

Insurance & Banking Subcommittee

Thursday, March 13, 2025
1:00 PM - 4:00 PM
Morris Hall (17 HOB)

Meeting Packet

Daniel Perez
Speaker

Bradford Yeager
Chair

The Florida House of Representatives

Commerce Committee

Insurance & Banking Subcommittee

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Meeting Agenda

Thursday, March 13, 2025
1:00 pm – 4:00 pm
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I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- CS/HB 97 Service of Process in Proceedings for Protection of Vulnerable Adults by Civil Justice & Claims Subcommittee, Steele, Berfield
- HB 319 Virtual Currency Kiosk Businesses by Fabricio
- CS/HB 385 Trusts by Civil Justice & Claims Subcommittee, Oliver
- HB 839 Insurance Overpayment Claims Submitted to Psychologists by Booth
- HB 1097 Insurance Research by Canady

V. Closing Remarks

VI. Adjournment

FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: CS/HB 97	**COMPANION BILL:** SB 106 (Martin)
TITLE: Service of Process in Proceedings for Protection of Vulnerable Adults	**LINKED BILLS:** None
SPONSOR(S): Civil Justice Subcommittee; Steele	**RELATED BILLS:** None

Committee References

Civil Justice & Claims (18 Y, 0 N, As CS) ➤ Insurance & Banking ➤ Judiciary

SUMMARY

Effect of the Bill:

In an effort to enhance protections to vulnerable adults from fraudulent transfers, CS/HB 97 authorizes service of process in a proceeding for an injunction for the protection against the exploitation of a vulnerable adult to be made by substituted service when a respondent who is "unascertainable" has communicated with the vulnerable adult by means that makes the respondent untraceable. The bill creates a mechanism by which a petitioner may file a sworn affidavit with the court alleging that the respondent is an "unascertainable respondent" and providing details on how the respondent communicated with the vulnerable adult, the facts leading the petitioner to believe a transfer of funds is in response to a fraudulent request, and all identifying information known about the respondent. Upon acceptance of the affidavit by the court and the issuance of a temporary injunction for the protection of the vulnerable adult, the petitioner must "serve" the unascertainable respondent with notice of the injunction using the same manner of communication that the respondent used to contact the vulnerable adult. The petitioner must provide proof of such substituted service, including screenshots, to the court.

Under the bill, a plaintiff may use substituted service to serve an unascertainable respondent in a case involving the exploitation of a vulnerable adult. Upon order by the court to return funds to the vulnerable adult, a 30-day freeze on any proposed transfer of funds or property is initiated. The bill has an effective date of July 1, 2025.

Fiscal or Economic Impact:

The bill may have an indeterminate insignificant fiscal impact on state government and may have a positive fiscal impact on the private sector.

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

CS/HB 97 amends s. 825.1035, F.S., to provide for substituted service of process on an unascertainable respondent in a case involving an injunction for protection against the exploitation of a vulnerable adult.[1] The bill works in conjunction with existing law and fraud detection services within financial institutions to provide enhanced protection to vulnerable adults. The bill defines an "unascertainable respondent" as a person whose identity cannot be ascertained or whose identity is unknown, and who has communicated with the vulnerable adult through any means that make tracing the person's identity impractical. (Section 1).

To be able to use substituted service against such an unascertainable respondent, the petitioner must file a sworn affidavit with the court. The affidavit must include:

[1] A "vulnerable adult" means a person 18 years of age or older whose ability to perform the normal activities of daily living or ability to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. *See* s. 825.101(16), F.S.; s. 415.102(28), F.S. For the purposes of the injunction process under s. 825.1035, F.S., the term "vulnerable adult" also includes any person age 65 or older, regardless of infirmity.

- The facts leading the petitioner to believe that the respondent qualifies as an "unascertainable respondent";
- Information regarding how the vulnerable adult and the respondent have been in contact;
- All identifying information for the unascertainable respondent known to the petitioner or the vulnerable adult;[2]
- The facts leading the petitioner to believe that a proposed or initiated transfer of funds or property by the vulnerable adult is a response to a fraudulent request by the unascertainable respondent; and
- A description of the petitioner's attempts to identify the unascertainable respondent, including, but not limited to, attempts to contact the respondent through the same method of communication the respondent used to communicate with the vulnerable adult. (Section 1).

Upon the filing of the sworn affidavit, the court must enter an order requiring the petitioner to serve the unascertainable respondent through the same means of communication that the respondent used to contact the vulnerable adult. Such attempt to serve the unascertainable respondent must be done within two business days after the date the court issued the temporary injunction order. Once the court has issued a temporary injunction or set the matter for a final hearing, the petitioner must "serve" the unascertainable respondent with notice of the injunction. For substitute service to be effectuated, the petitioner must file proof with the court that he or she has attempted to serve the unascertainable respondent through the same means of communication that the unascertainable respondent used to contact the vulnerable adult. Such proof includes, but is not limited to, a sworn affidavit with screenshots of the attempted service and communication to the unascertainable respondent. (Section 1).

Once substituted service has been properly effectuated, the court may enjoin the transfer of any funds or property in dispute. If a legitimate respondent appears before the court, the court may dissolve the injunction and allow the proposed transfer of funds or property to proceed or may enter an order requiring the funds or property to be returned to the vulnerable adult. Upon such order by the court, the funds or property in question must be held for 30 days before it may be distributed back to the vulnerable adult or his or her guardian. As such, the ability to use substituted service to serve an unascertainable respondent provides potentially exploited vulnerable adults a legal avenue by which to proceed to attempt to retrieve the funds or property that was fraudulently taken from them. (Section 1).

The bill specifies that s. 825.1035(8), F.S., shall be construed for the benefit and protection of a vulnerable adult. (Section 1).

The bill has an effective date of July 1, 2025. (Section 2).

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The bill may have an indeterminate insignificant fiscal impact on state government by increasing court filings due to the ability to effectuate service on previously untraceable respondents.

PRIVATE SECTOR:

The bill may simplify the process for effectuating service on an unascertainable respondent, providing an opportunity for an injunction to be issued to protect certain assets or property from being transferred to a fraudulent respondent.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Service of Process

[2] All information known to the petitioner or the vulnerable adults includes, but is not limited to, pseudonyms, tax identification numbers, e-mail addresses, telephone or cellular numbers, software application programs used, social media usernames and handles, or other similar information.

"Process" is used by a court or administrative body to acquire or exercise jurisdiction over a person or property.[3] There are three primary types of process: original, mesne, and final process. Original process includes an original writ or summons issued by the court as the first step in a lawsuit and includes a notice to the party being served regarding the time and date to appear before the court. Mesne process is an intermediate process issued between the original process and the final judgment. Final process is a writ of execution pursuant to a final judgment issued in the subject legal proceeding.

Generally, service of process is made by:

- Delivering a copy of the process to the person to be served; or
- Leaving the process at the person's usual place of abode[4] with any person residing there who is fifteen years of age or older and informing that person of the contents of the process.[5]

Service of Process on Business Entities

Chapter 48 of the Florida Statutes prescribes how service of process must be made on a variety of business entities such as partnerships, corporations, limited liability companies, and limited partnerships. For example, for service on a partnership, process must be served on any partner of the partnership and is valid as service on the partnership as if it was actually served on each partner.[6] If a partner is not available, he or she may designate any employee or agent to accept service. If, after one attempt to serve a partner or his or her designated employee or agent, such service is not achieved, service may be made on a person in charge of the partnership during regular business hours. For service on a corporation, process must be served on the designated registered agent. Section 48.061, F.S., provides a detailed hierarchical chain of acceptable contacts upon which service may be made if the previous contact in the hierarchy is unavailable or unable to be served.

Substituted Service

The Florida Secretary of State, as head of the Florida Department of State, is involved in many aspects of service of process. In some scenarios involving nonresident business entities, Florida law allows service of process through substituted service on the Florida Secretary of State when a party is unable to personally serve the individual or the business entity's representative.[7]

Substituted service on the Secretary of State is effectuated by electronic or physical delivery addressed to the Secretary of State. A copy of the process must be sent to the individual or entity at the last known address by certified or registered mail, by use of a commercial firm regularly engaged in the business of document or package delivery, or by electronic transmission.[8] Court decisions interpreting the statute requires that a party using substituted service on the Secretary of State make an honest and conscientious effort, in addition to the mailing, to provide the defendant with actual notice of the lawsuit,[9] which may be noticed through a known email.[10]

Exploitation of a Vulnerable Adult

Section 825.103, F.S., prohibits specified exploitation of elderly persons or disabled adults and provides criminal penalties for a violation. Under s. 825.101(4), F.S., an elderly person is defined as a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired. A disabled adult is defined as a person 18 years of age or older who

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[3] Black's Law Dictionary 837 (6th ed. 1995).
[4] "Usual place of abode" means the place where the party actually lives at the time of service of process. *Shurman v. Atlantic Mortg. & Inv. Corp.*, 795 So. 2d 952 (Fla. 2001).
[5] S. 48.031(1)(a), F.S.
[6] S. 48.061(1), F.S.
[7] S. 48.161, F.S.; s. 48.181, F.S.
[8] S. 48.161, F.S.
[9] *All Mobile Video v. Whitener*, 773 So. 2d 587, 589-90 (Fla. 1st DCA 2000) (plaintiff knew telephone and fax number of defendant company but did not call or fax for new address when mailed copy of process was returned).
[10] *Crystal Springs Partners, Ltd. v. Michael R. Band, P.A.*, 132 So. 3d 1230 (Fla 3rd DCA 2014) (law firm plaintiff knew former client's email address and should have emailed copy of process in addition to mailing).

suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.[11]

Under s. 825.103, F.S., exploitation of an elderly person or disabled adult ("EPDA") is a crime that means:

- Knowingly obtaining or using, or endeavoring to obtain or use, an EPDA's funds, assets, or property with the intent to temporarily or permanently deprive the EPDA of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the EPDA, by a person who:
  - Stands in a position of trust and confidence with the EPDA; or
  - Has a business relationship with the EPDA.[12]
- Obtaining or using, or endeavoring to obtain or use, or conspiring with another to obtain or use an EPDA's funds, assets, or property with the intent to temporarily or permanently deprive the EPDA of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the EPDA, by a person who knows or reasonably should know that the EPDA lacks the capacity[13] to consent.[14]
- Breach of a fiduciary duty to an EPDA by the person's guardian, trustee, or agent under a power of attorney which results in an unauthorized appropriation, sale, transfer of property, kickback,[15] or receipt of an improper benefit.[16] An unauthorized appropriation occurs when the EPDA does not receive the reasonably equivalent financial value in goods or services, or when the fiduciary violates a specified duty.[17]
- Misappropriating, misusing, or transferring without authorization money belonging to an EPDA from an account[18] in which the EPDA placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer.[19]
- Intentionally or negligently failing to effectively use an EPDA's income and assets for the necessities required for that person's support and maintenance, by a caregiver or a person who stands in a position of trust and confidence with the EPDA.[20]
- Knowingly obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an EPDA's funds, assets, property, or estate through intentional modification, alteration, or fraudulent creation of a plan of distribution or disbursement expressed in a will, trust agreement, or other testamentary devise of the EPDA without:
  - A court order which authorizes the modification or alteration;
  - A written instrument executed by the EPDA, sworn to and witnessed by two persons who would be competent as witnesses to a will, which authorizes the modification or alteration; or
  - Action of an agent under a valid power of attorney which authorizes the modification or alteration.[21]

Fraud Detection Services

Financial institutions such as banks employ software, programming, and security measures to detect fraudulent activity within their accounts. A bank may flag a transaction for potential fraud based on geolocation information,

[11] S. 825.101(3), F.S.
[12] S. 825.103(1)(a), F.S.
[13] "Lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person's or disabled adult's person or property. S. 825.101(10), F.S.
[14] S. 825.103(1)(b), F.S.
[15] "Kickback" means a remuneration or payment, by or on behalf of a provider of health care services or items, to any person as an incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense. S. 456.054(1), F.S.
[16] "Improper benefit" means any remuneration or payment, by or on behalf of any service provider or merchant of goods, to any person as an incentive or inducement to refer customers or patrons for past or future services or goods. S. 825.101(8), F.S.
[17] S. 825.103(1)(c), F.S.
[18] This type of exploitation only applies to the following types of accounts: personal accounts; joint accounts created with the intent that only the elderly person or disabled adult enjoys all rights, interests, and claims to monies deposited into such account; or convenience accounts created in accordance with s. 655.80, F.S. S. 825.103(d)(1.-3.), F.S.
[19] S. 825.103(1)(d), F.S.
[20] S. 825.103(1)(e), F.S.
[21] S. 825.103(1)(f), F.S.

pattern recognition, behavioral analysis, machine learning and artificial intelligence, data analytics, real-time monitoring, and more.[22] When a bank is alerted to possible fraudulent activity or a fraudulent transfer it often pauses the transaction and alerts the account holder of suspected fraud. The account holder, generally, can approve the transaction as legitimate or contest it as fraudulent, preventing the assets from being transferred.

The injunction process provided in s. 825.1035, F.S., may come into play once an account holder has been made aware that fraudulent activity has been detected. In the situation of a vulnerable adult who has been notified that potentially fraudulent activity has occurred, the vulnerable adult or certain persons acting on his or her behalf, may file in injunction with the court to request the court freeze the fraudulent transaction of assets or property.[23]

With the increased use of technology in every facet of daily life, fraudulent scams that target elderly and vulnerable individuals are a common concern. Some common fraudulent scams targeting these populations include:

- Government impersonation scams, in which scammers call unsuspecting older adults and pretend to be from the Internal Revenue Service, Social Security Administration, or Medicare. They may say the older adult has unpaid taxes and threaten arrest if they do not pay immediately. Alternatively, the scammers may say Social Security or Medicare benefits will be cut off if the older adult does not provide personal identifying information, which can later be used to commit identity theft.[24]
- Sweepstakes scams, in which scammers call an older adult to say he or she has won a lottery or prize of some kind. If the older adult wants to claim his or her winnings, the older adult must send money, cash, or gift cards to cover supposed taxes and processing fees, or the older adult must send his or her bank account information to receive the alleged winnings.[25]
- Computer tech support scams, which prey on older people's lack of knowledge about computers and cybersecurity. A pop-up message or blank screen usually appears on a computer or phone, telling the user his or her device is damaged and needs fixing. When the older person calls the support number for help, the scammer may either request remote access to the older person's computer and/or demand he or she pay a fee to have it repaired.[26]
- "Grandparent" scams, in which a scammer calls a would-be grandparent and says something along the lines of: "Hi, Grandma, do you know who this is?" When the unaware grandparent guesses the name of the grandchild the scammer most sounds like, the scammer is able to instantly secure the older person's trust. The fake grandchild then asks for money to solve some urgent financial problem (such as overdue rent, car repairs, or jail bond).[27]

In 2023, the FBI received over 101,068 complaints of fraud reported by adults over the age of 60 resulting in a total loss of $3,427,717,654. The average financial loss in 2023 per complaint was $33,915.[28]

Injunction for Protection of a Vulnerable Adult

Temporary Ex-Parte Injunction

Under s. 825.1035, F.S., a vulnerable adult in imminent danger of being exploited may file a petition[29] for an injunction for protection against exploitation. There is no requirement for any exploitation to have already occurred before the vulnerable adult may petition for an injunction.[30] A court may grant a temporary injunction ex

