer and the factual and legal grounds upon which the applicable department made the assessment.

3.

a. Prior to filing a petition under this chapter, the taxpayer shall pay to the applicable department the amount of taxes, penalties, and accrued interest assessed by that department which are not being contested by the taxpayer. Failure to pay the uncontested amount shall result in the dismissal of the action and imposition of an additional penalty of 25 percent of the amount taxed.

b. The requirements of s. 72.011(2) and (3)(a) are jurisdictional for any action under this chapter to contest an assessment or denial of refund by the Department of Revenue, the Department of Highway Safety and Motor Vehicles, or the Department of Business and Professional Regulation.

4. Except as provided in s. 220.719, further collection and enforcement of the contested amount of an assessment for nonpayment or underpayment of any tax, interest, or penalty shall be stayed beginning on the date a petition is filed. Upon entry of a final order, an agency may resume collection and enforcement action.

5. The prevailing party, in a proceeding under ss. 120.569 and 120.57 authorized by s. 72.011(1), may recover all legal costs incurred in such



proceeding, including reasonable attorney's fees, if the losing party fails to raise a justiciable issue of law or fact in its petition or response.

6. Upon review pursuant to s. 120.68 of final agency action concerning an assessment of tax, penalty, or interest with respect to a tax imposed under chapter 212, or the denial of a refund of any tax imposed under chapter 212, if the court finds that the Department of Revenue improperly rejected or modified a conclusion of law, the court may award reasonable attorney's fees and reasonable costs of the appeal to the prevailing appellant.

(c) Proceedings to establish paternity or paternity and child support; orders to appear for genetic testing; proceedings for administrative support orders. – In proceedings to establish paternity or paternity and child support pursuant to s. 409.256 and proceedings for the establishment of administrative support orders pursuant to s. 409.2563, final orders in cases referred by the Department of Revenue to the Division of Administrative Hearings shall be entered by the division's administrative law judge and transmitted to the Department of Revenue for filing and rendering. The Department of Revenue has the right to seek judicial review under s. 120.68 of a final order entered by an administrative law judge. The Department of Revenue or the person ordered to appear for genetic testing may seek immediate judicial review under s. 120.68 of an order issued by an administrative law judge pursuant to s. 409.256(5)(b). Final orders that adjudicate paternity or paternity and child support pursuant to s. 409.256 and administrative support orders rendered pursuant to s. 409.2563 may be enforced pursuant to s. 120.69 or, alternatively, by any method prescribed by law for the enforcement of judicial support orders, except contempt. Hearings held by the Division of Administrative Hearings pursuant to ss. 409.256, 409.2563, and 409.25635 shall be held in the judicial circuit where the person receiving services under Title IV-D resides or, if the person receiving services under Title IV-D does not reside in this state, in the judicial circuit where the respondent resides. If the department and the respondent agree, the hearing may be held in another location. If



ordered by the administrative law judge, the hearing may be conducted telephonically or by videoconference.

(15) DEPARTMENT OF HEALTH. – Notwithstanding s. 120.57(1)(a), formal hearings may not be conducted by the State Surgeon General, the Secretary of Health Care Administration, or a board or member of a board within the Department of Health or the Agency for Health Care Administration for matters relating to the regulation of professions, as defined by chapter 456. Notwithstanding s. 120.57(1)(a), hearings conducted within the Department of Health in execution of the Special Supplemental Nutrition Program for Women, Infants, and Children; Child Care Food Program; Children’s Medical Services Program; the Brain and Spinal Cord Injury Program; and the exemption from disqualification reviews for certified nurse assistants program need not be conducted by an administrative law judge assigned by the division. The Department of Health may contract with the Department of Children and Families for a hearing officer in these matters.

(16) FLORIDA BUILDING COMMISSION. –

(a) Notwithstanding the provisions of s. 120.542, the Florida Building Commission may not accept a petition for waiver or variance and may not grant any waiver or variance from the requirements of the Florida Building Code.

(b) The Florida Building Commission shall adopt within the Florida Building Code criteria and procedures for alternative means of compliance with the code or local amendments thereto, for enforcement by local governments, local enforcement districts, or other entities authorized by law to enforce the Florida Building Code. Appeals from the denial of the use of alternative means shall be heard by the local board, if one exists, and may be appealed to the Florida Building Commission.

(c) Notwithstanding ss. 120.565, 120.569, and 120.57, the Florida Building Commission and hearing officer panels appointed by the commission in accordance with s. 553.775(3)(c)1. may conduct proceedings to review decisions of local building code officials in accordance with s. 553.775(3)(c).



(d) Section 120.541(3) does not apply to the adoption of amendments and the triennial update to the Florida Building Code expressly authorized by s. 553.73.

(17) STATE FIRE MARSHAL. — Section 120.541(3) does not apply to the adoption of amendments and the triennial update to the Florida Fire Prevention Code expressly authorized by s. 633.202.

(18) DEPARTMENT OF TRANSPORTATION. — Sections 120.54(3)(b) and 120.541 do not apply to the adjustment of tolls pursuant to s. 338.165(3).

History - (s. 41, ch. 96-159; s. 13, ch. 98-166; s. 10, ch. 99-8; s. 4, ch. 99-397; s. 1, ch. 2000-141; s. 17, ch. 2000-151; s. 2, ch. 2000-160; s. 11, ch. 2000-304; s. 4, ch. 2000-305; ss. 2, 11, ch. 2000-312; s. 4, ch. 2000-355; s. 3, ch. 2000-367; s. 18, ch. 2001-158; s. 2, ch. 2001-279; s. 8, ch. 2002-173; s. 1, ch. 2002-239; s. 3, ch. 2003-36; s. 139, ch. 2003-261; s. 1, ch. 2004-52; s. 7, ch. 2004-334; ss. 12, 13, ch. 2005-39; s. 1, ch. 2005-96; s. 13, ch. 2005-147; s. 1, ch. 2005-209; s. 5, ch. 2006-45; s. 9, ch. 2008-6; s. 16, ch. 2008-104; s. 5, ch. 2009-187; s. 1, ch. 2011-64; s. 50, ch. 2011-142; s. 8, ch. 2011-225; s. 43, ch. 2012-30; s. 12, ch. 2013-14; s. 120, ch. 2013-183; s. 32, ch. 2014-19; s. 37, ch. 2014-97.)



§120.81 FS | EXCEPTIONS AND SPECIAL REQUIREMENTS; GENERAL AREAS

(1) EDUCATIONAL UNITS. —

(a) Notwithstanding s. 120.536(1) and the flush left provisions of s. 120.52(8), district school boards may adopt rules to implement their general powers under s. 1001.41.

(b) The preparation or modification of curricula by an educational unit is not a rule as defined by this chapter.

(c) Notwithstanding s. 120.52(16), any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 1003.4282, s. 1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

(d) Notwithstanding any other provision of this chapter, educational units shall not be required to include the full text of the rule or rule amendment in notices relating to rules and need not publish these or other notices in the Florida Administrative Register, but notice shall be made:

1. By publication in a newspaper of general circulation in the affected area;
2. By mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule; and
3. By posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified.

(e) Educational units, other than the Florida School for the Deaf and the Blind, shall not be required to make filings with the committee of the documents required to be filed by s. 120.54 or s. 120.55(1)(a)4.

(f) Notwithstanding s. 120.57(1)(a), hearings which involve student disciplinary suspensions or expulsions may be conducted by educational units.



(g) Sections 120.569 and 120.57 do not apply to any proceeding in which the substantial interests of a student are determined by a state university or a community college.

(h) Notwithstanding ss. 120.569 and 120.57, in a hearing involving a student disciplinary suspension or expulsion conducted by an educational unit, the 14-day notice of hearing requirement may be waived by the agency head or the hearing officer without the consent of parties.

(i) For purposes of s. 120.68, a district school board whose decision is reviewed under the provisions of s. 1012.33 and whose final action is modified by a superior administrative decision shall be a party entitled to judicial review of the final action.

(j) Notwithstanding s. 120.525(2), the agenda for a special meeting of a district school board under authority of s. 1001.372(1) shall be prepared upon the calling of the meeting, but not less than 48 hours prior to the meeting.

(k) Students are not persons subject to regulation for the purposes of petitioning for a variance or waiver to rules of educational units under s. 120.542.

(l) Sections 120.54(3)(b) and 120.541 do not apply to the adoption of rules pursuant to s. 1012.22, s. 1012.27, s. 1012.335, s. 1012.34, or s. 1012.795.

(2) LOCAL UNITS OF GOVERNMENT. —

(a) Local units of government with jurisdiction in only one county or part thereof shall not be required to make filings with the committee of the documents required to be filed by s. 120.54.

(b) Notwithstanding any other provision of this chapter, units of government with jurisdiction in only one county or part thereof need not publish required notices in the Florida Administrative Register, but shall publish these notices in the manner required by their enabling acts for notice of rulemaking or notice of meeting. Notices relating to rules are not required to include the full text of the rule or rule amendment.



(3) PRISONERS AND PAROLEES. –

(a) Notwithstanding s. 120.52(13), prisoners, as defined by s. 944.02, shall not be considered parties in any proceedings other than those under s. 120.54(3)(c) or (7), and may not seek judicial review under s. 120.68 of any other agency action. Prisoners are not eligible to seek an administrative determination of an agency statement under s. 120.56(4). Parolees shall not be considered parties for purposes of agency action or judicial review when the proceedings relate to the rescission or revocation of parole.

(b) Notwithstanding s. 120.54(3)(c), prisoners, as defined by s. 944.02, may be limited by the **Department of Corrections** to an opportunity to present evidence and argument on issues under consideration by submission of written statements concerning intended action on any department rule.

(c) Notwithstanding ss. 120.569 and 120.57, in a preliminary hearing for revocation of parole, no less than 7 days' notice of hearing shall be given.

(4) REGULATION OF PROFESSIONS. – Notwithstanding s. 120.569(2)(g), in a proceeding against a licensed professional or in a proceeding for licensure of an applicant for professional licensure which involves allegations of sexual misconduct:

(a) The testimony of the victim of the sexual misconduct need not be corroborated.

(b) Specific instances of prior consensual sexual activity between the victim of the sexual misconduct and any person other than the offender is inadmissible, unless:

1. It is first established to the administrative law judge in a proceeding in camera that the victim of the sexual misconduct is mistaken as to the identity of the perpetrator of the sexual misconduct; or



2. If consent by the victim of the sexual misconduct is at issue and it is first established to the administrative law judge in a proceeding in camera that such evidence tends to establish a pattern of conduct or behavior on the part of such victim which is so similar to the conduct or behavior in the case that it is relevant to the issue of consent.

(c) Reputation evidence relating to the prior sexual conduct of a victim of sexual misconduct is inadmissible.

(5) HUNTING AND FISHING REGULATION. – Agency action which has the effect of altering established hunting or fishing seasons, or altering established annual harvest limits for saltwater fishing if the procedure for altering such harvest limits is set out by rule of the Fish and Wildlife Conservation Commission, is not a rule as defined by this chapter, provided such action is adequately noticed in the area affected through publishing in a newspaper of general circulation or through notice by broadcasting by electronic media.

(6) RISK IMPACT STATEMENT. – The Department of Environmental Protection shall prepare a risk impact statement for any rule that is proposed for approval by the Environmental Regulation Commission and that establishes or changes standards or criteria based on impacts to or effects upon human health. The Department of Agriculture and Consumer Services shall prepare a risk impact statement for any rule that is proposed for adoption that establishes standards or criteria based on impacts to or effects upon human health.

(a) This subsection does not apply to rules adopted pursuant to federally delegated or mandated programs where such rules are identical or substantially identical to the federal regulations or laws being adopted or implemented by the Department of Environmental Protection or Department of Agriculture and Consumer Services, as applicable. However, the Department of Environmental Protection and the Department of Agriculture and Consumer Services shall identify any risk analysis information available to them from the Federal Government that has formed the basis of such a rule.



(b) This subsection does not apply to emergency rules adopted pursuant to this chapter.

(c) The Department of Environmental Protection and the Department of Agriculture and Consumer Services shall prepare and publish notice of the availability of a clear and concise risk impact statement for all applicable rules. The risk impact statement must explain the risk to the public health addressed by the rule and shall identify and summarize the source of the scientific information used in evaluating that risk.

(d) Nothing in this subsection shall be construed to create a new cause of action or basis for challenging a rule nor diminish any existing cause of action or basis for challenging a rule.

History - (s. 42, ch. 96-159; s. 17, ch. 97-176; s. 49, ch. 99-2; s. 65, ch. 99-245; s. 7, ch. 99-379; s. 28, ch. 99-398; s. 4, ch. 2000-214; s. 897, ch. 2002-387; s. 17, ch. 2008-104; s. 4, ch. 2010-78; s. 9, ch. 2011-225; s. 13, ch. 2013-14; s. 37, ch. 2013-35; s. 21, ch. 2014-17; s. 3, ch. 2014-39; s. 24, ch. 2014-184.)

§120.82 FS | KEEP OUR GRADUATES WORKING ACT

(1) SHORT TITLE. – This section may be cited as the “Keep Our Graduates Working Act of 2020.”

(2) PURPOSE. – The purpose of this act is to ensure that Floridians who graduate from an accredited college or university can maintain their occupational licenses, as defined in subsection (3), and remain in the workforce while they attempt to pay off their student loan debt.

(3) DEFINITIONS. – As used in this section, the term:

(a) “Default” means the failure to repay a student loan according to the terms agreed to in the promissory note.

(b) “Delinquency” means the failure to make a student loan payment when it is due.

(c) “License” means any professional license, certificate, registration, or permit granted by the applicable state authority.

(d) “State authority” means any department, board, or agency with the authority to grant a license to any person in this state.

(e) “Student loan” means a federal-guaranteed or state-guaranteed loan for the purposes of postsecondary education.

(4) STUDENT LOAN DEFAULT; DELINQUENCY. – A state authority may not deny a license, refuse to renew a license, or suspend or revoke a license that it has issued to a person who is in default on or delinquent in the payment of his or her student loans solely on the basis of such default or delinquency.

History - (s. 1, ch. 2020-125.)



CHAPTER 192 FLORIDA STATUTES | FLORIDA

TITLE: XIV TAXATION AND FINANCE

CHAPTER: 192 GENERAL PROVISIONS

PART: --

SECTIONS: §192.105 only

NOTE:



**§192.105 FS | UNLAWFUL DISCLOSURE OF FEDERAL TAX INFORMATION;
PENALTY**

(1) It is unlawful for any person to divulge or make known federal tax information obtained pursuant to 26 U.S.C. s. 6103, except in accordance with a proper judicial order or as otherwise provided by law for use in the administration of the tax laws of this state, and such information is confidential and exempt from the provisions of s. 119.07(1).

(2) Any person who violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History - (s. 1, ch. 78-160; s. 20, ch. 88-119; s. 37, ch. 90-360; s. 232, ch. 91-224; s. 48, ch. 96-406.)



CHAPTER 216 FLORIDA STATUTES | FLORIDA

TITLE: XIV TAXATION AND FINANCE

CHAPTER: 216 PLANNING AND BUDGETING

PART: --

SECTIONS: §216.011 only

NOTE:



§216.011 FS | DEFINITIONS

(1) For the purpose of fiscal affairs of the state, appropriations acts, legislative budgets, and approved budgets, each of the following terms has the meaning indicated:

(a) "Annual salary rate" means the monetary compensation authorized to be paid a position on an annualized basis. The term does not include moneys authorized for benefits associated with the position.

(b) "Appropriation" means a legal authorization to make expenditures for specific purposes within the amounts authorized by law.

(c) "Appropriations act" means the authorization of the Legislature, based upon legislative budgets or based upon legislative findings of the necessity for an authorization when no legislative budget is filed, for the expenditure of amounts of money by an agency, the judicial branch, or the legislative branch for stated purposes in the performance of the functions it is authorized by law to perform. The categories contained in the appropriations act include, but are not limited to:

1. Data processing services.
2. Expenses.
3. Fixed capital outlay.
4. Food products.
5. Grants and aids.
6. Grants and aids to local governments and nonstate entities-fixed capital outlay.
7. Lump-sum appropriations.
8. Operating capital outlay.
9. Other personal services.
10. Salaries and benefits.
11. Special categories.



(d) "Authorized position" means a position included in an approved budget. In counting the number of authorized positions, part-time positions shall be converted to full-time equivalents.

(e) "Baseline data" means indicators of a state agency's current performance level, pursuant to guidelines established by the Executive Office of the Governor, in consultation with legislative appropriations and appropriate substantive committees.

(f) "Budget entity" means a unit or function at the lowest level to which funds are specifically appropriated in the appropriations act. "Budget entity" and "service" have the same meaning.

(g) "Chairs of the legislative appropriations committees" means the chairs of the committees of the Senate and the House of Representatives responsible for producing the General Appropriations Act.

(h) "Consultation" means communication to allow government officials and agencies to deliberate and to seek and provide advice in an open and forthright manner.

(i) "Continuing appropriation" means an appropriation automatically renewed without further legislative action, period after period, until altered or revoked by the Legislature.

(j) "Data processing services" means the appropriation category used to fund electronic data processing services provided by state agencies or the judicial branch, which services include, but are not limited to, systems design, software development, or time-sharing by other governmental units or budget entities.

(k) "Disbursement" means the payment of an expenditure.

(l) "Disincentive" means a sanction as described in s. 216.163.

(m) "Expenditure" means the creation or incurring of a legal obligation to disburse money.



(n) "Expense" means the appropriation category used to fund the usual, ordinary, and incidental expenditures by an agency or the judicial branch, including such items as commodities, supplies of a consumable nature, current obligations, and fixed charges, and excluding expenditures classified as operating capital outlay. Payments to other funds or local, state, or federal agencies may be included in this category.

(o) "Fiscal year of the state" means a period of time beginning July 1 and ending on the following June 30, both dates inclusive.

(p) "Fixed capital outlay" means the appropriation category used to fund real property (land, buildings, including appurtenances, fixtures and fixed equipment, structures, etc.), including additions, replacements, major repairs, and renovations to real property which materially extend its useful life or materially improve or change its functional use and including furniture and equipment necessary to furnish and operate a new or improved facility, when appropriated by the Legislature in the fixed capital outlay appropriation category.

(q) "Food products" means the appropriation category used to fund food consumed and purchased in state-run facilities that provide housing to individuals.

(r) "Grants and aids" means the appropriation category used to fund contributions to units of government or nonstate entities to be used for one or more specified purposes or activities. Funds appropriated to units of government and nonprofit entities under this category may be advanced.

(s) "Grants and aids to local governments and nonstate entities-fixed capital outlay" means the appropriation category used to fund:

1. Grants to local units of governments or nonstate entities for the acquisition of real property (land, buildings, including appurtenances, fixtures and fixed equipment, structures, etc.); additions, replacements, major repairs, and renovations to real property which materially extend its useful life or materially improve or



change its functional use; and operating capital outlay necessary to furnish and operate a new or improved facility; and

2. Grants to local units of government for their respective infrastructure and growth management needs related to local government comprehensive plans.

Funds appropriated to local units of government and nonprofit organizations under this category may be advanced in part or in whole.

(t) "Incentive" means a mechanism, as described in s. 216.163, for recognizing the achievement of performance standards or for motivating performance that exceeds performance standards.

(u) "Independent judgment" means an evaluation of actual needs made separately and apart from the legislative budget request of any other agency or of the judicial branch, or any assessments by the Governor. Such evaluation shall not be limited by revenue estimates of the Revenue Estimating Conference.

(v) "Judicial branch" means all officers, employees, and offices of the Supreme Court, district courts of appeal, circuit courts, county courts, and the Judicial Qualifications Commission.

(w) "Legislative branch" means the various officers, committees, and other units of the legislative branch of state government.

(x) "Legislative budget instructions" means the annual set of instructions developed to assist agencies in submitting budget requests to the Legislature and to generate information necessary for budgetary decisionmaking. Such instructions may include program-based performance budget instructions.

(y) "Legislative budget request" means a request to the Legislature, filed pursuant to s. 216.023, or supplemental detailed requests filed with the Legislature, for the amounts of money such agency or branch believes will be needed in the performance of the



functions that it is authorized, or which it is requesting authorization by law, to perform.

(z) "Long-range program plan" means a plan developed pursuant to s. 216.013.

(aa) "Lump-sum appropriation" means the appropriation category used to fund a specific activity or project which must be transferred to one or more appropriation categories for expenditure.

(bb) "Operating capital outlay" means the appropriation category used to fund equipment, fixtures, and other tangible personal property of a nonconsumable and nonexpendable nature under s. 273.025.

(cc) "Original approved budget" means the approved plan of operation of an agency or of the judicial branch consistent with the General Appropriations Act or special appropriations acts.

(dd) "Other personal services" means the appropriation category used to fund the compensation for services rendered by a person who is not filling an established position. This definition includes, but is not limited to, services of temporary employees, student or graduate assistants, persons on fellowships, part-time academic employees, board members, and consultants and other services specifically budgeted by each agency, or by the judicial branch, in this category. In distinguishing between payments to be made from salaries and benefits appropriations and other-personal-services appropriations:

1. Those persons filling established positions shall be paid from salaries and benefits appropriations and those persons performing services for a state agency or for the judicial branch, but who are not filling established positions, shall be paid from other-personal-services appropriations.

2. Those persons paid from salaries and benefits appropriations shall be state officers or employees and shall be eligible for membership in a state retirement system and those paid from other-



personal-services appropriations shall not be eligible for such membership.

(ee) "Outcome" means an indicator of the actual impact or public benefit of a program.

(ff) "Output" means the actual service or product delivered by a state agency.

(gg) "Mandatory reserve" means the reduction of an appropriation by the Governor or the Legislative Budget Commission due to an anticipated deficit in a fund, pursuant to s. 216.221. Action may not be taken to restore a mandatory reserve either directly or indirectly.

(hh) "Budget reserve" means the withholding, as authorized by the Legislature, of an appropriation, or portion thereof. The need for a budget reserve may exist until certain conditions set by the Legislature are met by the affected agency, or such need may exist due to financial or program changes that have occurred since, and were unforeseen at the time of, passage of the General Appropriations Act.

(ii) "Performance measure" means a quantitative or qualitative indicator used to assess state agency performance.

(jj) "Program" means a set of services and activities undertaken in accordance with a plan of action organized to realize identifiable goals and objectives based on legislative authorization.

(kk) "Program component" means an aggregation of generally related objectives which, because of their special character, related workload, and interrelated output, can logically be considered an entity for purposes of organization, management, accounting, reporting, and budgeting.

(ll) "Proviso" means language that qualifies or restricts a specific appropriation and which can be logically and directly related to the specific appropriation.



(mm) "Salaries and benefits" means the appropriation category used to fund the monetary or cash-equivalent compensation for work performed by state employees for a specific period of time. Benefits shall be as provided by law.

(nn) "Salary" means the cash compensation for services rendered for a specific period of time.

(oo) "Special category" means the appropriation category used to fund amounts appropriated for a specific need or classification of expenditures.

(pp) "Standard" means the level of performance of an outcome or output.

(qq) "State agency" or "agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. For purposes of this chapter and chapter 215, "state agency" or "agency" includes, but is not limited to, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission. Solely for the purposes of implementing s. 19(h), Art. III of the State Constitution, the terms "state agency" or "agency" include the judicial branch.

(rr) "Activity" means a unit of work that has identifiable starting and ending points, consumes resources, and produces outputs.

(ss) "Qualified expenditure category" means the appropriations category used to fund specific activities and projects which must be transferred to one or more appropriation categories for expenditure upon recommendation by the Governor or Chief Justice, as appropriate, and subject to approval by the Legislative Budget Commission. The Legislature by law may provide that a specific portion of the funds appropriated in this category be transferred to one or more appropriation categories without approval by the commission and may provide that requirements or contingencies be satisfied prior to the transfer.



(tt) "Incurred obligation" means a legal obligation for goods or services that have been contracted for, referred to as an encumbrance in the state's financial system, or received or incurred by the state and referred to as a payable in the state's financial system.

(uu) "Salary rate reserve" means the withholding of a portion of the annual salary rate for a specific purpose.

(vv) "Lease or lease-purchase of equipment" means the appropriations category used to fund the lease or lease-purchase of equipment, fixtures, and other tangible personal property.

(ww) "Long-range financial outlook" means a document issued by the Legislative Budget Commission based on a 3-year forecast of revenues and expenditures.

(2) For purposes of this chapter, terms related to personnel affairs of the state shall be defined as set forth in s. 110.107.

(3) For purposes of this chapter, the term:

(a) "Approved operating budget" or "approved budget" means the plan of operations consisting of the original approved operating budget.

(b) "Commission" means the Legislative Budget Commission created in s. 11.90.

(c) "Statutorily authorized entity" means any entity primarily acting as an instrumentality of the state, any regulatory or governing body, or any other governmental or quasi-governmental organization that receives, disburses, expends, administers, awards, recommends expenditure of, handles, manages, or has custody or control of funds appropriated by the Legislature and:

1. Is created, organized, or specifically authorized to be created or established by general law; or

2. Assists a department, as defined in s. 20.03(2), or other unit of state government in providing programs or services on a statewide basis with a statewide service area or population.



History. — s. 31, ch. 69-106; s. 6, ch. 71-354; s. 2, ch. 77-352; s. 16, ch. 79-190; s. 2, ch. 80-380; s. 1, ch. 81-256; s. 3, ch. 83-49; s. 16, ch. 83-216; s. 2, ch. 83-279; s. 33, ch. 85-80; s. 3, ch. 87-137; s. 58, ch. 87-548; s. 1, ch. 89-51; ss. 1, 7, ch. 89-291; s. 2, ch. 91-109; s. 31, ch. 92-142; s. 87, ch. 92-279; s. 55, ch. 92-326; s. 3, ch. 94-249; s. 1509, ch. 95-147; s. 3, ch. 96-278; s. 1, ch. 98-73; s. 9, ch. 99-155; s. 20, ch. 99-399; s. 16, ch. 2000-237; s. 1, ch. 2000-371; s. 1, ch. 2001-56; s. 18, ch. 2003-138; ss. 12, 13, ch. 2005-152; s. 5, ch. 2006-119; s. 15, ch. 2006-122; s. 27, ch. 2007-62; s. 15, ch. 2009-204; s. 55, ch. 2010-102; s. 1, ch. 2011-45; s. 15, ch. 2013-44.



CHAPTER 257 FLORIDA STATUTES | FLORIDA

TITLE: XVIII PUBLIC LANDS AND PROPERTY

CHAPTER: 257 PUBLIC LIBRARIES AND STATE ARCHIVES

PART: --

SECTIONS: §257.36 only

NOTE:



§257.36 FS | RECORDS AND INFORMATION MANAGEMENT

(1) There is created within the Division of Library and Information Services of the Department of State a records and information management program. It is the duty and responsibility of the division to:

(a) Establish and administer a records management program directed to the application of efficient and economical management methods relating to the creation, utilization, maintenance, retention, preservation, and disposal of records.

(b) Establish and operate a records center or centers primarily for the storage, processing, servicing, and security of public records that must be retained for varying periods of time but need not be retained in an agency's office equipment or space.

(c) Analyze, develop, establish, and coordinate standards, procedures, and techniques of recordmaking and recordkeeping.

(d) Ensure the maintenance and security of records which are deemed appropriate for preservation.

(e) Establish safeguards against unauthorized or unlawful removal or loss of records.

(f) Initiate appropriate action to recover records removed unlawfully or without authorization.

(g) Institute and maintain a training and information program in:

1. All phases of records and information management to bring approved and current practices, methods, procedures, and devices for the efficient and economical management of records to the attention of all agencies.

2. The requirements relating to access to public records under chapter 119.

(h) Make continuous surveys of recordkeeping operations.



(i) Recommend improvements in current records management practices, including the use of space, equipment, supplies, and personnel in creating, maintaining, and servicing records.

(j) Establish and maintain a program in cooperation with each agency for the selection and preservation of records considered essential to the operation of government and to the protection of the rights and privileges of citizens.

(k) Make, or have made, preservation duplicates, or designate existing copies as preservation duplicates, to be preserved in the place and manner of safekeeping as prescribed by the division.

(2)

(a) All records transferred to the division may be held by it in a records center or centers, to be designated by it, for such time as in its judgment retention therein is deemed necessary. At such time as it is established by the division, such records as are determined by it as having historical or other value warranting continued preservation shall be transferred to the Florida State Archives.

(b) Title to any record detained in any records center shall remain in the agency transferring such record to the division. When the Legislature transfers any duty or responsibility of an agency to another agency, the receiving agency shall be the custodian of public records with regard to the public records associated with that transferred duty or responsibility, and shall be responsible for the records storage service charges of the division. If an agency is dissolved and the legislation dissolving that agency does not assign an existing agency as the custodian of public records for the dissolved agency's records, then the Cabinet is the custodian of public records for the dissolved agency, unless the Cabinet otherwise designates a custodian. The Cabinet or the agency designated by the Cabinet shall be responsible for the records storage service charges of the division.



(c) When a record held in a records center is eligible for destruction, the division shall notify, in writing, by certified mail, the agency which transferred the record. The agency shall have 90 days from receipt of that notice to respond requesting continued retention or authorizing destruction or disposal of the record. If the agency does not respond within that time, title to the record shall pass to the division.

(3) The division may charge fees for supplies and services, including, but not limited to, shipping containers, pickup, delivery, reference, and storage. Fees shall be based upon the actual cost of the supplies and services and shall be deposited in the Records Management Trust Fund.

(4) Any preservation duplicate of any record made pursuant to this chapter shall have the same force and effect for all purposes as the original record. A transcript, exemplification, or certified copy of such preservation duplicate shall be deemed, for all purposes, to be a transcript, exemplification, or certified copy of the original record.

(5) For the purposes of this section, the term "agency" shall mean any state, county, district, or municipal officer, department, division, bureau, board, commission, or other separate unit of government created or established by law. It is the duty of each agency to:

(a) Cooperate with the division in complying with the provisions of this chapter and designate a records management liaison officer.

(b) Establish and maintain an active and continuing program for the economical and efficient management of records.

(6) A public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the division. The division shall adopt reasonable rules not inconsistent with this chapter which shall be binding on all agencies relating to the destruction and disposition of records. Such rules shall provide, but not be limited to:

(a) Procedures for complying and submitting to the division records-retention schedules.



(b) Procedures for the physical destruction or other disposal of records.

(c) Standards for the reproduction of records for security or with a view to the disposal of the original record.

History.—s. 5, ch. 67-50; ss. 10, 35, ch. 69-106; s. 4, ch. 81-173; s. 24, ch. 83-339; s. 46, ch. 86-163; s. 8, ch. 95-296; s. 34, ch. 2000-258; s. 15, ch. 2004-335; s. 5, ch. 2015-117.

Note.—Former s. 267.051.



CHAPTER 286 FLORIDA STATUTES | FLORIDA

TITLE: XIX PUBLIC BUSINESS

CHAPTER: 286 PUBLIC BUSINESS; MISCELLANEOUS PROVISIONS

PART: --

SECTIONS: §286.001 through §286.311

NOTE: **Entire Chapter**



§286.001 FS | REPORTS STATUTORILY REQUIRED; FILING, MAINTENANCE, RETRIEVAL, AND PROVISION OF COPIES

(1) For purposes of this section, the term "state entity" means any agency or officer of the executive, legislative, or judicial branch of state government; the State Board of Education; the Board of Governors of the State University System; the Public Service Commission; or a water management district operating under the authority of chapter 373.

(2) A state entity required or authorized by law to make a regular or periodic report shall fulfill the requirement to submit the report by electronically filing one copy of the report with the Division of Library and Information Services of the Department of State. The report must be retained by the reporting agency or officer, and copies of the report must be provided to interested parties and the statutorily or administratively designated recipients of the report upon request.

(a) A state entity that submits a report pursuant to this section is solely responsible for redacting any portion of the report which is not subject to public inspection. The division or the department, or any contractor thereof, is not responsible for and may not be held liable for the failure of a state entity to redact exempt or confidential and exempt information from its reports.

(b) If a report is redacted, the state entity submitting the report must provide to the division an accompanying statement that identifies the specific statutory basis for the redaction.

(3) The state entity shall retain or archive each report in accordance with the applicable records retention schedule.

(4) With respect to reports statutorily required of state entities, it is the duty of the division to:

(a) By November 1, 2023, with assistance from the state entities, compile a list of statutorily required reports and their submission dates. The division shall update this list by each November 1 thereafter. The division shall publish the list on the Department of State's publicly accessible website.

(b) Beginning January 1, 2024, compile bibliographic information on each statutorily required report it receives



for publication in the system implemented and maintained under subsection (5). The division shall update the bibliographic information on a quarterly basis. The bibliographic information may be included in the bibliographies prepared by the division pursuant to s. 257.05(3).

(c) Beginning April 15, 2024, and each calendar quarter thereafter, distribute the most recently completed quarter's bibliography created pursuant to paragraph (b) to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(5) The Legislature finds that statutory reporting requirements for state entities is of great value to the public for accountability and transparency in government. A single, modern, Internet-based repository is necessary to compile reports on government activities as well as to ensure that statutorily required reports are easily accessible and available to the public. The ability to search for a statutorily required report by specific information will save time for the requestor and reduce the workload of state entities that are required to respond to requests for reports. Therefore, the Legislature intends that the division receive statutorily required reports, and by January 1, 2024, the division shall implement and maintain a publicly available, Internet-based system that includes, but is not limited to, the following features and functions:

(a) A section or subsection that is dedicated to the cataloging of statutorily required reports;

(b) The ability for state entities to electronically file statutorily required reports and to receive electronic confirmation of those filings;

(c) The ability to search for and retrieve electronic versions of statutorily required reports by using the report's designated recipient, the state entity that submitted the report, the date of the report's submission, the law requiring the state entity to submit the report, the title or topic of the report, and identifiable keywords; and

(d) The ability for users to receive automated notifications of the filing of statutorily required reports based on user-defined criteria.



History - (ss. 26, 28, 29, ch. 84-254; s. 12, ch. 92-98; s. 104, ch. 92-142; s. 29, ch. 95-196; s. 34, ch. 2007-217; s. 8, ch. 2015-117; s. 1, ch. 2023-41.)



§286.0105 FS | NOTICES OF MEETINGS AND HEARINGS MUST ADVISE THAT A RECORD IS REQUIRED TO APPEAL

Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The requirements of this section do not apply to the notice provided in s. 200.065(3).

History - (s. 1, ch. 80-150; s. 14, ch. 88-216; s. 209, ch. 95-148)



**§286.011 FS | PUBLIC MEETINGS AND RECORDS; PUBLIC INSPECTION;
CRIMINAL AND CIVIL PENALTIES**

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)

(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.



(4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission. However, this subsection shall not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.

(5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision appeals any court order which has found said board, commission, agency, or authority to have violated this section, and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such board, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.

(6) All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility.



(7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision is charged with a violation of this section and is subsequently acquitted, the board or commission is authorized to reimburse said member for any portion of his or her reasonable attorney's fees.

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.



(e) The transcript shall be made part of the public record upon conclusion of the litigation.

History - (s. 1, ch. 67-356; s. 159, ch. 71-136; s. 1, ch. 78-365; s. 6, ch. 85-301; s. 33, ch. 91-224; s. 1, ch. 93-232; s. 210, ch. 95-148; s. 1, ch. 95-353; s. 2, ch. 2012-25.)



§286.0111 FS | LEGISLATIVE REVIEW OF CERTAIN EXEMPTIONS FROM REQUIREMENTS FOR PUBLIC MEETINGS AND RECORDKEEPING BY GOVERNMENTAL ENTITIES

The provisions of s. 119.15, the Open Government Sunset Review Act, apply to the provisions of law which provide exemptions to s. 286.011, as provided in s. 119.15.

History - (s. 9, ch. 84-298; s. 2, ch. 85-301; s. 3, ch. 95-217; s. 53, ch. 2008-4.)



§286.0113 FS | GENERAL EXEMPTIONS FROM PUBLIC MEETINGS

(1) That portion of a meeting that would reveal a security or fire safety system plan or portion thereof made confidential and exempt by s. 119.071(3)(a) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(2)

(a) For purposes of this subsection:

1. "Competitive solicitation" means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.

2. "Team" means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

(b)

1. Any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2. Any portion of a team meeting at which negotiation strategies are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(c)

1. A complete recording shall be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.

2. The recording of, and any records presented at, the exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.

3. If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to



reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

(3)

(a) That portion of a meeting held by a utility owned or operated by a unit of local government which would reveal information that is exempt under s. 119.0713(5) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. All exempt portions of such a meeting must be recorded and transcribed. The recording and transcript of the meeting are exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, following an in camera review, determines that the meeting was not restricted to the discussion of data and information made exempt by this section. In the event of such a judicial determination, only the portion of the recording or transcript which reveals nonexempt data and information may be disclosed to a third party.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

(4)

(a) Any portion of a meeting that would reveal building plans, blueprints, schematic drawings, or diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication services, or other 911, E911, or public safety radio communication structures or facilities made



exempt by s. 119.071(3)(e)1.a. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(b) Any portion of a meeting that would reveal geographical maps indicating the actual or proposed locations of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication services, or other 911, E911, or public safety radio communication structures or facilities made exempt by s. 119.071(3)(e)1.b. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(c) No portion of an exempt meeting under paragraph (a) or paragraph (b) may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in camera review, determines that the meeting was not restricted to the discussion of the information made exempt by s. 119.071(3)(e)1.a. or b. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt information may be disclosed to a third party.

