

# WEEK 1 REPORT

// 2021 LEGISLATIVE SESSION

+ MARINE INDUSTRIES ASSOCIATION OF FLORIDA

MARCH 1-5, 2020



# // WEEK 1 REPORT

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The 2021 Legislative Session officially kicked off March 2nd in Tallahassee. The effects of COVID have impacted how business is done daily at the Capitol. The usual crammed committee hearings with lobbyists and legislators have been replaced by empty hallways and video conferencing. Everyone is having to make adjustments and try and get their messages across regarding support/opposition to proposed legislation. This has created many challenges that we are all trying to work through to the best of our abilities. So far, Zoom meetings, phone calls, texts, emails, and video testimony have taken the place of in-person meetings. Only one week into the nine-week Session, and everyone seems to be trying to make the best of an awkward situation.

I have attached, for your convenience, the Florida Senate and Florida House of Representative COVID Legislative Session protocols. As you will see, they have two totally different sets of rules. However, I am happy to report that elected officials seem to be going out of their way to still be accessible to our issues.

As you will see below, there are numerous boating bills this year. MIAF has been trying for months to negotiate with the Florida Fish and Wildlife Conservation Commission on their proposed boating bill. FWC has yet to accept any of our suggested amendments. We are now actively working with other boating interests and meeting with sponsors to discuss our concerns with the bill in its current form. We will keep you posted as this moves through the process and we hope to report some amendments in the near future. We have serious concerns with the drafting of the boating safety course language and no discharge zone language. We have asked for a 30 day grace period to take the boating safety course as not to impede boat sales and to protect dealer from liability. We are also asking for some language that would recognize boats that have recognizing some boats have sewage treatment systems.

Other bills we have concerns with include any and all bills that ban anchoring in a location without providing a mooring field. There are currently two no anchoring bills filed and MIAF does not want a patchwork approach



around the state banning anchoring on Florid waters. Mooring fields are better for the environment and provide adequate upland facilities for boaters.

Finally there are many other bills related to boating. We have listed below for your review. The “marina evacuation” bill is a negotiated bill from last Session that dies at the last minute. That bill seems to be moving quickly through the process this year.

This year is going to be different and we are going to need to your help. Budget cuts are coming and that will take up a lot of time once the budget process starts. MIAF always support derelict vessel funding, boating infrastructure funding, boating safety funding, etc. We will keep you posted on these issues as they begin to develop their respective budgets.

This is just a sample of the first week. Please stay tuned as we get deeper in the Session.

A handwritten signature in dark blue ink, appearing to read "Margaret Timmins", with a large, stylized flourish extending to the right.

Margaret “Missy” Timmins  
President  
Timmins Consulting, LLC

## // CIVIL LIABILITY FOR DAMAGES RELATING TO COVID-19

**Senate Bill 72 // Sen. Jeff Brandes // Referred to: Judiciary; Commerce and Tourism; Rules**

**House Bill 7 // Rep. Lawrence McClure // Referred to: Civil Justice & Property Rights Subcommittee; Pandemics & Public Emergencies Committee; Judiciary Committee**

HOUSE/SENATE BILL RELATIONSHIP: *SIMILAR*

**Senate Bill 72:** SB 72 creates civil liability protections for individuals, businesses, governmental entities, and other organizations against COVID-19-related claims. The bill, however, excludes healthcare providers from the liability protections created in the bill.

The bill establishes preliminary requirements that a plaintiff must complete before the case is allowed to proceed. A court must determine whether:

- The complaint was pled with particularity;
- A physician's affidavit was simultaneously submitted stating that, within a reasonable degree of medical certainty, the physician believed that the defendant caused, through acts or omissions, the plaintiff's damages, injury, or death. If the plaintiff did not meet these requirements, the court must dismiss the action, but the plaintiff is not barred from correcting the deficiencies and refile the claim.
- The defendant made a good faith effort to substantially comply with authoritative or controlling health standards when the action accrued. If the court determines that the defendant made the requisite good faith effort, the defendant is immune from civil liability.

If, in contrast, the court determines that the defendant did not make the requisite good faith effort, the action may proceed.

If a plaintiff meets these preliminary requirements, then he or she bears the burden of proving that the defendant did not make the good faith effort. Additionally, the plaintiff must meet the heightened standard of proving that the defendant's acts or omissions were grossly negligent by the clear and convincing evidence standard.