[22] *See* https://www.transunion.com/business-needs/fraud-prevention/banking-fraud-detection#:~:text=Banks%20use%20geolocation%20data%20from,may%20be%20flagged%20for%20review (last visited on Feb. 5, 2025).
[23] S. 825.1035(2), F.S.
[24] National Council on Aging, *Get the Facts on Elder Abuse*, https://www.ncoa.org/article/get-the-facts-on-elder-abuse (last visited Feb. 5, 2025).
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] Federal Bureau of Investigation Internet Crime Complaint Center, 2023 Elder Fraud Report, https://www.ic3.gov/AnnualReport/Reports/2023_IC3ElderFraudReport.pdf (last visited Feb. 5, 2025).
[29] Additionally, the guardian of a vulnerable adult, a person or organization acting on behalf of and with the consent of the vulnerable adult or his or her guardian, an agent acting under power of attorney, or a person simultaneously filing a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult may file a petition for injunction for protection from exploitation. *See* s. 825.1035(2)(a), F.S.
[30] S. 825.1035(2)(e), F.S.

parte, pending a full hearing on the petition, upon making specified findings including that an immediate and present danger of exploitation of the vulnerable adult exists.[31] A temporary ex parte injunction may be effective for up to 15 days, unless good cause is shown to extend the injunction, in which case, the temporary injunction may be extended one time for an additional 30 days. Such a temporary injunction may:

- Prohibit the respondent from having any direct or indirect contact with the vulnerable adult;
- Restrain the respondent from committing any acts of exploitation against the vulnerable adult;[32]
- Freeze the assets or credit lines of the vulnerable adult;
- Award the temporary exclusive use and possession of the dwelling that the vulnerable adult and the respondent share to the vulnerable adult, or bar the respondent from the vulnerable adult's residence; and
- Include other allowable terms the court deems necessary to protect the vulnerable adult or his or her assets, including orders and directives to law enforcement agencies and other entities.[33]

In determining whether reasonable cause exists to believe that the vulnerable adult is, or is in imminent danger of becoming, a victim of exploitation, the court must consider the following factors:

- The existence of a verifiable order of protection issued previously or from another jurisdiction.
- Any history of exploitation by the respondent upon the vulnerable adult in the petition or any other vulnerable adult.
- Any history of the vulnerable adult being previously exploited or unduly influenced.
- The capacity of the vulnerable adult to make decisions related to his or her finances and property.
- Susceptibility of the vulnerable adult to undue influence.
- Any criminal history of the respondent or previous probable cause findings by the adult protective services program, if known.[34]

A court may grant a temporary injunction in the ex parte proceeding if it finds that:[35]

- An immediate and present danger of exploitation of the vulnerable adult exists.
- There is a likelihood of irreparable harm and non-availability of an adequate remedy at law.
- There is a substantial likelihood of success on the merits.
- The threatened injury to the vulnerable adult outweighs possible harm to the respondent.
- Granting the injunction will not disserve the public interest.
- Such injunction provides for the vulnerable adult's physical or financial safety.[36]

Permanent Injunction and Relief

After a final hearing, a court may grant any additional relief the court deems appropriate, including:

- Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent;
- Directing the vulnerable adult's frozen assets to be returned to the vulnerable adult or the credit line to be unfrozen;
- Entering a final cost judgment against the respondent and in favor of the petitioner for all taxable costs and entering a final cost judgment against the respondent and in favor of the clerk of the circuit court for all the clerk's filing fees and service charges that were waived; and
- Ordering other relief as necessary to protect the victim.

Who Can Be a Petitioner?

Pursuant to s. 825.1035(2), F.S., a cause of action for an injunction for the protection of a vulnerable adult may be brought by:

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[31] S. 825.1035(5)(a)1., F.S.
[32] The terms of an injunction restraining the respondent remain in effect until the injunction is modified or dissolved. S. 825.1035(8)(c), F.S.
[33] *See* ss. 825.1035(3)(a)22., F.S., 825.1035(5)(a)2., F.S., and 825.1035(8)(a)2., F.S.
[34] S. 825.1035(6), F.S.
[35] The findings required for a temporary injunction and continuing an injunction after a full hearing on the petition are the same with the exception of probable cause findings that exploitation occurred if the temporary injunction froze the vulnerable adult's assets. See s. 825.1035(5)(a)1., F.S., and s. 825.1035(8)(a)1., F.S.
[36] S. 825.1035(5)(a)1., F.S.

- A vulnerable adult in imminent danger of being exploited;
- The guardian of a vulnerable adult in imminent danger of being exploited;
- A person or organization acting on behalf of the vulnerable adult with the consent of the vulnerable adult or of his or her guardian;
- An agent under a valid durable power of attorney with the authority specifically granted in the power of attorney; or
- A person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult.

RECENT LEGISLATION:

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2024	CS/CS/HB 515	Silvers, Beltran	Rouson	The bill became law on January 1, 2025.
2023	CS/HB 603	LaMarca	Garcia	The bill became law on October 1, 2023.

OTHER RESOURCES:

U.S. Department of Justice, Elder Justice Initiative: Financial Exploitation

Consumer Financial Protection Bureau: Reporting Elder Financial Abuse

National Elder Fraud Hotline: General Information About Financial Scams and Abuse Targeting Older People

National Council on Aging: Get the Facts on Elder Abuse

FBI Internet Crime Complaint Center: 2023 Elder Crime Report

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Civil Justice & Claims Subcommittee	18 Y, 0 N, As CS	3/5/2025	Jones	Mathews
THE CHANGES ADOPTED BY THE COMMITTEE:	The amendment clarified that service on an unascertainable respondent may be used as outlined by the bill after the court has entered a temporary injunction for the protection of a vulnerable adult or, alternatively, sets the matter for a final hearing. Further, the amendment clarified that the 30-day hold of any proposed transfer of funds or property begins to run on the date the final order is entered.			
Insurance & Banking Subcommittee			Lloyd	Herrera
Judiciary Committee				

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.

A bill to be entitled

An act relating to service of process in proceedings for protection of vulnerable adults; amending s. 825.1035, F.S.; authorizing the use of substitute service on unascertainable respondents; defining the term "unascertainable respondent"; requiring a petitioner to file with the court a sworn affidavit to effectuate substitute service; providing requirements for the affidavit; requiring the court to enter an order providing for specified service when a petitioner files the sworn affidavit; requiring the petitioner to file with the court proof that the petitioner attempted to serve the unascertainable respondent; requiring that any proposed transfer of funds or property in dispute be held for a specified time period after the entry of a final order of injunction; providing construction; providing an effective date.

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

Section 1. Subsections (8) through (14) of section 825.1035, Florida Statutes, are renumbered as subsections (9) through (15), respectively, subsection (7) is amended, and a new subsection (8) is added to that section, to read:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

825.1035 Injunction for protection against exploitation of a vulnerable adult.—

(7) NOTICE OF PETITION AND INJUNCTION.—

(a) Except as provided in subsection (8), the respondent must ~~shall~~ be personally served, pursuant to chapter 48, with a copy of the petition, notice of hearing, and temporary injunction, if any, before the final hearing.

(b) If the petitioner is acting in a representative capacity, the vulnerable adult must ~~shall~~ also be served with a copy of the petition, notice of hearing, and temporary injunction, if any, before the final hearing.

(c) If any assets or lines of credit are ordered to be frozen, the depository or financial institution must be served as provided in s. 655.0201.

(8) SUBSTITUTE SERVICE ON UNASCERTAINABLE RESPONDENT.—

(a) In lieu of service pursuant to chapter 48 as required pursuant to subsection (7), substitute service in accordance with this subsection may be made on an unascertainable respondent. As used in this subsection, the term "unascertainable respondent" means a person whose identity cannot be ascertained or whose identity is unknown, and who has communicated with the vulnerable adult through any means that make tracing the person's identity impractical.

(b) To effectuate substitute service pursuant to this subsection, a petitioner must file with the court a sworn

affidavit based on the petitioner's information and belief. The affidavit must include:

1. The facts leading the petitioner to believe that the respondent is an unascertainable respondent;

2. Information regarding how the unascertainable respondent and the vulnerable adult have been in contact;

3. All identifying information for the unascertainable respondent which is known to the petitioner or the vulnerable adult, including, but not limited to, pseudonyms, tax identification numbers, e-mail addresses, telephone or cellular numbers, software application programs used, social media usernames and handles, or other similar information;

4. The facts leading the petitioner to believe that a proposed or initiated transfer of funds or property by the vulnerable adult is a response to a fraudulent request by the unascertainable respondent; and

5. A description of the petitioner's attempts to identify the unascertainable respondent, including, but not limited to, using the same method of communication that the unascertainable respondent used to communicate with the vulnerable adult.

(c) When a petitioner files the sworn affidavit required under paragraph (b), the court must enter an order requiring the petitioner to serve the unascertainable respondent, through the same means of communication that the unascertainable respondent used to communicate with the vulnerable adult, within 2 business

days after the date the court issues the temporary injunction order or sets a final hearing.

(d) The petitioner must file with the court proof, including, but not limited to, a sworn affidavit with screenshots, that the petitioner has attempted to serve the unascertainable respondent in accordance with paragraph (c). This constitutes substitute service on the unascertainable respondent.

(e) In accordance with a written final order of injunction, when using substitute service as provided in this subsection, any proposed transfer of funds or property in dispute must be held for 30 days, beginning on the date the final order of injunction was issued, before such funds or property may be distributed for the benefit of the vulnerable adult.

(f) This subsection shall be construed for the benefit and protection of a vulnerable adult.

Section 2. This act shall take effect July 1, 2025.

HB 319

FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: HB 319	**COMPANION BILL:** None
TITLE: Virtual Currency Kiosk Businesses	**LINKED BILLS:** None
SPONSOR(S): Fabricio	**RELATED BILLS:** SB 292 (Burton)

Committee References

Insurance & Banking ➤ Commerce

SUMMARY

Effect of the Bill:

The bill establishes a regulatory framework for virtual currency kiosk businesses, and provides protections for users of the kiosks by requiring such businesses to register with the Office of Financial Regulation (OFR), requiring certain disclosures, restricting the name under which such business may transact, and providing penalties for specified violations. The legislative intent of the bill is to reduce unlawful and fraudulent activities. The bill provides the OFR is responsible for supervising virtual currency kiosk businesses, and authorizes the Financial Services Commission (Commission) to adopt rules to regulate them.

Fiscal or Economic Impact:

The bill has an indeterminate impact on the private sector and a minimal impact on the state government.

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

The bill provides for OFR regulation of virtual currency kiosk businesses. (Section 2).

Definitions

The bill creates definitions for the following terms, as used in Chapter 560, F.S., Money Services Businesses:

- "Virtual currency kiosk" means an electronic terminal that acts as a mechanical agent of the owner-operator, enabling the owner-operator to facilitate the exchange of virtual currency for fiat currency or other virtual currency for a customer.
- "Owner-operator" means a registrant or a licensed money services business.
- "Virtual currency kiosk business" or "registrant" means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which operates a virtual currency kiosk and which is not a money transmitter as defined in this section.
- "Virtual currency kiosk transaction" means the process in which a customer uses a virtual currency kiosk to exchange virtual currency for fiat currency or other virtual currency. A transaction begins at the point at which the customer is able to initiate a transaction after the customer is given the option to select the type of transaction or account, and does not include any of the screens that display the required terms and conditions, disclaimers, or attestations.
- "Blockchain analytics" means the process of examining, monitoring, and gathering insights from the data and transaction patterns on a blockchain network. The primary aims of blockchain analytics are to understand and monitor the network's health, track transaction flows, and identify potential security threats, including illicit activity, in order to extract actionable insights.
- "Wallet" means hardware or software that enables customers to store and use virtual currency.

The bill expands the current definition of "control person" to include virtual currency businesses instead of only money services businesses. (Section 1).

Registration Requirement

The bill prohibits a virtual currency kiosk (VCK) business from operating in Florida without first registering, or renewing its registration, with the OFR. A money transmitter licensed as a money services business (MSB) is exempt from registering as a VCK business. An entity that acts as an intermediary in specified circumstances and or otherwise meets the definition of a money transmitter must be licensed as a money services business. For an applicant to register a VCK business, the applicant must submit specified information relating to the proposed applicant and business, attest to specified information relating to blockchain analytics, and within a specified time, any supplemental information required by the OFR. A VCK business operating in Florida on or before January 1, 2026, must submit a registration application to the OFR within 30 days after that date. The bill requires the registrant to report on a form created by the Commission any information contained in an initial application form or an amendment thereto within 30 days after the change is effective. (Section 6).

The bill provides that registration for any VCK business is not transferable or assignable. (Section 5).

Renewal of Registration

The bill directs registrants to renew their registration annually on or before December 31st of the year preceding the expiration date of the registration, and the registrant must submit a renewal application that contains specific information. The bill provides specific instructions on the manner in which a registrant renews an inactive registration, and that failure to renew an inactive registration would result in the registration becoming null and void. If the registration is null and void, the VCK business must submit a new application and a certification of registration must be issued by OFC before the VCK business may conduct business in Florida. (Section 6).

Mandatory Denial of Application

The bill mandates that OFR deny an initial registration application if a control person of a registrant or prospective registrant has engaged in any unlawful business practice, or been convicted or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a crime involving dishonest dealing, fraud, acts of moral turpitude, or other acts that reflect an inability to engage lawfully in the business of a registered VCK business.

The bill requires OFR to deny a renewal application if the registrant fails to provide certain evidence of compliance with disclosure requirements and the conduct of business upon request of OFR.

The bill provides that any false statements made by a VCK business with respect to the name of the name of the business or its business address or location in any application for registration renders the registration void. (Section 6).

Disclosures, Attestations, and Confirmations

The bill requires that owner-operators must:

- Display a disclosure warning to consumers about potential dishonest schemes and requiring the customer to acknowledge that they have read the disclosure.
- Display a disclosure that funds lost due to user error or fraud may not be recoverable.
- Confirm whether the customer is using the kiosk to send virtual currency to a wallet owned by someone else and, if so, terminate the transaction unless the owner-operator is a licensed money transmitter.
- Display a disclosure of a toll-free telephone number the kiosk user may call to learn about the risks of the transaction; and
- Require an attestation to specified information, without which the transaction must be terminated. (Section 7).

Conduct of Business

An owner-operator may transact business only under the legal name by which it is registered, except under specified circumstances. An owner-operator must maintain clearly documented policies, processes, and procedures regarding how blockchain analytics activity integrates into their compliance controls, and must apply such blockchain analytics to prevent transfers to wallet addresses linked to known criminal activity. (Section 8).

Penalties

The bill provides that the following constitute third-degree felonies:

- Operating or soliciting business as a VCK business without the proper registration unless the business is licensed as an MSB.
- A person who registers or attempts to register as a virtual currency kiosk business by means of fraud, misrepresentation, or concealment.
- Failure to comply with the required disclosures, attestations, and confirmations for a VCK.

The bill provides that the following constitute second-degree misdemeanors:

- Operating under any name other than that designated in the registration (unless written notification is given to the OFR),
- Assigning or attempting to assign a registration, and
- Operating a VCK without using the required blockchain analytics.

The bill allows a court to invalidate a VCK registration that has failed to comply with the required disclosures, attestations, and confirmations, or has committed one of the crimes provided for by the bill.[1] (Section 9).

Collection of Fees

The bill does not provide authorization for the collection of fees for initial registration applications, the renewal of registrations, or the reactivation of inactive registrations.[2] (Section 6).

Legislative Intent

The legislative intent of the bill is to reduce unlawful and fraudulent activities by requiring VCK businesses to register with the state and by requiring such businesses and money transmitter licensees to regularly and consistently disclose to all customers of VCK certain specified risks relating to VCK transactions. (Section 4).

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The OFR states that there is "no incoming revenue as there are no registration fees included in the bill."[3] OFR has funding in the current budget to comply with the promulgation of new rules and implementing changes to the OFR's technology systems. [4]

PRIVATE SECTOR:

There is an indeterminate impact on the private sector. This bill may reduce the financial losses associated with VCK scams. However, VCK businesses may incur additional expenditures to comply with the bill provisions.