(d) For purposes of this subsection, the term "public safety radio" is defined as the means of communication between and among 911 public safety answering points, dispatchers, and first responder agencies using those portions of the radio frequency spectrum designated by the Federal Communications Commission under 47 C.F.R. part 90 for public safety purposes.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

History - (s. 2, ch. 2001-361; s. 44, ch. 2005-251; s. 2, ch. 2006-158; s. 2, ch. 2006-284; s. 13, ch. 2010-151; s. 2, ch. 2011-140; s. 2, ch. 2016-49; s. 3, ch. 2018-146; s. 1, ch. 2019-37; s. 2, ch. 2020-13; s. 3, ch. 2023-75.)



§286.0114 FS | PUBLIC MEETINGS; REASONABLE OPPORTUNITY TO BE HEARD; ATTORNEY FEES

(1) For purposes of this section, "board or commission" means a board or commission of any state agency or authority or of any agency or authority of a county, municipal corporation, or political subdivision.

(2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decision-making process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

(3) The requirements in subsection (2) do not apply to:

(a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;

(b) An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;

(c) A meeting that is exempt from s. 286.011; or

(d) A meeting during which the board or commission is acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

(4) Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:

(a) Provide guidelines regarding the amount of time an individual has to address the board or commission;

(b) Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or



factions, at meetings in which a large number of individuals wish to be heard;

(c) Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or

(d) Designate a specified period of time for public comment.

(5) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with this section.

(6) A circuit court has jurisdiction to issue an injunction for the purpose of enforcing this section upon the filing of an application for such injunction by a citizen of this state.

(7)

(a) Whenever an action is filed against a board or commission to enforce this section, the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with enforcing this section.

(b) Whenever a board or commission appeals a court order that has found the board or commission to have violated this section, and such order is affirmed, the court shall assess reasonable attorney fees for the appeal against such board or commission.

(8) An action taken by a board or commission which is found to be in violation of this section is not void as a result of that violation.

History - (s. 1, ch. 2013-227.)



§286.01141 FS | CRIMINAL JUSTICE COMMISSIONS; PUBLIC MEETINGS EXEMPTION

(1) As used in this section, the term:

(a) "Duly constituted criminal justice commission" means an advisory commission created by municipal or county ordinance whose membership is comprised of individuals from the private sector and the public sector and whose purpose is to examine local criminal justice issues.

(b) "Active" has the same meaning as provided in s. 119.011.

(c) "Criminal intelligence information" has the same meaning as provided in s. 119.011.

(d) "Criminal investigative information" has the same meaning as provided in s. 119.011.

(2) That portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before, the commission is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution, provided that at any public meeting of the criminal justice commission at which such matter is being considered, the commission members publicly disclose the fact that the matter has been discussed.

History - (s. 1, ch. 2013-196; s. 1, ch. 2018-40.)



§286.0115 FS | ACCESS TO LOCAL PUBLIC OFFICIALS; QUASI-JUDICIAL PROCEEDINGS ON LOCAL GOVERNMENT LAND USE MATTERS

(1)

(a) A county or municipality may adopt an ordinance or resolution removing the presumption of prejudice from ex parte communications with local public officials by establishing a process to disclose ex parte communications with such officials pursuant to this subsection or by adopting an alternative process for such disclosure. However, this subsection does not require a county or municipality to adopt any ordinance or resolution establishing a disclosure process.

(b) As used in this subsection, the term "local public official" means any elected or appointed public official holding a county or municipal office who recommends or takes quasi-judicial action as a member of a board or commission. The term does not include a member of the board or commission of any state agency or authority.

(c) Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any local public official the merits of any matter on which action may be taken by any board or commission on which the local public official is a member. If adopted by county or municipal ordinance or resolution, adherence to the following procedures shall remove the presumption of prejudice arising from ex parte communications with local public officials.

1. The substance of any ex parte communication with a local public official which relates to quasi-judicial action pending before the official is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter.

2. A local public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a local public official shall not be presumed prejudicial to the action, and such written



communication shall be made a part of the record before final action on the matter.

3. Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.

4. Disclosure made pursuant to subparagraphs 1., 2., and 3. must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication. This subsection does not subject local public officials to part III of chapter 112 for not complying with this paragraph.

(2)

(a) Notwithstanding the provisions of subsection (1), a county or municipality may adopt an ordinance or resolution establishing the procedures and provisions of this subsection for quasi-judicial proceedings on local government land use matters. The ordinance or resolution shall provide procedures and provisions identical to this subsection. However, this subsection does not require a county or municipality to adopt such an ordinance or resolution.

(b) In a quasi-judicial proceeding on local government land use matters, a person who appears before the decision-making body who is not a party or party-intervenor shall be allowed to testify before the decision-making body, subject to control by the decision-making body, and may be requested to respond to questions from the decision-making body, but need not be sworn as a witness, is not required to be subject to cross-examination, and is not required to be qualified as an expert witness. The decision-making body shall assign weight and credibility to such testimony as it deems appropriate. A party or party-intervenor in a quasi-judicial proceeding on local government land use matters, upon request by another party or party-intervenor, shall be sworn as a witness, shall be subject to cross-examination by other parties or party-



intervenors, and shall be required to be qualified as an expert witness, as appropriate.

(c) In a quasi-judicial proceeding on local government land use matters, a person may not be precluded from communicating directly with a member of the decision-making body by application of ex parte communication prohibitions. Disclosure of such communications by a member of the decision-making body is not required, and such nondisclosure shall not be presumed prejudicial to the decision of the decision-making body. All decisions of the decision-making body in a quasi-judicial proceeding on local government land use matters must be supported by substantial, competent evidence in the record pertinent to the proceeding, irrespective of such communications.

(3) This section does not restrict the authority of any board or commission to establish rules or procedures governing public hearings or contacts with local public officials.

History - (s. 1, ch. 95-352; s. 31, ch. 96-324.)



§286.012 FS | VOTING REQUIREMENT AT MEETINGS OF GOVERNMENTAL BODIES

A member of a state, county, or municipal governmental board, commission, or agency who is present at a meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may not abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, unless, with respect to any such member, there is, or appears to be, a possible conflict of interest under s. 112.311, s. 112.313, s. 112.3143, or additional or more stringent standards of conduct, if any, adopted pursuant to s. 112.326. If there is, or appears to be, a possible conflict under s. 112.311, s. 112.313, or s. 112.3143, the member shall comply with the disclosure requirements of s. 112.3143. If the only conflict or possible conflict is one arising from the additional or more stringent standards adopted pursuant to s. 112.326, the member shall comply with any disclosure requirements adopted pursuant to s. 112.326. If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.

History - (s. 1, ch. 72-311; s. 9, ch. 75-208; s. 2, ch. 84-357; s. 13, ch. 94-277; s. 19, ch. 2013-36; s. 7, ch. 2014-183.)



§286.021 FS | DEPARTMENT OF STATE TO HOLD TITLE TO PATENTS, TRADEMARKS, COPYRIGHTS, ETC

The legal title and every right, interest, claim or demand of any kind in and to any patent, trademark or copyright, or application for the same, now owned or held, or as may hereafter be acquired, owned and held by the state, or any of its boards, commissions or agencies, is hereby granted to and vested in the Department of State for the use and benefit of the state; and no person, firm or corporation shall be entitled to use the same without the written consent of said Department of State.

History - (s. 1, ch. 21959, 1943; ss. 22, 35, ch. 69-106; s. 2, ch. 70-440; s. 15, ch. 79-65.)

Note - (Former s. 272.01.)



§286.031 FS | AUTHORITY OF DEPARTMENT OF STATE IN CONNECTION WITH PATENTS, TRADEMARKS, COPYRIGHTS, ETC

The Department of State is authorized to do and perform any and all things necessary to secure letters patent, copyright and trademark on any invention or otherwise, and to enforce the rights of the state therein; to license, lease, assign, or otherwise give written consent to any person, firm or corporation for the manufacture or use thereof, on a royalty basis, or for such other consideration as said department shall deem proper; to take any and all action necessary, including legal actions, to protect the same against improper or unlawful use or infringement, and to enforce the collection of any sums due the state and said department for the manufacture or use thereof by any other party; to sell any of the same and to execute any and all instruments on behalf of the state necessary to consummate any such sale; and to do any and all other acts necessary and proper for the execution of powers and duties herein conferred upon said department for the benefit of the state.

History - (s. 2, ch. 21959, 1943; ss. 22, 35, ch. 69-106; s. 2, ch. 70-440; s. 16, ch. 79-65.)

Note - (Former s. 272.02.)



**§286.035 FS | CONSTITUTION REVISION COMMISSION; POWERS OF CHAIR;
ASSISTANCE BY STATE AND LOCAL AGENCIES**

(1) The chair of the Constitution Revision Commission, appointed pursuant to s. 2, Art. XI of the State Constitution, is authorized to employ personnel and to incur expenses related to the official operation of the commission or its committees, to sign vouchers, and to otherwise expend funds appropriated to the commission for carrying out its official duties.

(2) All state and local agencies are hereby authorized and directed to assist, in any manner necessary, the Constitution Revision Commission established pursuant to s. 2, Art. XI of the State Constitution upon its request or the request of its chair.

History - (s. 1, ch. 77-201; s. 211, ch. 95-148.)



§286.036 FS | TAXATION AND BUDGET REFORM COMMISSION; POWERS

(1) The Taxation and Budget Reform Commission appointed pursuant to s. 6, Art. XI of the State Constitution, is authorized to employ personnel and to incur expenses related to the official operation of the commission or its committees, and to expend funds appropriated to the commission for carrying out its official duties. Commission members and staff are entitled to per diem and reimbursement of travel expenses incurred in carrying out their duties, as provided in s. 112.061.

(2) All state and regional agencies and governments are authorized and directed to assist, in any manner necessary, the Taxation and Budget Reform Commission upon its request.

(3) All local governments are authorized to assist the Taxation and Budget Reform Commission in any manner necessary. Municipal and county governments are encouraged to cooperate with the commission, examine their taxation and budgetary policies, and submit recommendations to the commission in the form and manner prescribed by the commission.

(4) Each Taxation and Budget Reform Commission established pursuant to s. 6, Art. XI of the State Constitution and this section may not act or operate later than June 30 of the third year following the year in which the commission is required to be established.

(5) The Taxation and Budget Reform Commission is assigned, for administrative purposes, to the legislative branch. The Office of Legislative Services is directed to expedite, where possible, the business of the commission consistent with prudent financial and management practices.

(6) The Legislative Auditing Committee may at any time, without regard to whether the Legislature is then in session or out of session, take under consideration any matter within the scope of the duties of the Taxation and Budget Reform Commission, and in connection therewith may exercise the powers of subpoena by law vested in a standing committee of the Legislature.

History - (s. 12, ch. 90-203; s. 6, ch. 2007-98.)



§286.041 FS | PROHIBITED REQUIREMENTS OF BIDDERS ON CONTRACTS FOR PUBLIC WORKS RELATIVE TO INCOME TAX RETURNS

(1) The state or any of its departments, agencies, bureaus, commissions, and officers and the counties, consolidated governments, municipalities, school districts, special districts, and other public bodies of this state, and the departments, agencies, bureaus, commissions, and officers thereof, shall not require, directly or indirectly, an audit or inspection of any federal or state income tax returns of any company, corporation, or person as a prior condition before entering into contracts with said company, corporation, or person to construct any public work or to supply any materials, labor, equipment or services, or any combination thereof.

(2) Any person who violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, except that the fine shall not be less than \$100.

History - (s. 1, ch. 72-130.)



§286.043 FS | LIMITATION ON USE OF FUNDS FOR DISCRIMINATORY CONTRACT OR BID SPECIFICATIONS RELATING TO CAR RENTAL CONCESSIONS AT AIRPORTS

No public funds shall be used by a unit of local government for the purpose of promulgating contract or bid specifications relating to car rental concessions at airports which would preclude a corporation authorized to do business in this state from submitting bids or entering into such contracts with such unit of local government. Nothing in this section shall prevent the local government from providing in such specifications a minimum annual guarantee of revenue to be paid to such unit of local government.

History - (s. 4, ch. 79-119.)



§286.101 FS | FOREIGN GIFTS AND CONTRACTS

(1) As used in this section, the term:

(a) "Contract" means any agreement for the direct benefit or use of any party to such agreement, including an agreement for the sale of commodities or services.

(b) "Foreign country of concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such foreign country of concern.

(c) "Foreign government" means the government of any country, nation, or group of nations, or any province or other political subdivision of any country or nation, other than the government of the United States or the government of a state or political subdivision, including any agent of such foreign government.

(d) "Foreign source" means any of the following:

1. A foreign government or an agency of a foreign government.

2. A legal entity, governmental or otherwise, created solely under the laws of a foreign state or states.

3. An individual who is not a citizen or a national of the United States or a territory or protectorate of the United States.

4. An agent, including a subsidiary or an affiliate of a foreign legal entity, acting on behalf of a foreign source.

(e) "Gift" means any transfer of money or property from one entity to another without compensation.

(f) "Grant" means a transfer of money for a specified purpose, including a conditional gift.

(g) "Interest" in an entity means any direct or indirect investment in or loan to the entity valued at 5 percent or more of the entity's net worth or any form of direct or



indirect control exerting similar or greater influence on the governance of the entity.

(h) "State agency" means any agency or unit of state government created or established by law. For the purposes of this section only, the term does not include a state university or a state college.

(i) "State college" means any postsecondary educational institution under the supervision of the State Board of Education, including any entity under the control of or established for the benefit of a state college.

(j) "State university" means any state university under the supervision of the Board of Governors, including any entity under the control of or established for the benefit of a state university.

(2) Any state agency or political subdivision that receives directly or indirectly any gift or grant with a value of \$50,000 or more from any foreign source shall disclose such gift or grant to the Department of Financial Services within 30 days after receiving such gift or grant. Such disclosure shall include the date of the gift or grant, the amount of the gift or grant, and the name and country of residence or domicile of the foreign source. Disclosure is not required if such gift or grant is disclosed under s. 1010.25.

(3)

(a) Any entity that applies to a state agency or political subdivision for a grant or proposes a contract having a value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a foreign country of concern if such interest, contract, or grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract or grant or gift was received or in force at any time during the previous 5 years. Such disclosure shall include the name and mailing address of the disclosing entity, the amount of the contract or grant or gift or the value of the interest disclosed, the applicable foreign country of concern and, if applicable, the date of termination of the contract or interest, the date of receipt of the grant or gift, and the name of the agent or controlled entity that is the source or interest holder. Within 1 year



before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services.

(b) Disclosure under this subsection is not required with respect to:

1. A proposal to sell commodities through the online procurement program established pursuant to s. 287.057(22);
2. A proposal to sell commodities to a university pursuant to Board of Governors Regulation 18.001;
3. An application or proposal from an entity that discloses foreign gifts or grants under subsection (2) or s. 1010.25;
4. An application or proposal from a foreign source that, if granted or accepted, would be disclosed under subsection (2) or s. 1010.25; or
5. An application or proposal from a public or not-for-profit research institution with respect to research funded by any federal agency.

(c) A disclosure published online pursuant to subsection (5) is deemed disclosed to every state agency and political subdivision for purposes of paragraph (a). From the time a disclosure is made under paragraph (a) through the term of any awarded state grant or contract, the entity must revise its disclosure within 30 days after entering into a contract with or receiving a grant or gift from a foreign country of concern or within 30 days after the acquisition of any interest in the entity by a foreign country of concern.

(4) At least once every 5 years, the Department of Management Services shall screen each vendor of commodities participating in the online procurement system if such vendor has the capacity to fill an order of \$100,000 or more. Screening must be conducted through federal agencies responsible for identifying persons and organizations subject to trade sanctions, embargoes, or other restrictions under federal law. If a vendor is identified as being subject to any such sanctions, embargoes, or other restrictions, the vendor must make the disclosures required under subsection (3) until such restriction expires. A notification regarding the applicability of the disclosure requirement in subsection (3) to



the vendor must be included on the online procurement system when applicable. The Department of Management Services must ensure that purchasers through the online procurement system may easily access all disclosures made by vendors participating in the system.

(5) The Department of Financial Services must establish and maintain an Internet website to publish the disclosures required under this section. The Department of Financial Services may establish an online system for making such disclosures. The Department of Management Services may coordinate with the Department of Financial Services to establish the online system.

(6)

(a) Upon receiving a referral from an inspector general or other compliance officer of a state agency or political subdivision or any sworn complaint based upon substantive information and reasonable belief, the Department of Financial Services must investigate an allegation of a violation of this section.

(b) The Department of Financial Services, an inspector general, or any other agent or compliance officer authorized by a state agency or political subdivision may request records relevant to any reasonable suspicion of a violation of this section. An entity must provide the required records within 30 days after such request or at a later time agreed to by the investigating state agency or political subdivision.

(7)

(a) Failure to make a disclosure required under this section or failure to provide records requested under paragraph (6)(b) constitutes a civil violation punishable upon a final order of the Department of Financial Services by an administrative fine of \$5,000 for a first violation or \$10,000 for any subsequent violation.

(b) In addition to any fine assessed under paragraph (a), a final order determining a third or subsequent violation by a state agency or political subdivision must include a determination of the identity of the officer responsible for acceptance of the undisclosed grant or gift. Such order must also include a referral by the Department of Financial Services to the Governor or other officer authorized to suspend or remove the officer responsible for acceptance of the undisclosed grant or gift from public office. A copy of



such referral must be provided to the President of the Senate and the Speaker of the House of Representatives for oversight of such suspension and removal authority.

(c) In addition to any fine assessed under paragraph (a), a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause. The Department of Financial Services shall include and maintain an active and current list of such ineligible entities on the Internet website maintained under subsection (5).

(8) Information disclosed under subsections (2) and (3) is not confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(9)

(a) The Department of Management Services may adopt rules necessary to carry out its responsibilities under this section. The rules may identify the federal agencies to be consulted under subsection (4) and the procedure for notifying a vendor of the disclosure requirements under this section when applicable. The Department of Management Services may also adopt rules providing for the application of this section to the online procurement system.

(b) The Department of Financial Services may adopt rules necessary to carry out its responsibilities under this section.

(c) Any rules necessary to implement this section must be published by December 31, 2021, unless the applicable department head certifies in writing that a delay is necessary and the date by which the proposed rules will be published. Such certification must be published in the Florida Administrative Register and a copy provided to the Joint Administrative Procedures Committee.

(10)

(a) A state university or state college, or any employee or representative of a state university or state college, may not solicit or accept any gift in its official capacity,



including any physical object, loan, reward, promise of future employment, favor, or service, from a college or university based in a foreign country of concern or from a foreign principal as those terms are defined in s. 288.860.

(b) The Board of Governors and the State Board of Education shall adopt regulations and rules, respectively, to administer this subsection.

History - (s. 1, ch. 2021-76; s. 2, ch. 2023-34.)



§286.23 FS | REAL PROPERTY CONVEYED TO PUBLIC AGENCY; DISCLOSURE OF BENEFICIAL INTERESTS; NOTICE; EXEMPTIONS

(1) Any person or entity holding real property in the form of a partnership, limited partnership, corporation, trust, or any form of representative capacity whatsoever for others, except as otherwise provided in this section, shall, before entering into any contract whereby such real property held in representative capacity is sold, leased, taken by eminent domain, or otherwise conveyed to the state or any local governmental unit, or an agency of either, make a public disclosure in writing, under oath and subject to the penalties prescribed for perjury, which shall state his or her name and address and the name and address of every person having a beneficial interest in the real property, however small or minimal. This written disclosure shall be made to the chief officer, or to his or her officially designated representative, of the state, local governmental unit, or agency of either, with which the transaction is made at least 10 days prior to the time of closing or, in the case of an eminent domain taking, within 48 hours after the time when the required sum is deposited in the registry of the court. Notice of the deposit shall be made to the person or entity by registered or certified mail before the 48-hour period begins.

(2) The state or local governmental unit, or an agency of either, shall send written notice by registered mail to the person required to make disclosures under this section, prior to the time when such disclosures are required to be made, which written request shall also inform the person required to make such disclosure that such disclosure must be made under oath, subject to the penalties prescribed for perjury.

(3)

(a) The beneficial interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to chapter 517, whose interest is for sale to the general public, is hereby exempt from the provisions of this section. When disclosure of persons having beneficial interests in nonpublic entities is required, the entity or person shall not be required by the provisions of this section to disclose persons or entities holding less than 5 percent of the beneficial interest in the disclosing entity.

(b) In the case of an eminent domain taking, any entity or person other than a public officer or public employee, holding



real property in the form of a trust which was created more than 3 years prior to the deposit of the required sum in the registry of the court, is hereby exempt from the provisions of this section. However, in order to qualify for the exemption set forth in this section, the trustee of such trust shall be required to certify within 48 hours after such deposit, under penalty of perjury, that no public officer or public employee has any beneficial interest whatsoever in such trust. Disclosure of any changes in the trust instrument or of persons having beneficial interest in the trust shall be made if such changes occurred during the 3 years prior to the deposit of said sum in the registry of the court.

(4) This section shall be liberally construed to accomplish the purpose of requiring the identification of the actual parties benefiting from any transaction with a governmental unit or agency involving the procurement of the ownership or use of property by such governmental unit or agency.

History - (ss. 1, 2, 3, 4, 5, ch. 74-174; s. 1, ch. 77-174; s. 72, ch. 86-186; s. 7, ch. 91-56; s. 212, ch. 95-148.)



§286.25 FS | PUBLICATION OR STATEMENT OF STATE SPONSORSHIP

Any nongovernmental organization which sponsors a program financed partially by state funds or funds obtained from a state agency shall, in publicizing, advertising, or describing the sponsorship of the program, state:

“Sponsored by (name of organization) and the State of Florida.”

If the sponsorship reference is in written material, the words “State of Florida” shall appear in the same size letters or type as the name of the organization.

History - (s. 1, ch. 77-224)



§286.26 FS | ACCESSIBILITY OF PUBLIC MEETINGS TO THE PHYSICALLY HANDICAPPED

(1) Whenever any board or commission of any state agency or authority, or of any agency or authority of any county, municipal corporation, or other political subdivision, which has scheduled a meeting at which official acts are to be taken receives, at least 48 hours prior to the meeting, a written request by a physically handicapped person to attend the meeting, directed to the chairperson or director of such board, commission, agency, or authority, such chairperson or director shall provide a manner by which such person may attend the meeting at its scheduled site or reschedule the meeting to a site which would be accessible to such person.

(2) If an affected handicapped person objects in the written request, nothing contained in the provisions of this section shall be construed or interpreted to permit the use of human physical assistance to the physically handicapped in lieu of the construction or use of ramps or other mechanical devices in order to comply with the provisions of this section.

History - (s. 1, ch. 77-277; s. 1, ch. 79-170; s. 116, ch. 79-400; s. 1, ch. 81-268.)



§286.27 FS | USE OF STATE FUNDS FOR GREETING CARDS PROHIBITED

No state funds shall be expended for the purchase, preparation, printing, or mailing of any card the sole purpose of which is to convey holiday greetings.

History - (s. 1, ch. 92-21.)



§286.29 FS | CLIMATE-FRIENDLY PUBLIC BUSINESS

The Legislature recognizes the importance of leadership by state government in the area of energy efficiency and in reducing the greenhouse gas emissions of state government operations. The following shall pertain to all state agencies when conducting public business:

(1) The Department of Management Services shall develop the "Florida Climate-Friendly Preferred Products List." In maintaining that list, the department, in consultation with the Department of Environmental Protection, shall continually assess products currently available for purchase under state term contracts to identify specific products and vendors that offer clear energy efficiency or other environmental benefits over competing products. When procuring products from state term contracts, state agencies shall first consult the Florida Climate-Friendly Preferred Products List and procure such products if the price is comparable.

(2) State agencies shall contract for meeting and conference space only with hotels or conference facilities that have received the "Green Lodging" designation from the Department of Environmental Protection for best practices in water, energy, and waste efficiency standards, unless the responsible state agency head makes a determination that no other viable alternative exists.

(3) Each state agency shall ensure that all maintained vehicles meet minimum maintenance schedules shown to reduce fuel consumption, which include: ensuring appropriate tire pressures and tread depth; replacing fuel filters and emission filters at recommended intervals; using proper motor oils; and performing timely motor maintenance. Each state agency shall measure and report compliance to the Department of Management Services through the Equipment Management Information System database.

(4) When procuring new vehicles, all state agencies, state universities, community colleges, and local governments that purchase vehicles under a state purchasing plan shall first define the intended purpose for the vehicle and determine which of the following use classes for which the vehicle is being procured:

(a) State business travel, designated operator;



- (b) State business travel, pool operators;
- (c) Construction, agricultural, or maintenance work;
- (d) Conveyance of passengers;
- (e) Conveyance of building or maintenance materials and supplies;
- (f) Off-road vehicle, motorcycle, or all-terrain vehicle;
- (g) Emergency response; or
- (h) Other.

Vehicles described in paragraphs (a) through (h), when being processed for purchase or leasing agreements, must be selected for the greatest fuel efficiency available for a given use class when fuel economy data are available. Exceptions may be made for individual vehicles in paragraph (g) when accompanied, during the procurement process, by documentation indicating that the operator or operators will exclusively be emergency first responders or have special documented need for exceptional vehicle performance characteristics. Any request for an exception must be approved by the purchasing agency head and any exceptional performance characteristics denoted as a part of the procurement process prior to purchase.

(5) All state agencies shall use ethanol and biodiesel blended fuels when available. State agencies administering central fueling operations for state-owned vehicles shall procure biofuels for fleet needs to the greatest extent practicable.

History - (s. 23, ch. 2008-227; s. 25, ch. 2018-110; s. 10, ch. 2020-4.)



§286.31 FS | PROHIBITED USE OF STATE FUNDS; TRAVEL TO ANOTHER STATE FOR PURPOSE OF ABORTION SERVICES¹

(1) As used in this section, the term:

(a) "Educational institution" means public institutions under the control of a district school board, a charter school, a state university, a developmental research school, a Florida College System institution, the Florida School for the Deaf and the Blind, the Florida Virtual School, private school readiness programs, voluntary prekindergarten programs, private K-12 schools, and private colleges and universities.

(b) "Governmental entity" means the state or any political subdivision thereof, including the executive, legislative, and judicial branches of government; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; and any agencies that are subject to this chapter.

(2) Any person, governmental entity, or educational institution may not expend state funds as defined in s. 215.31 in any manner for a person to travel to another state to receive services that are intended to support an abortion as defined in s. 390.011, unless:

(a) The person, governmental entity, or educational institution is required by federal law to expend state funds for such a purpose; or

(b) There is a medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or to avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition.

History - (s. 2, ch. 2023-21)

Note - (¹Note - Section 9, ch. 2023-21, provides that "[e]xcept as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect 30 days after any of the following occurs: a decision by the Florida Supreme Court holding that the right to privacy enshrined in s. 23, Article I of the State Constitution does not include a right to abortion; a decision by the Florida Supreme Court in *Planned Parenthood v. State*, SC2022-1050, that allows the prohibition on abortions after 15 weeks in s. 390.011(1), Florida Statutes, to remain in effect, including a decision approving, in whole or in part, the



First District Court of Appeal’s decision under review or a decision discharging jurisdiction; an amendment to the State Constitution clarifying that s. 23, Article I of the State Constitution does not include a right to abortion; or a decision from the Florida Supreme Court after March 7, 2023, receding, in whole or in part, from In re T.W., 551 So. 2d 1186 (Fla. 1989), North Fla. Women’s Health v. State, 866 So. 2d 612 (Fla. 2003), or Gainesville Woman Care, LLC v. State, 210 So. 3d 1243 (Fla. 2017).”



§286.311 FS | PROHIBITED USE OF STATE FUNDS; SEX-REASSIGNMENT PRESCRIPTIONS OR PROCEDURES

(1) As used in this section, the term "governmental entity" means the state or any political subdivision thereof, including the executive, legislative, and judicial branches of government; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; and any agencies that are subject to this chapter.

(2) A governmental entity, a public postsecondary educational institution as described in s. 1000.04, the state group health insurance program, a managing entity as defined in s. 394.9082, or a managed care plan providing services under part IV of chapter 409 may not expend state funds as described in s. 215.31 for sex-reassignment prescriptions or procedures as defined in s. 456.001.

History - (s. 3, ch. 2023-90)



CHAPTER 393 FLORIDA STATUTES | FLORIDA

TITLE: XXIX PUBLIC HEALTH

CHAPTER: 393 DEVELOPMENTAL DISABILITIES

PART: --

SECTIONS: §393.063 only

NOTE:



§393.063 FS | DEFINITIONS¹

(1) "Adult day training" means training services that take place in a nonresidential setting, separate from the home or facility in which the client resides, and are intended to support the participation of clients in daily, meaningful, and valued routines of the community. Such training may be provided in work-like settings that do not meet the definition of supported employment.

(2) "Agency" means the Agency for Persons with Disabilities.

(3) "Algorithm" means the mathematical formula used by the agency to calculate budget amounts for clients which uses variables that have statistically validated relationships to clients' needs for services provided by the home and community-based services Medicaid waiver program.

(4) "Allocation methodology" is the process used to determine a client's iBudget by summing the amount generated by the algorithm, and, if applicable, any funding authorized by the agency for the client pursuant to s. 393.0662(1)(b).

(5) "Autism" means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.

(6) "Cerebral palsy" means a group of disabling symptoms of extended duration which results from damage to the developing brain that may occur before, during, or after birth and that results in the loss or impairment of control over voluntary muscles. For the purposes of this definition, cerebral palsy does not include those symptoms or impairments resulting solely from a stroke.

(7) "Client" means any person determined eligible by the agency for services under this chapter.

(8) "Client advocate" means a friend or relative of the client, or of the client's immediate family, who advocates for the best interests of the client in any proceedings under this chapter in which the client or his or her family has the right or duty to participate.



(9) "Comprehensive assessment" means the process used to determine eligibility for services under this chapter.

(10) "Comprehensive transitional education program" means the program established in s. 393.18.

(11) "Developmental disabilities center" means a state-owned and state-operated facility, formerly known as a "Sunland Center," providing for the care, habilitation, and rehabilitation of clients with developmental disabilities.

(12) "Developmental disability" means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

(13) "Direct service provider" means a person 18 years of age or older who has direct face-to-face contact with a client while providing services to the client or has access to a client's living areas or to a client's funds or personal property.

(14) "Domicile" means the place where a client legally resides and which is his or her permanent home. Domicile may be established as provided in s. 222.17. Domicile may not be established in Florida by a minor who has no parent domiciled in Florida, or by a minor who has no legal guardian domiciled in Florida, or by any alien not classified as a resident alien.

(15) "Down syndrome" means a disorder caused by the presence of an extra chromosome 21.

(16) "Express and informed consent" means consent voluntarily given in writing with sufficient knowledge and comprehension of the subject matter to enable the person giving consent to make a knowing decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(17) "Family care program" means the program established in s. 393.068.

(18) "Foster care facility" means a residential facility licensed under this chapter which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility may not be more than three residents.



(19) "Group home facility" means a residential facility licensed under this chapter which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility shall be at least 4 but not more than 15 residents.

(20) "Guardian" has the same meaning as in s. 744.102.

(21) "Guardian advocate" means a person appointed by a written order of the court to represent a person with developmental disabilities under s. 393.12.

(22) "Habilitation" means the process by which a client is assisted in acquiring and maintaining those life skills that enable the client to cope more effectively with the demands of his or her condition and environment and to raise the level of his or her physical, mental, and social efficiency. It includes, but is not limited to, programs of formal structured education and treatment.

(23) "High-risk child" means, for the purposes of this chapter, a child from 3 to 5 years of age with one or more of the following characteristics:

(a) A developmental delay in cognition, language, or physical development.

(b) A child surviving a catastrophic infectious or traumatic illness known to be associated with developmental delay, when funds are specifically appropriated.

(c) A child with a parent or guardian with developmental disabilities who requires assistance in meeting the child's developmental needs.

(d) A child who has a physical or genetic anomaly associated with developmental disability.



(24) "Intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely. For the purposes of this definition, the term:

(a) "Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.

(b) "Significantly subaverage general intellectual functioning" means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency.

For purposes of the application of the criminal laws and procedural rules of this state to matters relating to pretrial, trial, sentencing, and any matters relating to the imposition and execution of the death penalty, the terms "intellectual disability" or "intellectually disabled" are interchangeable with and have the same meaning as the terms "mental retardation" or "retardation" and "mentally retarded" as defined in this section before July 1, 2013.

(25) "Intermediate care facility for the developmentally disabled" means a residential facility licensed and certified under part VIII of chapter 400.

(26) "Medical/dental services" means medically necessary services that are provided or ordered for a client by a person licensed under chapter 458, chapter 459, or chapter 466. Such services may include, but are not limited to, prescription drugs, specialized therapies, nursing supervision, hospitalization, dietary services, prosthetic devices, surgery, specialized equipment and supplies, adaptive equipment, and other services as required to prevent or alleviate a medical or dental condition.

(27) "Personal care services" means individual assistance with or supervision of essential activities of daily living for self-care, including ambulation, bathing, dressing, eating, grooming, and toileting, and other similar services that are incidental to the care furnished and essential to the health,



safety, and welfare of the client if no one else is available to perform those services.

(28) "Phelan-McDermid syndrome" means a disorder caused by the loss of the terminal segment of the long arm of chromosome 22, which occurs near the end of the chromosome at a location designated q13.3, typically leading to developmental delay, intellectual disability, dolicocephaly, hypotonia, or absent or delayed speech.

(29) "Prader-Willi syndrome" means an inherited condition typified by neonatal hypotonia with failure to thrive, hyperphagia or an excessive drive to eat which leads to obesity usually at 18 to 36 months of age, mild to moderate intellectual disability, hypogonadism, short stature, mild facial dysmorphism, and a characteristic neurobehavior.

(30) "Relative" means an individual who is connected by affinity or consanguinity to the client and who is 18 years of age or older.

(31) "Resident" means a person who has a developmental disability and resides at a residential facility, whether or not such person is a client of the agency.

(32) "Residential facility" means a facility providing room and board and personal care for persons who have developmental disabilities.

(33) "Residential habilitation" means supervision and training with the acquisition, retention, or improvement in skills related to activities of daily living, such as personal hygiene skills, homemaking skills, and the social and adaptive skills necessary to enable the individual to reside in the community.

(34) "Residential habilitation center" means a community residential facility licensed under this chapter which provides habilitation services. The capacity of such a facility may not be fewer than nine residents. After October 1, 1989, new residential habilitation centers may not be licensed and the licensed capacity for any existing residential habilitation center may not be increased.

(35) "Respite service" means appropriate, short-term, temporary care that is provided to a person who has a developmental disability in order to meet the planned or emergency needs of the person or the family or other direct service provider.



(36) "Restraint" means a physical device, method, or drug used to control dangerous behavior.

(a) A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to an individual's body so that he or she cannot easily remove the restraint and which restricts freedom of movement or normal access to one's body.

(b) A drug used as a restraint is a medication used to control the person's behavior or to restrict his or her freedom of movement and is not a standard treatment for the person's medical or psychiatric condition. Physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint.

(c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding necessary for routine physical examinations and tests; for purposes of orthopedic, surgical, or other similar medical treatment; to provide support for the achievement of functional body position or proper balance; or to protect a person from falling out of bed.

(37) "Seclusion" means the involuntary isolation of a person in a room or area from which the person is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the person from leaving the room or area. For the purposes of this chapter, the term does not mean isolation due to the medical condition or symptoms of the person.

(38) "Self-determination" means an individual's freedom to exercise the same rights as all other citizens, authority to exercise control over funds needed for one's own support, including prioritizing these funds when necessary, responsibility for the wise use of public funds, and self-advocacy to speak and advocate for oneself in order to gain independence and ensure that individuals with a developmental disability are treated equally.



(39) "Specialized therapies" means those treatments or activities prescribed by and provided by an appropriately trained, licensed, or certified professional or staff person and may include, but are not limited to, physical therapy, speech therapy, respiratory therapy, occupational therapy, behavior therapy, physical management services, and related specialized equipment and supplies.

(40) "Spina bifida" means a medical diagnosis of spina bifida cystica or myelomeningocele.