A COVID-19-related lawsuit must be brought within 1 year after a cause of action accrues unless the cause of action occurred before the effective date of the bill. However, if a cause accrues before the effective date of the bill, the plaintiff has 1 year from the effective date of the act to bring the claim.

**Most Recent Action:** On Committee agenda - Rules, 03/11/21, 8:15 am

**CS/House Bill 7:** In the face of the COVID-19 outbreak in Florida, Governor Ron DeSantis declared a state of emergency and issued a series of executive orders directing Floridians to stay at home, with exceptions for essential services and activities. While some of the executive orders eventually expired or were modified, the Governor has continued to extend the state of

emergency, with the most recent extension occurring on December 29, 2020.

As COVID-19 spread across the world, the United States, and the State of Florida, information about the virus evolved at a rapid pace. Official guidance came from multiple sources and sometimes changed on a daily basis. Business owners, schools, government leaders, religious organizations, and other entities scrambled to make the best decisions possible based on their knowledge at the time.

CS/HB 7 provides several COVID-19-related liability protections for businesses, educational institutions, government entities, religious organizations, and other entities. Under the bill, a covered entity that makes a good faith effort to substantially comply with applicable COVID-19 guidance is immune from civil liability from a COVID-19-related civil action. The bill also provides that for any COVID-19-related civil action against a covered entity, a plaintiff must:

- Plead his or her complaint with particularity.
- Submit, at the time of filing suit, a physician's affidavit confirming the physician's belief that the plaintiff's COVID-19-related injury occurred because of the defendant's conduct.
- Prove, by clear and convincing evidence, that the defendant was at least grossly negligent.

The bill's liability protections do not apply to a health care provider, such as a hospital, nursing home, assisted living facility, or other health care-related entity. The bill provides a one-year statute of limitations for COVID-19-related claims. For a plaintiff whose cause of action has already accrued, the one-year period does not begin to run until the bill becomes effective.

**Most Recent Action:** Read Third Time; Passed (Vote: 83 Yeas / 31 Nays)

*Attached documents: SB 72 (as field) + Staff Analysis; CS/HB 7 + Staff Analysis*

## // MARINA EVACUATIONS

**Senate Bill 578 // Sen. Tom Wright // Referred to: Environment and Natural Resources; Transportation; Rules**

**House Bill 223 // Rep. Rene Plasencia // Referred to: Environment, Agriculture & Flooding Subcommittee; Pandemics & Public Emergencies Committee; State Affairs Committee**

RELATIONSHIP: *SIMILAR*

**Senate Bill 578:** SB 578 prohibits, upon the issuance of a hurricane watch that affects the waters of marinas located in a deepwater seaport, vessels under 500 gross tons from remaining in the waters of such marinas that have been deemed not suitable for refuge during a hurricane. The bill requires that vessel owners promptly remove their vessels from the waterways upon issuance

of an evacuation order by the deepwater seaport.

If the Coast Guard Captain of the Port sets the port condition to “Yankee”<sup>1</sup> and a vessel owner has failed to remove his or her vessel from the waterway, a marina owner, operator, employee, or agent, is required to remove the vessel, if reasonable, from its slip. The marina owner may charge the vessel owner a reasonable fee for the service of removing the vessel.

The bill provides that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to the vessel from a hurricane and is held harmless from removing the vessel from the waterways. However, the bill does not provide immunity to the marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel.

The bill provides that after a watch has been issued, if an owner or operator has not removed the vessel pursuant to an order from the seaport, the owner or operator may be subject to a fine, in an amount not exceeding three times the cost associated with removing the vessel from the waterway.

**Most Recent Action:** Favorable by Rules; 16 Yeas, 0 Nays; Placed on Calendar, on 2nd reading

**House Bill 223:** Under Florida law, the term “port” is defined as a port authority or district. Each port, in agreement with the United States Coast Guard, state pilots, and other ports in its operating port area, is required to adopt guidelines for minimum bottom clearance of each berth and channel, for the movement of vessels, and for radio communications of vessel traffic for all commercial vessels entering and leaving its harbor channels. There are 14 deepwater seaports in Florida.

A marina is a licensed commercial facility that provides secured public moorings or dry storage for vessels on a leased basis. Vessels that are left in a marina during hurricane and storm conditions can cause problems in the port, including the inability to secure docks, causing potential damage to infrastructure such as piers, and other harm to people or property. Vessels left in the harbor can also pose navigational issues and cause problems and delays in clearing channels.