[1] Criminal courts do not have jurisdiction to enforce administrative penalties such as invalidating a registration. *See also*, Florida Office of Financial Regulation, Agency Analysis of 2025 House Bill 319, p. 5 (Mar. 7, 2025).
[2] Florida Office of Financial Regulation, Agency Analysis of 2025 House Bill 319, p. 5 (Mar. 7, 2025).
[3] *Id.*, at 4.
[4] *Id.*, at 5.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Virtual Currency

Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value.[5] In some environments, it operates like "real" currency[6] (i.e., the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance).[7] Virtual currency that has an equivalent value in real currency, or that acts as a substitute for real currency, is referred to as "convertible" virtual currency.[8] Bitcoin is one example of a convertible virtual currency, as it can be digitally traded between users and can be purchased for, or exchanged into, U.S. dollars, Euros, and other real or virtual currencies.[9]

Virtual currencies generally consist of computers operating the network software (nodes) that enable, validate, and store transaction records on a distributed digital ledger (a blockchain).[10] To transfer an asset on a blockchain, a person enters an alphanumeric code known only to the transferor (a private key) into a cryptographic hash function enabled by the network software, which allows the transferor to request that the network software validate a new entry on the ledger showing that control of an asset has been assigned to the recipient.[11] Once the network software has validated this transfer, the ledger is altered and the recipient may transfer the asset to another recipient using their own private key.[12] Ledger entries are cryptographically secured, and accounts are identified on a blockchain by alphanumeric ''public keys''—not by the owner's name.[13]

Some persons use the services of a third-party to acquire or transact in virtual currency.[14] For example, certain third-parties provide custody services for their customers' virtual currency in so called ''hosted wallets.''[15] In such arrangements, the third-party wallet host may execute transactions on a blockchain on behalf of a customer using a private key controlled by the third-party wallet host.[16] Other persons do not use the services of such a third-party, in which case they use the private key controlling their virtual currency to transact directly on a blockchain.[17] Such persons may store the private key in a software program or written record, often referred to as an ''unhosted wallet.''[18]

Virtual currency networks present opportunities as well as risks.[19] The G7 Finance Ministers and Central Bank Governors recently noted that ''[t]he widespread adoption of digital payments . . . has the potential to address frictions in existing payment systems by improving access to financial services, reducing inefficiencies, and

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[5] IRS, *Virtual Currencies: What is virtual currency?*, https://www.irs.gov/filing/digital-assets (last visited Mar. 12, 2025).
[6] Often referred to as "fiat" currency.
[7] IRS, *supra* note 5.
[8] *Id.*
[9] *Id.*
[10] FinCEN, *Notice of Proposed Rulemaking: Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets*, https://www.govinfo.gov/content/pkg/FR-2020-12-23/pdf/2020-28437.pdf (last visited Mar. 7, 2025).
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*

lowering costs."[20] At the same time, however, virtual currencies are used in illicit financial activity that presents substantial national security concerns.[21]

Virtual Currency pKiosks

A virtual currency kiosk (VCK), also known as a cryptocurrency kiosk, is a physical machine that enables customers to exchange virtual currencies for fiat currency or other virtual currencies.[22] As of 2022, there were over 30,000 virtual currency kiosks in the United States.[23] Consumers are typically charged fees between nine percent and 12 percent of the value of the transaction but such fees may range from four percent to greater than 20 percent of the value of a transaction.[24]

A VCK business may be unidirectional, only allowing the sale of virtual currency, or bidirectional, allowing for both the sale and purchase of virtual currency.[25] To purchase virtual currency from a kiosk, a consumer may store the purchased virtual currency in their own wallet or send the currency to a third party's wallet if the purchaser has a quick response (QR) code to that person's wallet.[26] To sell virtual currency from a kiosk, a user deposits virtual currency into the machine's wallet, which is usually done by use of a QR code displayed on the kiosk's screen, and the kiosk dispenses cash when the transaction is completed.[27]

State Regulation

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[28] The Division of Consumer Finance within OFR licenses and regulates various aspects of the non-depository financial services industries, including MSBs regulated under ch. 560, F.S. A money services business is, "any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as a payment instrument seller, foreign currency exchanger, check casher, or money transmitter."[29] Money transmitters may include virtual currency kiosks. However, virtual currency kiosks do not have to be licensed if they only provide peer to peer transactions.[30] Virtual currency kiosks do not currently have to be registered.[31]

OFR can conduct examinations and investigations to determine whether a person has violated the MSB provisions.[32]

Since January 2020, scammers have stolen over $21 million from Floridians using virtual currency kiosks. [33]

Federal Regulation

Financial Crimes Enforcement Network ("FinCEN"), a bureau of the United States Department of Treasury[34] is responsible for safeguarding the financial system from illegal use, combatting money laundering and related

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[20] *Id*. (citing the G7 Finance Ministers and Central Bank Governors' Statement on Digital Payments on Oct. 13, 2020).
[21] FinCEN Notice of Proposed Rulemaking, *supra* note 6.
[22] National Association of Attorneys General, *Your Bitcoin on Every Block: An Introduction to Cryptocurrency Kiosks*, May 4, 2022, *https://www.naag.org/attorney-general-journal/your-bitcoin-on-every-block-an-introduction-to-cryptocurrency-kiosks/* (last visited Mar. 7, 2025).
[23] McDonnell, S., *United States: US GAO Urges New Virtual Currency Regulations to Counter Human Trafficking and Drug Cartels*, Jan. 2022, *available at* US GAO Urges New Virtual Currency Regulations To Counter Human Trafficking And Drug Cartels - Fin Tech - United States (mondaq.com) (last visited Mar. 7, 2025).
[24] *Supra* note at 19.
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] S. 20.121(3)(a)2., F.S.
[29] S. 560.103(24), F.S.
[30] Email from Ash Mason, Legislative & Cabinet Affairs Director, Office of Financial Regulation, RE: [EXT] HB 319 Virtual Currency Kiosk Businesses (Mar. 5, 2025).
[31] Florida Office of Financial Regulation, Agency Analysis of 2025 House Bill 319, p. 1 (Mar. 7, 2025).
[32] S. 560.109, F.S.
[33] RE: [EXT] HB 319 Virtual Currency Kiosk Businesses, *supra* note at 30.
[34] 31 C.F.R. s. 1010.100(s).

crimes, and promoting national security.[35] Unless an exception applies, a MSB[36]must register with FinCEN.[37] An MSB registration period is a two-calendar-year period.[38] Any person who fails to comply with the registration requirements is liable for a civil penalty of $5,000 for each violation.[39] A MSB must develop, implement, and maintain an anti-money laundering program, which includes, amongst other things, verifying customer identification.[40] A MSB must also comply with anti-money laundering reporting requirements, such as reporting certain payment transactions by, through, or to the MSB which involves a transaction more than $10,000.[41]

FinCEN has issued guidance that, unless an exception applies, an administrator[42] or exchanger[43] that: (a) accepts or transmits, or (b) buys or sells, virtual currency[44] is a money transmitter that is subject to money services business registration, reporting, and recordkeeping requirements.[45] Therefore, FinCEN treats VCK operators as MSBs, subject to registration regulations.[46] Notwithstanding this requirement, the United States Government Accountability Office ("GAO") reports that only 164 of the estimated 297 kiosk operators in the United States were registered, which has contributed to federal agencies, such as FinCEN, facing challenges in identifying VCK locations.[47]

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Insurance & Banking Subcommittee			Lloyd	Fletcher
Commerce Committee				

[35] The U.S. Treasury Financial Crimes Enforcement Network, *Financial Crimes Enforcement Network: Mission*, available at Mission | FinCEN.gov (last visited Mar. 7, 2025).
[36] "Money services business" is defined as a person wherever located doing business, whether or not on a regular basis or as an organized or licensed business concern, wholly or in substantial part within the United States, in one or more of the capacities specified under federal law. 31 C.F.R. s. 1010.100(ff).
[37] 31 C.F.R. s. 1022.380(a).
[38] 31 C.F.R. s. 1022.380(b).
[39] 31 C.F.R. s. 1022.380(e) (providing that each day a violation continues constitutes a separate violation).
[40] 31 C.F.R. s. 1022.210.
[41] 31 C.F.R. s. 1010.311.
[42] "Administrator" is defined as a person engaged as a business in issuing (putting into circulation) a virtual currency, and who has the authority to redeem (to withdraw from circulation) such virtual currency. The U. S. Treasury FinCEN, *Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies*, Mar. 18, 2013, *available at* Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies | FinCEN.gov (last visited Mar. 7, 2025).
[43] "Exchanger" is defined as a person engaged as a business in the exchange of virtual currency for real currency, funds, or other virtual currency. *Id.*
[44] "Virtual Currency" is defined as a medium of exchange that operates like a currency in some environments, but does not have all of attributes of real currency. "Convertible" virtual currency has an equivalent value in real currency, or acts as a substitute for real currency. *Id.*
[45] FinCEN Guidance on Persons Administering, Exchanging, or Using Virtual Currency. "Money transmitter" is defined as a person who provides money transmitter services, which means the acceptance of currency, funds, or other value that substitutes for currency from one person and the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means. "Any means" includes, but is not limited to, a financial agency or institution, a Federal Reserve Bank, an electronic funds transfer network, or an informal value transfer system. 31 C.F.R. s. 1010.100(ff)(5)(A).
[46] *Id.*
[47] The GAO, *Virtual Currencies Additional Information Could Improve Federal Agency Efforts to Counter Human and Drug Trafficking [Reissued with Revisions Feb. 7, 2022]*, GAO-22-105462, Published: Dec. 8, 2021, Publicly Released: Jan. 10, 2022, *available at* https://www.gao.gov/products/gao-22-105462 (last visited Mar. 7, 2025).

A bill to be entitled

An act relating to virtual currency kiosk businesses; amending s. 560.103, F.S.; defining terms and revising the definition of the term "control person"; amending s. 560.105, F.S.; requiring the Office of Financial Regulation of the Financial Services Commission to supervise virtual currency kiosk businesses; requiring that rules adopted to regulate virtual currency kiosk businesses be responsive to certain changes; creating part V of ch. 560, F.S., entitled "Virtual Currency Kiosk Businesses"; creating s. 560.501, F.S.; providing legislative intent; creating s. 560.502, F.S.; prohibiting a virtual currency kiosk business from operating without registering or renewing its registration in accordance with certain provisions; requiring the office to make certain notifications; specifying that certain money transmitters are exempt from registration but are subject to certain provisions; requiring that certain entities that perform or prevent certain actions be licensed as money services businesses; providing criminal penalties for certain entities that operate or solicit business as a virtual currency kiosk business under certain circumstances; providing criminal penalties for persons who register or attempt to register as a

virtual currency kiosk business by certain means; providing that a virtual currency kiosk business registration is not transferable or assignable; creating s. 560.503, F.S.; specifying application requirements for registering as a virtual currency kiosk business; requiring certain virtual currency kiosk businesses to submit an application within a specified timeframe; requiring a registrant to report certain changes in information within a specified timeframe; requiring a registrant to renew its registration within a specified timeframe; specifying requirements for a registrant to renew its registration; requiring that the registration of a virtual currency kiosk business be made inactive if such business does not renew its registration by a certain date; specifying requirements for a virtual currency kiosk business to renew an inactive registration; providing that a registration becomes null and void under certain circumstances; providing requirements if a registration becomes null and void; requiring the office to deny certain applications under certain circumstances; providing that certain false statements made by a virtual currency kiosk business render its registration void; authorizing the commission to adopt rules; creating s. 560.504, F.S.;

specifying requirements for specified disclosures and attestations displayed by a virtual currency kiosk; authorizing the commission to adopt rules; creating s. 560.505, F.S.; requiring an owner-operator to transact business under the legal name by which it is registered; providing exceptions; requiring an owner-operator to maintain certain policies, processes, and procedures; requiring an owner-operator to use blockchain analytics; creating s. 506.506, F.S.; providing criminal penalties; authorizing a court to invalidate the registration of a registrant under certain circumstances; providing effective dates.

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

Section 1. Present subsections (4) through (28) and (29) through (36) of section 560.103, Florida Statutes, are redesignated as subsections (5) through (29) and (31) through (38), respectively, new subsections (4) and (30) and subsections (39) through (42) are added to that section, and present subsection (10) of that section is amended, to read:

560.103 Definitions.—As used in this chapter, the term:

(4) "Blockchain analytics" means the process of examining, monitoring, and gathering insights from the data and transaction patterns on a blockchain network. The primary aims of blockchain

analytics are to understand and monitor the network's health, track transaction flows, and identify potential security threats, including illicit activity, in order to extract actionable insights.

(11)~~(10)~~ "Control person" means, with respect to a money services business or virtual currency kiosk business, any of the following:

(a) A person who holds the title of president, treasurer, chief executive officer, chief financial officer, chief operations officer, chief legal officer, or compliance officer for a money services business or virtual currency kiosk business.

(b) A person who holds any of the officer, general partner, manager, or managing member positions named in the money services business's or virtual currency kiosk business's governing documents. As used in this paragraph, the term "governing documents" includes bylaws, articles of incorporation or organization, partnership agreements, shareholder agreements, and management or operating agreements.

(c) A director of the money services business's or virtual currency kiosk business's board of directors.

(d) A shareholder in whose name shares are registered in the records of a corporation for profit, whether incorporated under the laws of this state or organized under the laws of any other jurisdiction and existing in that legal form, who owns 25

percent or more of a class of the company's equity securities.

(e) A general partner or a limited partner, as those terms are defined in s. 620.1102, who has a 25 percent or more transferable interest, as defined in s. 620.1102, of a limited partnership, limited liability limited partnership, foreign limited partnership, or foreign limited liability limited partnership, as those terms are defined in s. 620.1102.

(f) A member, who is a person that owns a membership interest in a limited liability company or a foreign limited liability company, as those terms are defined in s. 605.0102(36) and (26), respectively, that holds a 25 percent or more membership interest in such company. As used in this subsection, the term "membership interest" means a member's right to receive distributions or other rights, such as voting rights or management rights, under the articles of organization.

(g) A natural person who indirectly owns 25 percent or more of the shares or stock interest, transferable interest as defined in s. 620.1102, or membership interest as defined in paragraph (f), of any legal entities referred to in paragraphs (d)-(f).

(30) "Owner-operator" means a registrant or a licensed money services business.

(39) "Virtual currency kiosk" means an electronic terminal that acts as a mechanical agent of the owner-operator, enabling the owner-operator to facilitate the exchange of virtual

currency for fiat currency or other virtual currency for a customer.

(40) "Virtual currency kiosk business" or "registrant" means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which operates a virtual currency kiosk and which is not a money transmitter as defined in this section.

(41) "Virtual currency kiosk transaction" means the process in which a customer uses a virtual currency kiosk to exchange virtual currency for fiat currency or other virtual currency. A transaction begins at the point at which the customer is able to initiate a transaction after the customer is given the option to select the type of transaction or account, and does not include any of the screens that display the required terms and conditions, disclaimers, or attestations.

(42) "Wallet" means hardware or software that enables customers to store and use virtual currency.

Section 2. Paragraph (a) of subsection (1) and paragraph (b) of subsection (2) of section 560.105, Florida Statutes, are amended to read:

560.105 Supervisory powers; rulemaking.—

(1) The office shall:

(a) Supervise all money services businesses and their authorized vendors and virtual currency kiosk businesses.

(2) The commission may adopt rules pursuant to ss.

120.536(1) and 120.54 to administer this chapter.

(b) Rules adopted to regulate money services businesses, including deferred presentment providers and virtual currency kiosk businesses, must be responsive to changes in economic conditions, technology, and industry practices.

Section 3. Part V of chapter 560, Florida Statutes, consisting of ss. 560.501-560.506, Florida Statutes, is created and entitled "Virtual Currency Kiosk Businesses."

Section 4. Section 560.501, Florida Statutes, is created to read:

560.501 Legislative intent.—The Legislature intends to reduce unlawful and fraudulent activities by requiring virtual currency kiosk businesses to register with the state and by requiring such businesses and money transmitter licensees to regularly and consistently disclose to all customers of virtual currency kiosks certain specified risks relating to virtual currency kiosk transactions.