¹(41) "Support coordinator" means a person who is designated by the agency to assist individuals and families in identifying their capacities, needs, and resources, as well as finding and gaining access to necessary supports and services; coordinating the delivery of supports and services; advocating on behalf of the individual and family; maintaining relevant records; and monitoring and evaluating the delivery of supports and services to determine the extent to which they meet the needs and expectations identified by the individual, family, and others who participated in the development of the support plan.

(42) "Supported employment" means employment located or provided in an integrated work setting, with earnings paid on a commensurate wage basis, and for which continued support is needed for job maintenance.

(43) "Supported living" means a category of individually determined services designed and coordinated in such a manner as to provide assistance to adult clients who require ongoing supports to live as independently as possible in their own homes, to be integrated into the community, and to participate in community life to the fullest extent possible.

(44) "Training" means a planned approach to assisting a client to attain or maintain his or her maximum potential and includes services ranging from sensory stimulation to instruction in skills for independent living and employment.

(45) "Treatment" means the prevention, amelioration, or cure of a client's physical and mental disabilities or illnesses.



History. — s. 1, ch. 77-335; s. 1, ch. 79-148; s. 153, ch. 79-400; s. 3, ch. 81-23; s. 4, ch. 85-54; s. 1, ch. 85-147; s. 5, ch. 87-238; s. 5, ch. 88-398; s. 7, ch. 89-308; ss. 2, 4, ch. 89-339; s. 27, ch. 90-306; s. 1, ch. 90-333; s. 17, ch. 91-158; s. 3, ch. 94-154; s. 1045, ch. 95-148; s. 53, ch. 95-228; s. 1, ch. 95-293; s. 13, ch. 96-417; s. 23, ch. 98-171; s. 140, ch. 98-403; s. 80, ch. 99-8; s. 203, ch. 99-13; s. 3, ch. 2000-338; s. 35, ch. 2002-400; s. 7, ch. 2004-260; s. 71, ch. 2004-267; s. 15, ch. 2006-197; s. 10, ch. 2006-227; s. 2, ch. 2008-244; s. 2, ch. 2011-135; s. 9, ch. 2013-162; s. 6, ch. 2016-3; ss. 38, 39, 126, ch. 2016-62; ss. 11, 12, ch. 2016-65; s. 1, ch. 2016-140; s. 58, ch. 2019-3; s. 1, ch. 2020-71.

¹*Note.*—Section 1, ch. 2020-71, added new subsection (39), and amended present subsection (41), renumbered as subsection (42), effective July 1, 2021, to read:

(39) “Significant additional need” means an additional need for medically necessary services which would place the health and safety of the client, the client’s caregiver, or the public in serious jeopardy if it is not met. The term does not exclude services for an additional need that the client requires in order to remain in the least restrictive setting, including, but not limited to, employment services and transportation services. The agency may provide additional funding only after the determination of a client’s initial allocation amount and after the qualified organization has documented the availability of nonwaiver resources.

* * * * *

(42) “Support coordinator” means an employee of a qualified organization as provided in s. 393.0663 designated by the agency to assist individuals and families in identifying their capacities, needs, and resources, as well as finding and gaining access to necessary supports and services; coordinating the delivery of supports and services; advocating on behalf of the individual and family; maintaining relevant records; and monitoring and evaluating the delivery of supports and services to determine the extent to which they meet the needs and expectations identified by the individual, family, and others who participated in the development of the support plan.



CHAPTER 448 FLORIDA STATUTES | FLORIDA

TITLE: XXXI LABOR

CHAPTER: 448 GENERAL LABOR REGULATIONS

PART: I TERMS AND CONDITIONS OF EMPLOYMENT

SECTIONS: §448.01 through §448.111

NOTE: Entire Part



§448.01 FS | LEGAL DAY'S WORK; EXTRA PAY

(1) Ten hours of labor shall be a legal day's work, and when any person employed to perform manual labor of any kind by the day, week, month or year renders 10 hours of labor, he or she shall be considered to have performed a legal day's work, unless a written contract has been signed by the person so employed and the employer, requiring a less or greater number of hours of labor to be performed daily.

(2) Unless such written contract has been made, the person employed shall be entitled to extra pay for all work performed by the requirement of his or her employer in excess of 10 hours' labor daily.

History - (ss. 1, 2, 3, ch. 1988, 1874; RS 2117, 2118; GS 2641, 2642; RGS 4016, 4017; CGL 5939, 5940; s. 164, ch. 97-103.)



§448.03 FS | THREAT OF DISCHARGE TO COMPEL EMPLOYEE TO TRADE WITH ANY PARTICULAR FIRM OR PERSON; PENALTY

Any person or persons, firm, joint stock company, association or corporation organized, chartered or incorporated by and under the laws of this state, either as owner or lessee, having persons in their service as employees, who shall discharge any employee or threaten to discharge any employee in their service for trading or dealing, or for not trading or dealing as a customer or patron with any particular merchant or other person or class of persons in any business calling, or shall notify any employee either by general or special notice, directly or indirectly, secretly or openly given, not to trade or deal as a customer or patron with any particular merchant or person or class of persons in any business or calling, under penalty of being discharged from the service of such person, firm, joint stock company, corporation or association shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History - (ss. 1, 2, ch. 5015, 1901; GS 3233; RGS 5066; CGL 7168; s. 374, ch. 71-136.)



§448.04 FS | PENALTY FOR OFFICER OR AGENT VIOLATING S. 448.03

Any person acting as an officer or agent of any firm, joint stock company, association or corporation of the kind and character as described in s. 448.03 or for any one of them, who makes or executes any notice, order or threat of the kind therein mentioned and forbidden, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History - (s. 2, ch. 5015, 1901; GS 3234; RGS 5067; CGL 7169; s. 375, ch. 71-136.)



§448.045 FS | WRONGFUL COMBINATIONS AGAINST WORKERS

If two or more persons shall agree, conspire, combine or confederate together for the purpose of preventing any person from procuring work in any firm or corporation, or to cause the discharge of any person from work in such firm or corporation; or if any person shall verbally or by written or printed communication, threaten any injury to life, property or business of any person for the purpose of procuring the discharge of any worker in any firm or corporation, or to prevent any person from procuring work in such firm or corporation, such persons so combining shall be deemed guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History - (s. 1, ch. 4144, 1893; GS 3515; RGS 5401; CGL 7542; s. 983, ch. 71-136; s. 165, ch. 97-103.)

Note - (Former s. 833.02.)



§448.05 FS | SEATS TO BE FURNISHED FOR EMPLOYEES IN STORES; PENALTY

If any merchant, storekeeper, employer of male or female clerks, salespeople, cash boys or cash girls, or other assistants, in mercantile or other business pursuits, requiring such employees to stand or walk during their active duties, neglect to furnish at his or her own cost or expense suitable chairs, stools or sliding seats attached to the counters or walls, for the use of such employees when not engaged in their active work, and not required to be on their feet in the proper performance of their several duties; or refuse to permit their said employees to make reasonable use of said seats during business hours, for purposes of necessary rest, and when such use will not interfere with humane or reasonable requirements of their employment, he or she shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History - (s. 1, ch. 4762, 1899; GS 3235; RGS 5068; CGL 7170; s. 376, ch. 71-136; s. 166, ch. 97-103.)



§448.07 FS | WAGE RATE DISCRIMINATION BASED ON SEX PROHIBITED

(1) DEFINITIONS

As used in this section, unless the context or subject matter clearly requires otherwise, the following terms shall have the meanings as defined in this section:

(a) "Employee" means any individual employed by an employer, including individuals employed by the state or any of its political subdivisions or instrumentalities of subdivisions.

(b) "Employer" means any person who employs two or more employees.

(c) "Wages" means and includes all compensation paid by an employer or his or her agent for the performance of service by an employee, including the cash value of all compensation paid in any medium other than cash.

(d) "Rate" with reference to wages means the basis of compensation for services by an employee for an employer and includes compensation based on time spent in the performance of such services, on the number of operations accomplished, or on the quality produced or handled.

(e) "Unpaid wages" means the difference between the wages actually paid to an employee and the wages required to be paid an employee pursuant to subsection (3).

(2) DISCRIMINATION ON BASIS OF SEX PROHIBITED

(a) No employer shall discriminate between employees on the basis of sex by paying wages to employees at a rate less than the rate at which he or she pays wages to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except when such payment is made pursuant to:

1. A seniority system;
2. A merit system;
3. A system which measures earnings by quantity or quality of production; or



4. A differential based on any reasonable factor other than sex when exercised in good faith.

(b) No person shall cause or attempt to cause an employer to discriminate against any employee in violation of the provisions of this section.

(3) CIVIL ACTION FOR UNPAID WAGES

Any employer or person who violates the provisions of this section is liable to the employee for the amount of the difference between the amount the employee was paid and the amount he or she should have been paid under this section. Nothing in this section allows a claimant to recover more than an amount equal to his or her unpaid wages while so employed for 1 year prior to the filing of the claim. An action to recover such liability may be maintained in any court of competent jurisdiction by the aggrieved employee within 6 months after termination of employment. The court in such action may award to the prevailing party costs of the action and a reasonable attorney's fee.

(4) Nothing in this section or in s. 725.07, relating to discrimination based on sex in providing equal pay for equal services performed, is applicable to any employer, labor organization or member thereof, or employee whose employer is subject to the federal Fair Labor Standards Act of 1938, as amended.

History - (ss. 1, 2, 3, 4, ch. 69-5; s. 1, ch. 84-345; s. 167, ch. 97-103.)



§448.075 FS | EMPLOYMENT DISCRIMINATION ON BASIS OF SICKLE-CELL TRAIT PROHIBITED

No person, firm, corporation, unincorporated association, state agency, unit of local government, or any public or private entity shall deny or refuse employment to any person or discharge any person from employment solely because such person has the sickle-cell trait.

History - (s. 3, ch. 78-35.)



§448.076 FS | MANDATORY SCREENING OR TESTING FOR SICKLE-CELL TRAIT PROHIBITED

No person, firm, corporation, unincorporated association, state agency, unit of local government, or any public or private entity shall require screening or testing for the sickle-cell trait as a condition for employment, for admission into any state educational institution or state-chartered private educational institution, or for becoming eligible for adoption if otherwise eligible for adoption under the laws of this state.

History - (s. 4, ch. 78-35.)



§448.08 FS | ATTORNEY'S FEES FOR SUCCESSFUL LITIGANTS IN ACTIONS FOR UNPAID WAGES

The court may award to the prevailing party in an action for unpaid wages costs of the action and a reasonable attorney's fee.

History - (s. 1, ch. 78-327.)



§448.09 FS | UNAUTHORIZED ALIENS; EMPLOYMENT PROHIBITED¹

(1) It shall be unlawful for any person knowingly to employ, hire, recruit, or refer, either for herself or himself or on behalf of another, for private or public employment within the state, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States.

(2) The first violation of subsection (1) shall be a noncriminal violation as defined in s. 775.08(3) and, upon conviction, shall be punishable as provided in s. 775.082(5) by a civil fine of not more than \$500, regardless of the number of aliens with respect to whom the violation occurred.

(3) Any person who has been previously convicted for a violation of subsection (1) and who thereafter violates subsection (1), shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any such subsequent violation of this section shall constitute a separate offense with respect to each unauthorized alien.

History - (ss. 1, 2, 3, ch. 77-250; s. 193, ch. 79-400; s. 82, ch. 91-224; s. 168, ch. 97-103; s. 6, ch. 2023-40.)

¹*Note - (Section 6, ch. 2023-40, amended s. 448.09, effective July 1, 2024, to read:*

448.09 Unauthorized aliens; employment prohibited

(1) It is unlawful for any person to knowingly employ, hire, recruit, or refer, either for herself or himself or on behalf of another, for private or public employment within this state, an alien who is not duly authorized to work by the immigration laws of the United States, the Attorney General of the United States, or the United States Secretary of the Department of Homeland Security.

(2) If the Department of Economic Opportunity finds or is notified by an entity specified in s. 448.095(3)(a) that an employer has knowingly employed an unauthorized alien without verifying the employment eligibility of such person, the department must enter an order pursuant to chapter 120 making such determination and require repayment of any economic development incentive pursuant to s. 288.061(6).

(3) For a violation of this section, the department shall place the employer on probation for a 1-year period and require that the employer report quarterly to the



department to demonstrate compliance with the requirements of subsection (1) and s. 448.095.

(4) Any violation of this section which takes place within 24 months after a previous violation constitutes grounds for the suspension or revocation of all licenses issued by a licensing agency subject to chapter 120. The department shall take the following actions for a violation involving:

(a) One to ten unauthorized aliens, suspension of all applicable licenses held by a private employer for up to 30 days by the respective agencies that issued them.

(b) Eleven to fifty unauthorized aliens, suspension of all applicable licenses held by a private employer for up to 60 days by the respective agencies that issued them.

(c) More than fifty unauthorized aliens, revocation of all applicable licenses held by a private employer by the respective agencies that issued them.

(5) An alien who is not duly authorized to work by the immigration laws of the United States, the Attorney General of the United States, or the United States Secretary of the Department of Homeland Security and who knowingly uses a false identification document or who fraudulently uses an identification document of another person for the purpose of obtaining employment commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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§448.10 FS | EMPLOYMENT ELIGIBILITY

(1) DEFINITIONS

As used in this section, the term:

(a) "Contractor" means a person or an entity that has entered or is attempting to enter into a contract with a public agency to provide labor, supplies, or services to such agency in exchange for salary, wages, or other remuneration.

(b) "Employee" means an individual filling a permanent position who performs labor or services under the control or direction of an employer that has the power or right to control and direct the employee in the material details of how the work is to be performed in exchange for salary, wages, or other remuneration. An individual hired for casual labor, as defined in s. 443.036, which is to be performed entirely within a private residence, is not an employee of an occupant or owner of a private residence. An independent contractor, as defined in federal laws or regulations, hired to perform a specified portion of labor or services is not an employee.

(c) "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security which allows participating employers to electronically verify the employment eligibility of new employees.

(d) "Public agency" means any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, state, county, city, town, village, municipality, or any other separate unit of government created or established pursuant to law, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(e) "Subcontractor" means a person or an entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.



(f) "Unauthorized alien" means an individual who is not authorized under federal law to be employed in the United States, as described in 8 U.S.C. s. 1324a(h)(3). The term must be interpreted consistently with that section and any applicable federal rules or regulations.

(2) EMPLOYMENT VERIFICATION

(a) An employer shall verify each new employee's employment eligibility within 3 business days after the first day that the new employee begins working for pay as required under 8 C.F.R. s. 274a.

(b)

1. A public agency shall use the E-Verify system to verify a new employee's employment eligibility as required under paragraph (a).

2. Beginning on July 1, 2023, a private employer with 25 or more employees shall use the E-Verify system to verify a new employee's employment eligibility as required under paragraph (a).

3. Each employer required to use the E-Verify system under this paragraph must certify on its first return each calendar year to the tax service provider that it is in compliance with this section when making contributions to or reimbursing the state's unemployment compensation or reemployment assistance system. An employer that voluntarily uses the E-Verify system may also make such a certification on its first return each calendar year in order to document such use.

(c) If the E-Verify system is unavailable for 3 business days after the first day that the new employee begins working for pay and an employer cannot access the system to verify a new employee's employment eligibility, the employer must use the Employment Eligibility Verification form (Form I-9) to verify employment eligibility. The unavailability of the E-Verify system does not bar the employer from using the rebuttable presumption established in paragraph (4)(a). An employer must document the unavailability of the E-Verify system by retaining a screenshot from each day which shows the employer's lack of access to the system, a public



announcement that the E-Verify system is not available, or any other communication or notice recorded by the employer regarding the unavailability of the system.

(d) The employer must retain a copy of the documentation provided and any official verification generated, if applicable, for at least 3 years.

(e) An employer may not continue to employ an unauthorized alien after obtaining knowledge that a person is or has become an unauthorized alien.

(f) An employee leasing company licensed under part XI of chapter 468 which enters into a written agreement or understanding with a client company which places the primary obligation for compliance with this section upon the client company is not required to verify employment eligibility of any new employees of the client company. In the absence of a written agreement or understanding, the employee leasing company is responsible for compliance with this section. Such employee leasing company shall, at all times, remain an employer as otherwise defined in federal laws or regulations.

(3) ENFORCEMENT

(a) For the purpose of enforcement of this section, any of the following persons or entities may request, and an employer must provide, copies of any documentation relied upon by the employer for the verification of a new employee's employment eligibility:

1. The Department of Law Enforcement;
2. The Attorney General;
3. The state attorney in the circuit in which the new employee works;
4. The statewide prosecutor; or
5. The Department of Economic Opportunity.

(b) A person or an entity that makes a request under paragraph (a) must rely upon the Federal Government to verify an employee's employment eligibility and may not independently make a final determination as to whether an employee is an unauthorized alien.



(4) DEFENSES

(a) An employer that uses the E-Verify system or, if that system is unavailable, the Employment Eligibility Verification form (Form I-9) as provided in paragraph (2)(c), with respect to the employment of an unauthorized alien has established a rebuttable presumption that the employer has not violated s. 448.09 with respect to such employment.

(b) An employer that uses the same documentation that is required by the United States Citizenship and Immigration Services on its Employment Eligibility Verification form (Form I-9) with respect to the employment of an unauthorized alien, has established an affirmative defense that the employer has not violated s. 448.09 with respect to such employment.

(5) PUBLIC AGENCY CONTRACTING

(a) A public agency must require in any contract that the contractor, and any subcontractor thereof, register with and use the E-Verify system to verify the work authorization status of all new employees of the contractor or subcontractor. A public agency or a contractor or subcontractor thereof may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

(b) If a contractor enters into a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The contractor shall maintain a copy of such affidavit for the duration of the contract.

(c)

1. A public agency, contractor, or subcontractor who has a good faith belief that a person or an entity with which it is contracting has knowingly violated s. 448.09(1) shall terminate the contract with the person or entity.

2. A public agency that has a good faith belief that a subcontractor knowingly violated this



subsection, but the contractor otherwise complied with this subsection, shall promptly notify the contractor and order the contractor to immediately terminate the contract with the subcontractor.

3. A contract terminated under this paragraph is not a breach of contract and may not be considered as such. If a public agency terminates a contract with a contractor under this paragraph, the contractor may not be awarded a public contract for at least 1 year after the date on which the contract was terminated. A contractor is liable for any additional costs incurred by a public agency as a result of the termination of a contract.

(d) A public agency, contractor, or subcontractor may file a cause of action with a circuit or county court to challenge a termination under paragraph (c) no later than 20 calendar days after the date on which the contract was terminated.

(6) COMPLIANCE

(a) In addition to the requirements under s. 288.061(6), beginning on July 1, 2024, if the Department of Economic Opportunity determines that an employer failed to use the E-Verify system to verify the employment eligibility of employees as required under this section, the department must notify the employer of the department's determination of noncompliance and provide the employer with 30 days to cure the noncompliance.

(b) If the Department of Economic Opportunity determines that an employer failed to use the E-Verify system as required under this section three times in any 24-month period, the department must impose a fine of \$1,000 per day until the employer provides sufficient proof to the department that the noncompliance is cured. Noncompliance constitutes grounds for the suspension of all licenses issued by a licensing agency subject to chapter 120 until the noncompliance is cured.

(c) Fines collected under this subsection must be deposited into the State Economic Enhancement and Development Trust Fund for use by the department for



employer outreach and public notice of the state's employment verification laws.

(7) CONSTRUCTION

(a) This section must be enforced without regard to race, color, or national origin and must be construed in a manner so as to be fully consistent with any applicable federal laws or regulations.

(b) The requirements to use the E-Verify system under this section do not apply in any federal fiscal year in which the system is not funded by the Federal Government.

(c) This section shall expire 60 days after the E-Verify system is no longer a pilot program, and the Federal Government requires the use of the E-Verify system by all employers in the United States.

History - (s. 2, ch. 2020-149; s. 7, ch. 2023-40.)



§448.101 FS | DEFINITIONS

As used in ss. 448.101-448.105, the term:

(1) "Appropriate governmental agency" means any agency of government charged with the enforcement of laws, rules, or regulations governing an activity, policy, or practice of an employer.

(2) "Employee" means a person who performs services for and under the control and direction of an employer for wages or other remuneration. The term does not include an independent contractor.

(3) "Employer" means any private individual, firm, partnership, institution, corporation, or association that employs ten or more persons.

(4) "Law, rule, or regulation" includes any statute or ordinance or any rule or regulation adopted pursuant to any federal, state, or local statute or ordinance applicable to the employer and pertaining to the business.

(5) "Retaliatory personnel action" means the discharge, suspension, or demotion by an employer of an employee or any other adverse employment action taken by an employer against an employee in the terms and conditions of employment.

(6) "Supervisor" means any individual within an employer's organization who has the authority to direct and control the work performance of the affected employee or who has managerial authority to take corrective action regarding the violation of law, rule, or regulation of which the employee complains.

History - (s. 4, ch. 91-285.)



§448.102 FS | PROHIBITIONS

An employer may not take any retaliatory personnel action against an employee because the employee has:

(1) Disclosed, or threatened to disclose, to any appropriate governmental agency, under oath, in writing, an activity, policy, or practice of the employer that is in violation of a law, rule, or regulation. However, this subsection does not apply unless the employee has, in writing, brought the activity, policy, or practice to the attention of a supervisor or the employer and has afforded the employer a reasonable opportunity to correct the activity, policy, or practice.

(2) Provided information to, or testified before, any appropriate governmental agency, person, or entity conducting an investigation, hearing, or inquiry into an alleged violation of a law, rule, or regulation by the employer.

(3) Objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation.

History - (s. 5, ch. 91-285.)



§448.103 FS | EMPLOYEE'S REMEDY; RELIEF

(1)

(a) An employee who has been the object of a retaliatory personnel action in violation of this act may institute a civil action in a court of competent jurisdiction for relief as set forth in subsection (2) within 2 years after discovering that the alleged retaliatory personnel action was taken, or within 4 years after the personnel action was taken, whichever is earlier.

(b) Any civil action authorized under this section may be brought in the county in which the alleged retaliatory personnel action occurred, in which the complainant resides, or in which the employer has its principal place of business.

(c) An employee may not recover in any action brought pursuant to this subsection if he or she failed to notify the employer about the illegal activity, policy, or practice as required by s. 448.102(1) or if the retaliatory personnel action was predicated upon a ground other than the employee's exercise of a right protected by this act.

(2) In any action brought pursuant to subsection (1), the court may order relief as follows:

(a) An injunction restraining continued violation of this act.

(b) Reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position.

(c) Reinstatement of full fringe benefits and seniority rights.

(d) Compensation for lost wages, benefits, and other remuneration.

(e) Any other compensatory damages allowable at law.

History - (s. 6, ch. 91-285; s. 169, ch. 97-103.)



§448.104 FS | ATTORNEY'S FEES AND COSTS

A court may award reasonable attorney's fees, court costs, and expenses to the prevailing party.

History - (s. 7, ch. 91-285.)



§448.105 FS | EXISTING RIGHTS

This act does not diminish the rights, privileges, or remedies of an employee or employer under any other law or rule or under any collective bargaining agreement or employment contract.

History - (s. 8, ch. 91-285.)



§448.109 FS | NOTIFICATION OF THE STATE MINIMUM WAGE

(1) As used in this section, the terms:

(a) "Employer," "employee," and "wage" have the meanings as established under the federal Fair Labor Standards Act and its implementing regulations.

(b) "Florida minimum wage" means the wage that an employer must, at a minimum, pay an employee pursuant to s. 24, Art. X of the State Constitution and implementing law.

(2) Each employer who must pay an employee the Florida minimum wage shall prominently display a poster substantially similar to the one made available pursuant to subsection (3) in a conspicuous and accessible place in each establishment where such employees are employed.

(3)

(a) Each year the Department of Economic Opportunity shall, on or before December 1, create and make available to employers a poster in English and in Spanish which reads substantially as follows:

NOTICE TO EMPLOYEES

The Florida minimum wage is \$ (amount) per hour, with a minimum wage of at least \$ (amount) per hour for tipped employees, in addition to tips, for January 1, (year) , through December 31, (year) .

The rate of the minimum wage is recalculated yearly on September 30, based on the Consumer Price Index. Every year on January 1 the new Florida minimum wage takes effect.

An employer may not retaliate against an employee for exercising his or her right to receive the minimum wage. Rights protected by the State Constitution include the right to:

1. File a complaint about an employer's alleged noncompliance with lawful minimum wage requirements.



2. Inform any person about an employer's alleged noncompliance with lawful minimum wage requirements.

3. Inform any person of his or her potential rights under Section 24, Article X of the State Constitution and to assist him or her in asserting such rights.

An employee who has not received the lawful minimum wage after notifying his or her employer and giving the employer 15 days to resolve any claims for unpaid wages may bring a civil action in a court of law against an employer to recover back wages plus damages and attorney's fees.

An employer found liable for intentionally violating minimum wage requirements is subject to a fine of \$1,000 per violation, payable to the state.

The Attorney General or other official designated by the Legislature may bring a civil action to enforce the minimum wage.

For details see Section 24, Article X of the State Constitution.

(b) The poster must be at least 8.5 inches by 11 inches and in a format easily seen by employees. The text in the poster must be of a conspicuous size. The text in the first line must be larger than the text of any other line, and the text of the first sentence must be in bold type and larger than the text in the remaining lines.

History - (s. 1, ch. 2006-84; s. 398, ch. 2011-142.)



§448.11 FS | STATE MINIMUM WAGE; ANNUAL WAGE ADJUSTMENT; ENFORCEMENT

(1) This section may be cited as the "Florida Minimum Wage Act."

(2) The purpose of this section is to provide measures appropriate for the implementation of s. 24, Art. X of the State Constitution, in accordance with authority granted to the Legislature pursuant to s. 24(f), Art. X of the State Constitution. To implement s. 24, Art. X of the State Constitution, the Department of Economic Opportunity is designated as the state Agency for Workforce Innovation.

(3) Employers shall pay employees a minimum wage at an hourly rate of \$6.15 for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage under the federal Fair Labor Standards Act, as amended, and its implementing regulations shall be eligible to receive the state minimum wage pursuant to s. 24, Art. X of the State Constitution and this section. The provisions of ss. 213 and 214 of the federal Fair Labor Standards Act, as interpreted by applicable federal regulations and implemented by the Secretary of Labor, are incorporated herein.

(4)

(a) Beginning September 30, 2005, and annually on September 30 thereafter, the Department of Economic Opportunity shall calculate an adjusted state minimum wage rate by increasing the state minimum wage by the rate of inflation for the 12 months prior to September 1. In calculating the adjusted state minimum wage, the Department of Economic Opportunity shall use the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for the South Region or a successor index as calculated by the United States Department of Labor. Each adjusted state minimum wage rate shall take effect on the following January 1, with the initial adjusted minimum wage rate to take effect on January 1, 2006.

(b) The Department of Revenue and the Department of Economic Opportunity shall annually publish the amount of the adjusted state minimum wage and the effective date. Publication shall occur by posting the adjusted



state minimum wage rate and the effective date on the Internet home pages of the Department of Economic Opportunity and the Department of Revenue by October 15 of each year. In addition, to the extent funded in the General Appropriations Act, the Department of Economic Opportunity shall provide written notice of the adjusted rate and the effective date of the adjusted state minimum wage to all employers registered in the most current reemployment assistance database. Such notice shall be mailed by November 15 of each year using the addresses included in the database. Employers are responsible for maintaining current address information in the reemployment assistance database. The Department of Economic Opportunity is not responsible for failure to provide notice due to incorrect or incomplete address information in the database. The Department of Economic Opportunity shall provide the Department of Revenue with the adjusted state minimum wage rate information and effective date in a timely manner.

(5) It shall be unlawful for an employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected pursuant to s. 24, Art. X of the State Constitution. Rights protected include, but are not limited to, the right to file a complaint or inform any person of his or her potential rights pursuant to s. 24, Art. X of the State Constitution and to assist him or her in asserting such rights.

(6)

(a) Any person aggrieved by a violation of this section may bring a civil action in a court of competent jurisdiction against an employer violating this section or a party violating subsection (5). However, prior to bringing any claim for unpaid minimum wages pursuant to this section, the person aggrieved shall notify the employer alleged to have violated this section, in writing, of an intent to initiate such an action. The notice must identify the minimum wage to which the person aggrieved claims entitlement, the actual or estimated work dates and hours for which payment is sought, and the total amount of alleged unpaid wages through the date of the notice.



(b) The employer shall have 15 calendar days after receipt of the notice to pay the total amount of unpaid wages or otherwise resolve the claim to the satisfaction of the person aggrieved. The statute of limitations for bringing an action pursuant to this section shall be tolled during this 15-day period. If the employer fails to pay the total amount of unpaid wages or otherwise resolve the claim to the satisfaction of the person aggrieved, then the person aggrieved may bring a claim for unpaid minimum wages, the terms of which must be consistent with the contents of the notice.

(c)

1. Upon prevailing in an action brought pursuant to this section, aggrieved persons shall recover the full amount of any unpaid back wages unlawfully withheld plus the same amount as liquidated damages and shall be awarded reasonable attorney's fees and costs. As provided under the federal Fair Labor Standards Act, pursuant to s. 11 of the Portal-to-Portal Act of 1947, 29 U.S.C. s. 260, if the employer proves by a preponderance of the evidence that the act or omission giving rise to such action was in good faith and that the employer had reasonable grounds for believing that his or her act or omission was not a violation of s. 24, Art. X of the State Constitution, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed an amount equal to the amount of unpaid minimum wages. The court shall not award any economic damages on a claim for unpaid minimum wages not expressly authorized in this section.

2. Upon prevailing in an action brought pursuant to this section, aggrieved persons shall also be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, reinstatement in employment and injunctive relief. However, any entitlement to legal or equitable relief in an action brought under s. 24, Art. X of the State Constitution shall not include punitive damages.



(d) Any civil action brought under s. 24, Art. X of the State Constitution and this section shall be subject to s. 768.79.

(7) The Attorney General may bring a civil action to enforce this section. The Attorney General may seek injunctive relief. In addition to injunctive relief, or in lieu thereof, for any employer or other person found to have willfully violated this section, the Attorney General may seek to impose a fine of \$1,000 per violation, payable to the state.

(8) The statute of limitations for an action brought pursuant to this section shall be for the period of time specified in s. 95.11 beginning on the date the alleged violation occurred.

(9) Actions brought pursuant to this section may be brought as a class action pursuant to Rule 1.220, Florida Rules of Civil Procedure. In any class action brought pursuant to this section, the plaintiffs shall prove, by a preponderance of the evidence, the individual identity of each class member and the individual damages of each class member.

(10) This section shall constitute the exclusive remedy under state law for violations of s. 24, Art. X of the State Constitution.

(11) Except for calculating the adjusted state minimum wage and publishing the initial state minimum wage and any annual adjustments thereto, the authority of the Department of Economic Opportunity in implementing s. 24, Art. X of the State Constitution, pursuant to this section, shall be limited to that authority expressly granted by the Legislature.

History - (s. 2, ch. 2005-353; s. 399, ch. 2011-142; s. 73, ch. 2012-30; s. 1, ch. 2023-222.)



§448.111 FS | EVIDENTIARY STANDARDS FOR ACTIONS OF A BUSINESS DURING AN EMERGENCY

(1) For purposes of this section, the term “engaged individual” means an individual who provides a good or service to a business or on behalf of a business and who is remunerated for the good or service regardless of the individual’s classification as an employee or independent contractor.

(2) Notwithstanding any other law, the following actions of a business, if taken during a public health emergency declared by the State Health Officer under s. 381.00315 or a state of emergency declared by the Governor under s. 252.36, may not be used as evidence in a civil cause of action brought under s. 440.10, s. 440.192, s. 440.38, s. 440.381, s. 448.103, s. 448.110, s. 448.25, chapter 532, or s. 717.115, or in a civil cause of action, as provided for under general law, to recover lost wages, salary, employment benefits, or other compensation, because an individual has not been properly classified as an employee:

(a) Providing financial assistance to previously engaged individuals who are unable to work because of health and safety concerns.

(b) Directly providing benefits that are related to the health and safety of engaged individuals, including medical or cleaning supplies, personal protective equipment, health checks, or medical testing.

(c) Providing training or information related to the health and safety of engaged individuals or the public.

(d) Taking any action, including action required or suggested by any federal, state, or local law, ordinance, order, or directive which is intended to protect public health and safety.

History - (s. 1, ch. 2022-99.)



CHAPTER 448 FLORIDA STATUTES | FLORIDA

TITLE: XXXI LABOR

CHAPTER: 448 GENERAL LABOR REGULATIONS

PART: I LABOR POOL ACT

SECTIONS: §448.20 through §448.26

NOTE: Entire Part



§448.20 FS | SHORT TITLE

This part may be cited as the "Labor Pool Act."

History - (s. 1, ch. 95-332.)



§448.21 FS | LEGISLATIVE INTENT

The Legislature finds that this part is necessary to provide for the health, safety, and well-being of day laborers throughout the state and to establish uniform standards of conduct and practice for labor pools in the state, and this part shall be carried out in accordance with this purpose.

History - (s. 1, ch. 95-332.)



§448.22 FS | DEFINITIONS

For the purposes of this part:

(1) "Labor pool" means a business entity that operates a labor hall by one or more of the following methods:

(a) Contracting with third-party users to supply day laborers to them on a temporary basis.

(b) Hiring, employing, recruiting, or contracting with workers to fulfill these temporary labor contracts for day labor.

(c) Fulfilling any contracts for day labor in accordance with this subsection, even if the entity also conducts other business.

(2) "Day labor" means temporary labor or employment that is occasional or irregular for which the worker is employed for not longer than the time period required to complete the temporary assignment for which the individual worker was hired, although an individual may be eligible for additional temporary assignments when available.

(3) "Labor hall" means a central location maintained by a labor pool where day laborers assemble and are dispatched to work for a third-party user.

(4) "Business entity" means any individual, corporation, business partnership, firm, institution, or association.

(5) "Third-party user" means a business entity that uses the services of a day laborer provided by a labor pool.

History - (s. 1, ch. 95-332.)



§448.23 FS | EXCLUSIONS

Except as specified in ss. 448.22(1)(c) and 448.26, this part does not apply to:

- (1) Business entities duly registered as farm labor contractors pursuant to part III of chapter 450;
- (2) Employee leasing companies, as defined in s. 468.520;
- (3) Temporary help services engaged in supplying solely white collar employees, secretarial employees, clerical employees, or skilled laborers;
- (4) Labor union hiring halls; or
- (5) Labor bureau or employment offices operated by a business entity for the sole purpose of employing an individual for its own use.

History - (s. 1, ch. 95-332; s. 2, ch. 2006-10.)



§448.24 FS | DUTIES AND RIGHTS

(1) No labor pool shall charge a day laborer:

(a) For safety equipment, clothing, accessories, or any other items required by the nature of the work either by law, custom, or as a requirement of the third-party user:

1. This subsection shall not preclude the labor pool from charging the day laborer the market value of items temporarily provided to the worker by the labor pool, in the event that the worker willfully fails to return such items to the labor pool.

2. For items other than those referenced in this paragraph, which the labor pool makes available for purchase, the day laborer shall be charged no more than the actual cost of the item to the labor pool, or market value, whichever is less.

(b) More than a reasonable amount to transport a worker to or from the designated worksite, but in no event shall the amount exceed \$1.50 each way; or

(c) For directly or indirectly cashing a worker's check.

(2) A labor pool shall:

(a) Select one of the following methods of payment to compensate a day laborer for work performed:

1. Cash.

2. Commonly accepted negotiable instruments that are payable in cash, on demand at a financial institution, and without discount.

3. Payroll debit card.

4. Electronic fund transfer, which must be made to a financial institution designated by the day laborer.

(b) Before a day laborer's first pay period, provide notice to the day laborer of the method of payment that the labor pool intends to use for payroll and the day laborer's options to elect a different method of payment, and authorize the day laborer to elect not to be paid by payroll debit card or electronic fund transfer.



(c) If selecting to compensate a day laborer by payroll debit card:

1. Offer the day laborer the option to elect payment by electronic fund transfer; and
2. Before selecting payroll debit card, provide the day laborer with a list, including the address, of a business that is in close proximity to the labor pool and that does not charge a fee to withdraw the contents of the payroll debit card.

(d) Compensate day laborers at or above the minimum wage, in conformance with s. 448.01. Deductions, other than those authorized by federal or state law, may not bring the worker's pay below minimum wage for the hours worked.

(e) Comply with all requirements of chapter 440.

(f) Insure any motor vehicle owned or operated by the labor hall and used for the transportation of workers pursuant to Florida Statutes.

(g) At the time of each payment of wages, furnish each worker a written itemized statement showing in detail each deduction made from such wages. A labor pool may deliver this statement electronically upon written request of the day laborer.