Some marina docking contracts contain “safe haven” or “hurricane” clauses. These clauses provide that, when a hurricane watch is issued, boat owners must immediately remove their vessels and all personal property from the marina and seek safe haven somewhere else. In 1993, Florida enacted a law designed to prevent marinas from using safe haven clauses as a basis for recovering the costs of property damage from vessel owners after a hurricane.

Upon the issuance of a hurricane watch affecting the waters of marinas located in a deepwater seaport, the bill prohibits vessels under 500 gross tons from remaining in the waters of marinas that have been deemed not suitable for refuge during a hurricane. In addition, the bill requires vessel owners to promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport.

The bill specifies that if the Coast Guard captain of the port sets the port condition to “Yankee” and a vessel owner has failed to remove a vessel from the waterway, the marina owner must

remove the vessel and may charge the vessel owner a reasonable fee for the removal. In addition, the bill specifies that a marina owner may not be held liable for any damage incurred to a vessel from a hurricane and is held harmless as a result of such actions to remove the vessel from the waterways, unless the damage was caused by intentional acts or negligence.

Finally, the bill authorizes the deepwater seaport to impose and collect a fine in an amount not to exceed three times the cost associated with removing a vessel from the waterway if, after the hurricane watch has been issued, the owner or operator of a vessel has not removed the vessel from the waterway of the marina pursuant to an order from the deepwater seaport. The bill specifies that a deepwater seaport is not required to issue an order to evacuate vessels or impose and collect fines for failure to remove vessels from its waterways.

**Most Recent Action:** Favorable with CS by Pandemics & Public Emergencies Committee; 15 Yeas, 0 Nays

*Attached documents: SB 578 (as filed) + Staff Analysis; CS/HB 223 + Staff Analysis*

## // POWER-DRIVEN VESSEL SAFETY REQUIREMENTS

**Senate Bill 1658 // Sen. Jennifer Bradley // Referred to: Environment and Natural Resources; Community Affairs; Rules**

**House Bill 271 // Rep. Adam Botana // Referred to: Tourism, Infrastructure & Energy Subcommittee; Criminal Justice & Public Safety Subcommittee; Commerce Committee**

HOUSE/SENATE BILL RELATIONSHIP: *IDENTICAL*

**Senate Bill 1658:** Citing this act as the “Limb Preservation Act”; prohibiting sitting in a specified manner upon the bow, transom, or gunwale of a power-driven vessel while the vessel is making way; prohibiting a power-driven vessel operator from allowing a person to sit in such a way; providing a noncriminal infraction for violations relating to power-driven vessel safety requirements, etc.

**Most Recent Action:** Referred to Environment and Natural Resources; Community Affairs; Rules

**House Bill 271:** Prohibits sitting in specified manner on bow, transom, or gunwale of power-driven vessel while vessel is making way; provides penalties.

**Most Recent Action:** Referred to Tourism, Infrastructure & Energy Subcommittee; Criminal Justice & Public Safety Subcommittee; Commerce Committee

*Attached documents: SB 1658 (as filed); HB 271 (as filed)*

## // MOTORBOAT ENGINE CUTOFF SWITCHES // VESSEL SAFETY EQUIP.

**Senate Bill 1562 // Sen. Joe Gruters // Referred to: Environment and Natural Resources; Criminal Justice; Rules**

**House Bill 1099 // Rep. Fiona McFarland // Referred to: Tourism, Infrastructure & Energy Subcommittee; Environment, Agriculture & Flooding Subcommittee; Commerce Committee**

HOUSE/SENATE BILL RELATIONSHIP: *COMPARE*

**Senate Bill 1562:** Citing this act as the “Ethan’s Law”; requiring the use of an engine cutoff switch when operating certain motorboats that are making way; providing penalties, etc.