Section 5. Effective March 1, 2026, section 560.502, Florida Statutes, is created to read:

560.502 Registration required; exemptions; penalties.—

(1) A virtual currency kiosk business in this state may not operate without first registering, or renewing its registration, in accordance with s. 560.503. The office shall give written notice, in person or by mail, to each applicant that the agency has granted or denied the application for

registration.

(2) A money transmitter licensed as a money services business pursuant to s. 560.141 is exempt from registration as a virtual currency kiosk business but is subject to ss. 560.504, 560.505, and 560.506.

(3) An entity, in the course of its business, may not act as an intermediary with the ability to unilaterally execute or indefinitely prevent a virtual currency kiosk transaction, or otherwise meet the definition of a money transmitter as defined in s. 560.103, without being licensed as a money services business pursuant to part II of this chapter.

(4) Unless licensed as a money services business pursuant to part II of this chapter, an entity that operates or solicits business as a virtual currency kiosk business without first being registered with the office or without maintaining its registration commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) A person who registers or attempts to register as a virtual currency kiosk business by means of fraud, misrepresentation, or concealment commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) A virtual currency kiosk business registration issued under this part is not transferable or assignable.

Section 6. Section 560.503, Florida Statutes, is created

to read:

560.503 Registration applications.—

(1) To apply to be registered as a virtual currency kiosk business under this part, the applicant must submit all of the following to the office:

(a) A completed registration application on forms prescribed by rule of the commission. The application must include the following information:

1. The legal name, including any fictitious or trade names used by the applicant in the conduct of its business, and the physical and mailing address of the applicant.

2. The date of the applicant's formation and the state in which the applicant was formed, if applicable.

3. The name, social security number, alien identification or taxpayer identification number, business and residence addresses, and employment history for the past 5 years for each control person as defined in 560.103.

4. A description of the organizational structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded.

5. The name of the registered agent in this state for service of process.

6. The physical address of the location of each virtual currency kiosk through which the applicant proposes to conduct

or is conducting business in this state.

7. An attestation that the applicant has developed clearly documented policies, processes, and procedures regarding the use of blockchain analytics to prevent transfers to wallet addresses linked to known criminal activity, including the manner in which such blockchain analytics activity will integrate into its compliance controls, and that the applicant will maintain and comply with such blockchain analytics policies, processes, and procedures.

8. Any other information as required by this chapter or commission rule.

(b) Any information needed to resolve any deficiencies found in the application within a time period prescribed by rule.

(2) A virtual currency kiosk business operating in this state on or before January 1, 2026, must submit a registration application to the office within 30 days after that date.

(3) A registrant shall report, on a form prescribed by rule of the commission, any change in the information contained in an initial application form or an amendment thereto within 30 days after the change is effective.

(4) A registrant must renew its registration annually on or before December 31 of the year preceding the expiration date of the registration. To renew such registration, the registrant must submit a renewal application that provides:

(a) The information required in paragraph (1)(a) if there are changes in the application information, or an affidavit signed by the registrant that the information remains the same as the prior year.

(b) Upon request by the office, evidence that the registrant has been operating in compliance with ss. 560.504 and 560.505. Such evidence may be prescribed by rule by the commission and may include, but need not be limited to, all of the following:

1. Current disclosures presented to customers during the transaction process.

2. Current use of blockchain analytics to prevent transfers to wallet addresses linked to known criminal activity.

(5) The registration of a virtual currency kiosk business that does not renew its registration by December 31 of the year of expiration must be made inactive for 60 days. A virtual currency kiosk business may not conduct business while its registration is inactive.

(6) To renew an inactive registration, a virtual currency kiosk business must, within 60 days after the registration becomes inactive, submit all of the following:

(a) The information required in paragraph (1)(a) if there are changes in the application information or an affidavit signed by the registrant that the information remains the same as the prior year.

(b) Evidence that the registrant was operating in compliance with ss. 560.504 and 560.505. Such evidence may be prescribed by rule by the commission and may include, but need not be limited to, all of the following:

1. Current disclosures presented to customers during the transaction process.

2. Current use of blockchain analytics to prevent transfers to wallet addresses linked to known criminal activity.

Any renewal registration made pursuant to this subsection becomes effective upon the date the office approves the application for registration. The office shall approve the renewal registration within a timeframe prescribed by rule.

(7) Failure to submit an application to renew a virtual currency kiosk business's registration within 60 days after the registration becomes inactive shall result in the registration becoming null and void. If the registration is null and void, a new application to register the virtual currency kiosk business pursuant to subsection (1) must be submitted to the office and a certification of registration must be issued by the office before the virtual currency kiosk business may conduct business in this state.

(8) If a control person of a registrant or prospective registrant has engaged in any unlawful business practice, or been convicted or found guilty of, or pled guilty or nolo

contendere to, regardless of adjudication, a crime involving dishonest dealing, fraud, acts of moral turpitude, or other acts that reflect an inability to engage lawfully in the business of a registered virtual currency kiosk business, the office must deny the prospective registrant's initial registration application or the registrant's renewal application.

(9) The office shall deny the application of a virtual currency kiosk business that submits a renewal application and fails to provide evidence of compliance upon request pursuant to paragraph (4)(b) or as required in paragraph (6)(b).

(10) Any false statement made by a virtual currency kiosk business with respect to the name of the business or its business address or location in any application for registration under this section renders the registration void. A void registration may not be construed as creating a defense to any prosecution for violation of this chapter.

(11) The commission may adopt rules to administer this section.

Section 7. Section 560.504, Florida Statutes, is created to read:

560.504 Disclosures.—

(1) Disclosures or attestations required by this section and displayed by a virtual currency kiosk must meet all of the following requirements:

(a) Be full and complete.

(b) Contain no material misrepresentations.

(c) Be readily understandable and in the language in which the virtual currency kiosk transaction is conducted.

(d) Be displayed in at least 14-point type.

(2) Before authorizing a customer to initiate a virtual currency kiosk transaction, the owner-operator shall ensure that the virtual currency kiosk displays the disclosures in this section on two separate screens.

(a) The first disclosure must be in substantially the following form:

WARNING: CONSUMER FRAUD OFTEN STARTS WITH CONTACT FROM A STRANGER WHO IS INITIATING A DISHONEST SCHEME.

I UNDERSTAND THAT DISHONEST SCHEMES MAY APPEAR IN MANY FORMS, INCLUDING, BUT NOT LIMITED TO:

1. Claims of a frozen bank account or credit card.

2. Fraudulent bank transactions.

3. Claims of identity theft or job offerings in exchange for payments.

4. Requests for payments to government agencies or companies.

5. Requests for disaster relief donations or loans.

6. Offers to purchase tickets for lotteries, sweepstakes, or drawings for vehicles.

7. Prompts to click on desktop pop-ups, such as virus warnings or communication from alleged familiar merchants.

8. Communication from someone impersonating a representative of your bank or a law enforcement officer.

9. Requests from persons who are impersonating relatives or friends in need or promoting investment or romance scams.

PROTECT YOURSELF FROM FRAUD. NEVER SEND MONEY TO SOMEONE YOU DON'T KNOW.

(b) The second disclosure must be in substantially the following form:

WARNING: FUNDS LOST DUE TO USER ERROR OR FRAUD MAY NOT BE RECOVERABLE. TRANSACTIONS CONDUCTED ON THIS VIRTUAL CURRENCY KIOSK ARE IRREVERSIBLE. I UNDERSTAND THESE RISKS AND WISH TO CONTINUE WITH CONDUCTING MY VIRTUAL CURRENCY KIOSK TRANSACTION.

PROTECT YOURSELF FROM FRAUD. NEVER SEND MONEY TO SOMEONE YOU DON'T KNOW.

(3)(a) After the disclosures provided in subsection (2) are acknowledged by the customer, the virtual currency kiosk business shall ensure that the virtual currency kiosk displays on a pop-up window the following question to the customer: "ARE YOU USING THIS KIOSK TO SEND VIRTUAL CURRENCY TO A WALLET OWNED BY SOMEONE ELSE?"

(b) The virtual currency kiosk business shall require the customer to respond to the question in paragraph (a) with a "no" response before the customer can proceed to the attestation required in subsection (4).

(c) The virtual currency kiosk business shall ensure that the virtual currency kiosk terminates a customer's virtual currency kiosk transaction if the customer provides a "yes" response to the question in paragraph (a).

(4) After the disclosures provided in subsection (2) and, with respect to virtual currency kiosk businesses, an answer of "no" to the question provided in paragraph (3)(a), the owner-operator must ensure that the virtual currency kiosk displays, on a screen by itself, a toll-free number for the customer to contact regarding the risk of engaging in virtual currency transactions and the following attestation in substantially the following form:

I ATTEST THAT I HAVE BEEN GIVEN A TOLL-FREE NUMBER AND THAT I HAVE HAD AN OPPORTUNITY TO CALL THE NUMBER TO

SPEAK WITH SOMEONE REGARDING THE RISKS OF ENGAGING IN VIRTUAL CURRENCY KIOSK TRANSACTIONS. I FURTHER ATTEST THAT I UNDERSTAND THAT I MAY BE SOLELY RESPONSIBLE FOR LOSS OF FUNDS DUE TO USER ERROR OR FRAUD.

(a) If a customer makes the attestation in this subsection, the virtual currency kiosk may allow the customer to proceed with the virtual currency kiosk transaction.

(b) If the customer does not make the attestation in this subsection, the owner-operator must ensure that the virtual currency kiosk terminates the customer's virtual currency kiosk transaction.

(5) The commission may adopt rules to administer this section and to ensure that virtual currency kiosk disclosures are responsive to consumer fraud and emerging technology.

Section 8. Section 560.505, Florida Statutes, is created to read:

560.505 Conduct of business.—

(1) An owner-operator may transact business under this part only under the legal name by which such business is registered. The use of a fictitious name is allowed if the fictitious name has been registered with the Department of State and disclosed to the office as part of an initial registration or license application, or subsequent amendment to the application, before its use.

(2) An owner-operator must maintain clearly documented policies, processes, and procedures with regard to the manner in which the blockchain analytics activity integrates into their compliance controls. An owner-operator must use blockchain analytics to prevent transfers to wallet addresses linked to known criminal activity.

Section 9. Section 560.506, Florida Statutes, is created to read:

560.506 Penalties.—

(1) An owner-operator of a virtual currency kiosk which violates s. 560.504 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Each of the following violations constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

(a) Operating a virtual currency kiosk under any name other than that designated in the registration, unless written notification is given to the office.

(b) Assigning or attempting to assign a virtual currency kiosk business registration issued under this part.

(c) Operating a virtual currency kiosk without the use of blockchain analytics as required under s. 560.505.

(3) In addition to the criminal penalties provided in this section, a court may invalidate the registration of any registrant under this part who has been found guilty of conduct

punishable under subsection (1) or subsection (2).

Section 10. Except as otherwise expressly provided in this act, this act shall take effect January 1, 2026.

CS/HB 385

FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: CS/HB 385	**COMPANION BILL:** CS/SB 262 (Berman)
TITLE: Trusts	**LINKED BILLS:** None
SPONSOR(S): Civil Justice Subcommittee; Oliver	**RELATED BILLS:** None

Committee References

Civil Justice & Claims	➤	Insurance & Banking	➤	Judiciary
18 Y, 0 N, As CS				

SUMMARY

Effect of the Bill:

HB 385 modifies various provisions in the Florida Trust Code, including provisions relating to trust decanting, which refers to the process of transferring, or "decanting," trust assets from one trust to a new, second trust. Specifically, the bill clarifies that an authorized trustee decanting trust assets from an original trust into a new, second trust is not the settlor of the second trust; specifies whose intent may be considered when determining settlor intent with respect to a second trust; provides an option to expressly structure a decanting as a modification of the original trust; and clarifies that a decanting notice is not a trust disclosure document that would trigger a specified limitations period for bringing breach of fiduciary duty claims against the trustee. The bill also:

- Expressly prohibits a successor trustee from bringing a claim against a former trustee if the beneficiary is barred from personally bringing such a claim.
- Incorporates the concept of ademption by satisfaction, already found in the Florida Probate Code, into the Trust Code in the context of a revocable trust that later becomes irrevocable upon the settlor's death.
- Modifies the definition of "community property," clarifies the definition of "community property trust," and specifies how a transfer of homestead property into such a trust is to be treated for property tax assessment purposes.

Fiscal or Economic Impact:

The bill may have an indeterminate economic impact on the private sector.

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

Trust Decanting

Authorized Trustee

The bill amends the definition of "authorized trustee" in s. 736.04117, F.S., to clarify that, for the purposes of that section, an authorized trustee will not be considered the settlor of a second trust, even if the authorized trustee created the trust instrument governing the second trust or decanted assets from the first trust to the second trust. Practically speaking, this will ensure that the authorized trustee of the first trust can also be the authorized trustee of the second trust, as, under Florida law, an authorized trustee generally may not also be the settlor. (Section 1)

The bill further amends this section to clarify that, in determining settlor intent with respect to a second trust or a first trust modification, the intent of the first trust's settlor, the second trust's settlor, or the authorized trustee may be considered. This clarification is meant to conform this section to the intent of the Uniform Trust Decanting Act, from which this provision originated. (Section 1)

Decanting Power

The bill amends s. 736.04117(2), (3), and (4), F.S., to provide an additional method by which an authorized trustee may exercise its power (whether absolute or limited) to distribute trust principal to or for the benefit of one or more beneficiaries. Specifically, in addition to exercising this power by a traditional decanting, as authorized under current law, the bill would also allow an authorized trustee to exercise this power by expressly structuring a decanting as a modification of the first trust's terms. Practically speaking, expressly structuring a decanting as a modification may eliminate the need to retitle assets, simplify tax consequences (such as by possibly eliminating the need to obtain a new Employer Identification Number or redo Subchapter S elections), and may also avoid a termination in the context of a supplemental needs trust under Social Security Administration rules (thereby preserving the eligibility of a beneficiary with a disability to certain government benefits). (Section 1)

Decanting Notice

The bill amends s. 36.04117(8)(d), F.S., to provide that the authorized trustee's decanting notice is not a trust disclosure document as defined in s. 736.1008(4), F.S. The bill also provides that, with respect to the authorized trustee's power to invade principal, a trust disclosure document will not commence the six-month limitations period in which a beneficiary may bring a breach of trust action against the authorized trustee unless such document is given to the beneficiaries after the effective date of the authorized trustee's exercise of such power. Practically speaking, these changes provide clarity for beneficiaries as to when the limitations period for breach of trust related to a decanting begins to run. (Section 1)

Application

The bill creates s. 736.04117(12), F.S., to clarify that s. 736.04117, F.S., applies to all trusts governed by Florida law or that have a principal place of administration in Florida. (Section 1)

Claims Against Former Trustees

The bill creates s. 736.10085, F.S., to limit claims which may be brought against former trustees. Specifically, the bill provides that an action or claim by a successor trustee or other person acting on behalf of the trust against a former trustee is barred to the same extent that the action or claim would be barred if brought by the beneficiary whose interests the successor trustee or other person acting on behalf of the trust represents. (Section 3) The bill also amends s. 736.08125, F.S., to make a conforming change related to this limitation. (Section 2)

Ademption by Satisfaction

The bill creates s. 736.1110, F.S., to contemplate ademption by satisfaction with respect to property that is devised to or from a revocable trust, mirroring this provision to similar language in the Florida Probate Code (governing ademption by satisfaction where property is devised by a will). Specifically, the bill provides that property devised to or from a revocable trust which a settlor gave to someone during the settlor's lifetime is to be treated as a satisfaction of a devise to that person upon the settlor's death if any of the following circumstances apply:

- The trust instrument provides for the deduction of the lifetime gift or distribution;
- The settlor or the trustee declares in a contemporaneous writing that the gift or distribution is to be deducted from the devise or is in satisfaction thereof; or
- The devisee acknowledges in writing that the gift or distribution is in satisfaction of the devise. (Section 4)