(h) Provide each worker with an annual earnings summary within a reasonable period of time after the end of the preceding calendar year, but no later than February 1.

(3) No labor pool shall request or require that any day laborer sign any document waiving the protections of this part.

(4) No labor pool shall charge more than the actual cost of providing lunch, if lunch is provided at the worksite by the labor pool. In no case shall the purchase of lunch be a condition of employment.

(5) A labor pool that operates a labor hall must provide facilities for a worker waiting at the labor hall for a job assignment that include restroom facilities, drinking water, and sufficient seating. A labor pool satisfies requirements for providing restroom facilities and drinking water if its labor hall facilities comply with all minimum requirements



for public restrooms and drinking fountains in the Florida Building Code and any local amendments thereto. A labor pool may also provide drinking water through a water cooler dispenser, by offering bottled water, or by any other similar means.

(6) No labor pool shall restrict the right of a day laborer to accept a permanent position with a third-party user to whom the laborer is referred for temporary work, or to restrict the right of such a third-party user to offer such employment to an employee of the labor pool. However, nothing shall restrict the labor pool from receiving a reasonable placement fee from the third-party user.

(7) Nothing in this part precludes the labor pool from providing a day laborer with a method of obtaining cash from a cash-dispensing machine that is located on the premises of the labor pool and is operated by the labor pool, or by an affiliate, pursuant to chapter 560, if required, for a fee for each transaction which may not exceed \$1.99, provided:

(a) The labor pool offers payment in compliance with the provisions of paragraph (2) (a).

(b) The day laborer voluntarily elects to accept payment in cash after disclosure of the fee.

(c) The cash-dispensing machine requires affirmative action by the day laborer with respect to imposition of the fee and allows the day laborer to negate the transaction in lieu of payment in compliance with paragraph (2) (a).

History - (s. 1, ch. 95-332; s. 10, ch. 2001-65; s. 1, ch. 2006-10; s. 1, ch. 2015-20; s. 1, ch. 2023-138.)



§448.25 FS | REMEDIES; DAMAGES; COSTS

(1)

(a) Any worker aggrieved by a violation of s. 448.24 has the right to bring a civil action in a court of competent jurisdiction against the labor pool responsible for such violation.

(b) Before bringing a civil action pursuant to this section, an aggrieved worker must give the labor pool a reasonable opportunity to cure the alleged violation. The aggrieved worker must serve the labor pool in accordance with s. 48.081 with written notice of the alleged violation. Such notice must include a statement that failure by the labor pool to cure the alleged violation within 60 days after receipt of the notice may result in a civil action being filed against it in a court of competent jurisdiction. A labor pool may cure a violation relating to its labor hall facilities by modifying the alleged violation to comply with s. 448.24(5).

(c) In any action commenced pursuant to this section, the aggrieved worker is entitled to recover actual and consequential damages, or \$1,000, whichever is greater, for each violation of s. 448.24, and costs.

(2) A civil action brought under s. 448.24 must be filed within 1 year after the date the aggrieved worker serves written notice of the alleged violation on the labor pool.

(3) The remedies provided by this part for a violation of s. 448.24 are exclusive and preclude the aggrieved worker from pursuing any other remedy at law or equity which the worker may have.

History - (s. 1, ch. 95-332; s. 2, ch. 2023-138.)



§448.26 FS | APPLICATION

Nothing in this part shall exempt any client of any labor pool or temporary help arrangement entity as defined in s. 468.520(4)(a) or any assigned employee from any other license requirements of state, local, or federal law. Any employee assigned to a client who is licensed, registered, or certified pursuant to law shall be deemed an employee of the client for such licensure purposes but shall remain an employee of the labor pool or temporary help arrangement entity for purposes of chapters 440 and 443.

History - (s. 3, ch. 2006-10.)



CHAPTER 509 FLORIDA STATUTES | FLORIDA

TITLE: XXXIII REGULATION OF TRADE, COMMERCE...

CHAPTER: 509 LODGING AND FOOD ESTABLISHMENTS...

PART: I PUBLIC LODGING AND PUBLIC FOOD SERVICE...

SECTIONS: §509.013 and §509.092 only

NOTE:



§509.013 FS | DEFINITIONS

As used in this chapter, the term:

(1) "Division" means the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(2) "Operator" means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a public lodging establishment or public food service establishment.

(3) "Guest" means any patron, customer, tenant, lodger, boarder, or occupant of a public lodging establishment or public food service establishment.

(4)

(a) "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

2. "Nontransient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.



(b) The following are excluded from the definitions in paragraph (a):

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.
2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072.
3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.
4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.
5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895.
6. Any establishment inspected by the Department of Health and regulated by chapter 513.
7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.



8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.

9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.

(5)

(a) "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption. The term includes a culinary education program, as defined in s. 381.0072(2), which offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another state agency for compliance with sanitation standards.

(b) The following are excluded from the definition in paragraph (a):

1. Any place maintained and operated by a public or private school, college, or university:

a. For the use of students and faculty; or

b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, and athletic contests.

2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:

a. For the use of members and associates; or



b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, or athletic contests.

Upon request by the division, a church or a religious, nonprofit fraternal, or nonprofit civic organization claiming an exclusion under this subparagraph must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

3. Any eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting from 1 to 3 days which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization. Upon request by the division, the event host must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

4. Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.

5. Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place that is regulated under s. 381.0072.

6. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.

7. Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.

8. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

9. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.



10. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.

11. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

(6) "Director" means the Director of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(7) "Single complex of buildings" means all buildings or structures that are owned, managed, controlled, or operated under one business name and are situated on the same tract or plot of land that is not separated by a public street or highway.

(8) "Temporary food service event" means any event of 30 days or less in duration where food is prepared, served, or sold to the general public.

(9) "Theme park or entertainment complex" means a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.

(10) "Third-party provider" means, for purposes of s. 509.049, any provider of an approved food safety training program that provides training or such a training program to a public food service establishment that is not under common ownership or control with the provider.

(11) "Transient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that such guests' occupancy will be temporary.

(12) "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.

(13) "Transient" means a guest in transient occupancy.



(14) "Nontransient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole residence of the guest.

(15) "Nontransient occupancy" means occupancy when it is the intention of the parties that the occupancy will not be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient.

(16) "Nontransient" means a guest in nontransient occupancy.

History. — s. 1, ch. 73-325; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 39, 42, ch. 79-240; ss. 3, 4, ch. 81-161; ss. 2, 3, ch. 81-318; s. 2, ch. 83-241; s. 3, ch. 87-117; s. 31, ch. 88-90; s. 2, ch. 88-275; ss. 2, 51, 52, ch. 90-339; s. 1, ch. 91-40; s. 4, ch. 91-429; s. 21, ch. 92-180; s. 1, ch. 93-53; s. 14, ch. 93-133; s. 36, ch. 94-180; s. 202, ch. 94-218; s. 42, ch. 95-210; s. 3, ch. 95-314; s. 2, ch. 96-384; s. 245, ch. 99-8; s. 7, ch. 2004-292; s. 1, ch. 2008-55; s. 25, ch. 2010-161; s. 1, ch. 2011-119; s. 1, ch. 2012-165; s. 275, ch. 2014-19; s. 1, ch. 2014-133; s. 1, ch. 2016-86; s. 2, ch. 2016-120.



§509.092 FS | PUBLIC LODGING ESTABLISHMENTS AND PUBLIC FOOD SERVICE ESTABLISHMENTS; RIGHTS AS PRIVATE ENTERPRISES

Public lodging establishments and public food service establishments are private enterprises, and the operator has the right to refuse accommodations or service to any person who is objectionable or undesirable to the operator, but such refusal may not be based upon race, creed, color, sex, pregnancy, physical disability, or national origin. A person aggrieved by a violation of this section or a violation of a rule adopted under this section has a right of action pursuant to s. 760.11.

History.—s. 4, ch. 57-389; s. 1, ch. 70-291; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 6, 39, 42, ch. 79-240; ss. 3, 4, ch. 81-161; ss. 2, 3, ch. 81-318; ss. 9, 51, 52, ch. 90-339; s. 4, ch. 91-429; s. 10, ch. 92-177; s. 4, ch. 92-282; s. 1, ch. 2015-68.



CHAPTER 760 FLORIDA STATUTES | FLORIDA

TITLE: XLIV CIVIL RIGHTS

CHAPTER: 760 DISCRIMINATION IN THE TREATMENT OF...

PART: I FLORIDA CIVIL RIGHTS ACT

SECTIONS: §760.01 through §760.11

NOTE: Entire Chapter



§760.01 FS | PURPOSES; CONSTRUCTION; TITLE

(1) Sections 760.01-760.11 and 509.092 shall be cited as the "Florida Civil Rights Act of 1992."

(2) The general purposes of the Florida Civil Rights Act of 1992 are to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.

(3) The Florida Civil Rights Act of 1992 shall be construed according to the fair import of its terms and shall be liberally construed to further the general purposes stated in this section and the special purposes of the particular provision involved.

(History.—s. 1, ch. 69-287; s. 1, ch. 72-48; s. 1, ch. 77-341; s. 1, ch. 92-177; s. 4, ch. 92-282; s. 2, ch. 2015-68.)

(Note.—Former ss. 13.201, 23.161.)



§760.02 FS | DEFINITIONS

For the purposes of ss. 760.01-760.11 and 509.092, the term:

(1) "Florida Civil Rights Act of 1992" means ss. 760.01-760.11 and 509.092.

(2) "Commission" means the Florida Commission on Human Relations created by s. 760.03.

(3) "Commissioner" or "member" means a member of the commission.

(4) "Discriminatory practice" means any practice made unlawful by the Florida Civil Rights Act of 1992.

(5) "National origin" includes ancestry.

(6) "Person" includes an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, or unincorporated organization; any other legal or commercial entity; the state; or any governmental entity or agency.

(7) "Employer" means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

(8) "Employment agency" means any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such a person.

(9) "Labor organization" means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in connection with employment.

(10) "Aggrieved person" means any person who files a complaint with the Human Relations Commission.

(11) "Public accommodations" means places of public accommodation, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered establishments. Each of the following establishments which serves the public is a place of public accommodation within the meaning of this section:



(a) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than four rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his or her residence.

(b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station.

(c) Any motion picture theater, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment.

(d) Any establishment which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

History.—s. 2, ch. 69-287; s. 2, ch. 72-48; s. 2, ch. 77-341; s. 3, ch. 79-400; s. 2, ch. 92-177; s. 4, ch. 92-282; s. 4, ch. 2003-396.

Note.—Former ss. 13.211, 23.162.



§760.021 FS | ENFORCEMENT

(1) The Attorney General may commence a civil action for damages, injunctive relief, civil penalties not to exceed \$10,000 per violation, and such other relief as may be appropriate under the laws of this state if the Attorney General has reasonable cause to believe that any person or group:

(a) Has engaged in a pattern or practice of discrimination as defined by the laws of this state; or

(b) Has been discriminated against as defined by the laws of this state and such discrimination raises an issue of great public interest.

(2) The Attorney General may file an action under this section in the circuit court of the county where the cause of action arises or in the circuit court of the Second Judicial Circuit, in and for Leon County.

(3) In any proceeding under this section, the respondent may request, before any responsive pleading is due, that a hearing be held no earlier than 5 days but no more than 30 days after the filing of the complaint, at which hearing the court shall determine whether the complaint on its face makes a prima facie showing that a pattern or practice of discrimination exists or that, as a result of discrimination, an issue of great public interest exists.

(4) The prevailing party in an action brought under this section is entitled to an award of reasonable attorney's fees and costs.

(5) Any damages recovered under this section shall accrue to the injured party.

History.—s. 2, ch. 2003-396.



§760.03 FS | COMMISSION ON HUMAN RELATIONS; STAFF

(1) There is hereby created the Florida Commission on Human Relations, comprised of 12 members appointed by the Governor, subject to confirmation by the Senate. The commission shall select one of its members to serve as chairperson for terms of 2 years.

(2) The members of the commission must be broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups within the state; and at least one member of the commission must be 60 years of age or older.

(3) Commissioners shall be appointed for terms of 4 years. A member chosen to fill a vacancy otherwise than by expiration of term shall be appointed for the unexpired term of the member whom such appointee is to succeed. A member of the commission shall be eligible for reappointment. A vacancy in the commission shall not impair the right of the remaining members to exercise the powers of the commission.

(4) The Governor may suspend a member of the commission only for cause, subject to removal or reinstatement by the Senate.

(5) Six members shall constitute a quorum for the conduct of business; however, the commission may establish panels of not less than three of its members to exercise its powers under the Florida Civil Rights Act of 1992, subject to such procedures and limitations as the commission may provide by rule. Notwithstanding this subsection, three appointed members serving on panels shall constitute a quorum for the conduct of official business of the panel.

(6) Each commissioner shall be compensated at the rate of \$50 per day for each day of actual attendance to commission duties and shall be entitled to receive per diem and travel expenses as provided by s. 112.061.

(7) The commission shall appoint, and may remove, an executive director who, with the consent of the commission, may employ a deputy, attorneys, investigators, clerks, and such other personnel as may be necessary adequately to perform the functions of the commission, within budgetary limitations.

History.—s. 3, ch. 69-287; s. 1, ch. 70-438; s. 3, ch. 77-341; s. 1, ch. 80-148; s. 27, ch. 87-172; s. 3, ch. 92-177; s. 4, ch. 92-282; s. 1, ch. 2020-153.

Note.—Former ss. 13.221, 23.163.



§760.04 FS | COMMISSION ON HUMAN RELATIONS, ASSIGNED TO DEPARTMENT OF MANAGEMENT SERVICES.

The commission created by s. 760.03 is assigned to the Department of Management Services. The commission, in the performance of its duties pursuant to the Florida Civil Rights Act of 1992, shall not be subject to control, supervision, or direction by the Department of Management Services.

History.—s. 7, ch. 69-287; ss. 45, 56, ch. 79-190; s. 4, ch. 92-177; s. 134, ch. 92-279; ss. 1, 4, ch. 92-282; s. 55, ch. 92-326; s. 35, ch. 96-399.

Note.—Former ss. 13.231, 23.164.



§760.05 FS | FUNCTIONS OF THE COMMISSION

The commission shall promote and encourage fair treatment and equal opportunity for all persons regardless of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status and mutual understanding and respect among all members of all economic, social, racial, religious, and ethnic groups; and shall endeavor to eliminate discrimination against, and antagonism between, religious, racial, and ethnic groups and their members.

History.—s. 4, ch. 69-287; s. 4, ch. 77-341; s. 4, ch. 79-400; s. 3, ch. 2015-68.

Note.—Former ss. 13.241, 23.165.



§760.06 FS | POWERS OF THE COMMISSION

Within the limitations provided by law, the commission shall have the following powers:

- (1) To maintain offices in the State of Florida.
- (2) To meet and exercise its powers at any place within the state.
- (3) To promote the creation of, and to provide continuing technical assistance to, local commissions on human relations and to cooperate with individuals and state, local, and other agencies, both public and private, including agencies of the Federal Government and of other states.
- (4) To accept gifts, bequests, grants, or other payments, public or private, to help finance its activities.
- (5) To receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice, as defined by the Florida Civil Rights Act of 1992.
- (6) To issue subpoenas for, administer oaths or affirmations to and compel the attendance and testimony of witnesses or to issue subpoenas for and compel the production of books, papers, records, documents, and other evidence pertaining to any investigation or hearing convened pursuant to the powers of the commission. In conducting an investigation, the commission and its investigators shall have access at all reasonable times to premises, records, documents, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The authority to issue subpoenas and administer oaths may be delegated by the commission, for investigations or hearings, to a commissioner or the executive director. In the case of a refusal to obey a subpoena issued to any person, the commission may make application to any circuit court of this state, which shall have jurisdiction to order the witness to appear before the commission to give testimony and to produce evidence concerning the matter in question. Failure to obey the court's order may be punished by the court as contempt. If the court enters an order holding a person in contempt or compelling the person to comply with the commission's order or subpoena, the court shall order the person to pay the commission



reasonable expenses, including reasonable attorneys' fees, accrued by the commission in obtaining the order from the court.

(7) To recommend methods for elimination of discrimination and intergroup tensions and to use its best efforts to secure compliance with its recommendations.

(8) To furnish technical assistance requested by persons to facilitate progress in human relations.

(9) To make or arrange for studies appropriate to effectuate the purposes and policies of the Florida Civil Rights Act of 1992 and to make the results thereof available to the public.

(10) To become a deferral agency for the Federal Government and to comply with the necessary federal regulations to effect the Florida Civil Rights Act of 1992.

(11) To render, at least annually, a comprehensive written report to the Governor and the Legislature. The report may contain recommendations of the commission for legislation or other action to effectuate the purposes and policies of the Florida Civil Rights Act of 1992.

(12) To adopt, promulgate, amend, and rescind rules to effectuate the purposes and policies of the Florida Civil Rights Act of 1992 and govern the proceedings of the commission, in accordance with chapter 120.

(13) To receive complaints and coordinate all activities as required by the Whistle-blower's Act pursuant to ss. 112.3187-112.31895.

History.—s. 5, ch. 69-287; s. 3, ch. 72-48; s. 1, ch. 75-232; s. 5, ch. 77-341; s. 5, ch. 92-177; s. 4, ch. 92-282; s. 26, ch. 99-333.

Note.—Former ss. 13.251, 23.166.



§760.065 FS | FLORIDA CIVIL RIGHTS HALL OF FAME

(1) It is the intent of the Legislature to recognize and honor those persons, living or dead, who have made significant contributions to this state as leaders in the struggle for equality and justice for all persons.

(2)

(a) There is hereby established the Florida Civil Rights Hall of Fame. The Department of Management Services shall set aside an appropriate public area of the Capitol Building for the Florida Civil Rights Hall of Fame and shall consult with the commission regarding the design and theme of such area.

(b) Each person who is selected as a member shall have a designation placed in the Florida Civil Rights Hall of Fame, which designation shall provide information regarding the member's particular discipline or contribution and any vital information relating to the member.

(3)

(a) The commission shall annually accept nominations for persons to be recommended as members of the Florida Civil Rights Hall of Fame. The commission shall recommend up to 10 persons from which the Governor shall select up to 3 hall-of-fame members.

(b) In making recommendations pursuant to this subsection, the commission shall recommend persons who are 18 years of age or older, who were born in Florida or adopted Florida as their home state and base of operation, and who have made a significant contribution and provided exemplary leadership toward Florida's progress and achievements in civil rights.

(4) The commission may set specific time periods for acceptance of nominations and the selection of members to coincide with the appropriate activities of the Florida Civil Rights Hall of Fame.



(5) The commission shall be responsible for costs relating to the Florida Civil Rights Hall of Fame, excluding normal costs of operations, repairs, and maintenance of the public area designated for the Florida Civil Rights Hall of Fame, which shall be the responsibility of the Department of Management Services.

History.—s. 1, ch. 2010-53; s. 2, ch. 2020-153.



§760.07 FS | REMEDIES FOR UNLAWFUL DISCRIMINATION

Any violation of any Florida statute that makes unlawful discrimination because of race, color, religion, gender, pregnancy, national origin, age, handicap, or marital status in the areas of education, employment, or public accommodations gives rise to a cause of action for all relief and damages described in s. 760.11(5), unless greater damages are expressly provided for. If the statute prohibiting unlawful discrimination provides an administrative remedy, the action for equitable relief and damages provided for in this section may be initiated only after the plaintiff has exhausted his or her administrative remedy. The term "public accommodations" does not include lodge halls or other similar facilities of private organizations which are made available for public use occasionally or periodically. The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

History.—s. 6, ch. 92-177; s. 4, ch. 92-282; s. 1137, ch. 97-102; s. 4, ch. 2015-68; s. 3, ch. 2020-164.



§760.08 FS | DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

All persons are entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation without discrimination or segregation on the ground of race, color, national origin, sex, pregnancy, handicap, familial status, or religion.

History.—s. 5, ch. 2003-396; s. 5, ch. 2015-68.



§760.10 FS | UNLAWFUL EMPLOYMENT PRACTICES

(1) It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(2) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status or to classify or refer for employment any individual on the basis of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(3) It is an unlawful employment practice for a labor organization:

(a) To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(b) To limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.



(c) To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(4) It is an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status in admission to, or employment in, any program established to provide apprenticeship or other training.

(5) Whenever, in order to engage in a profession, occupation, or trade, it is required that a person receive a license, certification, or other credential, become a member or an associate of any club, association, or other organization, or pass any examination, it is an unlawful employment practice for any person to discriminate against any other person seeking such license, certification, or other credential, seeking to become a member or associate of such club, association, or other organization, or seeking to take or pass such examination, because of such other person's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(6) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee to print, or cause to be printed or published, any notice or advertisement relating to employment, membership, classification, referral for employment, or apprenticeship or other training, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, pregnancy, national origin, age, absence of handicap, or marital status.

(7) It is an unlawful employment practice for an employer, an employment agency, a joint labor-management committee, or a labor organization to discriminate against any person because that person has opposed any practice which is an unlawful employment practice under this section, or because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section.



(8) Notwithstanding any other provision of this section, it is not an unlawful employment practice under ss. 760.01-760.10 for an employer, employment agency, labor organization, or joint labor-management committee to:

(a) Take or fail to take any action on the basis of religion, sex, pregnancy, national origin, age, handicap, or marital status in those certain instances in which religion, sex, condition of pregnancy, national origin, age, absence of a particular handicap, or marital status is a bona fide occupational qualification reasonably necessary for the performance of the particular employment to which such action or inaction is related.

(b) Observe the terms of a bona fide seniority system, a bona fide employee benefit plan such as a retirement, pension, or insurance plan, or a system which measures earnings by quantity or quality of production, which is not designed, intended, or used to evade the purposes of ss. 760.01-760.10. However, no such employee benefit plan or system which measures earnings shall excuse the failure to hire, and no such seniority system, employee benefit plan, or system which measures earnings shall excuse the involuntary retirement of, any individual on the basis of any factor not related to the ability of such individual to perform the particular employment for which such individual has applied or in which such individual is engaged. This subsection shall not be construed to make unlawful the rejection or termination of employment when the individual applicant or employee has failed to meet bona fide requirements for the job or position sought or held or to require any changes in any bona fide retirement or pension programs or existing collective bargaining agreements during the life of the contract, or for 2 years after October 1, 1981, whichever occurs first, nor shall this act preclude such physical and medical examinations of applicants and employees as an employer may require of applicants and employees to determine fitness for the job or position sought or held.

(c) Take or fail to take any action on the basis of age, pursuant to law or regulation governing any employment or training program designed to benefit persons of a particular age group.



(d) Take or fail to take any action on the basis of marital status if that status is prohibited under its antinepotism policy.

(9) This section shall not apply to any religious corporation, association, educational institution, or society which conditions opportunities in the area of employment or public accommodation to members of that religious corporation, association, educational institution, or society or to persons who subscribe to its tenets or beliefs. This section shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporations, associations, educational institutions, or societies of its various activities.

(10) Each employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice provided by the commission setting forth such information as the commission deems appropriate to effectuate the purposes of ss. 760.01-760.10.

History. — s. 6, ch. 77-341; s. 2, ch. 78-49; s. 5, ch. 79-400; s. 1, ch. 81-109; s. 7, ch. 92-177; ss. 2, 4, ch. 92-282; s. 6, ch. 2015-68.

Note. — Former ss. 13.261, 23.167.



§760.11 FS | ADMINISTRATIVE AND CIVIL REMEDIES; CONSTRUCTION

(1) Any person aggrieved by a violation of ss. 760.01-760.10 may file a complaint with the commission within 365 days of the alleged violation, naming the employer, employment agency, labor organization, or joint labor-management committee, or, in the case of an alleged violation of s. 760.10(5), the person responsible for the violation and describing the violation. Any person aggrieved by a violation of s. 509.092 may file a complaint with the commission within 365 days of the alleged violation naming the person responsible for the violation and describing the violation. The commission, a commissioner, or the Attorney General may in like manner file such a complaint. On the same day the complaint is filed with the commission, the commission shall clearly stamp on the face of the complaint the date the complaint was filed with the commission. In lieu of filing the complaint with the commission, a complaint under this section may be filed with the federal Equal Employment Opportunity Commission or with any unit of government of the state which is a fair-employment-practice agency under 29 C.F.R. ss. 1601.70-1601.80. If the date the complaint is filed is clearly stamped on the face of the complaint, that date is the date of filing. The date the complaint is filed with the commission for purposes of this section is the earliest date of filing with the Equal Employment Opportunity Commission, the fair-employment-practice agency, or the commission. The complaint shall contain a short and plain statement of the facts describing the violation and the relief sought. The commission may require additional information to be in the complaint. The commission, within 5 days of the complaint being filed, shall by registered mail send a copy of the complaint to the person who allegedly committed the violation. The person who allegedly committed the violation may file an answer to the complaint within 25 days of the date the complaint was filed with the commission. Any answer filed shall be mailed to the aggrieved person by the person filing the answer. Both the complaint and the answer shall be verified.

(2) If any other agency of the state or of any other unit of government of the state has jurisdiction of the subject matter of any complaint filed with the commission and has legal authority to investigate the complaint, the commission may refer such complaint to such agency for an investigation. Referral of such a complaint by the commission does not constitute agency action within the meaning of s. 120.52. If the commission refers a complaint to another agency under this subsection, the commission shall accord



substantial weight to any findings and conclusions of any such agency. The referral of a complaint by the commission to a local agency does not divest the commission's jurisdiction over the complaint.

(3) Except as provided in subsection (2), the commission shall investigate the allegations in the complaint. Within 180 days of the filing of the complaint, the commission shall determine if there is reasonable cause to believe that discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992. When the commission determines whether or not there is reasonable cause, the commission by registered mail shall promptly notify the aggrieved person and the respondent of the reasonable cause determination, the date of such determination, and the options available under this section.

(4) If the commission determines that there is reasonable cause to believe that a discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992, the aggrieved person may either:

- (a) Bring a civil action against the person named in the complaint in any court of competent jurisdiction; or
- (b) Request an administrative hearing under ss. 120.569 and 120.57.

The election by the aggrieved person of filing a civil action or requesting an administrative hearing under this subsection is the exclusive procedure available to the aggrieved person under this act.

(5) In any civil action brought under this section, the court may issue an order prohibiting the discriminatory practice and providing affirmative relief from the effects of the practice, including back pay. The court may also award compensatory damages, including, but not limited to, damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive damages. The provisions of ss. 768.72 and 768.73 do not apply to this section. The judgment for the total amount of punitive damages awarded under this section to an aggrieved person shall not exceed \$100,000. In any action or proceeding under this subsection, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving



a Title VII action. The right to trial by jury is preserved in any such private right of action in which the aggrieved person is seeking compensatory or punitive damages, and any party may demand a trial by jury. The commission's determination of reasonable cause is not admissible into evidence in any civil proceeding, including any hearing or trial, except to establish for the court the right to maintain the private right of action. A civil action brought under this section shall be commenced no later than 1 year after the date of determination of reasonable cause by the commission. The commencement of such action shall divest the commission of jurisdiction of the complaint, except that the commission may intervene in the civil action as a matter of right. Notwithstanding the above, the state and its agencies and subdivisions shall not be liable for punitive damages. The total amount of recovery against the state and its agencies and subdivisions shall not exceed the limitation as set forth in s. 768.28(5).

(6) Any administrative hearing brought pursuant to paragraph (4)(b) shall be conducted under ss. 120.569 and 120.57. The commission may hear the case provided that the final order is issued by members of the commission who did not conduct the hearing or the commission may request that it be heard by an administrative law judge pursuant to s. 120.569(2)(a). If the commission elects to hear the case, it may be heard by a commissioner. If the commissioner, after the hearing, finds that a violation of the Florida Civil Rights Act of 1992 has occurred, the commissioner shall issue an appropriate proposed order in accordance with chapter 120 prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay. If the administrative law judge, after the hearing, finds that a violation of the Florida Civil Rights Act of 1992 has occurred, the administrative law judge shall issue an appropriate recommended order in accordance with chapter 120 prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay. Within 90 days of the date the recommended or proposed order is rendered, the commission shall issue a final order by adopting, rejecting, or modifying the recommended order as provided under ss. 120.569 and 120.57. The 90-day period may be extended with the consent of all the parties. An administrative hearing pursuant to paragraph (4)(b) must be requested no later than 35 days after the date of determination of reasonable cause by the commission. In any action or proceeding under this subsection, the commission, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the



costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action.

(7) If the commission determines that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, the commission shall dismiss the complaint. The aggrieved person may request an administrative hearing under ss. 120.569 and 120.57, but any such request must be made within 35 days of the date of determination of reasonable cause and any such hearing shall be heard by an administrative law judge and not by the commission or a commissioner. If the aggrieved person does not request an administrative hearing within the 35 days, the claim will be barred. If the administrative law judge finds that a violation of the Florida Civil Rights Act of 1992 has occurred, he or she shall issue an appropriate recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including back pay. Within 90 days of the date the recommended order is rendered, the commission shall issue a final order by adopting, rejecting, or modifying the recommended order as provided under ss. 120.569 and 120.57. The 90-day period may be extended with the consent of all the parties. In any action or proceeding under this subsection, the commission, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action. In the event the final order issued by the commission determines that a violation of the Florida Civil Rights Act of 1992 has occurred, the aggrieved person may bring, within 1 year of the date of the final order, a civil action under subsection (5) as if there has been a reasonable cause determination or accept the affirmative relief offered by the commission, but not both.

(8) If the commission fails to conciliate or determine whether there is reasonable cause on any complaint under this section within 180 days after the filing of the complaint:

(a) An aggrieved person may proceed under subsection (4) as if the commission determined that there was reasonable cause.



(b) The commission shall promptly notify the aggrieved person of the failure to conciliate or determine whether there is reasonable cause. The notice shall provide the options available to the aggrieved person under subsection (4) and inform the aggrieved person that he or she must file a civil action within 1 year after the date the commission certifies that the notice was mailed.

(c) A civil action brought by an aggrieved person under this section must be commenced within 1 year after the date the commission certifies that the notice was mailed pursuant to paragraph (b).

(9) No liability for back pay shall accrue from a date more than 2 years prior to the filing of a complaint with the commission.

(10) A judgment for the amount of damages and costs assessed pursuant to a final order by the commission may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(11) If a complaint is within the jurisdiction of the commission, the commission shall simultaneously with its other statutory obligations attempt to eliminate or correct the alleged discrimination by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent civil proceeding, trial, or hearing. The commission may initiate dispute resolution procedures, including voluntary arbitration, by special magistrates or mediators. The commission may adopt rules as to the qualifications of persons who may serve as special magistrates and mediators.

(12) All complaints filed with the commission and all records and documents in the custody of the commission, which relate to and identify a particular person, including, but not limited to, a complainant, employer, employment agency, labor organization, or joint labor-management committee shall be confidential and shall not be disclosed by the commission, except to the parties or in the course of a hearing or proceeding under this section. The restriction of this subsection shall not apply to any record or document which is part of the record of any hearing or court proceeding.



(13) Final orders of the commission are subject to judicial review pursuant to s. 120.68. The commission's determination of reasonable cause is not final agency action that is subject to judicial review. Unless specifically ordered by the court, the commencement of an appeal does not suspend or stay the order of the commission, except as provided in the Rules of Appellate Procedure. In any action or proceeding under this subsection, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the cost. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action. In the event the order of the court determines that a violation of the Florida Civil Rights Act of 1992 has occurred, the court shall remand the matter to the commission for appropriate relief. The aggrieved party has the option to accept the relief offered by the commission or may bring, within 1 year of the date of the court order, a civil action under subsection (5) as if there has been a reasonable cause determination.

(14) The commission may adopt, promulgate, amend, and rescind rules to effectuate the purposes and policies of this section and to govern the proceedings of the commission under this section.

(15) In any civil action or administrative proceeding brought pursuant to this section, a finding that a person employed by the state or any governmental entity or agency has violated s. 760.10 shall as a matter of law constitute just or substantial cause for such person's discharge.

History. — s. 8, ch. 92-177; s. 3, ch. 92-282; s. 1, ch. 94-91; s. 417, ch. 96-406; s. 302, ch. 96-410; s. 1, ch. 2001-187; s. 97, ch. 2004-11; s. 7, ch. 2015-68; s. 3, ch. 2020-153.



CHAPTER 760 FLORIDA STATUTES | FLORIDA

TITLE: XLIV CIVIL RIGHTS

CHAPTER: 760 DISCRIMINATION IN THE TREATMENT OF...

PART: II FLORIDA FAIR HOUSING ACT

SECTIONS: §760.20 through §760.37

NOTE: Entire Chapter



§760.20 FS | FAIR HOUSING ACT; SHORT TITLE

Sections 760.20-760.37 may be cited as the "Fair Housing Act."

History. — *s. 1, ch. 83-221.*



§760.21 FS | STATE POLICY ON FAIR HOUSING

It is the policy of this state to provide, within constitutional limitations, for fair housing throughout the state.

History — s. 2, ch. 83-221.



§760.22 FS | DEFINITIONS

As used in ss. 760.20-760.37, the term:

(1) "Commission" means the Florida Commission on Human Relations.

(2) "Covered multifamily dwelling" means:

(a) A building which consists of four or more units and has an elevator; or

(b) The ground floor units of a building which consists of four or more units and does not have an elevator.

(3) "Disability" means:

(a) A person has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment; or

(b) A person has a developmental disability as defined in s. 393.063.

(4) "Discriminatory housing practice" means an act that is unlawful under the terms of ss. 760.20-760.37.

(5) "Dwelling" means any building or structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location on the land of any such building or structure, or portion thereof.

(6) "Familial status" is established when an individual who has not attained the age of 18 years is domiciled with:

(a) A parent or other person having legal custody of such individual; or

(b) A designee of a parent or other person having legal custody, with the written permission of such parent or other person.

(7) "Family" includes a single individual.



(8) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(9) "Substantially equivalent" means an administrative subdivision of the State of Florida meeting the requirements of 24 C.F.R. part 115, s. 115.6.

(10) "To rent" includes to lease, to sublease, to let, and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

History. — s. 3, ch. 83-221; s. 1, ch. 84-117; s. 1, ch. 87-106; s. 28, ch. 89-308; s. 1, ch. 89-321; s. 1138, ch. 97-102; s. 5, ch. 2020-76.



§760.23 FS | DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING AND OTHER PROHIBITED PRACTICES

(1) It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, disability, familial status, or religion.

(2) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, disability, familial status, or religion.

(3) It is unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, national origin, sex, disability, familial status, or religion or an intention to make any such preference, limitation, or discrimination.

(4) It is unlawful to represent to any person because of race, color, national origin, sex, disability, familial status, or religion that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(5) It is unlawful, for profit, to induce or attempt to induce any person to sell or rent any dwelling by a representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, national origin, sex, disability, familial status, or religion.

(6) The protections afforded under ss. 760.20-760.37 against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(7) It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or



(c) Any person associated with the buyer or renter.

(8) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person associated with the buyer or renter.

(9) For purposes of subsections (7) and (8), discrimination includes:

(a) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; or

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

(10) Covered multifamily dwellings as defined herein which are intended for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site as determined by commission rule. Such buildings shall also be designed and constructed in such a manner that:

(a) The public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities.

(b) All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by a person in a wheelchair.

(c) All premises within such dwellings contain the following features of adaptive design:

1. An accessible route into and through the dwelling.



2. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

3. Reinforcements in bathroom walls to allow later installation of grab bars.

4. Usable kitchens and bathrooms such that a person in a wheelchair can maneuver about the space.

(d) Compliance with the appropriate requirements of the American National Standards Institute for buildings and facilities providing accessibility and usability for persons with physical disabilities, commonly cited as ANSI A117.1-1986, suffices to satisfy the requirements of paragraph (c).

State agencies with building construction regulation responsibility or local governments, as appropriate, shall review the plans and specifications for the construction of covered multifamily dwellings to determine consistency with the requirements of this subsection.

History. — s. 5, ch. 83-221; s. 2, ch. 84-117; s. 2, ch. 89-321; s. 6, ch. 2020-76.



§760.24 FS | DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES

It is unlawful to deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership, or participation, on account of race, color, national origin, sex, disability, familial status, or religion.

History. — s. 7, ch. 83-221; s. 3, ch. 84-117; s. 3, ch. 89-321; s. 1139, ch. 97-102; s. 7, ch. 2020-76.



§760.25 FS | DISCRIMINATION IN THE FINANCING OF HOUSING OR IN RESIDENTIAL REAL ESTATE TRANSACTIONS

(1) It is unlawful for any bank, building and loan association, insurance company, or other corporation, association, firm, or enterprise the business of which consists in whole or in part of the making of commercial real estate loans to deny a loan or other financial assistance to a person applying for the loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him or her in the fixing of the amount, interest rate, duration, or other term or condition of such loan or other financial assistance, because of the race, color, national origin, sex, disability, familial status, or religion of such person or of any person associated with him or her in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or because of the race, color, national origin, sex, disability, familial status, or religion of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

(2)

(a) It is unlawful for any person or entity whose business includes engaging in residential real estate transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, national origin, sex, disability, familial status, or religion.