**Most Recent Action:** Referred to Environment and Natural Resources; Criminal Justice; Rules

**House Bill 1099:** Requires operators of certain motorboats to use engine cutoff switch while motorboat is making way.

**Most Recent Action:** Tourism, Infrastructure & Energy Subcommittee; Environment, Agriculture & Flooding Subcommittee; Commerce Committee

*Attached documents: SB 1562 (as filed); SB 1099 (as filed)*

## // VESSEL SAFETY // VESSEL COLLISIONS, ACCIDENTS, &amp; CASUALTIES

**Senate Bill 1834 // Sen. Jason Pizzo // Referred to: Environment and Natural Resources; Criminal Justice; Rules**

**House Bill 1275 // Rep. Michael Grieco // Referred to: Criminal Justice & Public Safety Subcommittee; Justice Appropriations Subcommittee; Judiciary Committee**

HOUSE/SENATE BILL RELATIONSHIP: *SIMILAR*

**Senate Bill 1834:** Revising the penalties for persons operating a vessel involved in an accident or injury who leave the scene of the accident or injury under certain circumstances; providing graduated penalties depending on the level of damage to property or person; providing a mandatory minimum sentence for a person who willfully commits such violation resulting in the death of another while boating under the influence; providing that a person commits boating under the influence manslaughter when their impaired operation of a vessel causes the death of an unborn child; revising the definition of the term “vessel homicide” to include the killing of an unborn child by causing injury to the mother by operation of a vessel in a reckless manner under certain circumstances, etc.



**Most Recent Action:** Referred to Environment and Natural Resources; Criminal Justice; Rules

**House Bill 1275:** Provides penalties for vessel operators who leave scene of vessel accident that causes damage, injury, or death without complying with certain requirements, who operate vessel in reckless or careless manner & cause serious bodily injury, or who operate vessel while under influence & cause death of unborn child; provides mandatory minimum sentencing for specified violations.

**Most Recent Action:** Referred to Criminal Justice & Public Safety Subcommittee; Justice Appropriations Subcommittee; Judiciary Committee

*Attached documents: SB 1834 (as filed); HB 1275 (as filed)*

## // SEAGRASS MITIGATION BANKS

**Senate Bill 1668 // Sen. Ana Maria Rodriguez // Referred to: Environment and Natural Resources; Community Affairs; Appropriations**

**House Bill 1335 // Rep. Tyler Sirois // Referred to: Environment, Agriculture & Flooding Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee**

HOUSE/SENATE BILL RELATIONSHIP: *IDENTICAL*

**Senate Bill 1668:** Authorizing the Board of Trustees of the Internal Improvement Trust Fund to establish seagrass mitigation banks under certain conditions, etc.

**Most Recent Action:** Referred to Environment and Natural Resources; Community Affairs; Appropriations

**House Bill 1335:** Authorizes Board of Trustees of Internal Improvement Trust Fund to establish seagrass mitigation banks under certain conditions.

**Most Recent Action:** Referred to Environment, Agriculture & Flooding Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee

*Attached documents: SB 1668 (as filed); HB 1335 (as filed)*

## // ANCHORING LIMITATION AREAS

**Senate Bill 1652 // Sen. Jason Pizzo // Referred to: Environment and Natural Resources; Community Affairs; Rules**

**House Bill 1337 // Rep. Joe Geller // Referred to: Environment, Agriculture & Flooding Subcommittee; State Affairs Committee**

HOUSE/SENATE BILL RELATIONSHIP: *SIMILAR*

**Senate Bill 1652:** Designating specified waterways in densely populated urban areas as anchoring limitation areas, etc.

**Most Recent Action:** Referred to Environment and Natural Resources; Community Affairs; Rules

**CS/House Bill 1337:** Designates specified waterways as anchoring limitation areas.

**Most Recent Action:** Referred to Environment, Agriculture & Flooding Subcommittee; State Affairs Committee

*Attached documents: SB 1652 (as field); HB 1337 (as filed)*

## // ANCHORING LIMITATION AREAS

**Senate Bill 1946 // Sen. Tina Polsky // Referred to: Environment and Natural Resources; Community Affairs; Rules**

**House Bill 1515 // Rep. Wyman Duggan // Referred to: Environment, Agriculture & Flooding Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee**

HOUSE/SENATE BILL RELATIONSHIP: *IDENTICAL*

**Senate Bill 1946:** Authorizing counties to establish anchoring limitation areas that meet certain requirements; providing that specified established anchoring limitation areas are exempt from specified provisions; specifying size requirements for the anchoring limitation areas; prohibiting vessels from anchoring in such areas for longer than a specified time; requiring the Fish and Wildlife Conservation Commission to initiate rulemaking by a certain date, etc.

**Most Recent Action:** Referred to Environment and Natural Resources; Community Affairs; Rules

**House Bill 1515:** Authorizes local governments to establish anchoring limitation areas; revises provisions prohibiting & authorizing anchoring of vessels in anchoring limitation areas; provides for vessel owners & operators to present certain proof that vessel has not exceeded certain anchoring limitations; revises provisions authorizing removal & impoundment of certain vessels from anchoring limitation areas; declaring that certain vessels are public nuisance; directs FWCC to adopt specified rules.