Further, the bill specifies that:

- For purposes of partial satisfaction, property distributed or given during the settlor's lifetime will be valued at the time the devisee came into possession or enjoyment of the property or at the time of the settlor's death, whichever occurs first.
- These changes apply to revocable trusts that become irrevocable (due to the settlor's death) on or after July 1, 2025. (Section 4)

Community Property Trusts

The bill creates s. 736.151, F.S., to clarify that a transfer of homestead property by one or both of the settlor spouses to a community property trust will not be treated as a change of ownership for purposes of reassessing the property. Instead, the bill provides that such a transfer qualifies as a transfer of legal or equitable title between spouses as described in s. 193.155(3)(a)2., F.S. Practically speaking, this will ensure that the property appraiser's future assessments of the home's value for property tax purposes remain tied to the original assessment done the first year the home received the homestead exemption after purchase by one or both of the settlor spouses; this will likely keep the property taxes assessed on the home lower than they would be if the property's value was reassessed after the transfer to the trust. (Section 6)

The bill also modifies the definition of "community property" in s. 736.1502, F.S., to provide that the property owned by a community property trust and the appreciation of income from such property "are" community property for purposes of general law, rather than "deemed to be" as provided in current law. Further, the bill modifies the definition of "community property trust" in s. 736.1502, F.S., which Florida law originally tied to the trust's creation date, to clarify that an express trust that complies with s. 736.1503, F.S., and that is created, amended, restated, or modified on or after July 1, 2021, remains a community property trust. Practically speaking, this clarification expressly accounts for the reality that a married couple who moves to Florida may already have created a community property trust before their move, which trust they may want to amend or restate so that the trust qualifies as a Florida community property trust governable under the Florida Trust Code. (Section 5)

Miscellaneous Provisions

The bill:

- Provides that the amendments made by the bill to ss. 736.04117, 736.151 and 736.1502, F.S., are remedial and apply to all trusts created before, on, or after the bill's effective date. (Section 7)
- Provides an effective date of upon becoming a law. (Section 8)

FISCAL OR ECONOMIC IMPACT:

PRIVATE SECTOR:

The bill may have an indeterminate impact on the private sector. To the extent the bill reduces trust and homestead property tax implications, or preserves existing community property trusts, the bill may have a positive economic impact on the private sector.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Trust Overview

Generally speaking, a trust is a relationship in which one party (the "settlor")[1] gives another party (the "trustee")[2] the right to hold title to the settlor's assets for a third party's benefit (the "beneficiary").[3] A trust may be created and take effect during a settlor's lifetime ("a living trust") or may be created by a will or other disposition and take effect when the settlor dies ("testamentary trust").[4] A trust may also be revocable (so that the terms may be changed at any time before the settlor's death) or irrevocable (so that the terms cannot be modified after the trust's creation absent a court order upon the consent of the beneficiaries or where the trust's purposes have become frustrated or illegal).[5]

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[1] "Settlor" means a person, including a testator, who creates or contributes property to a trust. S. 736.0103(18), F.S.

[2] A settlor can designate a trustee, and successor trustees, in the trust document itself; however, where there is no designated trustee, or if the designated trustee is unable or unwilling to accept the trusteeship, the qualified beneficiaries may select a trustee by unanimous agreement, or else a court may appoint a trustee. S. 736.0704, F.S.

[3] A "beneficiary" may have a present or future beneficial interest in a trust, which interest may be vested or contingent. S. 736.0103(4), F.S.

[4] *See* "inter vivos trust" and "testamentary trust," Black's Law Dictionary (11th ed. 2019); s. 736.0401, F.S.

[5] Greg Depersio, Investopedia (Apr. 30, 2023), *Revocable Trust v. Irrevocable Trust: What's the Difference*, https://www.investopedia.com/ask/answers/071615/what-difference-between-revocable-trust-and-living-trust.asp (last visited Mar. 5, 2025).

General Trust Provisions

Most trusts are generally governed by the Florida Trust Code, codified in chapter 736, F.S. However, additional provisions of Florida law may apply if the trust has special attributes, and, importantly, the terms of the trust govern over Trust Code provisions unless the Trust Code provides otherwise.[6]

Trusts Governed by Florida Law

A trust is generally governed by the law of the jurisdiction designated in the trust's terms, provided there is a sufficient nexus to the designated jurisdiction at the time of the trust's creation or during the trust's administration; a sufficient nexus may include, but is not limited to, the location of real property held by the trust or the residence or location of an office of the settlor, a trustee, or any beneficiary.[7] However, where there is no controlling designation in the trust's terms, a trust is governed by the law of the jurisdiction where the settlor resides at the time of the trust's creation.[8]

Under Florida law, a trust is created only if certain conditions are met. Specifically, to create a trust:

- The settlor must have capacity to create a trust;[9]
- The settlor must indicate an intent to create a trust;
- The trust must have a definite beneficiary,[10] or else be a charitable trust,[11] a trust for the care of an animal,[12] or a trust for a non-charitable purpose;[13]
- The trustee must have duties to perform;[14] and
- The same person cannot be the sole trustee and sole beneficiary.[15]

Further, a trust may be created only to the extent that its purposes are lawful, not contrary to public policy, and possible to achieve.[16]

Principal Place of Administration

A trust's principal place of administration may be designated in the trust instrument or, where no such designation is validly made, determined by operation of law. For a designation of the principal place of administration to be valid, there must be a sufficient connection with the designated jurisdiction, which connection may be established when:

- A trustee's principal place of business or residence is located in the designated jurisdiction; or
- All or part of the administration occurs in the designated jurisdiction.[17]

Where the trust instrument lacks a valid designation:

- The principal place of administration is:

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[6] Ss. 736.0102 and 736.0105, F.S.
[7] S. 736.0107, F.S.
[8] *Id.*
[9] The capacity required to create, amend, revoke, or add property to a trust, or to direct the actions of the trustee, is generally the same as that required to make a will. In other words, the settlor must be at least 18 years of age and of sound mind, meaning that he or she understands the nature and extent of the property placed in trust, the identities of the beneficiaries, and the effect of the disposition. Ss. 732.501 and 736.0601, F.S.
[10] A beneficiary is "definite" if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities. S. 736.0402(2), F.S.
[11] A "charitable trust" is a trust created for charitable purposes, which may include poverty relief; the advancement of the arts, science, education, or religion; or the promotion of health, governmental, or municipal purposes. S. 736.0405, F.S.
[12] A trust may be created for the care of an animal alive during the settlor's lifetime. Such a trust terminates on the animal's death or, if the trust was created to provide for the care of more than one qualifying animal, on the death of the last surviving animal. S. 736.0408, F.S.
[13] A trust may be created for a non-charitable purpose without a definite or definitely ascertainable beneficiary. Such a trust may not be enforced for more than 1,000 years. S. 736.0409, F.S.
[14] Trustees must generally comply with the duties set out in the trust instrument. The Florida Trust Code also confers a number of duties on trustees, intended to ensure that trustees put the beneficiaries' interests before their own interests and act fairly and in good faith to preserve and protect the trust's assets for the beneficiaries' benefit. S. 736.0801, F.S.
[15] S. 736.0402(1), F.S.
[16] S. 736.0404, F.S.
[17] S. 736.0108(1), F.S.

    - The trustee's usual place of business where the trust's records are kept; or
    - If the trustee has no place of business, the trustee's residence.[18]
- In the case of co-trustees, the principal place of administration is:
    - The usual place of business of the corporate trustee, if there is only one such trustee;
    - The usual place of business or residence of the individual trustee who is a professional fiduciary, if there is only one such person and no corporate trustee; or
    - The usual place of business or residence of any of the co-trustees as agreed on by the co-trustees.[19]

Trustee Duties and Disclosure Document

The Trust Code imposes several affirmative duties upon a trustee. These include a duty:

- To administer the trust in good faith, in accordance with its terms and purposes and the beneficiaries' interests, and with the Trust Code;[20]
- To control and protect trust property;[21]
- To keep clear, distinct, and accurate records;[22] and
- To keep the trust's qualified beneficiaries reasonably informed of the trust and its administration, sometimes accomplished through a trust accounting.[23]

Where a trustee violates a duty owed to a beneficiary, the trustee commits a breach of trust.[24] To remedy a breach of trust, a court may, among other things:

- Compel the trustee to perform the trustee's duties;
- Enjoin the trustee from committing a breach of trust;
- Compel the trustee to pay money or restore property;
- Suspend or remove the trustee;
- Reduce or deny compensation owed to the trustee; or
- Void a trustee's act.[25]

However, a court typically cannot remedy a breach of trust unless a beneficiary brings a breach of trust action against the trustee within a specified time period after learning about the breach, which may occur when the beneficiary receives a trust disclosure document; such a document is a trust accounting or any other written report from the trustee or a trust director to the beneficiaries, the purpose of which is to adequately disclose a matter to the trust's beneficiaries to allow them to know or reasonably ascertain whether they have any kind of claim against the trustee for breach of trust related to the matter[26] More specifically, under the statutory limitations period, a beneficiary is barred from bringing a breach of trust action against a trustee with respect to a matter that was adequately disclosed in a trust disclosure document unless the action is brought within six months after receipt of such document or a limitation notice[27] applicable to that document,[28] whichever is received later.[29]

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[18] S. 736.0108(2), F.S.
[19] *Id.*
[20] S. 736.0801, F.S.
[21] S. 736.0809, F.S.
[22] S. 736.0810, F.S.
[23] A trust accounting must be a reasonably understandable report covering the time from the date of the last accounting or, if none, from the date on which the trustee became accountable, that adequately discloses specified information relating to trust assets and financials. S. 736.0813, F.S.
[24] S. 736.1001, F.S.
[25] *Id.*
[26] S. 736.1008(4)(c), F.S.
[27] A limitation notice is a written notice from the trustee or a trust director that a beneficiary's breach of trust action based on a matter adequately disclosed in a trust disclosure document may be barred if it is not brought within six months after receipt of the trust disclosure document or the limitation notice. S. 736.1008(4)(a), F.S.
[28] A limitation notice applies to a trust disclosure document when the notice is: contained as a part of the trust disclosure document or as part of another trust disclosure document received within one year before the receipt of the latter trust disclosure document; accompanied concurrently by the trust disclosure document or by another trust disclosure document that was received within one year of the latter trust disclosure document; delivered separately within ten days after delivery of the trust disclosure document or another trust disclosure document that was received within one year before receipt of the latter trust disclosure document; or received more than ten days after the delivery of the trust disclosure document, but only if the limitation notice references the trust disclosure document and meets other conditions. S. 736.10089(5), F.S.
[29] S. 736.1008(4)(c), F.S.

Trust Decanting

Florida law allows a trust to authorize a trustee (who is not a settlor or a beneficiary) to invade a trust's principal and shift it from one trust ("first trust") to another trust ("second trust") in certain circumstances.[30] This process, often called "decanting," provides unique opportunities to remedy problems in trust administration or address changes in circumstances or law; more specifically, it can be useful to achieve certain tax objectives, change trust situs, expand or limit trust powers, provide better asset protection, correct drafting errors, and more.[31]

Florida law has recognized a trustee's common law authority to decant since 1940, and the Legislature codified this authority into the Florida Trust Code in 2007, as s. 736.04117, F.S.[32] The legislature then amended this provision in 2018 to better align Florida's decanting laws to those of other states and the 2015 Uniform Trust Decanting Act;[33] the result of this modification is a broader opportunity to decant Florida trusts and affect changes in trust administration.

Authorized Trustee

Under Florida law, an "authorized trustee" is any trustee, other than the settlor or a beneficiary, authorized by a trust instrument to decant trust principal from one trust to a second trust.[34] Sometimes, however, an authorized trustee exercising his or her decanting power may execute the trust instrument that creates the second trust or place assets into the second trust (typically roles of the settlor); in such instances, confusion may arise as to whether the authorized trustee is the settlor of the second trust and, therefore, whether, he or she may be the authorized trustee of the second trust.

Decanting Power

Section 736.04117(2), F.S., generally provides that an authorized trustee given absolute power[35] under the trust's terms to distribute trust principal to or for the benefit of one or more beneficiaries may exercise such power by decanting, subject to certain limitations. Specifically, the authorized trustee may, as to the second trust:

- Eliminate beneficiaries, if no vested interest is thereby reduced, but may not add new beneficiaries;
- Omit most, but not all, powers of appointment granted in the first trust, modify existing powers of appointment, and create new powers of appointment; and
- Extend the trust's term past the first trust's term, if doing so does not violate the rule against perpetuities.

Such decanting is permissible whether the second trust was created under the same trust instrument as the first trust or a different trust instrument, including a trust instrument created for the purpose of exercising the power granted by this section.

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[30] S. 736.04117(1)(b), F.S.

[31] Amy J. Fanzlaw, *New Opportunities to Decant in Florida: Part I: Recent Changes to the Trust Decanting Statute*, 93 Fla. Bar Journal 31 (Sept./Oct. 2019), https://www.floridabar.org/the-florida-bar-journal/new-opportunities-to-decant-in-florida-part-irecent-changes-to-the-trust-decanting-statute/ ("Think of the process of decanting wine: Wine is poured form a bottle to a decanter to allow it to breathe and mature. While the wine decanter or vessel changes, the wine itself – the trust corpus – remains the same, conforming and molding itself according to the parameters of the new decanter. This is the same for trust decanting.") (last visited Mar. 5, 2025).

[32] *Phipps v. Palm Beach Trust Co.*, 196 So. 299 (Fla. 1940); *Id.*

[33] The Uniform Trust Decanting Act, produced by the Uniform Law Commission in 2015, is designed to standardize trust decanting laws amongst the several states and jurisdictions of the United States; its purpose is to allow a trust to adopt to unforeseen circumstances while still effectuating the settlor's original intent. 18 states have enacted the Act in its original form; one state has adopted a substantially similar version of the Act; and one state has introduced the Act for consideration in the 2025 legislative session. Florida's decanting statute predates the Act. Uniform Law Commission, *Uniform Trust Decanting Act*, https://www.uniformlaws.org/committees/community-home?communitykey=5b248bac-9251-47fb-bad8-57a23f3df540 (last visited Mar. 5, 2025).

[34] S. 736.04117(1)(b), F.S.

[35] "Absolute power" means a power to invade trust principal that is not limited to specific or ascertainable purposes, such as health, education, maintenance, and support, regardless of whether the term "absolute" is used. A power to invade principal for purposes such as best interests, welfare, comfort, or happiness constitutes an absolute power not limited to specific or ascertainable purposes. S. 736.04117(1)(a), F.S.

Similarly, s. 736.04117(3), F.S., generally allows an authorized trustee given limited powers to distribute trust principal to decant, albeit in a more limited manner. Specifically, an authorized trustee with limited power may not, as to the second trust, eliminate any beneficiaries; instead each beneficiary of the first trust must have a "substantially similar"[36] interest in the second trust during the first trust's term. However, the second trust's term may still extend beyond the first trust's term, and the second trust's instrument may, with respect to any property subject to the extended time period, conceivably change the potential beneficiaries of the second trust by:

- Including language giving the authorized trustee the absolute power to invade the second trust's principal during the extended time period; or
- Creating powers of appointment in those individuals who were beneficiaries under the first trust and expanding the class of permitted appointees of any powers of appointment existing in the first trust.

Finally, s. 736.04117(4), F.S., generally allows an authorized trustee with power (whether absolute or limited) under the first trust to distribute trust principal to or for the benefit of a beneficiary with a disability[37] to exercise such power by decanting to a supplemental needs trust,[38] subject to certain limitations. Specifically:

- The supplemental needs trust must benefit the beneficiary with the disability;
- The beneficiaries of the second trust may include only beneficiaries of the first trust, and must grant each beneficiary of the first trust, other than the disabled beneficiary, beneficial interests in the second trust which are substantially similar to their respective interests under the first trust; and
- The authorized trustee must determine that such decanting will further the first trust's purposes.