(b) As used in this subsection, the term "residential real estate transaction" means any of the following:

1. The making or purchasing of loans or providing other financial assistance:

a. For purchasing, constructing, improving, repairing, or maintaining a dwelling; or

b. Secured by residential real estate.

2. The selling, brokering, or appraising of residential real property.

History.—s. 6, ch. 83-221; s. 4, ch. 84-117; s. 4, ch. 89-321; s. 17, ch. 90-275; s. 1140, ch. 97-102; s. 8, ch. 2020-76.



§760.26 FS | PROHIBITED DISCRIMINATION IN LAND USE DECISIONS AND IN PERMITTING OF DEVELOPMENT

It is unlawful to discriminate in land use decisions or in the permitting of development based on race, color, national origin, sex, disability, familial status, religion, or, except as otherwise provided by law, the source of financing of a development or proposed development.

History. — s. 16, ch. 2000-353.



§760.27 FS | PROHIBITED DISCRIMINATION IN HOUSING PROVIDED TO PERSONS WITH A DISABILITY OR DISABILITY-RELATED NEED FOR AN EMOTIONAL SUPPORT ANIMAL.

(1) DEFINITIONS. – As used in this section, the term:

(a) “Emotional support animal” means an animal that does not require training to do work, perform tasks, provide assistance, or provide therapeutic emotional support by virtue of its presence which alleviates one or more identified symptoms or effects of a person’s disability.

(b) “Housing provider” means any person or entity engaging in conduct covered by the federal Fair Housing Act or s. 504 of the Rehabilitation Act of 1973, including the owner or lessor of a dwelling.

(2) REASONABLE ACCOMMODATION REQUESTS. – To the extent required by federal law, rule, or regulation, it is unlawful to discriminate in the provision of housing to a person with a disability or disability-related need for, and who has or at any time obtains, an emotional support animal. A person with a disability or a disability-related need must, upon the person’s request and approval by a housing provider, be allowed to keep such animal in his or her dwelling as a reasonable accommodation in housing, and such person may not be required to pay extra compensation for such animal. Unless otherwise prohibited by federal law, rule, or regulation, a housing provider may:

(a) Deny a reasonable accommodation request for an emotional support animal if such animal poses a direct threat to the safety or health of others or poses a direct threat of physical damage to the property of others, which threat cannot be reduced or eliminated by another reasonable accommodation.

(b) If a person’s disability is not readily apparent, request reliable information that reasonably supports that the person has a disability. Supporting information may include:

1. A determination of disability from any federal, state, or local government agency.
2. Receipt of disability benefits or services from any federal, state, or local government agency.



3. Proof of eligibility for housing assistance or a housing voucher received because of a disability.

4. Information from a health care practitioner, as defined in s. 456.001; a telehealth provider, as defined in s. 456.47; or any other similarly licensed or certified practitioner or provider in good standing with his or her profession's regulatory body in another state but only if such out-of-state practitioner has provided in-person care or services to the tenant on at least one occasion. Such information is reliable if the practitioner or provider has personal knowledge of the person's disability and is acting within the scope of his or her practice to provide the supporting information.

5. Information from any other source that the housing provider reasonably determines to be reliable in accordance with the federal Fair Housing Act and s. 504 of the Rehabilitation Act of 1973.

(c) If a person's disability-related need for an emotional support animal is not readily apparent, request reliable information that reasonably supports the person's need for the particular emotional support animal being requested. Supporting information may include:

1. Information identifying the particular assistance or therapeutic emotional support provided by the specific animal from a health care practitioner, as defined in s. 456.001; a telehealth provider, as defined in s. 456.47; or any other similarly licensed or certified practitioner or provider in good standing with his or her profession's regulatory body in another state. Such information is reliable if the practitioner or provider has personal knowledge of the person's disability and is acting within the scope of his or her practice to provide the supporting information.

2. Information from any other source that the housing provider reasonably determines to be



reliable in accordance with the federal Fair Housing Act and s. 504 of the Rehabilitation Act of 1973.

(d) If a person requests to keep more than one emotional support animal, request information regarding the specific need for each animal.

(e) Require proof of compliance with state and local requirements for licensing and vaccinating each emotional support animal.

(3) REQUEST LIMITATIONS. —

(a) Notwithstanding the authority to request information under subsection (2), a housing provider may not request information that discloses the diagnosis or severity of a person's disability or any medical records relating to the disability. However, a person may disclose such information or medical records to the housing provider at his or her discretion.

(b) A housing provider may develop and make available to persons a routine method for receiving and processing reasonable accommodation requests for emotional support animals; however, a housing provider may not require the use of a specific form or notarized statement, or deny a request solely because a person did not follow the housing provider's routine method.

(c) An emotional support animal registration of any kind, including, but not limited to, an identification card, patch, certificate, or similar registration obtained from the Internet is not, by itself, sufficient information to reliably establish that a person has a disability or a disability-related need for an emotional support animal.

(4) LIABILITY. — A person with a disability or a disability-related need is liable for any damage done to the premises or to another person on the premises by his or her emotional support animal.

(5) APPLICABILITY. — This section does not apply to a service animal as defined in s. 413.08.

History. — s. 1, ch. 2020-76.



§760.29 FS | EXEMPTIONS

(1)

(a) Nothing in ss. 760.23, 760.25, and 760.27 applies to:

1. Any single-family house sold or rented by its owner, provided such private individual owner does not own more than three single-family houses at any one time. In the case of the sale of a single-family house by a private individual owner who does not reside in such house at the time of the sale or who was not the most recent resident of the house prior to the sale, the exemption granted by this paragraph applies only with respect to one sale within any 24-month period. In addition, the bona fide private individual owner shall not own any interest in, nor shall there be owned or reserved on his or her behalf, under any express or voluntary agreement, title to, or any right to all or a portion of the proceeds from the sale or rental of, more than three single-family houses at any one time. The sale or rental of any single-family house shall be excepted from the application of ss. 760.20-760.37 only if the house is sold or rented:

a. Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate licensee or such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such licensee or person; and

b. Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of s. 760.23(3).

Nothing in this provision prohibits the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as is necessary to perfect or transfer the title.

2. Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and



occupies one of such living quarters as his or her residence.

(b) For the purposes of paragraph (a), a person is deemed to be in the business of selling or renting dwellings if the person:

1. Has, within the preceding 12 months, participated as principal in three or more transactions involving the sale or rental of any dwelling or interest therein;
2. Has, within the preceding 12 months, participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or interest therein; or
3. Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(2) Nothing in ss. 760.20-760.37 prohibits a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of any dwelling which it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nothing in ss. 760.20-760.37 prohibits a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(3) Nothing in ss. 760.20-760.37 requires any person renting or selling a dwelling constructed for first occupancy before March 13, 1991, to modify, alter, or adjust the dwelling in order to provide physical accessibility except as otherwise required by law.



(4)

(a) Any provision of ss. 760.20–760.37 regarding familial status does not apply with respect to housing for older persons.

(b) As used in this subsection, the term “housing for older persons” means housing:

1. Provided under any state or federal program that the commission determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program;

2. Intended for, and solely occupied by, persons 62 years of age or older; or

3. Intended and operated for occupancy by persons 55 years of age or older that meets the following requirements:

a. At least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

b. The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph. If the housing facility or community meets the requirements of sub-subparagraphs a. and c. and the recorded governing documents provide for an adult, senior, or retirement housing facility or community and the governing documents lack an amendatory procedure, prohibit amendments, or restrict amendments until a specified future date, then that housing facility or community shall be deemed housing for older persons intended and operated for occupancy by persons 55 years of age or older. If those documents further provide a prohibition against residents 16 years of age or younger, that provision shall be construed, for purposes of the Fair Housing Act, to only apply to residents 18 years of age or younger, in order



to conform with federal law requirements. Governing documents which can be amended at a future date must be amended and properly recorded within 1 year after that date to reflect the requirements for consideration as housing for older persons, if that housing facility or community intends to continue as housing for older persons.

c. The housing facility or community complies with rules made by the Secretary of the United States Department of Housing and Urban Development pursuant to 24 C.F.R. part 100 for verification of occupancy, which rules provide for verification by reliable surveys and affidavits and include examples of the types of policies and procedures relevant to a determination of compliance with the requirements of sub-subparagraph b. Such surveys and affidavits are admissible in administrative and judicial proceedings for the purposes of such verification.

(c) Housing may still be considered housing for older persons if:

1. A person who resides in such housing on or after October 1, 1989, does not meet the age requirements of this subsection, provided that any new occupant meets such age requirements; or

2. One or more units are unoccupied, provided that any unoccupied units are reserved for occupancy by persons who meet the age requirements of this subsection.

(d) A person is not personally liable for monetary damages for a violation of this subsection if such person reasonably relied in good faith on the application of the exemption under this subsection relating to housing for older persons. For purposes of this paragraph, a person may show good faith reliance on the application of the exemption only by showing that:



1. The person has no actual knowledge that the facility or the community is ineligible, or will become ineligible, for such exemption; and

2. The facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

A county or municipal ordinance regarding housing for older persons may not contravene the provisions of this subsection.

(5) Nothing in ss. 760.20-760.37:

(a) Prohibits a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, national origin, sex, disability, familial status, or religion.

(b) Limits the applicability of any reasonable local restriction regarding the maximum number of occupants permitted to occupy a dwelling.

(c) Requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(d) Prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined under chapter 893.

History. — ss. 4, 8, ch. 83-221; s. 5, ch. 84-117; s. 5, ch. 89-321; s. 18, ch. 90-275; s. 1, ch. 96-191; s. 1792, ch. 97-102; s. 1, ch. 99-348; s. 4, ch. 2001-143; s. 59, ch. 2003-164; s. 9, ch. 2020-76; s. 4, ch. 2020-153.



§760.30 FS | ADMINISTRATION OF SS. 760.20-760.37

(1) The authority and responsibility for administering ss. 760.20-760.37 is in the commission.

(2) The commission may delegate any of its functions, duties, and powers to its employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under ss. 760.20-760.37.

History. — s. 9, ch. 83-221.



§760.31 FS | POWERS AND DUTIES OF COMMISSION

The commission shall:

(1) Make studies with respect to the nature and extent of discriminatory housing practices in representative urban, suburban, and rural communities throughout the state.

(2) Publish and disseminate reports, recommendations, and information derived from such studies.

(3) Cooperate with and render technical assistance to public or private agencies, organizations, and institutions within the state which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices.

(4) Administer the programs and activities relating to housing in a manner affirmatively to further the policies of ss. 760.20-760.37.

(5) Adopt rules necessary to implement ss. 760.20-760.37 and govern the proceedings of the commission in accordance with chapter 120. Commission rules shall clarify terms used with regard to accessibility for persons with disabilities, exceptions from accessibility requirements based on terrain or site characteristics, and requirements related to housing for older persons.

History. — s. 9, ch. 83-221; s. 6, ch. 89-321; s. 5, ch. 2001-143; s. 10, ch. 2020-76; s. 5, ch. 2020-153.



§760.32 FS | INVESTIGATIONS; SUBPOENAS; OATHS

(1) In conducting an investigation, the commission shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation, provided the commission first complies with the provisions of the State Constitution relating to unreasonable searches and seizures. The commission may issue subpoenas to compel its access to or the production of such materials or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in court. The commission may administer oaths.

(2) Upon written application to the commission, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the commission to the same extent and subject to the same limitations as subpoenas issued by the commission itself. A subpoena issued at the request of a respondent shall show on its face the name and address of such respondent and shall state that it was issued at her or his request.

(3) Within 5 days after service of a subpoena upon any person, such person may petition the commission to revoke or modify the subpoena. The commission shall grant the petition if it finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, or that compliance would be unduly onerous or for other good reason.

(4) In case of refusal to obey a subpoena, the commission or the person at whose request the subpoena was issued may petition for its enforcement in the circuit court for the county in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(5) Witnesses summoned by subpoena of the commission shall be entitled to the same witness and mileage fees as are witnesses in proceedings in court. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by the respondent.



History. — s. 9, ch. 83-221; s. 1141, ch. 97-102.



§760.34 FS | ENFORCEMENT

(1) Any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be injured by a discriminatory housing practice that is about to occur may file a complaint with the commission. Complaints shall be in writing and contain such information and be in such form as the commission requires. Upon receipt of such a complaint, the commission shall furnish a copy to the person or persons who allegedly committed the discriminatory housing practice or are about to commit the alleged discriminatory housing practice. Within 100 days after receiving a complaint, or within 100 days after the expiration of any period of reference under subsection (3), the commission shall investigate the complaint and give notice in writing to the aggrieved person whether it intends to resolve it. If the commission decides to resolve the complaint, it shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under ss. 760.20-760.37 without the written consent of the persons concerned. Any employee of the commission who makes public any information in violation of this provision is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who files a complaint under subsection (1) must do so within 1 year after the alleged discriminatory housing practice occurred. The complaint must be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. A complaint may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him or her and, with the leave of the commission, which shall be granted whenever it would be reasonable and fair to do so, may amend his or her answer at any time. Both the complaint and the answer must be verified.



(3) If a local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in ss. 760.20-760.37, the commission shall notify the appropriate local agency of any complaint filed under ss. 760.20-760.37 which appears to constitute a violation of the local fair housing law, and the commission shall take no further action with respect to such complaint if the local law enforcement official has, within 30 days after the date the alleged offense was brought to his or her attention, commenced proceedings in the matter. In no event shall the commission take further action unless it certifies that in its judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

(4) The aggrieved person may commence a civil action in any appropriate court against the respondent named in the complaint or petition for an administrative determination under s. 760.35 to enforce the rights granted or protected by ss. 760.20-760.37 and is not required to petition for an administrative hearing or exhaust administrative remedies before commencing such action. If, as a result of its investigation under subsection (1), the commission finds there is reasonable cause to believe that a discriminatory housing practice has occurred, at the request of the aggrieved person, the Attorney General may bring an action in the name of the state on behalf of the aggrieved person to enforce ss. 760.20-760.37.

(5) In any proceeding brought under this section or s. 760.35, the burden of proof is on the complainant.

(6) If an action filed in court under this section or s. 760.35 comes to trial, the commission shall immediately terminate all efforts to obtain voluntary compliance.

(7)

(a) The commission may institute a civil action in any appropriate court if it is unable to obtain voluntary compliance with ss. 760.20-760.37. The commission does not have to petition for an administrative hearing or exhaust its administrative remedies before bringing a civil action.



(b) The court may impose the following fines for each violation of ss. 760.20-760.37:

1. Up to \$10,000, if the respondent has not previously been found guilty of a violation of ss. 760.20-760.37.
2. Up to \$25,000, if the respondent has been found guilty of one prior violation of ss. 760.20-760.37 within the preceding 5 years.
3. Up to \$50,000, if the respondent has been found guilty of two or more violations of ss. 760.20-760.37 within the preceding 7 years.

In imposing a fine under this paragraph, the court shall consider the nature and circumstances of the violation, the degree of culpability, the history of prior violations of ss. 760.20-760.37, the financial circumstances of the respondent, and the goal of deterring future violations of ss. 760.20-760.37.

(c) The court shall award reasonable attorney fees and costs to the commission in any action in which the commission prevails.

(8) Any local agency certified as substantially equivalent may institute a civil action in any appropriate court, including circuit court, if it is unable to obtain voluntary compliance with the local fair housing law. The agency does not have to petition for an administrative hearing or exhaust its administrative remedies before bringing a civil action. The court may impose fines as provided in the local fair housing law.

History. — ss. 9, 10, ch. 83-221; s. 7, ch. 89-321; s. 2, ch. 94-91; s. 418, ch. 96-406; s. 1793, ch. 97-102; s. 8, ch. 2013-207; s. 4, ch. 2020-164.



§760.35 FS | CIVIL ACTIONS AND RELIEF; ADMINISTRATIVE PROCEDURES

(1) An aggrieved person may commence a civil action no later than 2 years after an alleged discriminatory housing practice has occurred. However, the court shall continue a civil case brought under this section or s. 760.34 before bringing it to trial if the court believes that the conciliation efforts of the commission or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the commission or to the local agency and which practice forms the basis for the action in court. Any sale, encumbrance, or rental consummated before the issuance of any court order issued under the authority of ss. 760.20-760.37 and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under ss. 760.20-760.37 is not affected.

(2) An aggrieved person may commence a civil action under this section regardless of whether a complaint has been filed under s. 760.34(1) and regardless of the status of any such complaint. If the commission has obtained a conciliation agreement with the consent of an aggrieved person under s. 760.36, the aggrieved person may not file any action under this section regarding the alleged discriminatory housing practice that forms the basis for the complaint except for the purpose of enforcing the terms of the conciliation agreement.

(3) An aggrieved person may not commence a civil action under this section regarding an alleged discriminatory housing practice if an administrative law judge has commenced a hearing on the record on the allegation.

(4) If the court finds that a discriminatory housing practice has occurred, it shall issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including injunctive and other equitable relief, actual and punitive damages, and reasonable attorney fees and costs.

(5)

(a) If the commission is unable to obtain voluntary compliance with ss. 760.20-760.37 or has reasonable cause to believe that a discriminatory practice has occurred:

1. The commission may institute an administrative proceeding under chapter 120; or



2. The aggrieved person may request administrative relief under chapter 120 within 30 days after receiving notice that the commission has concluded its investigation under s. 760.34.

(b) Administrative hearings shall be conducted under ss. 120.569 and 120.57(1). The respondent must be served written notice by certified mail. If the administrative law judge finds that a discriminatory housing practice has occurred or is about to occur, he or she shall issue a recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including quantifiable damages and reasonable attorney fees and costs. The commission may adopt, reject, or modify a recommended order only as provided under s. 120.57(1). Judgment for the amount of damages and costs assessed pursuant to a final order by the commission may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(c) The district courts of appeal may, upon the filing of appropriate notices of appeal, review final orders of the commission under s. 120.68. Costs or fees may not be assessed against the commission in any appeal from a final order issued by the commission under this subsection. Unless specifically ordered by the court, the commencement of an appeal does not suspend or stay an order of the commission.

(d) This subsection does not prevent any other legal or administrative action provided by law.

History. — s. 11, ch. 83-221; s. 8, ch. 89-321; s. 303, ch. 96-410; s. 1794, ch. 97-102; s. 5, ch. 2020-164.



§760.36 FS | CONCILIATION AGREEMENTS

Any conciliation agreement arising out of conciliation efforts by the Florida Commission on Human Relations pursuant to the Fair Housing Act must be agreed to by the respondent and the complainant and is subject to the approval of the commission. Notwithstanding the provisions of s. 760.11(11) and (12), each conciliation agreement arising out of a complaint filed under the Fair Housing Act shall be made public unless the complainant and the respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of the Florida Fair Housing Act.

History.— s. 19, ch. 90-275; s. 9, ch. 92-177; s. 4, ch. 92-282; s. 3, ch. 94-91; s. 419, ch. 96-406.



§760.37 FS | INTERFERENCE, COERCION, OR INTIMIDATION; ENFORCEMENT BY ADMINISTRATIVE OR CIVIL ACTION

It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or on account of her or his having exercised, or on account of her or his having aided or encouraged any other person in the exercise of any right granted under ss. 760.20-760.37. This section may be enforced by appropriate administrative or civil action.

History. — s. 12, ch. 83-221; s. 9, ch. 89-321; s. 1142, ch. 97-102.



CHAPTER 760 FLORIDA STATUTES | FLORIDA

TITLE: XLIV CIVIL RIGHTS

CHAPTER: 760 DISCRIMINATION IN THE TREATMENT OF...

PART: III MISCELLANEOUS PROVISIONS

SECTIONS: §760.40 through §760.60

NOTE: Entire Chapter



§760.40 FS | GENETIC TESTING; DEFINITIONS; EXPRESS CONSENT REQUIRED; CONFIDENTIALITY; NOTICE OF USE OF RESULTS

(1) As used in this section, the term:

(a) "DNA analysis" means the medical and biological examination and analysis of a person's DNA to identify the presence and composition of genes in that person's body. The term includes DNA typing and genetic testing.

(b) "DNA sample" means any human biological specimen from which DNA can be extracted or the DNA extracted from such specimen.

(c) "Exclusive property" means the right of the person whose DNA has been extracted or analyzed to exercise control over his or her DNA sample and any results of his or her DNA analysis with regard to the collection, use, retention, maintenance, disclosure, or destruction of such sample or analysis results.

(d) "Express consent" means authorization by the person whose DNA is to be extracted or analyzed, or such person's legal guardian or authorized representative, evidenced by an affirmative action demonstrating an intentional decision, after the person receives a clear and prominent disclosure regarding the manner of collection, use, retention, maintenance, or disclosure of a DNA sample or results of a DNA analysis for specified purposes. A single express consent may authorize every instance of a specified purpose or use.

(2) Except as provided in s. 817.5655, a person or entity may only perform DNA analysis with express consent. The results of such DNA analysis, whether held by a public or private entity, are the exclusive property of the person tested, are confidential, and may not be disclosed without express consent. Such information held by a public entity is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) A person who performs DNA analysis or receives records, results, or findings of DNA analysis must provide the person tested with notice that the analysis was performed or that the information was received. The notice must state that, upon the request of the person tested, the information will be made available to his or her physician. The notice must



also state whether the information was used in any decision to grant or deny any insurance, employment, mortgage, loan, credit, or educational opportunity. If the information was used in any decision that resulted in a denial, the analysis must be repeated to verify the accuracy of the first analysis, and if the first analysis is found to be inaccurate, the denial must be reviewed.

History - (s. 1, ch. 92-101; s. 10, ch. 93-204; s. 1, ch. 94-90; s. 420, ch. 96-406; s. 1795, ch. 97-102; s. 15, ch. 98-251; s. 7, ch. 2001-127; s. 40, ch. 2005-39; s. 3, ch. 2009-190; s. 2, ch. 2021-216)



§760.50 FS | DISCRIMINATION ON THE BASIS OF AIDS, AIDS-RELATED COMPLEX, AND HIV PROHIBITED

(1) The Legislature finds and declares that persons infected or believed to be infected with human immunodeficiency virus have suffered and will continue to suffer irrational and scientifically unfounded discrimination. The Legislature further finds and declares that society itself is harmed by this discrimination, as otherwise able-bodied persons are deprived of the means of supporting themselves, providing for their own health care, housing themselves, and participating in the opportunities otherwise available to them in society. The Legislature further finds and declares that remedies are needed to correct these problems.

(2) Any person with or perceived as having acquired immune deficiency syndrome, acquired immune deficiency syndrome related complex, or human immunodeficiency virus shall have every protection made available to handicapped persons.

(3)

(a) No person may require an individual to take a human immunodeficiency virus-related test as a condition of hiring, promotion, or continued employment unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification for the job in question.

(b) No person may fail or refuse to hire or discharge any individual, segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of knowledge or belief that the individual has taken a human immunodeficiency virus test or the results or perceived results of such test unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification of the job in question.

(c) A person who asserts that a bona fide occupational qualification exists for human immunodeficiency virus-related testing shall have the burden of proving that:



1. The human immunodeficiency virus-related test is necessary to ascertain whether an employee is currently able to perform in a reasonable manner the duties of the particular job or whether an employee will present a significant risk of transmitting human immunodeficiency virus infection to other persons in the course of normal work activities; and

2. There exists no means of reasonable accommodation short of requiring that the individual be free of human immunodeficiency virus infection.

(4)

(a) A person may not discriminate against an otherwise qualified individual in housing, public accommodations, or governmental services on the basis of the fact that such individual is, or is regarded as being, infected with human immunodeficiency virus.

(b) A person or other entity receiving or benefiting from state financial assistance may not discriminate against an otherwise qualified individual on the basis of the fact that such individual is, or is regarded as being, infected with human immunodeficiency virus.

(c) A person who asserts that an individual who is infected with human immunodeficiency virus is not otherwise qualified shall have the burden of proving that no reasonable accommodation can be made to prevent the likelihood that the individual will, under the circumstances involved, expose other individuals to a significant possibility of being infected with human immunodeficiency virus.

(d) A person may not fail or refuse to hire or discharge any individual, segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of the fact that the individual is a licensed health care professional or health care



worker who treats or provides patient care to persons infected with human immunodeficiency virus.

(5) Every employer who provides or administers health insurance benefits or life insurance benefits to its employees shall maintain the confidentiality of information relating to the medical condition or status of any person covered by such insurance benefits. Such information in the possession of a public employer is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. An employer shall be liable in damages to any person damaged by its failure to implement such a procedure.

(6)

(a) Any person aggrieved by a violation of this section shall have a right of action in the circuit court and may recover for each violation:

1. Against any person who violates a provision of this section, liquidated damages of \$1,000 or actual damages, whichever is greater.

2. Against any person who intentionally or recklessly violates a provision of this section, liquidated damages of \$5,000 or actual damages, whichever is greater.

3. Reasonable attorney's fees.

4. Such other relief, including an injunction, as the court may deem appropriate.

(b) Nothing in this section limits the right of the person aggrieved by a violation of this section to recover damages or other relief under any other applicable law.

History - (s. 45, ch. 88-380; s. 14, ch. 89-350; s. 6, ch. 94-90; s. 421, ch. 96-406; s. 1796, ch. 97-102)



§760.51 FS | VIOLATIONS OF CONSTITUTIONAL RIGHTS, CIVIL ACTION BY THE ATTORNEY GENERAL; CIVIL PENALTY

(1) Whenever any person, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any other person of rights secured by the State Constitution or laws of this state, the Attorney General may bring a civil or administrative action for damages, and for injunctive or other appropriate relief for violations of the rights secured. Any damages recovered under this section shall accrue to the injured person. The civil action shall be brought in the name of the state and may be brought on behalf of the injured person. The Attorney General is entitled to an award of reasonable attorney's fees and costs if the Department of Legal Affairs prevails in an action brought under this section.

(2) Any person who interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any other person of rights secured by the State Constitution or laws of this state is liable for a civil penalty of not more than \$10,000 for each violation. This penalty may be recovered in any action brought under this section by the Attorney General. A civil penalty so collected shall accrue to the state and shall be deposited as received into the General Revenue Fund unallocated.

History - (s. 4, ch. 91-74)



**§760.60 FS | DISCRIMINATORY PRACTICES OF CERTAIN CLUBS PROHIBITED;
REMEDIES**

(1) It is unlawful for a person to discriminate against any individual because of race, color, religion, gender, national origin, handicap, age above the age of 21, or marital status in evaluating an application for membership in a club that has more than 400 members, that provides regular meal service, and that regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages directly or indirectly from nonmembers for business purposes. It is unlawful for a person, on behalf of such a club, to publish, circulate, issue, display, post, or mail any advertisement, notice, or solicitation that contains a statement to the effect that the accommodations, advantages, facilities, membership, or privileges of the club are denied to any individual because of race, color, religion, gender, national origin, handicap, age above the age of 21, or marital status. This subsection does not apply to fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent.

(2) A person who has been discriminated against in violation of this act may file a complaint with the Commission on Human Relations or with the Attorney General's Office of Civil Rights. A complaint must be in writing and must contain such information and be in such form as the commission requires. Upon receipt of a complaint, the commission or the Attorney General shall provide a copy to the person who represents the club. Within 30 days after receiving a complaint, the commission or the Attorney General shall give notice in writing to the person who filed the complaint if it intends to resolve the complaint. If the commission or the Attorney General decides to resolve the complaint, it shall attempt to eliminate or correct the alleged discriminatory practices of a club by informal methods of conference, conciliation, and persuasion.

(3) If the commission or the Attorney General fails, within 30 days after receiving a complaint filed under subsection (2), to give notice of its intent to resolve the complaint, or if the commission or the Attorney General fails to resolve the complaint within 45 days after giving such notice, the person or the Attorney General on behalf of the person filing the complaint may commence a civil action in a court against



the club, its officers, or its members to enforce this section. If the court finds that a discriminatory practice occurs at the club, the court may enjoin the club, its officers, or its members from engaging in such practice or may order other appropriate action.

History - (s. 12, ch. 92-177; s. 6, ch. 2020-153)



CHAPTER 760 FLORIDA STATUTES | FLORIDA

TITLE: XLIV CIVIL RIGHTS

CHAPTER: 760 DISCRIMINATION IN THE TREATMENT OF...

PART: IV MINORITY REPRESENTATION IN CERTAIN BODIES

SECTIONS: §760.80

NOTE: Entire Chapter



§760.80 FS | MINORITY REPRESENTATION ON BOARDS, COMMISSIONS, COUNCILS, AND COMMITTEES

(1) It is the intent of the Legislature to recognize the importance of balance in the appointment of minority and nonminority persons to membership on statutorily created decisionmaking and regulatory boards, commissions, councils, and committees, and to promote that balance through the provisions of this section. In addition, the Legislature recognizes the importance of including persons with physical disabilities on such panels. Furthermore, the Legislature recognizes that statutorily created decisionmaking and regulatory boards, commissions, councils, and committees play a vital role in shaping public policy for Florida, and the selection of the best-qualified candidates is the paramount obligation of the appointing authority.

(2) As used in this section, "minority person" means:

(a) An African American; that is, a person having origins in any of the racial groups of the African Diaspora.

(b) A Hispanic American; that is, a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race.

(c) An Asian American; that is, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands prior to 1778.

(d) A Native American; that is, a person who has origins in any of the Indian Tribes of North America prior to 1835.

(e) An American woman.

(3) In appointing members to any statutorily created decisionmaking or regulatory board, commission, council, or committee of the state, the appointing authority should select, from among the best-qualified persons, those persons whose appointment would ensure that the membership of the board, commission, council, or committee accurately reflects the proportion that each group of minority persons specified in subsection (2) represents in the population of the state as a whole or, in the case of a local board, commission,



council, or committee, in the population of the area represented by the board, commission, council, or committee, as determined pursuant to the most recent federal decennial census, unless the law regulating such appointment requires otherwise, or persons of the underrepresented minority group cannot be recruited. When appointing members to a statutorily created decisionmaking or regulatory board, commission, council, or committee which was created to address a specific issue relating to minority persons, the appointing authority should give weight to the minority group that the board, commission, council, or committee was created to serve. If the size of the board, commission, council, or committee precludes an accurate representation of all minority groups, appointments should be made which conform to the requirements of this section insofar as possible. If there are multiple appointing authorities for the board, commission, council, or committee, they shall consult with each other to ensure compliance with this section.

(4) Each appointing authority described in subsection (3) shall submit a report to the Secretary of State annually by December 1 which discloses the number of appointments made during the preceding year from each minority group and the number of nonminority appointments made, expressed both in numerical terms and as a percentage of the total membership of the board, commission, council, or committee. In addition, information shall be included in the report detailing the number of physically disabled persons appointed to boards, commissions, councils, and committees in the previous calendar year. A copy of the report shall be submitted to the Governor, the Speaker of the House of Representatives, and the President of the Senate. In addition, each appointing authority shall designate a person responsible for retaining all applications for appointment, who shall ensure that information describing each applicant's race, ethnicity, gender, physical disability, if applicable, and qualifications is available for public inspection during reasonable hours. Nothing in this section requires disclosure of an applicant's identity or of any other information made confidential by law.

History - (s. 1, ch. 94-213; s. 160, ch. 2020-2.)



CHAPTER 760 FLORIDA STATUTES | FLORIDA

TITLE: XLIV CIVIL RIGHTS

CHAPTER: 760 DISCRIMINATION IN THE TREATMENT OF...

PART: V ENVIRONMENTAL EQUITY AND JUSTICE

SECTIONS: §760.854

NOTE: Entire Chapter



§760.854 FS | CENTER FOR ENVIRONMENTAL EQUITY AND JUSTICE

(1) There is hereby established the Center for Environmental Equity and Justice.

(2) The purpose of the center is to conduct and facilitate research, develop policies, and engage in education, training, and community outreach with respect to environmental equity and justice issues.

(3) The Center for Environmental Equity and Justice shall be established at the Florida Agricultural and Mechanical University within the Environmental Sciences Institute.

(4) The Center for Environmental Equity and Justice shall sponsor students to serve as interns at the Department of Health, the Department of Environmental Protection, and other relevant state agencies. The center may enter into a memorandum of understanding with these agencies to address environmental equity and justice issues.

History - (s. 1, ch. 98-304; s. 440, ch. 2011-142)



CHAPTER 768 FLORIDA STATUTES | FLORIDA

TITLE: XLV TORTS

CHAPTER: 768 NEGLIGENCE

PART: I GENERAL PROVISIONS

SECTIONS: §768.041 through §768.31

NOTE: Pertinent Parts Only!!!



§768.041 FS | RELEASE OR COVENANT NOT TO SUE

(1) A release or covenant not to sue as to one tortfeasor for property damage to, personal injury of, or the wrongful death of any person shall not operate to release or discharge the liability of any other tortfeasor who may be liable for the same tort or death.

(2) At trial, if any defendant shows the court that the plaintiff, or any person lawfully on her or his behalf, has delivered a release or covenant not to sue to any person, firm, or corporation in partial satisfaction of the damages sued for, the court shall set off this amount from the amount of any judgment to which the plaintiff would be otherwise entitled at the time of rendering judgment and enter judgment accordingly.

(3) The fact of such a release or covenant not to sue, or that any defendant has been dismissed by order of the court shall not be made known to the jury.

History - (ss. 1, 2, 3, ch. 57-395; s. 45, ch. 67-254; s. 1158, ch. 97-102.)

Note - (Former s. 54.28.)



§768.042 FS | DAMAGES

In any action brought in the circuit court to recover damages for personal injury or wrongful death, the amount of general damages shall not be stated in the complaint, but the amount of special damages, if any, may be specifically pleaded and the requisite jurisdictional amount established for filing in any court of competent jurisdiction.

History - (ss. 8, 9, ch. 75-9; s. 161, ch. 2020-2.)



§768.0705 FS | LIMITATION ON PREMISES LIABILITY

The owner or operator of a convenience business that substantially implements the applicable security measures listed in ss. 812.173 and 812.174 shall gain a presumption against liability in connection with criminal acts that occur on the premises and that are committed by third parties who are not employees or agents of the owner or operator of the convenience business.

History - (s. 18, ch. 99-225.)



§768.08 FS | LIABILITY OF CORPORATIONS HAVING RELIEF DEPARTMENT FOR INJURY TO EMPLOYEES; CONTRACTS IN VIOLATION OF ACT VOID

Any person, association of persons, or corporation that has, or shall hereafter have, a relief department for the benefit of their or its employees, or which shall contribute any money or other thing of value to any relief society or association for the benefit of their or its employees, to which such employee may also contribute any money, or other thing of value, shall not be relieved of liability to such employee, or in case of her or his death to any person authorized by law to sue for such death, for the negligent injury or killing of such employee, because such employee may have been a member of or contributed to any such relief department, or received any benefits therefrom, but such employee, and in case of her or his death any person or persons authorized by law to sue for such death, shall be entitled to demand, sue for and recover any benefit that such employee may have been entitled to receive by reason of having been a member of or contributed to any such relief department, society or association, and such employee, and in case of her or his death any person authorized by law to sue for such death, shall be entitled to institute suit against any such person, association of persons or corporations, and to recover for any injury suffered by such employee and for the death of such employee, suffered through the negligence of such person, association of persons, or corporation, and any contract, stipulation or provision in violation of this section is declared to be null and void.

History - (s. 1, ch. 6520, 1913; RGS 4967; CGL 7054; s. 1162, ch. 97-102.)



§768.0895 FS | LIMITATION OF LIABILITY FOR EMPLOYERS OF PERSONS WITH DISABILITIES

(1) An employer who employs a person with a developmental disability is not liable for the acts or omissions, negligent or intentional, of the employee if:

(a) The employee receives or has received supported employment services through a supported employment service provider; and

(b) The employer does not have actual notice of the actions of the employee which created unsafe conditions in the workplace.

(2) A supported employment service provider that provides or has provided supported employment services to a person with a developmental disability is not liable for the actions or conduct of the person which occur within the scope of the person's employment.

(3) As used in this section, the term:

(a) "Developmental disability" has the same meaning as provided in s. 393.063.

(b) "Supported employment service provider" means a not-for-profit public or private organization or agency that provides services for persons in supported employment, as defined in s. 393.063.

History - (s. 1, ch. 2011-231.)



§768.095 FS | EMPLOYER IMMUNITY FROM LIABILITY; DISCLOSURE OF INFORMATION REGARDING FORMER OR CURRENT EMPLOYEES

An employer who discloses information about a former or current employee to a prospective employer of the former or current employee upon request of the prospective employer or of the former or current employee is immune from civil liability for such disclosure or its consequences unless it is shown by clear and convincing evidence that the information disclosed by the former or current employer was knowingly false or violated any civil right of the former or current employee protected under chapter 760.