**Most Recent Action:** Referred to Environment, Agriculture & Flooding Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee

*Attached documents: SB 1946 (as filed); HB 1515 (as filed)*

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We appreciate the opportunity to be your voice in Tallahassee!

# APPENDIX

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## // CIVIL LIABILITY FOR DAMAGES RELATING TO COVID-19

SB 72 (as filed) + Staff Analysis  
CS/HB 7 + Staff Analysis

## // MARINA EVACUATIONS

SB 578 (as filed) + Staff Analysis  
HB 223 (as filed)

## // POWER-DRIVEN VESSEL SAFETY REQUIREMENTS

SB 1658 (as filed)  
HB 271 (as filed)

## // MOTORBOAT ENGINE CUTOFF SWITCHES

SB 1562 (as filed)  
HB 1099 (as filed)

## // VESSEL SAFETY

SB 1834 (as filed)  
HB 1275 (as filed)

## // SEAGRASS MITIGATION BANKS

SB 1668 (as filed)  
HB 1335 (as filed)

## // ANCHORING LIMITATION AREAS

SB 1652 (as filed)  
HB 1337 (as filed)

## // ANCHORING LIMITATION AREAS

SB 1946 (as filed)  
HB 1515 (as filed)

## // CORONAVIRUS RESOURCES

## // CURRENT BILL TRACKING LIST





**THE FLORIDA SENATE**  
**SENATOR WILTON SIMPSON**  
*President*

## **MEMORANDUM**

**TO:** All Senators  
All Senate Professional Staff

**FROM:** Wilton Simpson

**SUBJECT:** 2021 Opening Day and Session Protocols

**DATE:** February 17, 2021

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Thank you for your partnership and commitment to keeping the Senate as safe as possible during our Interim Committee Weeks. With the 2021 Regular Session quickly approaching, I wanted to provide a few updates regarding the protocols the Senate will employ this session to reduce the spread of COVID-19. As a reminder, these protocols were developed in consultation and coordination with infectious disease experts at Tampa General Hospital, the Florida Department of Emergency Management, the Florida Department of Health, and our own in-house epidemiologist.

### **Opening Day – Tuesday, March 2, 2021**

- **Guests and Testing:** Each Senator may bring one guest on the floor for opening day. All Senators and guests must be tested for COVID-19 on Sunday, February 28, or Monday, March 1. **The testing sign up link will be sent in an upcoming email.**
- **Joint Session:** Senators will remain in the Senate Chamber during the Joint Session and will observe the State of the State Address on the Senate overhead screen.
- **Senate Family Luncheon:** A luncheon will be held immediately following the Joint Session (approximately 12:00pm) – Capitol location to be determined. Seating will be socially-distanced and limited to Senators, their opening day guest, and children. All adults attending the luncheon must be COVID tested. The testing sign up link will be sent in an upcoming email. Please **RSVP to Jacqui Peters at [Peters.Jacqui@FLSenate.gov](mailto:Peters.Jacqui@FLSenate.gov) by Friday, February 26, 2021.**
- **Staff:** Floor access for staff is limited to those specifically identified as having a role that requires their presence on the Senate Floor.

- **Flowers:** All flowers should be delivered to Senate Offices. Flowers will not be permitted on the floor.
- **Gallery:** The public gallery will be closed.
- **Media:** The press gallery will be open. All media must be tested weekly for the duration of the 2021 Regular Session.

#### **Session Programs**

- **Senate Spouse Program:** Senate Spouses are welcome during Session, but must be tested for COVID-19 each week. The testing sign up link will be sent weekly. Spouses who have not tested will not be permitted to enter Senate areas of the Capitol, including private offices. The Spouse Lounge will be open for a very limited spouse program.
- **Doctor of the Day/Chaplain Programs:** Separate communications from the Secretary were sent regarding Senators who wish to sponsor a Doctor of the Day and or a Chaplain. All participants in these programs will be tested for COVID-19.
- **Page Program:** As previously noted, the Senate Page Program has been suspended for the 2021 Session.