However, trust decanting, as currently contemplated in Florida law, may have tax consequences (including the need to obtain a new Employer Identification Number[39] or to redo Subchapter S elections[40]) and may require the retitling of certain assets to the second trust; further, the decanting may be treated as a termination for the purposes of a supplemental needs trust under Social Security Administration rules, which would impact the eligibility of a beneficiary with a disability for certain government benefits. To try to avoid these issues, an authorized trustee could consider structuring the decanting as a modification of the first trust, but such a structuring is not expressly authorized under current Florida law.

Decanting Notice

Section 736.04117(8), F.S., generally requires the authorized trustee to provide written notification of the manner in which he or she intends to exercise his or her power to invade principal to all of the following parties at least 60 days before the effective date of the authorized trustee's exercise of such power:

- All qualified beneficiaries of the first trust.
- To the settlor of the first trust, if the settlor is not treated as the owner of first trust for tax purposes;
- All trustees of the first trust; and
- Any person who has the power to remove or replace the authorized trustee of the first trust.[41]

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[36] "Substantially similar" means no material change in a beneficiary's beneficial interest or in the power to make distributions and that the power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to the power under the first trust to make a distribution directly to the beneficiary. S. 736.04117(1)(i), F.S.

[37] "Beneficiary with a disability" means a beneficiary of the first trust who the authorized trustee believes may qualify for government benefits based on disability, regardless of whether the beneficiary currently receives those benefits or has been adjudicated incapacitated. S. 736.04117(1)(c), F.S.

[38] "Supplemental needs trust" means a trust that the authorized trustee believes would not be considered a resource for purposes of determining whether the beneficiary who has a disability is eligible for government benefits. "Government benefits," in turn, means financial aid or services from any state, federal, or other public agency. S. 736.04117(1)(e) and (j), F.S.

[39] An "Employer Identification Number" is a federal tax ID number for businesses, tax-exempt organizations, and other entities. Internal Revenue Service, *Employer Identification Number*, https://www.irs.gov/businesses/employer-identification-number (last visited Mar. 5, 2025).

[40] A "Subchapter S election" is an election by a corporation to pass corporate income, losses, deductions, and credits through to its shareholders for federal tax purposes. Shareholders of so-called "S Corporations" report the flow-through of income and losses on their personal tax returns and are assed taxes thereon at their individual income tax rates, allowing the corporation to avoid double taxation on the corporate income. Internal Revenue Service, *S Corporations*, https://www.irs.gov/businesses/small-businesses-self-employed/s-corporations (last visited Mar. 5, 2025).

[41] If all those required to be noticed waive the notice period as provided by law, the authorized trustee's power to invade principal must be exercised immediately.

The authorized trustee's obligation to provide such a notice is satisfied when he or she provides to the required parties copies of the proposed instrument exercising the power, the trust instrument of the first trust, and the proposed trust instrument of the second trust. Further, such notice does not limit any beneficiary's right to object to the exercise of the authorized trustee's power to invade principal except as otherwise provided in the Florida Trust Code. However, confusion exists as to whether the decanting notice is a trust disclosure document that would trigger the six-month limitations period for breach of trust claims related to matters disclosed in the notice.

Claims Against Former Trustees

Section 736.08125, F.S., generally protects a successor trustee from being held personally liable for certain actions taken by a former trustee in certain situations. Specifically, this section provides that a successor trustee is not personally liable for actions taken by a former trustee, nor does any successor trustee have a duty to institute any proceeding against a former trustee, for any of the former trustee's actions as trustee under any of the following circumstances:

- As to a successor trustee who succeeds a trustee who was also the settlor of a trust that was revocable during the time that the settlor serves as trustee;
- As to any beneficiary who has waived any required accounting, but only as to the periods included in the waiver;
- As to any beneficiary who has released the successor trustee from the duty to institute any proceeding or file any claim;
- As to any person who is not an eligible beneficiary; or
- As to any beneficiary:
    - If a super-majority of the eligible beneficiaries has released the successor trustee;
    - If the eligible beneficiary has not delivered a written request to the successor trustee to institute an action or file a claim against the former trustee within six months after the date the successor trustee accepted the trusteeship, if the successor trustee notified the beneficiary in writing of such acceptance; or
    - For any action or claim that the eligible beneficiary is barred from bringing against the former trustee.

However, this section clarifies that nothing therein affects the former trustee's liability or a successor trustee's or beneficiary's right to pursue an action or claim against the former trustee. Taking this together, Florida law currently reads to suggest that, where a beneficiary is barred from bringing an action or claim against a former trustee, the successor trustee might still be able to do so in his or her discretion.

Ademption by Satisfaction

Section 732.609, F.S., under the Florida Probate Code,[42] addresses ademption by satisfaction in the case of a will[43] – that is, what happens when property that is to be devised by a testator's[44] will is no longer a part of the testator's estate[45] at the time of his or her death because it was given to someone during the testator's lifetime. Specifically, this section provides that property that a testator gave to someone in the testator's lifetime is treated as a satisfaction of a devise to that person only if:

- The will provides for deduction of the lifetime gift;
- The testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction thereof; or
- The devisee acknowledges in writing that the gift is in satisfaction of the devise.

[42] The Probate Code is codified in the following chapters of Florida law: ch. 731, F.S.; ch. 732, F.S.; ch. 733, F.S.; ch. 734, F.S.; and ch. 735, F.S.
[43] "Will" means a testamentary instrument executed by a person in the manner prescribed in the Florida Probate Code, which disposes of the person's property on or after his or her death. S. 731.201(40), F.S.
[44] "Testator" means a person who has died and left a will. Legal Information Institute, *Testator*, https://www.law.cornell.edu/wex/testator (last visited Mar. 5, 2025).
[45] "Estate" means the property of a decedent that is the subject of administration, which, in turn, is the legal process that ensures the orderly distribution of a decedent's assets and the settlement of his or her debts. S. 731.201(14), F.S.

Under this section, property given during the testator's lifetime is valued at the time the devisee came into possession or enjoyment of the property or at the time of the testator's death, whichever occurs first.

In some instances, a person considering how best to distribute his or her property upon his or her death may choose to place the property into a revocable trust in lieu of devising it by will; however, the Florida Trust Code does not currently contemplate the concept of ademption by satisfaction in the case of a revocable trust. In other words, the Trust Code does not address what happens when property that is to be devised to or from a revocable trust is not part of the trust's assets when the trust becomes irrevocable (that is, when the settlor dies) because it was given to someone during the settlor's lifetime.

Community Property Trusts

Generally speaking, Florida is a "common law property" state, meaning that assets and debts acquired during marriage are, with few exceptions, subject to equitable (though not necessarily equal) distribution by the courts upon a dissolution of the marriage. This is in contrast to "community property" states, where assets and debts acquired during marriage are, with few exceptions, owned (or owed) equally by both spouses and divided equally by the courts upon a dissolution of the marriage. However, since 2021, Part XV of the Florida Trust Code has allowed married persons to transfer property to a "community property trust," essentially establishing "community property" in Florida, the benefit of which may be significant income tax savings for a settlor spouse upon the other settlor spouse's death.[46]

Under s. 736.1502(1), FS., "community property" means the property and the appreciation of income from the property owned by a qualified trustee of a community property trust during the settlor spouses' marriage, which property and the appreciation of income is "deemed to be" community property for the purposes of general law. Further, under s. 736.1502(2), F.S., of this Part, "community property trust" means an express trust,[47] "created" on or after July 1, 2021, that complies with s. 736.1503, F.S.; this section in turn provides that an arrangement is a community property trust if one or both of the settlor spouses transfers property to a trust that:

- Expressly declares that the trust is a community property trust;
- Has at least one trustee who is a qualified trustee;
- Is signed by both settlor spouses consistent with the formalities required for trust execution; and
- Contains statutorily-specified language at the beginning of the community property trust agreement relating to the arrangement's consequences.

Property that may be transferred to a community property trust includes homestead property;[48] however, confusion exists as to whether such a transfer is considered a change of ownership[49] for property tax appraisal purposes, or instead a transfer of legal or equitable ownership between spouses. Whether such a transfer is a change of ownership matters, as current Florida law provides a tax benefit (known as the "Save Our Homes" benefit") that limits the rate at which a property tax assessment on homestead property may increase per year following the first assessment after a home receives a homestead exemption upon a change of ownership; currently, that annual increase is limited to three percent of the previous years' value or the percent change in the Consumer Price Index,[50] whichever is less.[51] However, a change of ownership would trigger a new property tax assessment, the assessed value of which would then serve as the baseline for the Save Our Homes benefit; practically speaking, property taxes on the home may increase as a result.[52]

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[46] There are also ramifications for how courts distribute property during a dissolution of marriage proceeding, not discussed here.
[47] An "express trust" is a trust created with the settlor's express intent, usually declared in writing. *Byrne Realty Co. v. South Florida Farms Co.*, 89 So. 318 (Fla. 1921).
[48] Under Florida law, when someone owns property that is his or her permanent residence, and where such property is no more than half an acre within a municipality or 160 acres within an unincorporated area of a county, the property owner may be eligible to receive a homestead exemption that would decrease the property's taxable value by up to $50,000. Property that qualifies for such an exemption is known as "homestead property." Art. VII, s. 6, Fla. Const.; s. 196.031, F.S.
[49] "Change of ownership" means any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person, absent an exception; such exceptions include the transfer of legal or equitable title between spouses. S. 193.155, F.S.
[50] The Consumer Price Index is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. U.S. Bureau of Labor Statistics, *Consumer Price Index*, https://www.bls.gov/cpi/ (last visited Mar. 5, 2025).
[51] S. 193.155, F.S.; Florida Department of Revenue, *Save Our Homes Assessment Limitation and Portability Transfer*, https://floridarevenue.com/property/Documents/pt112.pdf (last visited Mar. 5, 2025).
[52] *Id.*

Further, confusion exists as to whether an existing community property trust formed under the laws of a foreign state but then amended or restated to qualify as a Florida community property trust is "created" on or after July 1, 2021, as the current definition of "community property trust" contemplates. This confusion may impact married couples with existing community property trusts who wish to relocate to Florida and receive the benefits of a Florida community property trust.

Retroactivity

In determining whether a law may be applied retroactively, courts first determine whether the law is procedural, remedial, or substantive in nature.[53] A purely procedural or remedial law may apply retroactively without offending the Constitution, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.[54] However, even where the Legislature has expressly stated that a law will have retroactive application, a court may reject that application if the law impairs a vested right, creates a new obligation, or imposes a new penalty.[55] Further, where a law is designed to serve a remedial purpose, a court may decide not to apply the law retroactively where doing so "would attach new legal consequences to events completed before its enactment."[56]

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Civil Justice & Claims Subcommittee	18 Y, 0 N, As CS	3/5/2025	Jones	Mawn
THE CHANGES ADOPTED BY THE COMMITTEE:	Made technical changes which conformed the House Bill to the Senate Bill.			
Insurance & Banking Subcommittee			Lloyd	Herrera
Judiciary Committee				

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.

[53] A procedural law merely establishes the means and methods for applying or enforcing existing duties or rights. A remedial law confers or changes a remedy, i.e., the means employed in enforcing an existing right or in redressing an injury. A substantive law creates, alters, or impairs existing substantive rights. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); *St. John's Village I, Ltd. v. Dept. of State*, 497 So. 2d 990 (Fla. 5th DCA 1986); *McMillen v. State Dept. of Revenue*, 74 So. 2d 1234 (Fla. 1st DCA 1999).
[54] *State Farm Mutual Automobile Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).
[55] *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010).
[56] *L. Ross, Inc. v. R.W. Roberts Const. Co.*, 481 So. 2d 484 (Fla. 1986).

A bill to be entitled

An act relating to trusts; amending s. 736.04117, F.S.; revising the definition of the term "authorized trustee"; revising how an authorized trustee may exercise the power to invade principal as an authorized trustee administering a trust; providing that notice of such exercise by an authorized trustee is not a trust disclosure document; providing that a trust disclosure document may not commence a limitations period unless such trust disclosure document is provided after the effective date of the exercise of the power to invade principal by an authorized trustee; providing applicability; amending s. 736.08125, F.S.; providing an exception with regard to protection of successor trustees; creating s. 736.10085, F.S.; barring certain actions initiated by specified parties against prior trustees; creating s. 736.1110, F.S.; providing that property devised to or from a revocable trust which is devised, given, or distributed to a donee by a settlor during the settlor's lifetime is treated as a satisfaction of devise to that donee if certain criteria are met; providing that property distributed or given to a devisee during a settlor's lifetime is to be valued at the time the devisee came into possession or enjoyment

of the property, or at the time of the death of the settlor, whichever occurs first; providing applicability; amending s. 736.1502, F.S.; revising the definitions of the terms "community property" and "community property trust"; amending s. 736.151, F.S.; providing that homestead property transferred by one or both settlor spouses to a community property trust will not be treated as a change of ownership for the purposes of reassessing the property; providing that such transfer qualifies as a change or transfer of legal or equitable title between spouses; providing construction and retroactive application; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1), paragraph (a) of subsection (2), subsection (3), paragraph (a) of subsection (4), and paragraph (d) of subsection (8) of section 736.04117, Florida Statutes, are amended, and subsection (12) is added to that section, to read:

736.04117 Trustee's power to invade principal in trust.—

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

(b) "Authorized trustee" means a trustee, other than the settlor or a beneficiary, who has the power to invade the

principal of a trust. For the purposes of this section, an authorized trustee will not be considered a settlor of a second trust, even if the authorized trustee created the trust instrument governing the second trust or made a distribution of assets from the first trust to the second trust. In determining settlor intent with respect to a second trust or a modification of the first trust, the intent of a settlor of the first trust, a settlor of the second trust, or the authorized trustee may be considered.

(2) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN AUTHORIZED TRUSTEE HAS ABSOLUTE POWER TO INVADE.—

(a) Unless a trust instrument expressly provides otherwise, an authorized trustee who has absolute power under the terms of the trust to invade its principal, referred to in this section as the "first trust," to make current distributions to or for the benefit of one or more beneficiaries may instead exercise such power by modifying the terms of the first trust or by appointing all or part of the principal of the trust subject to such power in favor of a trustee of one or more other trusts, whether created under the same trust instrument as the first trust or a different trust instrument, including a trust instrument created for the purposes of exercising the power granted by this section, each referred to in this section as the "second trust," for the current benefit of one or more of such beneficiaries only if:

1. The beneficiaries of the second trust include only beneficiaries of the first trust; and

2. The second trust does not reduce any vested interest.

(3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.—Unless the trust instrument expressly provides otherwise, an authorized trustee who has a power, other than an absolute power, under the terms of a first trust to invade principal to make current distributions to or for the benefit of one or more beneficiaries may instead exercise such power by modifying the terms of the first trust or by appointing all or part of the principal of the first trust subject to such power in favor of a trustee of one or more second trusts. If the authorized trustee exercises such power:

(a) The second trusts, in the aggregate, must ~~shall~~ grant each beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficial interests of the beneficiary in the first trust.

(b) If the first trust grants a power of appointment to a beneficiary of the first trust, the second trust must ~~shall~~ grant such power of appointment in the second trust to such beneficiary, and the class of permissible appointees must ~~shall~~ be the same as in the first trust.

(c) If the first trust does not grant a power of appointment to a beneficiary of the first trust, the second

trust may not grant a power of appointment in the second trust to such beneficiary.

(d) Notwithstanding paragraphs (a), (b), and (c), the term of the second trust may extend beyond the term of the first trust, and, for any period after the first trust would have otherwise terminated, in whole or in part, under the provisions of the first trust, the trust instrument of the second trust may, with respect to property subject to such extended term:

1. Include language providing the trustee with the absolute power to invade the principal of the second trust during such extended term; and

2. Create a power of appointment, if the power holder is a current beneficiary of the first trust, or expand the class of permissible appointees in favor of which a power of appointment may be exercised.