History - (s. 1, ch. 91-165; s. 17, ch. 99-225.)



§768.096 FS | EMPLOYER PRESUMPTION AGAINST NEGLIGENT HIRING

(1) In a civil action for the death of, or injury or damage to, a third person caused by the intentional tort of an employee, such employee's employer is presumed not to have been negligent in hiring such employee if, before hiring the employee, the employer conducted a background investigation of the prospective employee and the investigation did not reveal any information that reasonably demonstrated the unsuitability of the prospective employee for the particular work to be performed or for the employment in general. A background investigation under this section must include:

(a) Obtaining a criminal background investigation on the prospective employee under subsection (2);

(b) Making a reasonable effort to contact references and former employers of the prospective employee concerning the suitability of the prospective employee for employment;

(c) Requiring the prospective employee to complete a job application form that includes questions concerning whether he or she has ever been convicted of a crime, including details concerning the type of crime, the date of conviction and the penalty imposed, and whether the prospective employee has ever been a defendant in a civil action for intentional tort, including the nature of the intentional tort and the disposition of the action;

(d) Obtaining, with written authorization from the prospective employee, a check of the driver license record of the prospective employee if such a check is relevant to the work the employee will be performing and if the record can reasonably be obtained; or

(e) Interviewing the prospective employee.

(2) To satisfy the criminal-background-investigation requirement of this section, an employer must request and obtain from the Department of Law Enforcement a check of the information as reported and reflected in the Florida Crime Information Center system as of the date of the request.



(3) The election by an employer not to conduct the investigation specified in subsection (1) does not raise any presumption that the employer failed to use reasonable care in hiring an employee.

History - (s. 16, ch. 99-225.)



§768.098 FS | LIMITATION OF LIABILITY FOR EMPLOYEE LEASING

(1) An employer in a joint employment relationship pursuant to s. 468.520 shall not be liable for the tortious actions of another employer in that relationship, or for the tortious actions of any jointly employed employee under that relationship, provided that:

(a) The employer seeking to avoid liability pursuant to this section did not authorize or direct the tortious action;

(b) The employer seeking to avoid liability pursuant to this section did not have actual knowledge of the tortious conduct and fail to take appropriate action;

(c) The employer seeking to avoid liability pursuant to this section did not have actual control over the day-to-day job duties of the jointly employed employee who has committed a tortious act nor actual control over the portion of a job site at which or from which the tortious conduct arose or at which and from which a jointly employed employee worked, and that said control was assigned to the other employer under the contract;

(d) The employer seeking to avoid liability pursuant to this section is expressly absolved in the written contract forming the joint employment relationship of control over the day-to-day job duties of the jointly employed employee who has committed a tortious act, and actual control over the portion of the job site at which or from which the tortious conduct arose or at which and from which the jointly employed employee worked, and that said control was assigned to the other employer under the contract; and



(e) Complaints, allegations, or incidents of any tortious misconduct or workplace safety violations, regardless of the source, are required to be reported to the employer seeking to avoid liability pursuant to this section by all other joint employers under the written contract forming the joint employment relationship, and that the employer seeking to avoid liability pursuant to this section did not fail to take appropriate action as a result of receiving any such report related to a jointly employed employee who has committed a tortious act.

(2) An employer seeking to avoid liability pursuant to this section shall not be presumed to have actual control over the day-to-day job duties of the jointly employed employee who has committed a tortious act, nor actual control over the portion of a job site at which or from which that employee worked, based solely upon the fact that the employee at issue is a leased employee.

(3) This section shall not alter any responsibilities of the joint employer who has actual control over the day-to-day job duties of the jointly employed employee and who has actual control over the portion of a job site at which or from which the employee is employed, which arise from s. 768.096.

History - (s. 29, ch. 99-225.)



§768.14 FS | SUIT BY STATE; WAIVER OF SOVEREIGN IMMUNITY

Suit by the state or any of its agencies or subdivisions to recover damages in tort shall constitute a waiver of sovereign immunity from liability and suit for damages in tort to the extent of permitting the defendant to counterclaim for damages resulting from the same transaction or occurrence.

History - (s. 1, ch. 67-2204.)



§768.28 FS | WAIVER OF SOVEREIGN IMMUNITY IN TORT ACTIONS; RECOVERY LIMITS; LIMITATION ON ATTORNEY FEES; STATUTE OF LIMITATIONS; EXCLUSIONS; INDEMNIFICATION; RISK MANAGEMENT PROGRAMS

(1) In accordance with s. 13, Art. X of the State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant, in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act. Any such action may be brought in the county where the property in litigation is located or, if the affected agency or subdivision has an office in such county for the transaction of its customary business, where the cause of action accrued. However, any such action against a state university board of trustees shall be brought in the county in which that university's main campus is located or in the county in which the cause of action accrued if the university maintains therein a substantial presence for the transaction of its customary business.

(2) As used in this act, "state agencies or subdivisions" include the executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the **Florida Space Authority**.

(3) Except for a municipality and the **Florida Space Authority**, the affected agency or subdivision may, at its discretion, request the assistance of the **Department of Financial Services** in the consideration, adjustment, and settlement of any claim under this act.



(4) Subject to the provisions of this section, any state agency or subdivision shall have the right to appeal any award, compromise, settlement, or determination to the court of appropriate jurisdiction.

(5) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$200,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$300,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to \$200,000 or \$300,000, as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature. Notwithstanding the limited waiver of sovereign immunity provided herein, the state or an agency or subdivision thereof may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action by the Legislature, but the state or agency or subdivision thereof shall not be deemed to have waived any defense of sovereign immunity or to have increased the limits of its liability as a result of its obtaining insurance coverage for tortious acts in excess of the \$200,000 or \$300,000 waiver provided above. The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity before July 1, 1974.

(6)

(a) An action may not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency, and also, except as to any claim against a municipality, county, or the **Florida Space Authority**, presents such claim in writing to the



Department of Financial Services, within 3 years after such claim accrues and the **Department of Financial Services** or the appropriate agency denies the claim in writing; except that, if:

1. Such claim is for contribution pursuant to s. 768.31, it must be so presented within 6 months after the judgment against the tortfeasor seeking contribution has become final by lapse of time for appeal or after appellate review or, if there is no such judgment, within 6 months after the tortfeasor seeking contribution has either discharged the common liability by payment or agreed, while the action is pending against her or him, to discharge the common liability; or
2. Such action is for wrongful death, the claimant must present the claim in writing to the **Department of Financial Services** within 2 years after the claim accrues.

(b) For purposes of this section, the requirements of notice to the agency and denial of the claim pursuant to paragraph (a) are conditions precedent to maintaining an action but shall not be deemed to be elements of the cause of action and shall not affect the date on which the cause of action accrues.

(c) The claimant shall also provide to the agency the claimant's date and place of birth and social security number if the claimant is an individual, or a federal identification number if the claimant is not an individual. The claimant shall also state the case style, tribunal, the nature and amount of all adjudicated penalties, fines, fees, victim restitution fund, and other judgments in excess of \$200, whether imposed by a civil, criminal, or administrative tribunal, owed by the claimant to the state, its agency, officer or subdivision. If there exists no prior adjudicated unpaid claim in excess of \$200, the claimant shall so state.

(d) For purposes of this section, complete, accurate, and timely compliance with the requirements of paragraph (c) shall occur prior to settlement payment, close of discovery or commencement of trial, whichever is sooner;



provided the ability to plead setoff is not precluded by the delay. This setoff shall apply only against that part of the settlement or judgment payable to the claimant, minus claimant's reasonable attorney's fees and costs. Incomplete or inaccurate disclosure of unpaid adjudicated claims due the state, its agency, officer, or subdivision, may be excused by the court upon a showing by the preponderance of the evidence of the claimant's lack of knowledge of an adjudicated claim and reasonable inquiry by, or on behalf of, the claimant to obtain the information from public records. Unless the appropriate agency had actual notice of the information required to be disclosed by paragraph (c) in time to assert a setoff, an unexcused failure to disclose shall, upon hearing and order of court, cause the claimant to be liable for double the original undisclosed judgment and, upon further motion, the court shall enter judgment for the agency in that amount. Except as provided otherwise in this subsection, the failure of the **Department of Financial Services** or the appropriate agency to make final disposition of a claim within 6 months after it is filed shall be deemed a final denial of the claim for purposes of this section. For purposes of this subsection, in medical malpractice actions and in wrongful death actions, the failure of the **Department of Financial Services** or the appropriate agency to make final disposition of a claim within 90 days after it is filed shall be deemed a final denial of the claim. The statute of limitations for medical malpractice actions and wrongful death actions is tolled for the period of time taken by the **Department of Financial Services** or the appropriate agency to deny the claim. The provisions of this subsection do not apply to such claims as may be asserted by counterclaim pursuant to s. 768.14.

(7) In actions brought pursuant to this section, process shall be served upon the head of the agency concerned and also, except as to a defendant municipality, county, or the **Florida Space Authority**, upon the **Department of Financial Services**; and the department or the agency concerned shall have 30 days within which to plead thereto.

(8) No attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement.



(9)

(a) No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. However, such officer, employee, or agent shall be considered an adverse witness in a tort action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. The exclusive remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers shall be by action against the governmental entity, or the head of such entity in her or his official capacity, or the constitutional officer of which the officer, employee, or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The state or its subdivisions shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of her or his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(b) As used in this subsection, the term:

1. "Employee" includes any volunteer firefighter.
2. "Officer, employee, or agent" includes, but is not limited to, any health care provider when providing services pursuant to s. 766.1115; any nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, and its employees or agents, when providing patient services pursuant to paragraph (10)(f); and any public defender or her



or his employee or agent, including, among others, an assistant public defender and an investigator.

(c) For purposes of the waiver of sovereign immunity only, a member of the **Florida National Guard** is not acting within the scope of state employment when performing duty under the provisions of Title 10 or Title 32 of the United States Code or other applicable federal law; and neither the state nor any individual may be named in any action under this chapter arising from the performance of such federal duty.

(d) The employing agency of a law enforcement officer as defined in s. 943.10 is not liable for injury, death, or property damage effected or caused by a person fleeing from a law enforcement officer in a motor vehicle if:

1. The pursuit is conducted in a manner that does not involve conduct by the officer which is so reckless or wanting in care as to constitute disregard of human life, human rights, safety, or the property of another;
2. At the time the law enforcement officer initiates the pursuit, the officer reasonably believes that the person fleeing has committed a forcible felony as defined in s. 776.08; and
3. The pursuit is conducted by the officer pursuant to a written policy governing high-speed pursuit adopted by the employing agency. The policy must contain specific procedures concerning the proper method to initiate and terminate high-speed pursuit. The law enforcement officer must have received instructional training from the employing agency on the written policy governing high-speed pursuit.

(10)

(a) Health care providers or vendors, or any of their employees or agents, that have contractually agreed to act as agents of the **Department of Corrections** to provide health care services to inmates of the state correctional system shall be considered agents of the State of Florida, **Department of Corrections**, for the purposes of this section, while acting within the scope



of and pursuant to guidelines established in said contract or by rule. The contracts shall provide for the indemnification of the state by the agent for any liabilities incurred up to the limits set out in this chapter.

(b) This subsection shall not be construed as designating persons providing contracted health care services to inmates as employees or agents of the state for the purposes of chapter 440.

(c) For purposes of this section, regional poison control centers created in accordance with s. 395.1027 and coordinated and supervised under the Division of Children's Medical Services Prevention and Intervention of the Department of Health, or any of their employees or agents, shall be considered agents of the State of Florida, Department of Health. Any contracts with poison control centers must provide, to the extent permitted by law, for the indemnification of the state by the agency for any liabilities incurred up to the limits set out in this chapter.

(d) For the purposes of this section, operators, dispatchers, and providers of security for rail services and rail facility maintenance providers in the South Florida Rail Corridor, or any of their employees or agents, performing such services under contract with and on behalf of the South Florida Regional Transportation Authority or the Department of Transportation shall be considered agents of the state while acting within the scope of and pursuant to guidelines established in said contract or by rule.

(e) For purposes of this section, a professional firm that provides monitoring and inspection services of the work required for state roadway, bridge, or other transportation facility construction projects, or any of the firm's employees performing such services, shall be considered agents of the Department of Transportation while acting within the scope of the firm's contract with the Department of Transportation to ensure that the project is constructed in conformity with the project's plans, specifications, and contract provisions. Any contract between the professional firm and the state, to the extent permitted by law, shall provide for the



indemnification of the department for any liability, including reasonable attorney's fees, incurred up to the limits set out in this chapter to the extent caused by the negligence of the firm or its employees. This paragraph shall not be construed as designating persons who provide monitoring and inspection services as employees or agents of the state for purposes of chapter 440. This paragraph is not applicable to the professional firm or its employees if involved in an accident while operating a motor vehicle. This paragraph is not applicable to a firm engaged by the Department of Transportation for the design or construction of a state roadway, bridge, or other transportation facility construction project or to its employees, agents, or subcontractors.

(f) For purposes of this section, any nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, or any of its employees or agents, and which has agreed in an affiliation agreement or other contract to provide, or permit its employees or agents to provide, patient services as agents of a teaching hospital, is considered an agent of the teaching hospital while acting within the scope of and pursuant to guidelines established in the affiliation agreement or other contract. To the extent allowed by law, the contract must provide for the indemnification of the teaching hospital, up to the limits set out in this chapter, by the agent for any liability incurred which was caused by the negligence of the college or university or its employees or agents. The contract must also provide that those limited portions of the college, university, or medical school which are directly providing services pursuant to the contract and which are considered an agent of the teaching hospital for purposes of this section are deemed to be acting on behalf of a public agency as defined in s. 119.011(2).

1. For purposes of this paragraph, the term:

a. "Employee or agent" means an officer, employee, agent, or servant of a nonprofit independent college or university located and chartered in this state which owns or operates



an accredited medical school, including, but not limited to, the faculty of the medical school, any health care practitioner or licensee as defined in s. 456.001 for which the college or university is vicariously liable, and the staff or administrators of the medical school.

b. "Patient services" mean:

(I) Comprehensive health care services as defined in s. 641.19, including any related administrative service, provided to patients in a teaching hospital;

(II) Training and supervision of interns, residents, and fellows providing patient services in a teaching hospital; or

(III) Training and supervision of medical students in a teaching hospital.

c. "Teaching hospital" means a teaching hospital as defined in s. 408.07 which is owned or operated by the state, a county or municipality, a public health trust, a special taxing district, a governmental entity having health care responsibilities, or a not-for-profit entity that operates such facility as an agent of the state, or a political subdivision of the state, under a lease or other contract.

2. The teaching hospital or the medical school, or its employees or agents, must provide notice to each patient, or the patient's legal representative, that the college or university that owns or operates the medical school and the employees or agents of that college or university are acting as agents of the teaching hospital and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the teaching hospital, the college or university that owns or operates the medical school, or the employees or agents of the college or university, while acting within the scope of duties pursuant to



the affiliation agreement or other contract with a teaching hospital, is by commencement of an action pursuant to the provisions of this section. This notice requirement may be met by posting the notice in a place conspicuous to all persons.

3. This paragraph does not designate any employee providing contracted patient services in a teaching hospital as an employee or agent of the state for purposes of chapter 440.

(g) For the purposes of this section, the executive director of the **Board of Nursing**, when serving as the state administrator of the Nurse Licensure Compact pursuant to s. 464.0095, and any administrator, officer, executive director, employee, or representative of the Interstate Commission of Nurse Licensure Compact Administrators, when acting within the scope of their employment, duties, or responsibilities in this state, are considered agents of the state. The commission shall pay any claims or judgments pursuant to this section and may maintain insurance coverage to pay any such claims or judgments.

(11)

(a) Providers or vendors, or any of their employees or agents, that have contractually agreed to act on behalf of the state as agents of the Department of Juvenile Justice to provide services to children in need of services, families in need of services, or juvenile offenders are, solely with respect to such services, agents of the state for purposes of this section while acting within the scope of and pursuant to guidelines established in the contract or by rule. A contract must provide for the indemnification of the state by the agent for any liabilities incurred up to the limits set out in this chapter.

(b) This subsection does not designate a person who provides contracted services to juvenile offenders as an employee or agent of the state for purposes of chapter 440.

(12)



(a) A health care practitioner, as defined in s. 456.001(4), who has contractually agreed to act as an agent of a state university board of trustees to provide medical services to a student athlete for participation in or as a result of intercollegiate athletics, to include team practices, training, and competitions, shall be considered an agent of the respective state university board of trustees, for the purposes of this section, while acting within the scope of and pursuant to guidelines established in that contract. The contracts shall provide for the indemnification of the state by the agent for any liabilities incurred up to the limits set out in this chapter.

(b) This subsection shall not be construed as designating persons providing contracted health care services to athletes as employees or agents of a state university board of trustees for the purposes of chapter 440.

(13) Laws allowing the state or its agencies or subdivisions to buy insurance are still in force and effect and are not restricted in any way by the terms of this act.

(14) Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after such claim accrues; except that an action for contribution must be commenced within the limitations provided in s. 768.31(4), and an action for damages arising from medical malpractice or wrongful death must be commenced within the limitations for such actions in s. 95.11(4).

(15) No action may be brought against the state or any of its agencies or subdivisions by anyone who unlawfully participates in a riot, unlawful assembly, public demonstration, mob violence, or civil disobedience if the claim arises out of such riot, unlawful assembly, public demonstration, mob violence, or civil disobedience. Nothing in this act shall abridge traditional immunities pertaining to statements made in court.

(16)



(a) The state and its agencies and subdivisions are authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance for whatever coverage they may choose, or to have any combination thereof, in anticipation of any claim, judgment, and claims bill which they may be liable to pay pursuant to this section. Agencies or subdivisions, and sheriffs, that are subject to homogeneous risks may purchase insurance jointly or may join together as self-insurers to provide other means of protection against tort claims, any charter provisions or laws to the contrary notwithstanding.

(b) Claims files maintained by any risk management program administered by the state, its agencies, and its subdivisions are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Claims files records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided for in this paragraph.

(c) Portions of meetings and proceedings conducted pursuant to any risk management program administered by the state, its agencies, or its subdivisions, which relate solely to the evaluation of claims filed with the risk management program or which relate solely to offers of compromise of claims filed with the risk management program are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. Until termination of all litigation and settlement of all claims arising out of the same incident, persons privy to discussions pertinent to the evaluation of a filed claim shall not be subject to subpoena in any administrative or civil proceeding with regard to the content of those discussions.

(d) Minutes of the meetings and proceedings of any risk management program administered by the state, its agencies, or its subdivisions, which relate solely to



the evaluation of claims filed with the risk management program or which relate solely to offers of compromise of claims filed with the risk management program are exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until termination of all litigation and settlement of all claims arising out of the same incident.

(17) This section, as amended by chapter 81-317, Laws of Florida, shall apply only to causes of actions which accrue on or after October 1, 1981.

(18) No provision of this section, or of any other section of the Florida Statutes, whether read separately or in conjunction with any other provision, shall be construed to waive the immunity of the state or any of its agencies from suit in federal court, as such immunity is guaranteed by the Eleventh Amendment to the Constitution of the United States, unless such waiver is explicitly and definitely stated to be a waiver of the immunity of the state and its agencies from suit in federal court. This subsection shall not be construed to mean that the state has at any time previously waived, by implication, its immunity, or that of any of its agencies, from suit in federal court through any statute in existence prior to June 24, 1984.

(19) Neither the state nor any agency or subdivision of the state waives any defense of sovereign immunity, or increases the limits of its liability, upon entering into a contractual relationship with another agency or subdivision of the state. Such a contract must not contain any provision that requires one party to indemnify or insure the other party for the other party's negligence or to assume any liability for the other party's negligence. This does not preclude a party from requiring a nongovernmental entity to provide such indemnification or insurance. The restrictions of this subsection do not prevent a regional water supply authority from indemnifying and assuming the liabilities of its member governments for obligations arising from past acts or omissions at or with property acquired from a member government by the authority and arising from the acts or omissions of the authority in performing activities contemplated by an interlocal agreement. Such indemnification may not be considered to increase or otherwise waive the



limits of liability to third-party claimants established by this section.

(20) Every municipality, and any agency thereof, is authorized to undertake to indemnify those employees that are exposed to personal liability pursuant to the Clean Air Act Amendments of 1990, 42 U.S.C.A. ss. 7401 et seq., and all rules and regulations adopted to implement that act, for acts performed within the course and scope of their employment with the municipality or its agency, including but not limited to indemnification pertaining to the holding, transfer, or disposition of allowances allocated to the municipality's or its agency's electric generating units, and the monitoring, submission, certification, and compliance with permits, permit applications, records, compliance plans, and reports for those units, when such acts are performed within the course and scope of their employment with the municipality or its agency. The authority to indemnify under this section covers every act by an employee when such act is performed within the course and scope of her or his employment with the municipality or its agency, but does not cover any act of willful misconduct or any intentional or knowing violation of any law by the employee. The authority to indemnify under this section includes, but is not limited to, the authority to pay any fine and provide legal representation in any action.

History - (s. 1, ch. 73-313; s. 1, ch. 74-235; ss. 1, 2, 3, ch. 77-86; s. 9, ch. 79-139; s. 1, ch. 79-253; s. 284, ch. 79-400; s. 1, ch. 80-271; ss. 1, 2, ch. 81-317; s. 1, ch. 83-44; s. 1, ch. 83-257; s. 1, ch. 84-29; s. 1, ch. 84-335; s. 21, ch. 86-183; s. 1, ch. 86-184; s. 3, ch. 87-134; s. 2, ch. 88-173; ss. 55, 61, ch. 89-300; s. 92, ch. 89-360; s. 8, ch. 90-192; s. 3, ch. 91-209; s. 112, ch. 92-33; ss. 2, 11, ch. 92-278; s. 1, ch. 93-89; s. 34, ch. 93-129; s. 1, ch. 94-76; s. 2, ch. 94-147; s. 70, ch. 94-209; s. 21, ch. 94-321; s. 428, ch. 96-406; s. 34, ch. 97-93; s. 1809, ch. 97-102; s. 4, ch. 98-402; s. 289, ch. 99-8; s. 9, ch. 2000-155; s. 97, ch. 2002-20; s. 24, ch. 2002-183; s. 2, ch. 2002-401; s. 9, ch. 2003-159; s. 1903, ch. 2003-261; s. 1, ch. 2003-290; s. 67, ch. 2003-416; s. 1, ch. 2006-234; s. 1, ch. 2010-26; s. 1, ch. 2011-113; s. 3, ch. 2011-219; s. 126, ch. 2012-184; s. 12, ch. 2016-139; s. 33, ch. 2017-175.)

§768.295 FS | STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION (SLAPP) PROHIBITED

(1) It is the intent of the Legislature to protect the right in Florida to exercise the rights of free speech in connection with public issues, and the rights to peacefully assemble, instruct representatives, and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. It is the public policy of this state that a person or governmental entity not engage in **SLAPP** suits because such actions are inconsistent with the right of persons to exercise such constitutional rights of free speech in connection with public issues. Therefore, the Legislature finds and declares that prohibiting such lawsuits as herein described will preserve this fundamental state policy, preserve the constitutional rights of persons in Florida, and assure the continuation of representative government in this state. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts.

(2) As used in this section, the phrase or term:

(a) "Free speech in connection with public issues" means any written or oral statement that is protected under applicable law and is made before a governmental entity in connection with an issue under consideration or review by a governmental entity, or is made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work.

(b) "Governmental entity" or "government entity" means the state, including the executive, legislative, and the judicial branches of government and the independent establishments of the state, counties, municipalities, corporations primarily acting as instrumentalities of the state, counties, or municipalities, districts, authorities, boards, commissions, or any agencies thereof.

(3) A person or governmental entity in this state may not file or cause to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity without merit



and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue, or right to peacefully assemble, to instruct representatives of government, or to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

(4) A person or entity sued by a governmental entity or another person in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A person or entity may move the court for an order dismissing the action or granting final judgment in favor of that person or entity. The person or entity may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the claimant's or governmental entity's lawsuit has been brought in violation of this section. The claimant or governmental entity shall thereafter file a response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the motion, which shall be held at the earliest possible time after the filing of the claimant's or governmental entity's response. The court may award, subject to the limitations in s. 768.28, the party sued by a governmental entity actual damages arising from a governmental entity's violation of this section. The court shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section.

(5) In any case filed by a governmental entity which is found by a court to be in violation of this section, the governmental entity shall report such finding and provide a copy of the court's order to the Attorney General no later than 30 days after such order is final. The Attorney General shall report any violation of this section by a governmental entity to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives. A copy of such report shall be provided to the affected governmental entity.

History - (s. 1, ch. 2000-174; s. 1, ch. 2015-70.)



§768.31 FS | CONTRIBUTION AMONG TORTFEASORS

(1) SHORT TITLE. — This act shall be cited as the “**Uniform Contribution Among Tortfeasors Act.**”

(2) RIGHT TO CONTRIBUTION. —

(a) Except as otherwise provided in this act, when two or more persons become jointly or severally liable in tort for the same injury to person or property, or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than her or his pro rata share of the common liability, and the tortfeasor’s total recovery is limited to the amount paid by her or him in excess of her or his pro rata share. No tortfeasor is compelled to make contribution beyond her or his own pro rata share of the entire liability.

(c) There is no right of contribution in favor of any tortfeasor who has intentionally (willfully or wantonly) caused or contributed to the injury or wrongful death.

(d) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement or in respect to any amount paid in a settlement which is in excess of what was reasonable.

(e) A liability insurer who by payment has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full its obligation as insurer is subrogated to the tortfeasor’s right of contribution to the extent of the amount it has paid in excess of the tortfeasor’s pro rata share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.

(f) This act does not impair any right of indemnity under existing law. When one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from



the obligee for any portion of her or his indemnity obligation.

(g) This act shall not apply to breaches of trust or of other fiduciary obligation.

(3) PRO RATA SHARES. – In determining the pro rata shares of tortfeasors in the entire liability:

(a) Their relative degrees of fault shall be the basis for allocation of liability.

(b) If equity requires, the collective liability of some as a group shall constitute a single share.

(c) Principles of equity applicable to contribution generally shall apply.

(4) ENFORCEMENT. –

(a) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

(b) When a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants, by motion upon notice to all parties to the action.

(c) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by her or him to enforce contribution must be commenced within 1 year after the judgment has become final by lapse of time for appeal or after appellate review.

(d) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, the tortfeasor's right of contribution is barred unless she or he has either:

1. Discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against her or him and has commenced her or his action for contribution within 1 year after payment, or



2. Agreed, while action is pending against her or him, to discharge the common liability and has within 1 year after the agreement paid the liability and commenced her or his action for contribution.

(e) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(f) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution.

(5) RELEASE OR COVENANT NOT TO SUE. – When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and,

(b) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

(6) UNIFORMITY OF INTERPRETATION. – This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it.

(7) PENDING CAUSES OF ACTION. – This act shall apply to all causes of action pending on June 12, 1975, wherein the rights of contribution among joint tortfeasors is involved and to cases thereafter filed.

History - (ss. 1, 4, ch. 75-108; s. 1, ch. 76-186; s. 1171, ch. 97-102.)



CHAPTER 768 FLORIDA STATUTES | FLORIDA

TITLE: XLV TORTS

CHAPTER: 768 NEGLIGENCE

PART: II DAMAGES

SECTIONS: §768.71 through §768.81

NOTE: Entire Subpart!



§768.71 FS | APPLICABILITY; CONFLICTS

(1) Except as otherwise specifically provided, this part applies to any action for damages, whether in tort or in contract.

(2) This part applies only to causes of action arising on or after July 1, 1986, and does not apply to any cause of action arising before that date.

(3) If a provision of this part is in conflict with any other provision of the Florida Statutes, such other provision shall apply.

History - (s. 50, ch. 86-160.)



§768.72 FS | PLEADING IN CIVIL ACTIONS; CLAIM FOR PUNITIVE DAMAGES

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

(2) A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence. As used in this section, the term:

(a) "Intentional misconduct" means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.

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

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

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



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

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

(4) The provisions of this section shall be applied to all causes of action arising after the effective date of this act.

History - (s. 51, ch. 86-160; s. 1172, ch. 97-102; s. 22, ch. 99-225.)



§768.725 FS | PUNITIVE DAMAGES; BURDEN OF PROOF

In all civil actions, the plaintiff must establish at trial, by clear and convincing evidence, its entitlement to an award of punitive damages. The "greater weight of the evidence" burden of proof applies to a determination of the amount of damages.

History - (s. 21, ch. 99-225.)



§768.73 FS | PUNITIVE DAMAGES; LIMITATION

(1)

(a) Except as provided in paragraphs (b) and (c), an award of punitive damages may not exceed the greater of:

1. Three times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or
2. The sum of \$500,000.

(b) Where the fact finder determines that the wrongful conduct proven under this section was motivated solely by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greater of:

1. Four times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or
2. The sum of \$2 million.

(c) Where the fact finder determines that at the time of injury the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there shall be no cap on punitive damages.

(d) This subsection is not intended to prohibit an appropriate court from exercising its jurisdiction under s. 768.74 in determining the reasonableness of an award of punitive damages that is less than three times the amount of compensatory damages.

(2)



(a) Except as provided in paragraph (b), punitive damages may not be awarded against a defendant in a civil action if that defendant establishes, before trial, that punitive damages have previously been awarded against that defendant in any state or federal court in any action alleging harm from the same act or single course of conduct for which the claimant seeks compensatory damages. For purposes of a civil action, the term "the same act or single course of conduct" includes acts resulting in the same manufacturing defects, acts resulting in the same defects in design, or failure to warn of the same hazards, with respect to similar units of a product.

(b) In subsequent civil actions involving the same act or single course of conduct for which punitive damages have already been awarded, if the court determines by clear and convincing evidence that the amount of prior punitive damages awarded was insufficient to punish that defendant's behavior, the court may permit a jury to consider an award of subsequent punitive damages. In permitting a jury to consider awarding subsequent punitive damages, the court shall make specific findings of fact in the record to support its conclusion. In addition, the court may consider whether the defendant's act or course of conduct has ceased. Any subsequent punitive damage awards must be reduced by the amount of any earlier punitive damage awards rendered in state or federal court.

(3) The claimant attorney's fees, if payable from the judgment, are, to the extent that the fees are based on the punitive damages, calculated based on the final judgment for punitive damages. This subsection does not limit the payment of attorney's fees based upon an award of damages other than punitive damages.

(4) The jury may neither be instructed nor informed as to the provisions of this section.

(5) The provisions of this section shall be applied to all causes of action arising after the effective date of this act.

History - (ss. 52, 65, ch. 86-160; s. 1, ch. 87-42; s. 5, ch. 87-50; s. 1, ch. 88-335; s. 71, ch. 91-282; ss. 2, 3, ch. 92-85; s. 16, ch. 97-94; s. 23, ch. 99-225.)



§768.733 FS | BONDS IN CLASS ACTIONS; LIMITATIONS

(1) In any civil action that is brought as a certified class action, the trial court, upon the posting of a bond or equivalent surety as provided in this section, shall stay the execution of any judgment, or portion thereof, entered on account of punitive damages pending completion of any appellate review of the judgment.

(2) The required bond or equivalent surety acceptable to the court for imposition of the stay shall be the lower of:

(a) The amount of the punitive-damages judgment, plus twice the statutory rate of interest; or

(b) Ten percent of the net worth of the defendant as determined by applying generally accepted accounting principles to the defendant's financial status as of December 31 of the year prior to the judgment for punitive damages;

provided that in no case shall the amount of the required bond or equivalent surety exceed \$100 million, regardless of the amount of punitive damages.

(3) If, at any time after notice and hearing, the court finds that a defendant who has posted a bond or equivalent surety pursuant to subsection (2) is purposefully moving assets with the intent to avoid the punitive-damages judgment, the court shall increase the bond or equivalent surety to the amount determined pursuant to paragraph (2)(a). If the defendant does not post the additional bond required by the court, the stay shall be revoked.

History - (s. 4, ch. 2000-128.)



§768.734 FS | CAPACITY TO SUE

(1)

(a) In any action asserting the right to class action status, the claimant class having capacity to sue shall be limited to residents of this state at the time of the alleged misconduct, except as provided in paragraph (b).

(b)

1. Before issuing a class certification order, the court hearing an action asserting the right to class action status may expand a class to include any nonresident whose claim is recognized within the claimant's state of residence and is not time barred, but whose rights cannot be asserted because the claimant's state of residence lacks personal jurisdiction over the defendant or defendants.

2. In addition, the claimant class may include nonresidents if the conduct giving rise to the claim occurred in or emanated from this state.

(2) Notwithstanding any law to the contrary, in order to maintain a class action seeking statutory penalties under chapters 320, 501, 520, and 521, the class action claimants must allege and prove actual damages. This section does not limit or restrict the ability of the Attorney General to bring a class action for the recovery of statutory penalties, if otherwise authorized by law. However, class action claimants may seek to obtain, if appropriate, nonmonetary relief, including injunctive relief, orders or declaratory relief, and orders or judgments enjoining wrongful conduct, regardless of whether the class action claimants can prove any actual monetary damages. This section does not in any way limit or restrict the availability of such nonmonetary relief.

(3) This section does not affect any class action lawsuits involving federal or state civil rights laws.

History - (s. 1, ch. 2006-117.)



§768.735 FS | PUNITIVE DAMAGES; EXCEPTIONS; LIMITATION

(1) Sections 768.72(2)-(4), 768.725, and 768.73 do not apply to any civil action based upon child abuse, abuse of the elderly under chapter 415, or abuse of the developmentally disabled. Such actions are governed by applicable statutes and controlling judicial precedent. This section does not apply to claims brought pursuant to s. 400.023 or s. 429.29.

(2)

(a) In any civil action based upon child abuse, abuse of the elderly under chapter 415, or abuse of the developmentally disabled, and involving the award of punitive damages, the judgment for the total amount of punitive damages awarded to a claimant may not exceed three times the amount of compensatory damages awarded to each person entitled thereto by the trier of fact, except as provided in paragraph (b). This subsection does not apply to any class action.

(b) If any award for punitive damages exceeds the limitation specified in paragraph (a), the award is presumed to be excessive and the defendant is entitled to remittitur of the amount in excess of the limitation unless the claimant demonstrates to the court by clear and convincing evidence that the award is not excessive in light of the facts and circumstances that were presented to the trier of fact.

(c) This subsection is not intended to prohibit an appropriate court from exercising its jurisdiction under s. 768.74 in determining the reasonableness of an award of punitive damages which is less than three times the amount of compensatory damages.

(d) The jury may not be instructed or informed as to the provisions of this section.

(3) This section is remedial in nature and shall take effect upon becoming a law.

History - (s. 24, ch. 99-225; s. 11, ch. 2001-45; s. 107, ch. 2006-197.)



§768.736 FS | PUNITIVE DAMAGES; EXCEPTIONS FOR INTOXICATION

Sections 768.725 and 768.73 do not apply to any defendant who, at the time of the act or omission for which punitive damages are sought, was under the influence of any alcoholic beverage or drug to the extent that the defendant's normal faculties were impaired, or who had a blood or breath alcohol level of 0.08 percent or higher.

History - (s. 25, ch. 99-225.)



§768.737 FS | PUNITIVE DAMAGES; APPLICATION IN ARBITRATION

Where punitive damages are available as a remedy in an arbitration proceeding, ss. 768.72, 768.725, and 768.73 apply. When an award of punitive damages is made in an arbitration proceeding, the arbitrator who renders the award must issue a written opinion setting forth the conduct which gave rise to the award and how the arbitrator applied the standards in s. 768.72 to such conduct.

History - (s. 26, ch. 99-225.)



§768.74 FS | REMITTITUR AND ADDITUR

(1) In any action to which this part applies wherein the trier of fact determines that liability exists on the part of the defendant and a verdict is rendered which awards money damages to the plaintiff, it shall be the responsibility of the court, upon proper motion, to review the amount of such award to determine if such amount is excessive or inadequate in light of the facts and circumstances which were presented to the trier of fact.

(2) If the court finds that the amount awarded is excessive or inadequate, it shall order a remittitur or additur, as the case may be.

(3) It is the intention of the Legislature that awards of damages be subject to close scrutiny by the courts and that all such awards be adequate and not excessive.

(4) If the party adversely affected by such remittitur or additur does not agree, the court shall order a new trial in the cause on the issue of damages only.