#### **Reaffirmation of Existing Senate COVID-19 Protocols**

- **Weekly Testing:** Tampa General Hospital affirms weekly testing is appropriate given the current status of the virus.
- **Additional Testing:** Please do not ignore symptoms. If you experience any (even mild) cold, flu, allergy or COVID-19 symptoms, you should immediately schedule an appointment to receive a rapid antigen test here in the Senate. Email [Covid-19@flsenate.gov](mailto:Covid-19@flsenate.gov) to make an appointment, ideally before you enter the building.
- **Vaccines:** The Senate will continue to offer vaccines for Senators and staff according to the state issued criteria.
- **In-Person Meetings:** Senate areas will remain closed to visitors. Senators and professional staff are encouraged to meet with members of the public via phone, teleconferencing, or outdoor (social distance) meetings.

- **Committee Room Admittance:** In-person committee viewing will remain limited to Senators, staff, subject matter experts invited to present information before the committee, and members of the media. Public Testimony will continue to be accepted from the Civic Center.
- **Senate Sitzings:** Senators will be temperature checked prior to entering the Chamber. The Chamber will be sanitized after each sitting, and portable HEPA filters will continue to run before, during, and after Senate sittings. The public gallery will be closed.
- **Additional Protocols:** Please be mindful that testing is only one of multiple protection strategies. In keeping with CDC guidelines, there is a mask requirement in the Senate. Speakers in a committee meeting may temporarily remove their mask. The risk of transmission in Senate committee rooms is extremely low because all Senators and professional staff are tested prior to meetings, social distancing guidelines are observed and the Senate is closed to the public. Please continue to observe social distancing and sanitizing guidelines, both in Tallahassee and in Senate District Offices.

Specific protocols noted in prior communications, but not readdressed here, remain in place. A summary of Senate COVID-19 Protocols can be found on the Senate website. Again, I am grateful for your diligence in adhering to these protocols; your patience with one another as we navigate the current status of the pandemic; and, above all, your commitment to serving the people of our state during these trying and unprecedented times. We will get through this together. I look forward to serving alongside each of you this session.



## VISITORS COVID-19 PROTOCOLS 2021 LEGISLATIVE SESSION

*(Updated 2/26/2021)*

Below is a list of precautions and protocols that visitors to the Florida House of Representatives must observe while occupying an indoor House space within the Capitol Complex. Included are multiple ways visitors may communicate with their Representatives electronically and follow the legislative process remotely.

Visitors diagnosed with COVID-19, who are exhibiting COVID-19 symptoms, or who are in quarantine may not enter House spaces and should reschedule their visit for a different time.

### **Capitol Building Access**

The Capitol Complex is currently closed to the general public and only open to visitors participating in the legislative process. Access to the Capitol Building is managed by the Department of Management Services. Access to House spaces is granted strictly based on registration to participate in committee meetings or by scheduled appointments that require the visitor to be escorted inside the building.

The schedule for the Capitol Building can be found at [www.floridacapitol.myflorida.com](http://www.floridacapitol.myflorida.com). The east plaza entrance to the Capitol (double doors facing the Old Capitol) will serve as the main entrance. Days and hours will vary each week in accordance with the legislative calendar.

### **General Precautions**

Visitors must:

- Wear a face covering when in the company of another person, including when providing in-person testimony during a committee meeting. If you are not wearing a



mask in House spaces, you will be reminded to wear one by the Sergeant at Arms or by the committee chairs if you are appearing before a committee.

- Stay at least 6 ft. from others.
- Follow CDC recommended hygiene practices, including frequent hand-washing and use of the multiple hand sanitizing stations that have been added around the House.

Visitors may not:

- Congregate in House open spaces and seating areas.
- Use restricted seats in committee rooms and other areas.
- Appear unannounced to see a Member or House employees.

When visiting Tallahassee, please know that Leon County Emergency Ordinance No. 20-15 imposes certain mandatory requirements for the use of facial coverings in business establishments.

### **Use of House Spaces**

- The House will not be offering Chamber tours or reservations of any House spaces to outside groups through the end of the 2021 Legislative Session.