(4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS TRUST.—

(a) Notwithstanding subsections (2) and (3), unless the trust instrument expressly provides otherwise, an authorized trustee who has the power under the terms of a first trust to invade the principal of the first trust to make current distributions to or for the benefit of a beneficiary with a disability may instead exercise such power by modifying the terms of the first trust or by appointing all or part of the principal of the first trust in favor of a trustee of a second

trust that is a supplemental needs trust if:

1. The supplemental needs trust benefits the beneficiary with a disability;

2. The beneficiaries of the second trust include only beneficiaries of the first trust; and

3. The authorized trustee determines that the exercise of such power will further the purposes of the first trust.

(8) NOTICE.—

(d) The authorized trustee's notice under this subsection is not a trust disclosure document as defined in s. 736.1008(4) and does not limit the right of any beneficiary to object to the exercise of the authorized trustee's power to invade principal except as otherwise provided in other applicable provisions of this code. With respect to the exercise of the authorized trustee's power to invade principal, such trust disclosure document will not commence a limitations period unless the trust disclosure document is provided after the effective date of the exercise of such power to invade principal by the authorized trustee.

(12) APPLICATION.—This section applies to all trusts that are governed by the laws of this state or that have a principal place of administration within this state.

Section 2. Subsection (3) of section 736.08125, Florida Statutes, is amended to read:

736.08125 Protection of successor trustees.—

(3) Except as provided in s. 736.10085, ~~nothing in~~ this section does not affect ~~affects~~ any liability of the prior trustee or the right of the successor trustee or any beneficiary to pursue an action or claim against the prior trustee.

Section 3. Section 736.10085, Florida Statutes, is created to read:

736.10085 Claims against former trustees.—An action or claim by a successor trustee or other person acting on behalf of the trust against a prior trustee is barred to the same extent that the action or claim would be barred if brought by the beneficiary whose interests are represented by the successor trustee or other person acting on behalf of the trust.

Section 4. Section 736.1110, Florida Statutes, is created to read:

736.1110 Ademption by satisfaction.—

(1) Property devised to or from a revocable trust which a settlor gave to a donee during the settlor's lifetime or which is distributed from a revocable trust to a donee during the settlor's lifetime is to be treated as a satisfaction of a devise to that donee, in whole or in part, upon the settlor's death, if any of the following circumstances applies:

(a) The trust instrument provides for the deduction of the lifetime gift or distribution.

(b) The settlor or the trustee of the revocable trust declares in a contemporaneous writing that the gift or

distribution is to be deducted from the devise or is in satisfaction of the devise.

(c) The devisee acknowledges in writing that the gift or distribution is in satisfaction of the devise.

(2) For purposes of part satisfaction, property distributed or given during the settlor's lifetime is valued at the time the devisee came into possession or enjoyment of the property or at the time of the death of the settlor, whichever occurs first.

(3) This section applies to revocable trusts that become irrevocable on or after July 1, 2025.

Section 5. Subsections (1) and (2) of section 736.1502, Florida Statutes, are amended to read:

736.1502 Definitions.—Unless the context otherwise requires, as used in this part:

(1) "Community property" means the property and the appreciation of and income from the property owned by a qualified trustee of a community property trust during the marriage of the settlor spouses. The property owned by a community property trust pursuant to this part and the appreciation of and income from such property are ~~shall be deemed to be~~ community property for purposes of general law.

(2) "Community property trust" means an express trust that complies with s. 736.1503 and is created, amended, restated, or modified on or after July 1, 2021.

Section 6. Subsection (3) is added to section 736.151, Florida Statutes, to read:

736.151 Homestead property.—

(3) A transfer of homestead property by one or both of the settlor spouses to a community property trust will not be treated as a change of ownership for purposes of reassessing the property and instead qualifies as a change or transfer of legal or equitable title between spouses as described in s. 193.155(3)(a)2.

Section 7. The amendments made by this act to ss. 736.04117, 736.1502, and 736.151, Florida Statutes, are remedial and apply to trusts created before, on, or after the effective date of this act.

Section 8. This act shall take effect upon becoming a law.

INSURANCE & BANKING SUBCOMMITTEE

HB 385 by Rep. Oliver
Trusts

AMENDMENT SUMMARY
March 12, 2025

Amendment 1 by Rep. Oliver (Line 58): The amendment makes technical changes to conform with the Senate version.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Civil Justice & Claims Subcommittee

Representative Oliver offered the following:

Amendment (with title amendment)

Remove lines 146-222 and insert:

(12) APPLICATION.—This section applies to all trusts that are governed by the laws of this state or that have a principal place of administration within this state.

Section 2. Subsection (3) of section 736.08125, Florida Statutes, is amended to read:

736.08125 Protection of successor trustees.—

(3) Except as provided in s. 736.10085, ~~nothing in~~ this section does not affect ~~affects~~ any liability of the prior trustee or the right of the successor trustee or any beneficiary to pursue an action or claim against the prior trustee.

Section 3. Section 736.10085, Florida Statutes, is created to read:

736.10085 Claims against former trustees.—An action or claim by a successor trustee or other person acting on behalf of the trust against a prior trustee is barred to the same extent that the action or claim would be barred if brought by the beneficiary whose interests are represented by the successor trustee or other person acting on behalf of the trust.

Section 4. Section 736.1110, Florida Statutes, is created to read:

736.1110 Ademption by satisfaction.—

(1) Property devised to or from a revocable trust which a settlor gave to a donee during the settlor's lifetime or which is distributed from a revocable trust to a donee during the settlor's lifetime is to be treated as a satisfaction of a devise to that donee, in whole or in part, upon the settlor's death, if any of the following circumstances applies:

(a) The trust instrument provides for the deduction of the lifetime gift or distribution.

(b) The settlor or the trustee of the revocable trust declares in a contemporaneous writing that the gift or distribution is to be deducted from the devise or is in satisfaction of the devise.

(c) The devisee acknowledges in writing that the gift or distribution is in satisfaction of the devise.

(2) For purposes of part satisfaction, property distributed or given during the settlor's lifetime is valued at the time the devisee came into possession or enjoyment of the property or at the time of the death of the settlor, whichever occurs first.

(3) This section applies to revocable trusts that become irrevocable on or after July 1, 2025.

Section 5. Subsections (1) and (2) of section 736.1502, Florida Statutes, are amended to read:

736.1502 Definitions.—Unless the context otherwise requires, as used in this part:

(1) "Community property" means the property and the appreciation of and income from the property owned by a qualified trustee of a community property trust during the marriage of the settlor spouses. The property owned by a community property trust pursuant to this part and the appreciation of and income from such property are ~~shall be deemed to be~~ community property for purposes of general law.

(2) "Community property trust" means an express trust that complies with s. 736.1503 and is created, amended, restated, or modified on or after July 1, 2021.

Section 6. Subsection (3) is added to section 736.151, Florida Statutes, to read:

736.151 Homestead property.—

(3) A transfer of homestead property by one or both of the settlor spouses to a community property trust will not be treated as a change of ownership for purposes of reassessing the property and instead qualifies as a change or transfer of legal or equitable title between spouses as described in s. 193.155(3)(a)2.

Section 7. The amendments made by this act to ss. 736.04117, 736.1502, and 736.151, Florida Statutes, are remedial and apply to trusts created before, on, or after the effective date of this act.

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

Remove lines 37-39 and insert:
construction and retroactive application; providing an effective date.

FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: HB 839 **TITLE:** Insurance Overpayment Claims Submitted to Psychologists **SPONSOR(S):** Booth	**COMPANION BILL:** None **LINKED BILLS:** None **RELATED BILLS:** SB 944 (Davis)

Committee References

Insurance & Banking ➤ Health Care Facilities & Systems ➤ Commerce

SUMMARY

Effect of the Bill:

By default, under Florida law, health insurers have 30 months after rendering payment to a provider to submit a claim for overpayment. The bill reduces the 30-month period to 12 months for overpayment claims submitted to licensed psychologists provided on or after January 1, 2026.

The bill adds licensed psychologists to a list of providers that already enjoy the shortened overpayment claim window under Florida law. Existing law applies the 12-month period for overpayment claims to several licensed providers (chiropractors, podiatrists, osteopaths, certain physicians and dental surgeons).

Fiscal or Economic Impact:

Insurers may recover less from overpaid claims to psychologists due to the reduced overpayment claim period. The effect on premiums is indeterminate.

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

The bill adds psychiatrists licensed under ch. 490, F.S., to a list of licensed providers that enjoy a reduced time period for insurers to submit claims for overpayment. Under the reduced time period, claims for overpayment must be submitted to the provider within 12 months, rather than the standard 30-month period.

The changes in the bill apply to claims for services provided on or after January 1, 2026.

FISCAL OR ECONOMIC IMPACT:

PRIVATE SECTOR:

Insurers may recover less from overpaid claims to psychologists due to the reduced overpayment claim period. The effect on premiums is indeterminate.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Health Insurer Review of Claims Overpayment

Subsection (6) of s. 627.6131, F.S., contains the process by which a health insurer may make a claim for overpayment against a provider to whom it rendered payment. The insurer must send a written or electronic statement specifying the basis for the retroactive denial or payment adjustment to the provider of the specific

provider claim(s) for which the overpayment is submitted. Often, overpayment claims are the result of a retroactive review or audit of coverage decisions and payment levels.

If the overpayment is not related to fraud, the health insurer must submit its claim for overpayment within 30 months after the insurer paid the claim. After receiving the claim for overpayment, the provider has 40 days in which to pay, deny, or contest the claim. A contested claim for overpayment must be paid or denied by the provider within 120 days after receipt. If, after 140 days, the provider has not paid or denied the overpayment claim, an uncontestable obligation is placed on the provider to pay the insurer's claim. A provider that chooses to deny or contest an insurer's claim must notify the insurer in writing of the provider's decision within 35 days after the provider received the claim for overpayment. If the claim is contested, the provider must request additional information, which the insurer has 35 days to give the provider after receiving the request. After receiving the additional information, the provider has 45 days to pay or deny the claim.

Subsection (18) of s. 627.6131, F.S., provides an exception. Claims for overpayment must be submitted within 12 months, rather than the usual 30-month period, to certain providers. Specifically, the exception applies to overpayment claims submitted to physicians licensed under ch. 458, F.S., osteopaths licensed under ch. 459, F.S., chiropractors licensed under ch. 460, F.S., podiatrists licensed under ch. 461, F.S., and (for oral surgery only) dental surgeons licensed under ch. 466, F.S.

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Insurance & Banking Subcommittee			Lloyd	Schenk
Health Care Facilities & Systems Subcommittee				
Commerce Committee				

A bill to be entitled

An act relating to insurance overpayment claims submitted to psychologists; amending s. 627.6131, F.S.; requiring insurance overpayment claims submitted to psychologists to be submitted within a specified timeframe; providing applicability; providing an effective date.

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

Section 1. Subsection (18) of section 627.6131, Florida Statutes, is amended to read:

627.6131 Payment of claims.—

(18) Notwithstanding the 30-month period provided in subsection (6), all claims for overpayment submitted to a provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, ~~or~~ chapter 466, or chapter 490 must be submitted to the provider within 12 months after the health insurer's payment of the claim. A claim for overpayment may not be permitted beyond 12 months after the health insurer's payment of a claim, except that claims for overpayment may be sought beyond that time from providers convicted of fraud pursuant to s. 817.234.

Section 2. The amendments made by this act to s. 627.6131(18), Florida Statutes, apply to claims for services provided on or after January 1, 2026.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Section 3. This act shall take effect July 1, 2025.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

INSURANCE & BANKING SUBCOMMITTEE

HB 839 by Rep. Booth
Insurance Overpayment Claims Submitted to Psychologists

AMENDMENT SUMMARY
March 13, 2025

Amendment 1 by Rep. Booth (Lines 23-25): The amendment applies the same change to health maintenance organizations (HMOs) as the original bill provided for health insurers.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Booth offered the following:

Amendment (with title amendment)

Remove lines 23-25 and insert:

Section 2. Subsection (16) of section 641.3155, Florida Statutes, is amended to read:

641.3155 Prompt payment of claims.—

(16) Notwithstanding the 30-month period provided in subsection (5), all claims for overpayment submitted to a provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, ~~or~~ chapter 466, or chapter 490 must be submitted to the provider within 12 months after the health maintenance organization's payment of the claim. A claim for overpayment may not be permitted beyond 12 months after the health maintenance

organization's payment of a claim, except that claims for overpayment may be sought beyond that time from providers convicted of fraud pursuant to s. 817.234.

Section 3. The amendments made by this act to ss. 627.6131(18) and 641.3155(16), Florida Statutes, apply to claims for services provided on or after January 1, 2026.

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

Remove lines 3-4 and insert:
submitted to psychologists; amending ss. 627.6131 and 641.3155, F.S.; requiring that insurance overpayment claims submitted

FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: HB 1097	**COMPANION BILL:** None
TITLE: Insurance Research	**LINKED BILLS:** None
SPONSOR(S): Canady	**RELATED BILLS:** SB 1140 (Trumbull)

Committee References

Insurance & Banking ➤ Budget ➤ Commerce

SUMMARY

Effect of the Bill:

The bill renames the existing "Florida Catastrophic Storm Risk Management Center" to the "Florida Center for Excellence in Insurance and Risk Management" (Center) located at Florida State University. The bill expands the purpose, duties, and interests of the Center. The bill requires the Center to collaborate with the Office of Insurance Regulation (OIR) on a variety of tasks.

The bill transfers all of the duties, powers, functions, funds, existing contracts, and other issues associated with or related to the public hurricane loss production model from Florida International University to Florida State University.

The bill provides recurring and nonrecurring funds to Florida State University to establish and maintain the Center.

Fiscal or Economic Impact:

See Section on Fiscal or Economic Impact.

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

The bill renames Florida State University's Florida Catastrophic Storm Risk Management Center to the Florida Center for Excellence in Insurance and Risk Management (Center). The bill expands the scope of the Center from catastrophic storms to broadening its purpose to insurance and risk management.

The bill changes the purpose of the Center:

- to develop, conduct, and evaluate accurate and timely research issues related to Florida's insurance market and risk management;
- to assist the Legislature in developing and evaluating evidence-based policy options and making recommendations related to insurance and risk management in Florida;
- to identify emerging issues in the insurance market; and
- to provide insight regarding accessibility and affordability of insurance products.

The bill does not change the Center's purpose to assist in identifying and developing education and research grant funding opportunities among higher education institution in this state and the private sector.

The bill aligns the Center's purpose consistent with this change. The Center is to conduct research responsive to inquiries from the President of the Senate and the Speaker. The bill permits the Center to conduct research upon the request of OIR. (Section 1).

The Center and OIR

Conducting Research
The bill requires the Center to cooperate with the OIR on conducting research. The bill provides that areas of research may include:

- storm forecasting and loss modeling;
- Florida's insurance-related consumer protections;
- insurer claims-handling and adjudication practices in this state in comparison with insurer practices in other states;
- cost factors in the reinsurance, catastrophe bond, and insurance-linked securities markets;
- the Florida Hurricane Catastrophe Fund;
- the effectiveness of the My Safe Florida Home Program;
- risk management strategies, particularly for catastrophic risk; or
- health insurance, life insurance, workers' compensation, motor vehicle insurance, or any other type of insurance sold within this state. (Section 1).

Producing Report
The bill requires the Center to collaborate with OIR to create and to produce a report examining the property insurance market in Florida by forecasting what the market will look like in 1 year, 5 years, 10 years, and 20 years. The report must include recommendations on improving the availability and affordability of property insurance, and this state's preparation and response to catastrophic events. (Section 1).

The bill requires the Center to publish the initial report on or before January 1, 2026, and update the report at least every 2 years. (Section 1).