(5) In determining whether an award is excessive or inadequate in light of the facts and circumstances presented to the trier of fact and in determining the amount, if any, that such award exceeds a reasonable range of damages or is inadequate, the court shall consider the following criteria:

(a) Whether the amount awarded is indicative of prejudice, passion, or corruption on the part of the trier of fact;

(b) Whether it appears that the trier of fact ignored the evidence in reaching a verdict or misconceived the merits of the case relating to the amounts of damages recoverable;

(c) Whether the trier of fact took improper elements of damages into account or arrived at the amount of damages by speculation and conjecture;

(d) Whether the amount awarded bears a reasonable relation to the amount of damages proved and the injury suffered; and



(e) Whether the amount awarded is supported by the evidence and is such that it could be adduced in a logical manner by reasonable persons.

(6) It is the intent of the Legislature to vest the trial courts of this state with the discretionary authority to review the amounts of damages awarded by a trier of fact in light of a standard of excessiveness or inadequacy. The Legislature recognizes that the reasonable actions of a jury are a fundamental precept of American jurisprudence and that such actions should be disturbed or modified with caution and discretion. However, it is further recognized that a review by the courts in accordance with the standards set forth in this section provides an additional element of soundness and logic to our judicial system and is in the best interests of the citizens of this state.

History - (s. 53, ch. 86-160.)



§768.76 FS | COLLATERAL SOURCES OF INDEMNITY

(1) In any action to which this part applies in which liability is admitted or is determined by the trier of fact and in which damages are awarded to compensate the claimant for losses sustained, the court shall reduce the amount of such award by the total of all amounts which have been paid for the benefit of the claimant, or which are otherwise available to the claimant, from all collateral sources; however, there shall be no reduction for collateral sources for which a subrogation or reimbursement right exists. Such reduction shall be offset to the extent of any amount which has been paid, contributed, or forfeited by, or on behalf of, the claimant or members of the claimant's immediate family to secure her or his right to any collateral source benefit which the claimant is receiving as a result of her or his injury.

(2) For purposes of this section:

(a) "Collateral sources" means any payments made to the claimant, or made on the claimant's behalf, by or pursuant to:

1. The United States Social Security Act, except Title XVIII and Title XIX; any federal, state, or local income disability act; or any other public programs providing medical expenses, disability payments, or other similar benefits, except those prohibited by federal law and those expressly excluded by law as collateral sources.

2. Any health, sickness, or income disability insurance; automobile accident insurance that provides health benefits or income disability coverage; and any other similar insurance benefits, except life insurance benefits available to the claimant, whether purchased by her or him or provided by others.

3. Any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services.



4. Any contractual or voluntary wage continuation plan provided by employers or by any other system intended to provide wages during a period of disability.

(b) Notwithstanding any other provision of this section, benefits received under Medicare, or any other federal program providing for a Federal Government lien on or right of reimbursement from the plaintiff's recovery, the Workers' Compensation Law, the Medicaid program of Title XIX of the Social Security Act or from any medical services program administered by the Department of Health shall not be considered a collateral source.

(3) In the event that the fees for legal services provided to the claimant are based on a percentage of the amount of money awarded to the claimant, such percentage shall be based on the net amount of the award as reduced by the amounts of collateral sources and as increased by insurance premiums paid.

(4) A provider of collateral sources that has a right of subrogation or reimbursement that has complied with this section shall have a right of reimbursement from a claimant to whom it has provided collateral sources if such claimant has recovered all or part of such collateral sources from a tortfeasor. Such provider's right of reimbursement shall be limited to the actual amount of collateral sources recovered by the claimant from a tortfeasor, minus its pro rata share of costs and attorney's fees incurred by the claimant in recovering such collateral sources from the tortfeasor. In determining the provider's pro rata share of those costs and attorney's fees, the provider shall have deducted from its recovery a percentage amount equal to the percentage of the judgment or settlement which is for costs and attorney's fees.



(5) Any disputes between the claimant and the provider as to the actual amount of collateral sources recovered by the claimant from a tortfeasor shall be subject to determination by a court of competent jurisdiction. In determining the actual amount of collateral sources recovered, the court shall give consideration to any offset in the amount of settlement or judgment for any comparative negligence of the claimant, limitations in the amount of liability insurance coverage available to the tortfeasor, or any other mitigating factors which the court deems equitable and appropriate under the circumstances.

(6) A claimant shall send the provider of any collateral sources, by certified or registered mail, notification of claimant's intent to claim damages from the tortfeasor. If the claimant has filed suit against the tortfeasor at the time such notice is sent, a copy of the complaint against the tortfeasor should be sent along with such notice. Such notice must include a statement that the provider of collateral sources will waive any right to subrogation or reimbursement unless it provides the claimant or claimant's attorney a statement asserting payment of benefits and right of subrogation or reimbursement within 30 days following receipt of the claimant's notification to the collateral sources provider.

(7) Within 30 days after receipt of the claimant's notification of intent to claim damages from the tortfeasor, the provider of collateral sources must provide the claimant or claimant's attorney a statement asserting its payment of collateral sources benefits and right of subrogation or reimbursement. Failure of the provider of collateral sources to provide such statement to the claimant or claimant's attorney within the 30-day period shall result in waiver of any claim to subrogation or reimbursement by the provider with respect to any such collateral sources. No right of subrogation or reimbursement shall exist for a provider of collateral sources that has waived its right of subrogation or reimbursement pursuant to this subsection.



(8) Reimbursement of a collateral sources provider pursuant to this section shall satisfy such collateral sources provider's right of subrogation or reimbursement. The provider shall have no right of subrogation or reimbursement for collateral sources payments made after the date of waiver, settlement, or judgment.

(9) A collateral source provider claiming a right of subrogation or reimbursement under this section shall cooperate with the claimant by producing such information as is reasonably necessary for the claimant to prove the nature and extent of the value of the collateral sources provided. The failure of the collateral source provider to cooperate may be taken into account by the court in determining the right to or the amount of the reimbursement asserted.

History - (s. 55, ch. 86-160; s. 1, ch. 93-245; s. 1173, ch. 97-102; s. 290, ch. 99-8.)



§768.77 FS | ITEMIZED VERDICT

(1) Except as provided in subsection (2), in any action to which this part applies in which the trier of fact determines that liability exists on the part of the defendant, the trier of fact shall, as a part of the verdict, itemize the amounts to be awarded to the claimant into the following categories of damages:

- (a) Amounts intended to compensate the claimant for economic losses;
- (b) Amounts intended to compensate the claimant for noneconomic losses; and
- (c) Amounts awarded to the claimant for punitive damages, if applicable.

(2) In any action for damages based on personal injury or wrongful death arising out of medical malpractice, whether in tort or contract, to which this part applies in which the trier of fact determines that liability exists on the part of the defendant, the trier of fact shall, as a part of the verdict, itemize the amounts to be awarded to the claimant into the following categories of damages:

- (a) Amounts intended to compensate the claimant for:
 - 1. Past economic losses; and
 - 2. Future economic losses, not reduced to present value, and the number of years or part thereof which the award is intended to cover;
- (b) Amounts intended to compensate the claimant for:
 - 1. Past noneconomic losses; and
 - 2. Future noneconomic losses and the number of years or part thereof which the award is intended to cover; and
- (c) Amounts awarded to the claimant for punitive damages, if applicable.

History - (s. 56, ch. 86-160; s. 7, ch. 99-225; s. 68, ch. 2003-416.)



§768.78 FS | ALTERNATIVE METHODS OF PAYMENT OF DAMAGE AWARDS

(1)

(a) In any action to which this part applies in which the court determines that an award to compensate the claimant includes future economic losses which exceed \$250,000, payment of amounts intended to compensate the claimant for these losses shall be made by one of the following means, unless an alternative method of payment of damages is provided in this section:

1. The defendant may make a lump-sum payment for all damages so assessed, with future economic losses and expenses reduced to present value; or

2. Subject to the provisions of this subsection, the court shall, at the request of either party, unless the court determines that manifest injustice would result to any party, enter a judgment ordering future economic damages, as itemized pursuant to s. 768.77(1), in excess of \$250,000 to be paid in whole or in part by periodic payments rather than by a lump-sum payment.

(b) In entering a judgment ordering the payment of such future damages by periodic payments, the court shall make a specific finding of the dollar amount of periodic payments which will compensate the judgment creditor for these future damages after offset for collateral sources. The total dollar amount of the periodic payments shall equal the dollar amount of all such future damages before any reduction to present value, less any attorney's fees payable from future damages in accordance with paragraph (f). The period of time over which the periodic payments shall be made is the period of years determined by the trier of fact in arriving at its itemized verdict and shall not be extended if the plaintiff lives beyond the determined period. If the claimant has been awarded damages to be discharged by periodic payments and the claimant dies prior to the termination of the period of years during which periodic payments are to be made, the remaining liability of the defendant, reduced to present value, shall be paid into the estate of the claimant in a lump sum. The court may



order that the payments be equal or vary in amount, depending upon the need of the claimant.

(c) As a condition to authorizing periodic payments of future damages, the court shall require the defendant to post a bond or security or otherwise to assure full payment of these damages awarded by the judgment. A bond is not adequate unless it is written by a company authorized to do business in this state and is rated A+ by Best's. If the defendant is unable to adequately assure full payment of the damages, the court shall order that all damages be paid to the claimant in a lump sum pursuant to the verdict. No bond may be canceled or be subject to cancellation unless at least 60 days' advance written notice is filed with the court and the judgment creditor. Upon termination of periodic payments, the court shall order the return of the security, or so much as remains, to the judgment debtor.

(d)

1. In the event that the court finds that the judgment debtor has exhibited a continuing pattern of failing to timely make the required periodic payments, the court shall:

a. Order that all remaining amounts of the award be paid by lump sum within 30 days after entry of the order;

b. Order that, in addition to the required periodic payments, the judgment debtor pay the claimant all damages caused by the failure to timely make periodic payments, including court costs and attorney's fees; or

c. Enter other orders or sanctions as appropriate to protect the judgment creditor.

2. If it appears that the judgment debtor may be insolvent or that there is a substantial risk that the judgment debtor may not have the financial responsibility to pay all amounts due and owing the judgment creditor, the court may:

a. Order additional security;



b. Order that the balance of payments due be placed in trust for the benefit of the claimant;

c. Order that all remaining amounts of the award be paid by lump sum within 30 days after entry of the order; or

d. Order such other protection as may be necessary to assure the payment of the remaining balance of the judgment.

(e) The judgment providing for payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amounts of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Periodic payments shall be subject to modification only as specified in this subsection.

(f) Claimant's attorney's fee, if payable from the judgment, shall be based upon the total judgment, adding all amounts awarded for past and future damages. The attorney's fee shall be paid from past and future damages in the same proportion. If a claimant has agreed to pay her or his attorney's fees on a contingency fee basis, the claimant shall be responsible for paying the agreed percentage calculated solely on the basis of that portion of the award not subject to periodic payments. The remaining unpaid portion of the attorney's fees shall be paid in a lump sum by the defendant, who shall receive credit against future payments for this amount. However, the credit against each future payment is limited to an amount equal to the contingency fee percentage of each periodic payment. Any provision of this paragraph may be modified by the agreement of all interested parties.

(g) Nothing in this subsection shall preclude any other method of payment of awards, if such method is consented to by the parties.



(2)

(a) In any action for damages based on personal injury or wrongful death arising out of medical malpractice, whether in tort or contract, in which the trier of fact makes an award to compensate the claimant for future economic losses, payment of amounts intended to compensate the claimant for these losses shall be made by one of the following means:

1. The defendant may make a lump-sum payment for all damages so assessed, with future economic losses and expenses reduced to present value; or
2. The court shall, at the request of either party, enter a judgment ordering future economic damages, as itemized pursuant to s. 768.77, to be paid by periodic payments rather than lump sum.

(b) For purposes of this subsection, "periodic payment" means provision for the spreading of future economic damage payments, in whole or in part, over a period of time, as follows:

1. A specific finding of the dollar amount of periodic payments which will compensate for these future damages after offset for collateral sources shall be made. The total dollar amount of the periodic payments shall equal the dollar amount of all such future damages before any reduction to present value.
2. The defendant shall be required to post a bond or security or otherwise to assure full payment of these damages awarded. A bond is not adequate unless it is written by a company authorized to do business in this state and is rated A+ by Best's. If the defendant is unable to adequately assure full payment of the damages, all damages, reduced to present value, shall be paid to the claimant in a lump sum. No bond may be canceled or be subject to cancellation unless at least 60 days' advance written notice is filed with the court and the claimant. Upon termination of periodic payments, the security, or so much as remains, shall be returned to the defendant.



3. The provision for payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amounts of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made.

History - (ss. 57, 65, ch. 86-160; s. 5, ch. 87-50; s. 47, ch. 88-1; s. 25, ch. 88-277; s. 1, ch. 88-335; s. 1174, ch. 97-102; s. 8, ch. 99-225.)



§768.79 FS | OFFER OF JUDGMENT AND DEMAND FOR JUDGMENT

(1) In any civil action for damages filed in the courts of this state, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant shall be entitled to recover reasonable costs and attorney's fees incurred by her or him or on the defendant's behalf pursuant to a policy of liability insurance or other contract from the date of filing of the offer if the judgment is one of no liability or the judgment obtained by the plaintiff is at least 25 percent less than such offer, and the court shall set off such costs and attorney's fees against the award. Where such costs and attorney's fees total more than the judgment, the court shall enter judgment for the defendant against the plaintiff for the amount of the costs and fees, less the amount of the plaintiff's award. If a plaintiff files a demand for judgment which is not accepted by the defendant within 30 days and the plaintiff recovers a judgment in an amount at least 25 percent greater than the offer, she or he shall be entitled to recover reasonable costs and attorney's fees incurred from the date of the filing of the demand. If rejected, neither an offer nor demand is admissible in subsequent litigation, except for pursuing the penalties of this section.

(2) The making of an offer of settlement which is not accepted does not preclude the making of a subsequent offer. An offer must:

(a) Be in writing and state that it is being made pursuant to this section.

(b) Name the party making it and the party to whom it is being made.

(c) State with particularity the amount offered to settle a claim for punitive damages, if any.

(d) State its total amount.

The offer shall be construed as including all damages which may be awarded in a final judgment.

(3) The offer shall be served upon the party to whom it is made, but it shall not be filed unless it is accepted or unless filing is necessary to enforce the provisions of this section.



(4) An offer shall be accepted by filing a written acceptance with the court within 30 days after service. Upon filing of both the offer and acceptance, the court has full jurisdiction to enforce the settlement agreement.

(5) An offer may be withdrawn in writing which is served before the date a written acceptance is filed. Once withdrawn, an offer is void.

(6) Upon motion made by the offeror within 30 days after the entry of judgment or after voluntary or involuntary dismissal, the court shall determine the following:

(a) If a defendant serves an offer which is not accepted by the plaintiff, and if the judgment obtained by the plaintiff is at least 25 percent less than the amount of the offer, the defendant shall be awarded reasonable costs, including investigative expenses, and attorney's fees, calculated in accordance with the guidelines promulgated by the Supreme Court, incurred from the date the offer was served, and the court shall set off such costs in attorney's fees against the award. When such costs and attorney's fees total more than the amount of the judgment, the court shall enter judgment for the defendant against the plaintiff for the amount of the costs and fees, less the amount of the award to the plaintiff.

(b) If a plaintiff serves an offer which is not accepted by the defendant, and if the judgment obtained by the plaintiff is at least 25 percent more than the amount of the offer, the plaintiff shall be awarded reasonable costs, including investigative expenses, and attorney's fees, calculated in accordance with the guidelines promulgated by the Supreme Court, incurred from the date the offer was served.

For purposes of the determination required by paragraph (a), the term "judgment obtained" means the amount of the net judgment entered, plus any postoffer collateral source payments received or due as of the date of the judgment, plus any postoffer settlement amounts by which the verdict was reduced. For purposes of the determination required by paragraph (b), the term "judgment obtained" means the amount of the net judgment entered, plus any postoffer settlement amounts by which the verdict was reduced.



(7)

(a) If a party is entitled to costs and fees pursuant to the provisions of this section, the court may, in its discretion, determine that an offer was not made in good faith. In such case, the court may disallow an award of costs and attorney's fees.

(b) When determining the reasonableness of an award of attorney's fees pursuant to this section, the court shall consider, along with all other relevant criteria, the following additional factors:

1. The then apparent merit or lack of merit in the claim.
2. The number and nature of offers made by the parties.
3. The closeness of questions of fact and law at issue.
4. Whether the person making the offer had unreasonably refused to furnish information necessary to evaluate the reasonableness of such offer.
5. Whether the suit was in the nature of a test case presenting questions of far-reaching importance affecting nonparties.
6. The amount of the additional delay cost and expense that the person making the offer reasonably would be expected to incur if the litigation should be prolonged.

(8) Evidence of an offer is admissible only in proceedings to enforce an accepted offer or to determine the imposition of sanctions under this section.

History - (s. 58, ch. 86-160; s. 48, ch. 90-119; s. 1175, ch. 97-102.)



§768.81 FS | COMPARATIVE FAULT

(1) DEFINITIONS. – As used in this section, the term:

(a) “Accident” means the events and actions that relate to the incident as well as those events and actions that relate to the alleged defect or injuries, including enhanced injuries.

(b) “Economic damages” means past lost income and future lost income reduced to present value; medical and funeral expenses; lost support and services; replacement value of lost personal property; loss of appraised fair market value of real property; costs of construction repairs, including labor, overhead, and profit; and any other economic loss that would not have occurred but for the injury giving rise to the cause of action.

(c) “Negligence action” means, without limitation, a civil action for damages based upon a theory of negligence, strict liability, products liability, professional malpractice whether couched in terms of contract or tort, or breach of warranty and like theories. The substance of an action, not conclusory terms used by a party, determines whether an action is a negligence action.

(d) “Products liability action” means a civil action based upon a theory of strict liability, negligence, breach of warranty, nuisance, or similar theories for damages caused by the manufacture, construction, design, formulation, installation, preparation, or assembly of a product. The term includes an action alleging that injuries received by a claimant in an accident were greater than the injuries the claimant would have received but for a defective product. The substance of an action, not the conclusory terms used by a party, determines whether an action is a products liability action.

(2) EFFECT OF CONTRIBUTORY FAULT. – In a negligence action, contributory fault chargeable to the claimant diminishes proportionately the amount awarded as economic and noneconomic damages for an injury attributable to the claimant’s contributory fault, but does not bar recovery.



(3) APPORTIONMENT OF DAMAGES. – In a negligence action, the court shall enter judgment against each party liable on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability.

(a)

1. In order to allocate any or all fault to a nonparty, a defendant must affirmatively plead the fault of a nonparty and, absent a showing of good cause, identify the nonparty, if known, or describe the nonparty as specifically as practicable, either by motion or in the initial responsive pleading when defenses are first presented, subject to amendment any time before trial in accordance with the Florida Rules of Civil Procedure.

2. In order to allocate any or all fault to a nonparty and include the named or unnamed nonparty on the verdict form for purposes of apportioning damages, a defendant must prove at trial, by a preponderance of the evidence, the fault of the nonparty in causing the plaintiff's injuries.

(b) In a products liability action alleging that injuries received by a claimant in an accident were enhanced by a defective product, the trier of fact shall consider the fault of all persons who contributed to the accident when apportioning fault between or among them. The jury shall be appropriately instructed by the trial judge on the apportionment of fault in products liability actions where there are allegations that the injuries received by the claimant in an accident were enhanced by a defective product. The rules of evidence apply to these actions.

(4) APPLICABILITY. – This section does not apply to any action brought by any person to recover actual economic damages resulting from pollution, to any action based upon an intentional tort, or to any cause of action as to which application of the doctrine of joint and several liability is specifically provided by chapter 403, chapter 498, chapter 517, chapter 542, or chapter 895.



(5) MEDICAL MALPRACTICE. – Notwithstanding anything in law to the contrary, in an action for damages for personal injury or wrongful death arising out of medical malpractice, whether in contract or tort, if an apportionment of damages pursuant to this section is attributed to a teaching hospital as defined in s. 408.07, the court shall enter judgment against the teaching hospital on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability.

History - (ss. 60, 65, ch. 86-160; s. 5, ch. 87-50; s. 79, ch. 88-1; s. 43, ch. 88-277; s. 1, ch. 88-335; s. 38, ch. 91-110; s. 104, ch. 92-33; s. 27, ch. 99-225; s. 1, ch. 2006-6; s. 1, ch. 2011-215.)

¹Note –

(A. Section 2, ch. 2011-215, provides that “[t]he Legislature intends that this act be applied retroactively and overrule D’Amario v. Ford Motor Co., 806 So. 2d 424 (Fla. 2001), which adopted what the Florida Supreme Court acknowledged to be a minority view. That minority view fails to apportion fault for damages consistent with Florida’s statutory comparative fault system, codified in s. 768.81, Florida Statutes, and leads to inequitable and unfair results, regardless of the damages sought in the litigation. The Legislature finds that, in a products liability action as defined in this act, fault should be apportioned among all responsible persons.”

B. Section 3, ch. 2011-215, provides that “[t]his act is remedial in nature and applies retroactively. The Legislature finds that the retroactive application of this act does not unconstitutionally impair vested rights. Rather, the law affects only remedies, permitting recovery against all tortfeasors while lessening the ultimate liability of each consistent with this state’s statutory comparative fault system, codified in s. 768.81, Florida Statutes. In all cases, the Legislature intends that this act be construed consistent with the due process provisions of the State Constitution and the Constitution of the United States.”)



CHAPTER 775 FLORIDA STATUTES | FLORIDA

TITLE: XLVI CRIMES

CHAPTER: 775 GENERAL PENALTIES; REGISTRATION OF CRIMINALS

PART: --

SECTIONS: §775.08, §775.082, §775.083, §775.084, and §775.15

NOTE:



§775.08 FS | CLASSES AND DEFINITIONS OF OFFENSES

When used in the laws of this state:

(1) The term "felony" shall mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or imprisonment in a state penitentiary. "State penitentiary" shall include state correctional facilities. A person shall be imprisoned in the state penitentiary for each sentence which, except an extended term, exceeds 1 year.

(2) The term "misdemeanor" shall mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by a term of imprisonment in a county correctional facility, except an extended term, not in excess of 1 year. The term "misdemeanor" shall not mean a conviction for any noncriminal traffic violation of any provision of chapter 316 or any municipal or county ordinance.

(3) The term "noncriminal violation" shall mean any offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by no other penalty than a fine, forfeiture, or other civil penalty. A noncriminal violation does not constitute a crime, and conviction for a noncriminal violation shall not give rise to any legal disability based on a criminal offense. The term "noncriminal violation" shall not mean any conviction for any violation of any municipal or county ordinance. Nothing contained in this code shall repeal or change the penalty for a violation of any municipal or county ordinance.

(4) The term "crime" shall mean a felony or misdemeanor.

History - (s. 1(11), ch. 1637, 1868; RS 2352; GS 3176; RGS 5006; CGL 7105; s. 1, ch. 71-136; s. 4, ch. 74-383; s. 1, ch. 75-298; s. 1, ch. 88-196.)



§775.082 FS | PENALTIES; APPLICABILITY OF SENTENCING STRUCTURES; MANDATORY MINIMUM SENTENCES FOR CERTAIN REOFFENDERS PREVIOUSLY RELEASED FROM PRISON

(1)

(a) Except as provided in paragraph (b), a person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in a determination that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

(b)

1. A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. If the court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. A person sentenced pursuant to this subparagraph is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(a).

2. A person who did not actually kill, intend to kill, or attempt to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 15 years is entitled to



a review of his or her sentence in accordance with s. 921.1402(2)(c).

3. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(a) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(2) In the event the death penalty in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment as provided in subsection (1). No sentence of death shall be reduced as a result of a determination that a method of execution is held to be unconstitutional under the State Constitution or the Constitution of the United States.

(3) A person who has been convicted of any other designated felony may be punished as follows:

(a)

1. For a life felony committed before October 1, 1983, by a term of imprisonment for life or for a term of at least 30 years.

2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.

3. Except as provided in subparagraph 4., for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

4.

a. Except as provided in sub-subparagraph b., for a life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), by:



(I) A term of imprisonment for life; or

(II) A split sentence that is a term of at least 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4).

b. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b), by a term of imprisonment for life.

5. Notwithstanding subparagraphs 1.-4., a person who is convicted under s. 782.04 of an offense that was reclassified as a life felony which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(b) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may



find that multiple defendants killed, intended to kill, or attempted to kill the victim.

6. For a life felony committed on or after October 1, 2014, which is a violation of s. 787.06(3)(g), by a term of imprisonment for life.

(b)

1. For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.

2. Notwithstanding subparagraph 1., a person convicted under s. 782.04 of a first degree felony punishable by a term of years not exceeding life imprisonment, or an offense that was reclassified as a first degree felony punishable by a term of years not exceeding life, which was committed before the person attained 18 years of age may be punished by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(b) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or



attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(c) Notwithstanding paragraphs (a) and (b), a person convicted of an offense that is not included in s. 782.04 but that is an offense that is a life felony or is punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, or an offense that was reclassified as a life felony or an offense punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 20 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(d).

(d) For a felony of the second degree, by a term of imprisonment not exceeding 15 years.

(e) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows:

(a) For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year;

(b) For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days.

(5) Any person who has been convicted of a noncriminal violation may not be sentenced to a term of imprisonment nor to any other punishment more severe than a fine, forfeiture, or other civil penalty, except as provided in chapter 316 or by ordinance of any city or county.

(6) Nothing in this section shall be construed to alter the operation of any statute of this state authorizing a trial court, in its discretion, to impose a sentence of imprisonment



for an indeterminate period within minimum and maximum limits as provided by law, except as provided in subsection (1).

(7) This section does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

(8)

(a) The sentencing guidelines that were effective October 1, 1983, and any revisions thereto, apply to all felonies, except capital felonies, committed on or after October 1, 1983, and before January 1, 1994, and to all felonies, except capital felonies and life felonies, committed before October 1, 1983, when the defendant affirmatively selects to be sentenced pursuant to such provisions.

(b) The 1994 sentencing guidelines, that were effective January 1, 1994, and any revisions thereto, apply to all felonies, except capital felonies, committed on or after January 1, 1994, and before October 1, 1995.

(c) The 1995 sentencing guidelines that were effective October 1, 1995, and any revisions thereto, apply to all felonies, except capital felonies, committed on or after October 1, 1995, and before October 1, 1998.

(d) The Criminal Punishment Code applies to all felonies, except capital felonies, committed on or after October 1, 1998. Any revision to the Criminal Punishment Code applies to sentencing for all felonies, except capital felonies, committed on or after the effective date of the revision.

(e) Felonies, except capital felonies, with continuing dates of enterprise shall be sentenced under the sentencing guidelines or the Criminal Punishment Code in effect on the beginning date of the criminal activity.

(9)

(a)

1. "Prison releasee reoffender" means any defendant who commits, or attempts to commit:



- a. Treason;
- b. Murder;
- c. Manslaughter;
- d. Sexual battery;
- e. Carjacking;
- f. Home-invasion robbery;
- g. Robbery;
- h. Arson;
- i. Kidnapping;
- j. Aggravated assault with a deadly weapon;
- k. Aggravated battery;
- l. Aggravated stalking;
- m. Aircraft piracy;
- n. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- o. Any felony that involves the use or threat of physical force or violence against an individual;
- p. Armed burglary;
- q. Burglary of a dwelling or burglary of an occupied structure; or
- r. Any felony violation of s. 790.07, s. 800.04, s. 827.03, s. 827.071, or s. 847.0135 (5);

within 3 years after being released from a state correctional facility operated by the Department of Corrections or a private vendor, a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence, or a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following



incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

2. "Prison releasee reoffender" also means any defendant who commits or attempts to commit any offense listed in sub-subparagraphs (a)1.a.-r. while the defendant was serving a prison sentence or on escape status from a state correctional facility operated by the Department of Corrections or a private vendor or while the defendant was on escape status from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

3. If the state attorney determines that a defendant is a prison releasee reoffender as defined in subparagraph 1., the state attorney may seek to have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced as follows:

- a. For a felony punishable by life, by a term of imprisonment for life;
- b. For a felony of the first degree, by a term of imprisonment of 30 years;
- c. For a felony of the second degree, by a term of imprisonment of 15 years; and
- d. For a felony of the third degree, by a term of imprisonment of 5 years.

(b) A person sentenced under paragraph (a) shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Any person sentenced under paragraph (a) must serve 100 percent of the court-imposed sentence.



(c) Nothing in this subsection shall prevent a court from imposing a greater sentence of incarceration as authorized by law, pursuant to s. 775.084 or any other provision of law.

(d)

1. It is the intent of the Legislature that offenders previously released from prison or a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence who meet the criteria in paragraph (a) be punished to the fullest extent of the law and as provided in this subsection, unless the state attorney determines that extenuating circumstances exist which preclude the just prosecution of the offender, including whether the victim recommends that the offender not be sentenced as provided in this subsection.

2. For every case in which the offender meets the criteria in paragraph (a) and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney.

(10) If a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third degree felony but not a forcible felony as defined in s. 776.08, and excluding any third degree felony violation under chapter 810, and if the total sentence points pursuant to s. 921.0024 are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility pursuant to this section.

(11) The purpose of this section is to provide uniform punishment for those crimes made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.



History - (s. 3, ch. 71-136; ss. 1, 2, ch. 72-118; s. 2, ch. 72-724; s. 5, ch. 74-383; s. 1, ch. 77-174; s. 1, ch. 83-87; s. 1, ch. 94-228; s. 16, ch. 95-184; s. 4, ch. 95-294; s. 2, ch. 97-239; s. 2, ch. 98-3; s. 10, ch. 98-204; s. 2, ch. 99-188; s. 3, ch. 2000-246; s. 1, ch. 2001-239; s. 2, ch. 2002-70; ss. 1, 2, ch. 2002-211; s. 4, ch. 2005-28; s. 13, ch. 2008-172; s. 1, ch. 2008-182; s. 1, ch. 2009-63; s. 2, ch. 2011-200; s. 8, ch. 2014-160; s. 1, ch. 2014-220; s. 1, ch. 2016-13; s. 19, ch. 2016-24; s. 3, ch. 2017-1; s. 21, ch. 2017-37; s. 11, ch. 2017-107; s. 30, ch. 2019-167.)



§775.083 FS | FINES

(1) A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he or she may be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations shall not exceed:

- (a) \$15,000, when the conviction is of a life felony.
- (b) \$10,000, when the conviction is of a felony of the first or second degree.
- (c) \$5,000, when the conviction is of a felony of the third degree.
- (d) \$1,000, when the conviction is of a misdemeanor of the first degree.
- (e) \$500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation.
- (f) Any higher amount equal to double the pecuniary gain derived from the offense by the offender or double the pecuniary loss suffered by the victim.
- (g) Any higher amount specifically authorized by statute.

Fines imposed in this subsection shall be deposited by the clerk of the court in the fine and forfeiture fund established pursuant to s. 142.01. If a defendant is unable to pay a fine, the court may defer payment of the fine to a date certain. As used in this subsection, the term "convicted" or "conviction" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

(2) In addition to the fines set forth in subsection (1), court costs shall be assessed and collected in each instance a defendant pleads nolo contendere to, or is convicted of, or adjudicated delinquent for, a felony, a misdemeanor, or a criminal traffic offense under state law, or a violation of any municipal or county ordinance if the violation constitutes a misdemeanor under state law. The court costs



imposed by this section shall be \$50 for a felony and \$20 for any other offense and shall be deposited by the clerk of the court into an appropriate county account for disbursement for the purposes provided in this subsection. A county shall account for the funds separately from other county funds as crime prevention funds. The county, in consultation with the sheriff, must expend such funds for crime prevention programs in the county.

(3) The clerk of the court of each county is the entity responsible for collecting payment of fines, fees, service charges, and court costs. Unless otherwise designated by the court, a person who has been ordered to pay court obligations under this section shall immediately contact the clerk to pay fines, fees, service charges, and court costs in full or to apply for enrollment in a payment plan pursuant to s. 28.246(4).

(4) The purpose of this section is to provide uniform penalty authorization for criminal offenses and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

History - (s. 4, ch. 71-136; s. 6, ch. 74-383; s. 1, ch. 77-97; s. 1, ch. 77-174; s. 1, ch. 96-408; s. 1810, ch. 97-102; s. 117, ch. 2003-402; s. 5, ch. 2009-6; s. 29, ch. 2010-162; s. 8, ch. 2017-126; s. 13, ch. 2021-116; s. 19, ch. 2021-131.)



§775.084 FS | VIOLENT CAREER CRIMINALS; HABITUAL FELONY OFFENDERS AND HABITUAL VIOLENT FELONY OFFENDERS; THREE-TIME VIOLENT FELONY OFFENDERS; DEFINITIONS; PROCEDURE; ENHANCED PENALTIES OR MANDATORY MINIMUM PRISON TERMS

(1) As used in this act:

(a) "Habitual felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in paragraph (4)(a), if it finds that:

1. The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses.

2. The felony for which the defendant is to be sentenced was committed:

a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for a felony or other qualified offense; or

b. Within 5 years of the date of the conviction of the defendant's last prior felony or other qualified offense, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later.

3. The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation of s. 893.13 relating to the purchase or the possession of a controlled substance.

4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph.

5. A conviction of a felony or other qualified offense necessary to the operation of this



paragraph has not been set aside in any postconviction proceeding.

(b) "Habitual violent felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in paragraph (4)(b), if it finds that:

1. The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:

- a. Arson;
- b. Sexual battery;
- c. Robbery;
- d. Kidnapping;
- e. Aggravated child abuse;
- f. Aggravated abuse of an elderly person or disabled adult;
- g. Aggravated assault with a deadly weapon;
- h. Murder;
- i. Manslaughter;
- j. Aggravated manslaughter of an elderly person or disabled adult;
- k. Aggravated manslaughter of a child;
- l. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- m. Armed burglary;
- n. Aggravated battery; or
- o. Aggravated stalking.

2. The felony for which the defendant is to be sentenced was committed:

- a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is



imposed as a result of a prior conviction for an enumerated felony; or

b. Within 5 years of the date of the conviction of the last prior enumerated felony, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.

3. The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this paragraph.

4. A conviction of a crime necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(c) "Three-time violent felony offender" means a defendant for whom the court must impose a mandatory minimum term of imprisonment, as provided in paragraph (4)(c), if it finds that:

1. The defendant has previously been convicted as an adult two or more times of a felony, or an attempt to commit a felony, and two or more of such convictions were for committing, or attempting to commit, any of the following offenses or combination thereof:

- a. Arson;
- b. Sexual battery;
- c. Robbery;
- d. Kidnapping;
- e. Aggravated child abuse;
- f. Aggravated abuse of an elderly person or disabled adult;
- g. Aggravated assault with a deadly weapon;
- h. Murder;



- i. Manslaughter;
- j. Aggravated manslaughter of an elderly person or disabled adult;
- k. Aggravated manslaughter of a child;
- l. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- m. Armed burglary;
- n. Aggravated battery;
- o. Aggravated stalking;
- p. Home invasion/robbery;
- q. Carjacking; or
- r. An offense which is in violation of a law of any other jurisdiction if the elements of the offense are substantially similar to the elements of any felony offense enumerated in sub-subparagraphs a.-q., or an attempt to commit any such felony offense.

2. The felony for which the defendant is to be sentenced is one of the felonies enumerated in sub-subparagraphs 1.a.-q. and was committed:

- a. While the defendant was serving a prison sentence or other sentence imposed as a result of a prior conviction for any offense enumerated in sub-subparagraphs 1.a.-r.; or
- b. Within 5 years after the date of the conviction of the last prior offense enumerated in sub-subparagraphs 1.a.-r., or within 5 years after the defendant's release from a prison sentence, probation, community control, or other sentence imposed as a result of a prior conviction for any offense enumerated in sub-subparagraphs 1.a.-r., whichever is later.

3. The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this paragraph.



4. A conviction of a crime necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(d) "Violent career criminal" means a defendant for whom the court must impose imprisonment pursuant to paragraph (4)(d), if it finds that:

1. The defendant has previously been convicted as an adult three or more times for an offense in this state or other qualified offense that is:

a. Any forcible felony, as described in s. 776.08;

b. Aggravated stalking, as described in s. 784.048(3) and (4);

c. Aggravated child abuse, as described in s. 827.03(2)(a);

d. Aggravated abuse of an elderly person or disabled adult, as described in s. 825.102(2);

e. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, as described in s. 800.04 or s. 847.0135(5);

f. Escape, as described in s. 944.40; or

g. A felony violation of chapter 790 involving the use or possession of a firearm.

2. The defendant has been incarcerated in a state prison or a federal prison.

3. The primary felony offense for which the defendant is to be sentenced is a felony enumerated in subparagraph 1. and was committed on or after October 1, 1995, and:

a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or

b. Within 5 years after the conviction of the last prior enumerated felony, or within 5



years after the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.

4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph.

5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(e) "Qualified offense" means any offense, substantially similar in elements and penalties to an offense in this state, which is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction, that was punishable under the law of such jurisdiction at the time of its commission by the defendant by death or imprisonment exceeding 1 year.