Developing a Program to Encourage Students to Work for Public Sector
The bill requires the Center to collaborate with OIR and the Actuarial Science Program of the FSU Department of Mathematics to develop a program to encourage actuarial science students to work in the public sector in the field of risk management insurance. (Section 1).

The Florida Public Hurricane Loss Model

The bill mandates OIR to contract with the Center to manage the public hurricane loss model, and the Center to work with other entities and universities, including Florida International University (FIU), to develop the public model. The bill removes FIU as the lead institution for developing and operating the public model, and replaces parts in the statutes to reflect FSU's Center instead of FIU. (Section 2).

The bill transfers[1] all powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and any other funds relating to the public hurricane loss projection model from FIU to FSU. (Section 3).

Annual Report on Hurricane Loss data and Associated Exposure Data

The bill requires the FSU Center instead of FIU to annually publish a report summarizing the hurricane loss data and associated exposure data connected[2] to and collected from residential property insurers and licensed rating and advisory organizations. The bill directs the FSU Center to annually submit such report on or before October 1st to the Governor, the President of the Senate, and the Speaker of the House of Representatives. (Section 4).

[1]The bill states that such transfer is a type two transfer, as defined in s. 20.06(2), F.S. A type two transfer allows the state to move a program and functions of an existing agency to another agency.
[2] S. 627.06292(2) defines "loss data and associated exposure data" as the type, age, wind mitigation features, and location of each property insured; the amount and type of coverage written on each of those properties; the amount, date, and type of damage paid for by the insurer on each property; and the amount of any reserves held by an insurer for future payments or expenses on damages associated with the date or dates of occurrence of hurricanes.

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

For the 2025-2026 fiscal year, the bill appropriates $5 million in recurring funds and $1.5 million in nonrecurring funds from the General Revenue Fund to FSU to establish and maintain the Center.

The bill has a positive fiscal impact on FSU by providing funds in order to establish and maintain the Center. In addition, the bill may have a positive fiscal impact on FSU because more students may enroll at FSU due to the Center's partnership with the State. There may be a negative fiscal impact on FIU because the bill transfers the public model to the FSU Center which will result in a loss of funds.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Office of Insurance Regulation

The Office of Insurance Regulation (OIR) regulates specified insurance products, insurers, and other risk bearing entities in Florida.[3] The Financial Services Commission (FSC), composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, serves as agency head of the OIR for purposes of rulemaking. Further, the FSC appoints the OIR commissioner.

As part of their regulatory oversight, the OIR may suspend or revoke an insurer's certificate of authority under certain conditions.[4] The OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each insurer that holds a certificate of authority to transact insurance business in Florida.[5] As part of the examination process, all persons being examined must make available to the OIR the accounts, records, documents, files, information, assets, and matters in their possession or control that relate to the subject of the examination.[6] The OIR is also authorized to conduct market conduct examinations to determine compliance with applicable provisions of the Insurance Code.[7]

Florida Catastrophic Storm Risk Management Center

In 2007, the Florida Legislature created the Florida Catastrophic Storm Management Center. The Florida Catastrophic Storm Management Center is housed within the Department of Risk Management in the College of Business located at FSU.[8] The Florida Catastrophic Storm Management Center's primary focus is to support the state's ability to prepare for, respond to, and recover from catastrophic storms. The support the Florida Catastrophic Storm Management Center provides includes:[9]

- Coordinating and disseminating research efforts that are expected to have an immediate impact on policy and practices related to catastrophic storm preparedness.
- Coordinating and disseminating information related to catastrophic storm risk management, including but not limited to research and information that benefits business, consumers and public policy makers.
- Facilitating Florida's preparedness and responsiveness to catastrophic storms and collaborating with other public and private institutions.
- Creating and promoting studies that enhance the educational options available to risk management and insurance students.
- Publishing and disseminating findings primarily related to risk management.

[3] S. 20.121(3)(a), F.S.
[4] S. 624.418, F.S.
[5] S. 624.316(1)(a), F.S.
[6] S. 624.318(2), F.S.
[7] The Code is comprised of chs. 624-632, 634-636, 641, 642, 648, and 651, F.S. *See* S. 624.3161, F.S.
[8] S. 1004.647, F.S.
[9] *Id.*

- Organizing and sponsoring conferences, symposiums, and workshops to educate consumers and policymakers.

The Florida Public Hurricane Loss Model

In 2000, the Florida Legislature authorized the creation of a public hurricane loss projection model (public model) and the OIR contracted with FIU to develop the model in 2001.[10] In March 2006 the public model was activated and in August 2007 it was first found acceptable by the Florida Commission on Hurricane Loss Projection Methodology. The public model was built to assess hurricane risk and predict annual expected insured residential losses in Florida for an insurance company, zip code, county, or for the entire state. The OIR uses the public model as an independent tool to facilitate its review of the reasonableness of property insurance rates proposed by insurers. Without the public model, the OIR's basis for rate determinations would be each insurer's own selected private model and corresponding loss data and the OIR would not have a way to corroborate the accuracy of this data. The FIU is the lead institution for developing and operating the public model, but it collaborates with several other public and private Florida universities (including FSU, the Florida Institute of Technology, the University of Florida, and the University of Miami), University of Missouri-Kansas City, and the U.S. National Oceanic and Atmospheric Administration.[11]

Annual Report on Hurricane Loss data and Associated Exposure Data

Currently, FIU is required to annually publish a report summarizing the hurricane loss data and associated exposure data connected to and collected from residential property insurers and licensed rating and advisory organizations. FIU must annually submit such report on or before October 1st to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include a summary of the data supplied by residential property insurers and licensed rating and advisory organizations from September 1 of the prior year to August 31st of the current year, and must include certain information.[12]

FIU International Hurricane Research Center

FIU has a specific center that focuses on minimizing hurricane damage and loss of life. The International Hurricane Center studies include: [13]

- household mitigation and evacuation;
- storm hazard and vulnerability mapping, long-term community recovery; and
- economic loss modeling.

Previously, the National Science Foundation (NSF), the Federal Emergency Agency (FEMA), OIR, and the Florida Division of Emergency Management (DEM) have assisted with these studies. [14] The International Hurricane Center has four research laboratories[15] focused on different aspects of hurricane damage and resiliency.

OTHER RESOURCES:

FIU Hurricane Research Center
Florida Public Hurricane Loss Model

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[10] Summary information on the Florida Public Hurricane Loss Projection Model obtained from Office of Program Policy Analysis and Government Accountability. Report No. 11-25: *Steps Could Be Taken to Reduce the Public Hurricane Loss Projection Model's Reliance on State Funding* (December 2011). Available at: http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1125rpt.pdf.

[11] *What Is the FPHLM?* Florida Public Hurricane Loss Model, Florida International University International Hurricane Research Center, https://fphlm.cs.fiu.edu/ (last visited Mar. 6, 2025).

[12] S. 627.06292(3), F.S.

[13] *History*, International Hurricane Research Center, Florida International University, www.ihrc.fiu.edu/about/history/ (last visited Mar. 7, 2025).

[14] *Id*.

[15] The four research laboratories include the laboratory for coastal research, laboratory for insurance, financial and economic research, laboratory for social science research, and laboratory for wind engineering research.

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Insurance & Banking Subcommittee			Lloyd	Herrera
Budget Committee				
Commerce Committee				

A bill to be entitled

An act relating to insurance research; amending s. 1004.647, F.S.; renaming the Florida Catastrophic Storm Risk Management Center to the Florida Center for Excellence in Insurance and Risk Management; revising the purpose of the center; revising the duties of the center; providing areas of interest for research; requiring the center to collaborate with the Office of Insurance Regulation to produce an annual report analyzing the property insurance market in this state; requiring that the report be published by a specified date and updated at least biennially; requiring the center to develop a program with the office and the Actuarial Science Program at the Florida State University for a specified purpose; requiring the center to use the public hurricane loss projection model when necessary; requiring the center to conduct research in response to inquiries from the Legislature; authorizing the center to conduct research in response to requests from the office; amending s. 627.06281, F.S.; requiring the office to contract with the center to manage the public hurricane loss projection model; requiring the center to update the model; providing that certain fees charged for access and use of the model do not apply

to the Florida Center for Excellence in Insurance and Risk Management; providing for a type two transfer of the public hurricane loss projection model from Florida International University to Florida State University; amending s. 627.06292, F.S.; making conforming changes; providing appropriations; providing an effective date.

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

Section 1. Section 1004.647, Florida Statutes, is amended to read:

1004.647 Florida Center for Excellence in Insurance and ~~Catastrophic Storm~~ Risk Management ~~Center~~.—The Florida Center for Excellence in Insurance and ~~Catastrophic Storm~~ Risk Management ~~Center~~ is created at the Florida State University, College of Business, Department of Risk Management. The purpose of the center is to develop, conduct, evaluate, promote, and disseminate accurate and timely research on issues related to this state's insurance market and risk management, to assist the Legislature in developing and evaluating evidence-based policy options and making recommendations related to insurance and risk management in this state, to identify emerging issues in the insurance market, to provide insight regarding accessibility and affordability of insurance products, ~~catastrophic storm loss~~ and

to assist in identifying and developing education and research grant funding opportunities among higher education institutions in this state and the private sector. ~~The purpose of the activities of the center is to support the state's ability to prepare for, respond to, and recover from catastrophic storms~~. The center shall do all of the following:

(1) Conduct, coordinate, and disseminate research efforts and information that would benefit businesses, consumers, and public policy makers or that are expected to have an immediate impact on policy and practices related to this state's insurance markets or catastrophic event ~~storm~~ preparedness. The center shall cooperate with the Office of Insurance Regulation in conducting research. Areas of research may include:

(a) Storm forecasting and loss modeling;

(b) This state's insurance-related consumer protections;

(c) Insurer claims-handling and adjudication practices in this state in comparison with insurer practices in other states;

(d) Cost factors in the reinsurance, catastrophe bond, and insurance-linked securities markets;

(e) The resilience of building construction and mitigation techniques;

(f) The Florida Hurricane Catastrophe Fund;

(g) The effectiveness of the My Safe Florida Home Program;

(h) Risk management strategies, particularly for catastrophic risk; or

(i) Health insurance, life insurance, workers' compensation, motor vehicle insurance, or any other type of insurance sold within this state.

(2) Collaborate with the Office of Insurance Regulation to create a report analyzing the property insurance market in this state, projecting the outlook for the property insurance market over 1 year, 5 years, 10 years, and 20 years. The report must include recommendations for improving the availability and affordability of property insurance in this state and for facilitating this state's preparedness for and responsiveness to catastrophic events. The center shall work with the Office of Insurance Regulation to produce the report. The office shall cooperate with the center in providing data necessary to complete the report. The center shall publish the initial report on or before January 1, 2026, and update the report at least once every 2 years. ~~Coordinate and disseminate information related to catastrophic storm risk management, including, but not limited to, research and information that would benefit businesses, consumers, and public policy makers. Areas of interest may include storm forecasting, loss modeling, building construction and mitigation, and risk management strategies. Through its efforts, the center shall facilitate Florida's preparedness for and responsiveness to catastrophic storms and collaborate with other public and private institutions.~~

(3) Create and promote studies and opportunities that

enhance the educational options available to risk management and insurance students.

(4) Develop a program in collaboration with the Office of Insurance Regulation and the Actuarial Science Program of the Department of Mathematics at Florida State University to encourage actuarial science students to practice in the public sector in the fields of risk management and insurance.

(5) Publish and disseminate findings.

(6) ~~(5)~~ Organize and sponsor conferences, symposia, and workshops to educate consumers and policymakers.

(7) Use the public hurricane loss projection model under s. 627.06281 when needed to meet the center's obligations under this section.

(8) Conduct research responsive to joint or individual inquiries from the President of the Senate and the Speaker of the House of Representatives regarding insurance or risk management. The center may also conduct research responsive to requests made by the Office of Insurance Regulation.

Section 2. Section 627.06281, Florida Statutes, is amended to read:

627.06281 Public hurricane loss projection model; reporting of data by insurers.—

(1) The Office of Insurance Regulation shall contract with the Florida Center for Excellence in Insurance and Risk Management to manage the public hurricane loss projection model

developed under this section. The center shall cooperate with other entities and universities, including Florida International University, to develop and maintain the public model. The center shall constantly evaluate and update the public model so that it will have the same functionalities as other models approved by the Florida Commission on Hurricane Loss Projection Methodology. The center may use the public model, including all assumptions and factors and all detailed loss results, for the purpose of meeting its obligations under s. 1004.647. Within 30 days after a written request for loss data and associated exposure data by the office or the center ~~Florida International University center established to study mitigation~~, residential property insurers and licensed rating and advisory organizations that compile residential property insurance loss data shall provide loss data and associated exposure data for residential property insurance policies to the office or the ~~Florida International University~~ center ~~established to study mitigation~~, as directed by the office, for the purposes of developing, maintaining, and updating the ~~a~~ public model ~~for hurricane loss projections~~. The loss data and associated exposure data provided must ~~shall~~ be in writing.

(2) The public model must be submitted to the Florida Commission on Hurricane Loss Projection Methodology for review under s. 627.0628 ~~by March 1, 2007~~. The office may continue to use the public model for its review of rate filings pursuant to

ss. 627.062 and 627.351 until such time as the Florida Commission on Hurricane Loss Projection Methodology determines that the public model is not accurate or reliable pursuant to the same process and standards as the commission uses for the review of other hurricane loss projection models.

(3)(a) A residential property insurer may have access to and use the public ~~hurricane loss projection~~ model, including all assumptions and factors and all detailed loss results, for the purpose of calculating rate indications in a rate filing and for analytical purposes, including any analysis or evaluation of the public model required under actuarial standards of practice.

(b) The fees charged for private sector access and use of the public model must ~~shall~~ be the reasonable costs associated with the operation and maintenance of the public model by the office. Such fees do not apply to access and use of the public model by the office or the Florida Center for Excellence in Insurance and Risk Management.

Section 3. All powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and any other funds relating to the public hurricane loss projection model are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from Florida International University to Florida State University.

Section 4. Subsection (3) of section 627.06292, Florida Statutes, is amended to read:

627.06292 Reports of hurricane loss data and associated exposure data; public records exemption.—

(3) Each year, on October 1, the Florida State ~~International~~ University center that develops, maintains, and updates the public model for hurricane loss projections shall publish a report summarizing loss data and associated exposure data collected from residential property insurers and licensed rating and advisory organizations. The Florida State ~~International~~ University center shall submit the report annually, on or before October 1, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(a) Such report must include a summary of the data supplied by residential property insurers and licensed rating and advisory organizations from September 1 of the prior year to August 31 of the current year, and must include the following information:

1. The total amount of insurance written by county.

2. The number of property insurance policies by county.

3. The number of property insurance policies by county and by construction type.

4. The number of property insurance policies by county and by decade of construction.

5. The number of property insurance policies by county and

by deductible amount.

6. The number of property insurance policies by county and by wind mitigation features when the information is supplied by the residential property insurer or licensed rating and advisory organization.

7. The total amount of hurricane losses by county and by decade of construction.

8. The total amount of hurricane losses by county and by deductible amount.

9. The total amount of hurricane losses by county and by wind mitigation features when the information is supplied by the residential property insurer or licensed rating and advisory organization.

(b) Separate compilations of the data obtained shall be presented in order to use the public model for calculating rate indications and to update, validate, or calibrate the public model. Additional detail and a description of the operation and maintenance of the public model may be included in the report.

(c) The report may not contain any information that identifies a specific insurer or policyholder.

Section 5. For the 2025-2026 fiscal year, the sum of $5 million in recurring funds and the sum of $1.5 million in nonrecurring funds is appropriated from the General Revenue Fund to the Florida State University for the purpose of establishing and maintaining the Center for Excellence in Insurance and Risk

Management.

Section 6. This act shall take effect July 1, 2025.