(2) For the purposes of this section, the placing of a person on probation or community control without an adjudication of guilt shall be treated as a prior conviction.

(3)

(a) In a separate proceeding, the court shall determine if the defendant is a habitual felony offender or a habitual violent felony offender. The procedure shall be as follows:

1. The court shall obtain and consider a presentence investigation prior to the imposition of a sentence as a habitual felony offender or a habitual violent felony offender.

2. Written notice shall be served on the defendant and the defendant's attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence in order to allow the



preparation of a submission on behalf of the defendant.

3. Except as provided in subparagraph 1., all evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

4. Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable to the extent normally applicable to similar findings.

5. For the purpose of identification of a habitual felony offender or a habitual violent felony offender, the court shall fingerprint the defendant pursuant to s. 921.241.

6. For an offense committed on or after October 1, 1995, if the state attorney pursues a habitual felony offender sanction or a habitual violent felony offender sanction against the defendant and the court, in a separate proceeding pursuant to this paragraph, determines that the defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a habitual felony offender or a habitual violent felony offender, subject to imprisonment pursuant to this section unless the court finds that such sentence is not necessary for the protection of the public. If the court finds that it is not necessary for the protection of the public to sentence the defendant as a habitual felony offender or a habitual violent felony offender, the court shall provide written reasons; a written transcript of orally stated reasons is permissible, if filed by the court within 7 days after the date of sentencing. Each month, the court shall submit to the Office of Economic and Demographic Research of the Legislature the written reasons or transcripts in each case in which the court determines not to sentence a defendant as a habitual felony offender or a habitual violent felony offender as provided in this subparagraph.



(b) In a separate proceeding, the court shall determine if the defendant is a three-time violent felony offender. The procedure shall be as follows:

1. The court shall obtain and consider a presentence investigation prior to the imposition of a sentence as a three-time violent felony offender.

2. Written notice shall be served on the defendant and the defendant's attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence in order to allow the preparation of a submission on behalf of the defendant.

3. Except as provided in subparagraph 1., all evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

4. Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable to the extent normally applicable to similar findings.

5. For the purpose of identification of a three-time violent felony offender, the court shall fingerprint the defendant pursuant to s. 921.241.

6. For an offense committed on or after the effective date of this act, if the state attorney pursues a three-time violent felony offender sanction against the defendant and the court, in a separate proceeding pursuant to this paragraph, determines that the defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a three-time violent felony offender, subject to imprisonment pursuant to this section as provided in paragraph (4)(c).

(c) In a separate proceeding, the court shall determine whether the defendant is a violent career criminal with respect to a primary offense committed on or after October 1, 1995. The procedure shall be as follows:



1. Written notice shall be served on the defendant and the defendant's attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence in order to allow the preparation of a submission on behalf of the defendant.
2. All evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.
3. Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable only as provided in paragraph (d).
4. For the purpose of identification, the court shall fingerprint the defendant pursuant to s. 921.241.
5. For an offense committed on or after October 1, 1995, if the state attorney pursues a violent career criminal sanction against the defendant and the court, in a separate proceeding pursuant to this paragraph, determines that the defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a violent career criminal, subject to imprisonment pursuant to this section unless the court finds that such sentence is not necessary for the protection of the public. If the court finds that it is not necessary for the protection of the public to sentence the defendant as a violent career criminal, the court shall provide written reasons; a written transcript of orally stated reasons is permissible, if filed by the court within 7 days after the date of sentencing. Each month, the court shall submit to the Office of Economic and Demographic Research of the Legislature the written reasons or transcripts in each case in which the court determines not to sentence a defendant as a violent career criminal as provided in this subparagraph.

(d)



1. A person sentenced under paragraph (4) (d) as a violent career criminal has the right of direct appeal, and either the state or the defendant may petition the trial court to vacate an illegal sentence at any time. However, the determination of the trial court to impose or not to impose a violent career criminal sentence is presumed appropriate and no petition or motion for collateral or other postconviction relief may be considered based on an allegation either by the state or the defendant that such sentence is inappropriate, inadequate, or excessive.

2. It is the intent of the Legislature that, with respect to both direct appeal and collateral review of violent career criminal sentences, all claims of error or illegality be raised at the first opportunity and that no claim should be filed more than 2 years after the judgment and sentence became final, unless it is established that the basis for the claim could not have been ascertained at the time by the exercise of due diligence. Technical violations and mistakes at trials and sentencing proceedings involving violent career criminals that do not affect due process or fundamental fairness are not appealable by either the state or the defendant.

3. It is the intent of the Legislature that no funds, resources, or employees of the state or its political subdivisions be used, directly or indirectly, in appellate or collateral proceedings based on violent career criminal sentencing, except when such use is constitutionally or statutorily mandated.

(4)

(a) The court, in conformity with the procedure established in paragraph (3)(a), may sentence the habitual felony offender as follows:

1. In the case of a life felony or a felony of the first degree, for life.



2. In the case of a felony of the second degree, for a term of years not exceeding 30.

3. In the case of a felony of the third degree, for a term of years not exceeding 10.

(b) The court, in conformity with the procedure established in paragraph (3)(a), may sentence the habitual violent felony offender as follows:

1. In the case of a life felony or a felony of the first degree, for life, and such offender shall not be eligible for release for 15 years.

2. In the case of a felony of the second degree, for a term of years not exceeding 30, and such offender shall not be eligible for release for 10 years.

3. In the case of a felony of the third degree, for a term of years not exceeding 10, and such offender shall not be eligible for release for 5 years.

(c)

1. The court, in conformity with the procedure established in paragraph (3)(b), must sentence the three-time violent felony offender to a mandatory minimum term of imprisonment, as follows:

a. In the case of a felony punishable by life, to a term of imprisonment for life;

b. In the case of a felony of the first degree, to a term of imprisonment of 30 years;

c. In the case of a felony of the second degree, to a term of imprisonment of 15 years; or

d. In the case of a felony of the third degree, to a term of imprisonment of 5 years.

2. Nothing in this subsection shall prevent a court from imposing a greater sentence of incarceration as authorized by law.

(d) The court, in conformity with the procedure established in paragraph (3)(c), shall sentence the violent career criminal as follows:



1. In the case of a life felony or a felony of the first degree, for life.

2. In the case of a felony of the second degree, for a term of years not exceeding 40, with a mandatory minimum term of 30 years' imprisonment.

3. In the case of a felony of the third degree, for a term of years not exceeding 15, with a mandatory minimum term of 10 years' imprisonment.

(e) If the court finds, pursuant to paragraph (3)(a) or paragraph (3)(c), that it is not necessary for the protection of the public to sentence a defendant who meets the criteria for sentencing as a habitual felony offender, a habitual violent felony offender, or a violent career criminal, with respect to an offense committed on or after October 1, 1995, sentence shall be imposed without regard to this section.

(f) At any time when it appears to the court that the defendant is eligible for sentencing under this section, the court shall make that determination as provided in paragraph (3)(a), paragraph (3)(b), or paragraph (3)(c).

(g) A sentence imposed under this section shall not be increased after such imposition.

(h) A sentence imposed under this section is not subject to s. 921.002.

(i) The provisions of this section do not apply to capital felonies, and a sentence authorized under this section does not preclude the imposition of the death penalty for a capital felony.

(j) The provisions of s. 947.1405 shall apply to persons sentenced as habitual felony offenders and persons sentenced as habitual violent felony offenders.

(k)

1. A defendant sentenced under this section as a habitual felony offender, a habitual violent felony offender, or a violent career criminal is eligible for gain-time granted by the Department of Corrections as provided in s. 944.275(4)(b).

2. For an offense committed on or after October 1, 1995, a defendant sentenced under this section as a violent career criminal is not eligible for any form of discretionary early release, other than pardon or executive clemency, or conditional medical release granted pursuant to s. 947.149.

3. For an offense committed on or after July 1, 1999, a defendant sentenced under this section as a three-time violent felony offender shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release.

(5) In order to be counted as a prior felony for purposes of sentencing under this section, the felony must have resulted in a conviction sentenced separately prior to the current offense and sentenced separately from any other felony conviction that is to be counted as a prior felony.

(6) The purpose of this section is to provide uniform punishment for those crimes made punishable under this section, and to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

History - (s. 5, ch. 71-136; s. 7, ch. 74-383; s. 1, ch. 75-116; s. 2, ch. 75-298; s. 1, ch. 77-174; s. 6, ch. 88-131; s. 1, ch. 89-280; s. 2, ch. 93-406; s. 2, ch. 95-182; s. 8, ch. 95-195; s. 14, ch. 96-322; s. 44, ch. 96-388; s. 12, ch. 97-78; s. 12, ch. 97-194; s. 11, ch. 98-204; s. 3, ch. 99-188; s. 3, ch. 99-201; s. 3, ch. 2000-246; ss. 1, 2, ch. 2002-210; s. 2, ch. 2003-23; s. 14, ch. 2008-172; s. 10, ch. 2012-155; s. 39, ch. 2016-105; s. 8, ch. 2019-98.)



§775.15 FS | TIME LIMITATIONS; GENERAL TIME LIMITATIONS; EXCEPTIONS

(1) A prosecution for a capital felony, a life felony, or a felony that resulted in a death may be commenced at any time. If the death penalty is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, all crimes designated as capital felonies shall be considered life felonies for the purposes of this section, and prosecution for such crimes may be commenced at any time.

(2) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony of the first degree must be commenced within 4 years after it is committed.

(b) A prosecution for any other felony must be commenced within 3 years after it is committed.

(c) A prosecution for a misdemeanor of the first degree must be commenced within 2 years after it is committed.

(d) A prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within 1 year after it is committed.

(3) An offense is committed either when every element has occurred or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(4)

(a) Prosecution on a charge on which the defendant has previously been arrested or served with a summons is commenced by the filing of an indictment, information, or other charging document.

(b) A prosecution on a charge on which the defendant has not previously been arrested or served with a summons is commenced when either an indictment or information is filed, provided the capias, summons, or other process issued on such indictment or information is executed without unreasonable delay. In determining what is



reasonable, inability to locate the defendant after diligent search or the defendant's absence from the state shall be considered. The failure to execute process on or extradite a defendant in another state who has been charged by information or indictment with a crime in this state shall not constitute an unreasonable delay.

(c) If, however, an indictment or information has been filed within the time period prescribed in this section and the indictment or information is dismissed or set aside because of a defect in its content or form after the time period has elapsed, the period for commencing prosecution shall be extended 3 months from the time the indictment or information is dismissed or set aside.

(5) The period of limitation does not run during any time when the defendant is continuously absent from the state or has no reasonably ascertainable place of abode or work within the state. This provision shall not extend the period of limitation otherwise applicable by more than 3 years, but shall not be construed to limit the prosecution of a defendant who has been timely charged by indictment or information or other charging document and who has not been arrested due to his or her absence from this state or has not been extradited for prosecution from another state.

(6) A prosecution for perjury in an official proceeding that relates to the prosecution of a capital felony may be commenced at any time.

(7) A prosecution for a felony that resulted in injury to any person, when such felony arises from the use of a "destructive device," as defined in s. 790.001, may be commenced within 10 years.

(8) A prosecution for a felony violation of chapter 517 or s. 409.920 must be commenced within 5 years after the violation is committed.

(9) A prosecution for a felony violation of chapter 403 must be commenced within 5 years after the date of discovery of the violation.

(10)



(a) A prosecution for a felony violation of s. 817.5695, s. 825.102, or s. 825.103 must be commenced within 5 years after it is committed.

(b) If the period prescribed in paragraph (a) has expired, a prosecution may nevertheless be commenced for any offense, a material element of which is either fraud or a breach of fiduciary obligation, within 5 years after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is not a party to the offense.

(11) A prosecution for a felony violation of s. 440.105 or s. 817.234 must be commenced within 5 years after the violation is committed.

(12) If the period prescribed in subsection (2), subsection (8), subsection (9), subsection (10), or subsection (11) has expired, a prosecution may nevertheless be commenced for:

(a) Any offense, a material element of which is either fraud or a breach of fiduciary obligation, within 1 year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself or herself not a party to the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than 3 years.

(b) Any offense based upon misconduct in office by a public officer or employee at any time when the defendant is in public office or employment, within 2 years from the time he or she leaves public office or employment, or during any time permitted by any other part of this section, whichever time is greater.

(13)

(a) If the victim of a violation of s. 794.011, former s. 794.05, Florida Statutes 1995, s. 800.04, s. 826.04, or s. 847.0135(5) is under the age of 18, the applicable period of limitation, if any, does not begin to run until the victim has reached the age of 18 or the violation is reported to a law enforcement agency or other governmental agency, whichever occurs earlier. Such law enforcement agency or other governmental agency shall promptly report such allegation to the state attorney



for the judicial circuit in which the alleged violation occurred. If the offense is a first or second degree felony violation of s. 794.011, and the offense is reported within 72 hours after its commission, the prosecution for such offense may be commenced at any time. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before December 31, 1984.

(b) If the offense is a first degree felony violation of s. 794.011 and the victim was under 18 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before October 1, 2003.

(c) If the offense is a violation of s. 794.011 and the victim was under 16 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before July 1, 2010.

(14)

(a) A prosecution for a first or second degree felony violation of s. 794.011, if the victim is 16 years of age or older at the time of the offense and the offense is reported to a law enforcement agency within 72 hours after commission of the offense, may be commenced at any time.

(b) Except as provided in paragraph (a) or paragraph (13)(b), a prosecution for a first or second degree felony violation of s. 794.011, if the victim is 16 years of age or older at the time of the offense, must be commenced within 8 years after the violation is committed. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before July 1, 2015.

(15)

(a) In addition to the time periods prescribed in this section, a prosecution for any of the following offenses



may be commenced within 1 year after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused:

1. An offense of sexual battery under chapter 794.
2. A lewd or lascivious offense under s. 800.04 or s. 825.1025.

(b) This subsection applies to any offense that is not otherwise barred from prosecution between July 1, 2004, and June 30, 2006.

(16)

(a) In addition to the time periods prescribed in this section, a prosecution for any of the following offenses may be commenced at any time after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused:

1. Aggravated battery or any felony battery offense under chapter 784.
2. Kidnapping under s. 787.01 or false imprisonment under s. 787.02.
3. An offense of sexual battery under chapter 794.
4. A lewd or lascivious offense under s. 800.04, s. 825.1025, or s. 847.0135(5).
5. A burglary offense under s. 810.02.
6. A robbery offense under s. 812.13, s. 812.131, or s. 812.135.
7. Carjacking under s. 812.133.
8. Aggravated child abuse under s. 827.03.



(b) This subsection applies to any offense that is not otherwise barred from prosecution on or after July 1, 2006.

(17) In addition to the time periods prescribed in this section, a prosecution for video voyeurism in violation of s. 810.145 may be commenced within 1 year after the date on which the victim of video voyeurism obtains actual knowledge of the existence of such a recording or the date on which the recording is confiscated by a law enforcement agency, whichever occurs first. Any dissemination of such a recording before the victim obtains actual knowledge thereof or before its confiscation by a law enforcement agency does not affect any provision of this subsection.

(18) If the offense is a violation of s. 800.04(4) or (5) and the victim was under 16 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time, unless, at the time of the offense, the offender is less than 18 years of age and is no more than 4 years older than the victim. This subsection applies to an offense that is not otherwise barred from prosecution on or before October 1, 2014.

(19) A prosecution for a violation of s. 787.06 may be commenced at any time. This subsection applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before October 1, 2014.

(20) If a victim is younger than 18 years of age at the time the offense was committed, a prosecution for a violation of s. 794.011 may be commenced at any time. This subsection applies to an offense that is committed on or after July 1, 2020.

(21) In addition to the time periods prescribed in this section, a prosecution for any offense under s. 827.071(2) or (3), if the offender was 18 years of age or older at the time of the offense, may be commenced at any time. This subsection applies to any offense that is not otherwise barred from prosecution on or before July 1, 2022.

History - (s. 78, Feb. 10, 1832; s. 1, ch. 4915, 1901; RS 2357; GS 3181, 3182; RGS 5011, 5012; CGL 7113, 7114; s. 1, ch. 16962, 1935; s. 10, ch. 26484, 1951; s. 109, ch. 70-339; s. 10, ch. 74-383; s. 1, ch. 76-275; s. 1, ch. 77-174; s. 12, ch. 78-435; s. 6, ch. 84-86; s. 1, ch. 84-550; s. 10, ch.



85-63; s. 4, ch. 89-143; s. 2, ch. 90-120; s. 2, ch. 91-258; s. 16, ch. 93-156; s. 17, ch. 95-158; s. 139, ch. 95-418; s. 1, ch. 96-145; s. 3, ch. 96-280; s. 3, ch. 96-322; s. 4, ch. 96-409; s. 1, ch. 97-36; s. 1, ch. 97-90; s. 1812, ch. 97-102; s. 1, ch. 97-104; s. 17, ch. 98-174; s. 7, ch. 99-201; s. 5, ch. 99-204; s. 3, ch. 2000-246; s. 1, ch. 2001-102; s. 1, ch. 2002-168; s. 1, ch. 2003-116; s. 1, ch. 2004-94; s. 1, ch. 2005-110; s. 1, ch. 2006-266; s. 15, ch. 2008-172; s. 2, ch. 2010-54; s. 6, ch. 2011-220; s. 2, ch. 2014-4; s. 6, ch. 2014-160; s. 2, ch. 2015-133; s. 30, ch. 2016-24; s. 2, ch. 2020-81; s. 6, ch. 2022-169; s. 1, ch. 2022-170; s. 2, ch. 2023-133.)

Note - (Former ss. 932.05, 932.06, 915.03, 932.465.)



CHAPTER 815 FLORIDA STATUTES | FLORIDA

TITLE: XLVI CRIMES

CHAPTER: 815 COMPUTER-RELATED CRIMES

PART: -

SECTIONS: §815.06 only

NOTE:



§815.06 FS | OFFENSES AGAINST USERS OF COMPUTERS, COMPUTER SYSTEMS, COMPUTER NETWORKS, AND ELECTRONIC DEVICES

(1) As used in this section, the term "user" means a person with the authority to operate or maintain a computer, computer system, computer network, or electronic device.

(2) A person commits an offense against users of computers, computer systems, computer networks, or electronic devices if he or she willfully, knowingly, and without authorization or exceeding authorization:

(a) Accesses or causes to be accessed any computer, computer system, computer network, or electronic device with knowledge that such access is unauthorized or the manner of use exceeds authorization;

(b) Disrupts or denies or causes the denial of the ability to transmit data to or from an authorized user of a computer, computer system, computer network, or electronic device, which, in whole or in part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another;

(c) Destroys, takes, injures, or damages equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device;

(d) Destroys, injures, or damages any computer, computer system, computer network, or electronic device;

(e) Introduces any computer contaminant into any computer, computer system, computer network, or electronic device; or

(f) Engages in audio or video surveillance of an individual by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, including accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.



(3)

(a) Except as provided in paragraphs (b) and (c), a person who violates subsection (2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she violates subsection (2) and:

1. Damages a computer, computer equipment or supplies, a computer system, or a computer network and the damage or loss is at least \$5,000;
2. Commits the offense for the purpose of devising or executing any scheme or artifice to defraud or obtain property;
3. Interrupts or impairs a governmental operation or public communication, transportation, or supply of water, gas, or other public service; or
4. Intentionally interrupts the transmittal of data to or from, or gains unauthorized access to, a computer, computer system, computer network, or electronic device belonging to any mode of public or private transit, as defined in s. 341.031.

(c) A person who violates subsection (2) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the violation:

1. Endangers human life; or
2. Disrupts a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person.

(4) A person who willfully, knowingly, and without authorization modifies equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.



(5)

(a) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, computer equipment or supplies, electronic device, or computer data may bring a civil action against a person convicted under this section for compensatory damages.

(b) In an action brought under this subsection, the court may award reasonable attorney fees to the prevailing party.

(6) A computer, computer system, computer network, computer software, computer data, or electronic device owned by a defendant that is used during the commission of a violation of this section or a computer or electronic device owned by the defendant that is used as a repository for the storage of software or data obtained in violation of this section is subject to forfeiture as provided under ss. 932.701-932.704.

(7) This section does not apply to a person who:

(a) Acts pursuant to a search warrant or to an exception to a search warrant authorized by law;

(b) Acts within the scope of his or her lawful employment; or

(c) Performs authorized security operations of a government or business.

(8) For purposes of bringing a civil or criminal action under this section, a person who causes, by any means, the access to a computer, computer system, computer network, or electronic device in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, computer network, or electronic device in both jurisdictions.

(9) This chapter does not impose liability on a provider of an interactive computer service as defined in 47 U.S.C. s. 230(f), information service as defined in 47 U.S.C. s. 153, or communications service as defined in s. 202.11 that provides the transmission, storage, or caching of electronic communications or messages of others; other related telecommunications or commercial mobile radio service; or content provided by another person.

History.—s. 1, ch. 78-92; s. 11, ch. 2001-54; s. 5, ch. 2014-208; s. 40, ch. 2019-167.



CHAPTER 837 FLORIDA STATUTES | FLORIDA

TITLE: XLVI CRIMES

CHAPTER: 837 PERJURY

PART:

SECTIONS: §837.011 through §837.07

NOTE: Entire Chapter



§837.011 FS | DEFINITIONS

In this chapter, unless a different meaning plainly is required:

(1) "Official proceeding" means a proceeding heard, or which may be or is required to be heard, before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, general or special magistrate, administrative law judge, hearing officer, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.

(2) "Oath" includes affirmation or any other form of attestation required or authorized by law by which a person acknowledges that he or she is bound in conscience or law to testify truthfully in an official proceeding or other official matter.

(3) "Material matter" means any subject, regardless of its admissibility under the rules of evidence, which could affect the course or outcome of the proceeding. Whether a matter is material in a given factual situation is a question of law.

History - (s. 53, ch. 74-383; s. 316, ch. 96-410; s. 1823, ch. 97-102; s. 98, ch. 2004-11.)



§837.012 FS | PERJURY WHEN NOT IN AN OFFICIAL PROCEEDING

(1) Whoever makes a false statement, which he or she does not believe to be true, under oath, not in an official proceeding, in regard to any material matter shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Knowledge of the materiality of the statement is not an element of this crime, and the defendant's mistaken belief that his or her statement was not material is not a defense.

History - (s. 2, ch. 1637, 1868; RS 2560; GS 3472; RGS 5341; CGL 7474; s. 997, ch. 71-136; s. 54, ch. 74-383; s. 32, ch. 75-298; s. 205, ch. 91-224; s. 1310, ch. 97-102.)

Note - (Former s. 837.01.)



§837.02 FS | PERJURY IN OFFICIAL PROCEEDINGS

(1) Except as provided in subsection (2), whoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding in regard to any material matter, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Whoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding that relates to the prosecution of a capital felony, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Knowledge of the materiality of the statement is not an element of the crime of perjury under subsection (1) or subsection (2), and the defendant's mistaken belief that the statement was not material is not a defense.

History - (s. 1, sub-ch. 6, ch. 1637, 1868; RS 2561; GS 3473; RGS 5343; CGL 7477; s. 998, ch. 71-136; s. 55, ch. 74-383; s. 33, ch. 75-298; s. 3, ch. 97-90; s. 1311, ch. 97-102.)



§837.021 FS | PERJURY BY CONTRADICTORY STATEMENTS

(1) Except as provided in subsection (2), whoever, in one or more official proceedings, willfully makes two or more material statements under oath which contradict each other, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Whoever, in one or more official proceedings that relate to the prosecution of a capital felony, willfully makes two or more material statements under oath which contradict each other, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) In any prosecution for perjury under this section:

(a) The prosecution may proceed in a single count by setting forth the willful making of contradictory statements under oath and alleging in the alternative that one or more of them are false.

(b) The question of whether a statement was material is a question of law to be determined by the court.

(c) It is not necessary to prove which, if any, of the contradictory statements is not true.

(d) It is a defense that the accused believed each statement to be true at the time the statement was made.

(4) A person may not be prosecuted under this section for making contradictory statements in separate proceedings if the contradictory statement made in the most recent proceeding was made under a grant of immunity under s. 914.04; but such person may be prosecuted under s. 837.02 for any false statement made in that most recent proceeding, and the contradictory statements may be received against him or her upon any criminal investigation or proceeding for such perjury.

History - (s. 1, ch. 72-314; s. 56, ch. 74-383; s. 34, ch. 75-298; s. 2, ch. 85-41; s. 4, ch. 97-90; s. 1312, ch. 97-102.)



§837.05 FS | FALSE REPORTS TO LAW ENFORCEMENT AUTHORITIES

(1)

(a) Except as provided in paragraph (b) or subsection (2), a person who knowingly gives false information to a law enforcement officer concerning the alleged commission of any crime, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who commits a violation of paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person has previously been convicted of a violation of paragraph (a) and subparagraph 1. or subparagraph 2. applies:

1. The information the person gave to the law enforcement officer was communicated orally and the officer's account of that information is corroborated by:

a. An audio recording or video recording of that information;

b. A written or recorded statement made by the person who gave that information; or

c. Another person who was present when that person gave that information to the officer and heard that information.

2. The information the person gave to the law enforcement officer was communicated in writing.

(2) A person who knowingly gives false information to a law enforcement officer concerning the alleged commission of a capital felony, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History - (s. 57, ch. 74-383; s. 34, ch. 75-298; s. 206, ch. 91-224; s. 5, ch. 97-90; s. 1, ch. 2013-117.)



§837.055 FS | FALSE INFORMATION TO LAW ENFORCEMENT DURING INVESTIGATION

(1) Whoever knowingly and willfully gives false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Whoever knowingly and willfully gives false information to a law enforcement officer who is conducting a missing person investigation involving a child 16 years of age or younger with the intent to mislead the officer or impede the investigation, and the child who is the subject of the investigation suffers great bodily harm, permanent disability, permanent disfigurement, or death, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History - (s. 1, ch. 2006-142; s. 1, ch. 2012-53.)



§837.06 FS | FALSE OFFICIAL STATEMENTS

Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History - (s. 58, ch. 74-383; s. 34, ch. 75-298; s. 207, ch. 91-224; s. 1313, ch. 97-102.)



§837.07 FS | RECANTATION AS A DEFENSE

Recantation shall be a defense to any prosecution for perjury or false statement only if the person making the false statement admits such statement to be false in the same continuous proceeding or matter, and:

- (1) The false statement has not substantially affected the proceeding; or
- (2) Such admission is made before it has become manifest that such false statement has been or will be exposed.

History - (s. 1, ch. 90-126.)



CHAPTER 838 FLORIDA STATUTES | FLORIDA

TITLE: XLVI CRIMES

CHAPTER: 838 BRIBERY; MISUSE OF PUBLIC OFFICE

PART:

SECTIONS: §838.014 through §838.23

NOTE: Entire Chapter



§838.014 FS | DEFINITIONS

As used in this chapter, the term:

(1) "Benefit" means gain or advantage, or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

(2) "Bid" includes a response to an "invitation to bid," "invitation to negotiate," "request for a quote," or "request for proposals" as those terms are defined in s. 287.012.

(3) "Commodity" means any goods, merchandise, wares, produce, chose in action, land, article of commerce, or other tangible or intangible property, real, personal, or mixed, for use, consumption, production, enjoyment, or resale.

(4) "Governmental entity" means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.

(5) "Harm" means pecuniary or other loss, disadvantage, or injury to the person affected.

(6) "Public contractor" means, for purposes of ss. 838.022 and 838.22 only:

(a) Any person, as defined in s. 1.01(3), who has entered into a contract with a governmental entity; or

(b) Any officer or employee of a person, as defined in s. 1.01(3), who has entered into a contract with a governmental entity.

(7) "Public servant" means:

(a) Any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee;

(b) Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or



(c) A candidate for election or appointment to any of the officer positions listed in this subsection, or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

(8) "Service" means any kind of activity performed in whole or in part for economic benefit.

History - (s. 59, ch. 74-383; s. 317, ch. 96-410; s. 1824, ch. 97-102; s. 2, ch. 2003-158; s. 99, ch. 2004-11; s. 1, ch. 2016-151.)



§838.015 FS | BRIBERY

(1) "Bribery" means to knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, to knowingly and intentionally request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.

(2) Prosecution under this section shall not require any allegation or proof that the public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way, that the public servant had assumed office, that the matter was properly pending before him or her or might by law properly be brought before him or her, that the public servant possessed jurisdiction over the matter, or that his or her official action was necessary to achieve the person's purpose.

(3) Any person who commits bribery commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History - (s. 60, ch. 74-383; s. 35, ch. 75-298; s. 44, ch. 91-110; s. 1314, ch. 97-102; s. 3, ch. 2003-158; s. 2, ch. 2016-151.)



§838.016 FS | UNLAWFUL COMPENSATION OR REWARD FOR OFFICIAL BEHAVIOR

(1) It is unlawful for any person to knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, to knowingly and intentionally request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law, for the past, present, or future performance, nonperformance, or violation of any act or omission which the person believes to have been, or the public servant represents as having been, either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty. This section does not preclude a public servant from accepting rewards for services performed in apprehending any criminal.

(2) It is unlawful for any person to knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, to knowingly and intentionally request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law for the past, present, or future exertion of any influence upon or with any other public servant regarding any act or omission which the person believes to have been, or which is represented to him or her as having been, either within the official discretion of the other public servant, in violation of a public duty, or in performance of a public duty.

(3) Prosecution under this section shall not require that the exercise of influence or official discretion, or violation of a public duty or performance of a public duty, for which a pecuniary or other benefit was given, offered, promised, requested, or solicited was accomplished or was within the influence, official discretion, or public duty of the public servant whose action or omission was sought to be rewarded or compensated.

(4) Whoever violates the provisions of this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History - (s. 60, ch. 74-383; s. 36, ch. 75-298; s. 1315, ch. 97-102; s. 4, ch. 2003-158; s. 3, ch. 2016-151.)



§838.021 FS | CORRUPTION BY THREAT AGAINST PUBLIC SERVANT

(1) It is unlawful to harm or threaten to harm any public servant, his or her immediate family, or any other person with whose welfare the public servant is interested with the intent to:

(a) Influence the performance of any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

(b) Cause or induce the public servant to use or exert, or procure the use or exertion of, any influence upon or with any other public servant regarding any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

(2) Prosecution under this section shall not require any allegation or proof that the public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way, that the public servant had assumed office, that the matter was properly pending before him or her or might by law properly be brought before him or her, that the public servant possessed jurisdiction over the matter, or that his or her official action was necessary to achieve the person's purpose.

(3)

(a) Whoever unlawfully harms any public servant or any other person with whose welfare the public servant is interested shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Whoever threatens unlawful harm to any public servant or to any other person with whose welfare the public servant is interested shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History - (s. 61, ch. 74-383; s. 37, ch. 75-298; s. 1316, ch. 97-102; s. 13, ch. 2010-117.)



§838.022 FS | OFFICIAL MISCONDUCT

(1) It is unlawful for a public servant or public contractor, to knowingly and intentionally obtain a benefit for any person or to cause unlawful harm to another, by:

(a) Falsifying, or causing another person to falsify, any official record or official document;

(b) Concealing, covering up, destroying, mutilating, or altering any official record or official document, except as authorized by law or contract, or causing another person to perform such an act; or

(c) Obstructing, delaying, or preventing the communication of information relating to the commission of a felony that directly involves or affects the government entity served by the public servant or public contractor.

(2) For the purposes of this section:

(a) The term "public servant" does not include a candidate who does not otherwise qualify as a public servant.

(b) An official record or official document includes only public records.

(3) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History - (s. 5, ch. 2003-158; s. 4, ch. 2016-151.)



§838.12 FS | BRIBERY IN ATHLETIC CONTESTS

(1) Whoever gives, promises, offers or conspires to give, promise or offer, to anyone who participates or expects to participate in any professional or amateur game, contest, match, race or sport; or to any umpire, referee, judge or other official of such game, contest, match, race or sport; or to any owner, manager, coach or trainer of, or to any relative of, or to any person having any direct, indirect, remote or possible connection with, any team, individual, participant or prospective participant in any such professional or amateur game, contest, match, race or sport, or the officials aforesaid, any bribe, money, goods, present, reward or any valuable thing whatsoever, or any promise, contract or agreement whatsoever, with intent to influence him or her or them to lose or cause to be lost any game, contest, match, race or sport, or to limit his or her or their or any person's or any team's margin of victory in any game, contest, match, race, or sport, or to fix or throw any game, contest, match, race or sport, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any participant or prospective participant in any professional or amateur game, contest, match, race or sport; or any umpire, referee, judge or other official of such game, contest, match, race or sport; or any owner, manager, coach or trainer of, or any relative of, or any person having any direct, indirect, remote or possible connection with, any team, individual, participant or prospective participant in any such professional or amateur game, contest, match, race or sport, or the officials aforesaid; who in any way solicits, receives or accepts, or agrees to receive or accept, or who conspires to receive or accept, any bribe, money, goods, present, reward or any valuable thing whatsoever, or any promise, contract or agreement whatsoever, with intent to lose or cause to be lost any game, contest, match, race or sport, or to limit his, her, their or any person's or any team's margin of victory in any game, contest, match, race or sport, or to fix or throw any game, contest, match, race or sport, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History - (ss. 1, 2, ch. 28024, 1953; s. 1010, ch. 71-136; s. 1317, ch. 97-102.)



§838.15 FS | COMMERCIAL BRIBE RECEIVING

(1) A person commits the crime of commercial bribe receiving if the person solicits, accepts, or agrees to accept a benefit with intent to violate a statutory or common-law duty to which that person is subject as:

(a) An agent or employee of another;

(b) A trustee, guardian, or other fiduciary;

(c) A lawyer, physician, accountant, appraiser, or other professional adviser;

(d) An officer, director, partner, manager, or other participant in the direction of the affairs of an organization; or

(e) An arbitrator or other purportedly disinterested adjudicator or referee.

(2) Commercial bribe receiving is a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History - (s. 1, ch. 90-301.)



§838.16 FS | COMMERCIAL BRIBERY

(1) A person commits the crime of commercial bribery if, knowing that another is subject to a duty described in s. 838.15(1) and with intent to influence the other person to violate that duty, the person confers, offers to confer, or agrees to confer a benefit on the other.

(2) Commercial bribery is a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History - (s. 2, ch. 90-301)



§838.21 FS | DISCLOSURE OR USE OF CONFIDENTIAL CRIMINAL JUSTICE INFORMATION

It is unlawful for a public servant, with intent to obstruct, impede, or prevent a criminal investigation or a criminal prosecution, to disclose active criminal investigative or intelligence information as defined in chapter 119 or to disclose or use information regarding either the efforts to secure or the issuance of a warrant, subpoena, or other court process or court order relating to a criminal investigation or criminal prosecution when such information is not available to the general public and is gained by reason of the public servant's official position. Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History - (s. 5, ch. 2003-158.)



§838.22 FS | BID TAMPERING

(1) It is unlawful for a public servant or a public contractor who has contracted with a governmental entity to assist in a competitive procurement to knowingly and intentionally influence or attempt to influence the competitive solicitation undertaken by any governmental entity for the procurement of commodities or services, by:

(a) Disclosing, except as authorized by law, material information concerning a vendor's response, any evaluation results, or other aspects of the competitive solicitation when such information is not publicly disclosed.

(b) Altering or amending a submitted response, documents or other materials supporting a submitted response, or any evaluation results relating to the competitive solicitation for the purpose of intentionally providing a competitive advantage to any person who submits a response.

(2) It is unlawful for a public servant or a public contractor who has contracted with a governmental entity to assist in a competitive procurement to knowingly and intentionally obtain a benefit for any person or to cause unlawful harm to another by circumventing a competitive solicitation process required by law or rule through the use of a sole-source contract for commodities or services.

(3) It is unlawful for any person to knowingly agree, conspire, combine, or confederate, directly or indirectly, with a public servant or a public contractor who has contracted with a governmental entity to assist in a competitive procurement to violate subsection (1) or subsection (2).

(4) It is unlawful for any person to knowingly enter into a contract for commodities or services which was secured by a public servant or a public contractor who has contracted with a governmental entity to assist in a competitive procurement acting in violation of subsection (1) or subsection (2).

(5) Any person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.



History - (s. 5, ch. 2003-158; s. 5, ch. 2016-151.)



§838.23 FS | RESTITUTION AND COMMUNITY SERVICE

A person who is convicted of any offense in this chapter shall be ordered by the sentencing judge to make restitution to the victim of the offense if, after conducting a hearing, the judge finds that the victim suffered an actual financial loss caused directly or indirectly by the person's offense or an actual financial loss related to the person's criminal episode. A person who is convicted of any offense in this chapter shall also be ordered to perform 250 hours of community service work. Restitution and community service work shall be in addition to any fine or sentence that may be imposed and may not be in lieu thereof.

History - (s. 2, ch. 2015-132.)



APPENDIX



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