### **Public Participation**

- All committee meetings will be live-streamed on <https://thefloridachannel.org/>.
- Seating will continue to be available via electronic reservation on a first-come, first-served basis for meetings in which public testimony is solicited (when filed bills or draft legislation are being discussed). The public may register for a seat in the audience through [www.myfloridahouse.gov](http://www.myfloridahouse.gov). For meetings in which public testimony is not solicited, seating will be limited to the Members, invited presenters, and the press.
- Electronic committee appearance records serve as the registration tool for in-person testimony. They become available for each committee meeting once the meeting is noticed. Registration will be only for the main committee room.
- Committee amendment filing deadlines will be handled in accordance with House Rule 7.11.
- Due to the return of in-meeting amendments, the resources required to manage the expected increase in participation while balancing the need to maintain appropriate safety measures make it necessary to limit the use of additional rooms; therefore, there will be no on-site virtual testimony.
- Persons wishing to attend a committee meeting must complete an electronic committee appearance record no later than three (3) hours before the start of a

committee meeting. Electronic committee appearance records can be found at [www.myfloridahouse.gov](http://www.myfloridahouse.gov) under the House Meetings and Sessions section toward the bottom of the front page and on each committee or subcommittee webpage.

Please note that, due to the need for social distancing, seating will be limited.

- Members of the general public who are not registered lobbyists and who cannot attend a committee meeting in person but would like to offer comments on legislation will have the option to email their written testimony to the committee members directly through the electronic appearance record.
- All individuals wishing to register for an in-person appearance and who find that seating capacity has been reached will also have the option to email their written testimony to committee members directly through the electronic appearance record.
- Registered lobbyists who do not wish to attend the meeting but would like to record their principal's position can fill out the electronic committee appearance record to waive in support or opposition of filed bills, amendments, or draft legislation instead of appearing in person. Committee chairs may choose to read aloud these appearance records during committee meetings.
- All individuals registered to testify in person will need to print their appearance record or save a digital copy and bring it with them when picking up a pass at the Legislative Welcome Center on the 4th Floor of the Capitol. For greater efficiency, the Legislative Welcome Center will be using barcode scanners to verify appearance records before issuing a pass. Passes will be available beginning one hour before the start of a committee meeting.
- Visitors must also keep in mind that House Rule 17.1 prohibits lobbyists from directly or indirectly lobbying a Member via electronic communication while the House is in daily session or during any meeting of a committee or subcommittee to which the Member is appointed.

### **In-Person Meetings**

- A phone call or videoconference call is the preferred meeting method. As a reminder, Florida law prohibits the use of any device to record communications without the express consent of all participants. Accepting a virtual meeting does not constitute express consent for such recording.
- If an in-person meeting is necessary, the number of visitors in a group will be limited to the number of people that can safely meet in the space.
- In-person meetings should be by appointment, with sufficient time in between appointments to avoid crowding in office spaces.

- Visitors with appointments will need to contact the Member's office upon arrival to the Capitol. The Member's staff will meet the visitor in the plaza level of the Capitol and escort them to the Member's office. After the appointment is over, the visitor will be escorted out of the building or escorted to their next appointment by the Member's staff if they have one scheduled.
- Visitors in House spaces who are unescorted or who do not have a valid pass for an upcoming committee meeting, will be directed to leave the building by the House Sergeant's Office staff.

### **Follow Legislation**

- To check the status of a bill or actions concerning all legislation filed during a legislative session, visit the [Bills Page](#).
- You can also use the House [Legislative Tracking System](#) to identify and track specific bills and committees throughout the legislative process.

### **Contact your Representative**

- To locate and contact your local Representative, use the [Find Your Representative](#) tool.
- If you know your local Representative but don't have their contact information, visit our [Representatives](#) page and select the Member you wish to contact.

**Other protocols for the 2021 Legislative Session can be found here:**

**<https://www.myfloridahouse.gov/LegislativeSessionProtocols>.**

**Please email [COVIDQuestions@myfloridahouse.gov](mailto:COVIDQuestions@myfloridahouse.gov) if you have questions regarding these protocols.**

By Senator Brandes

24-00824B-21

202172\_\_

1 A bill to be entitled  
2 An act relating to civil liability for damages  
3 relating to COVID-19; creating s. 768.38, F.S.;  
4 providing legislative findings and intent; defining  
5 terms; providing requirements for a civil action based  
6 on a COVID-19-related claim; providing that the  
7 plaintiff has the burden of proof in such action;  
8 providing a statute of limitations; providing  
9 severability; providing retroactive applicability;  
10 providing an effective date.

11  
12 WHEREAS, on March 9, 2020, Governor Ron DeSantis issued  
13 Executive Order Number 20-52 declaring a state of emergency for  
14 the State of Florida due to the COVID-19 pandemic, and

15 WHEREAS, in light of the ongoing nature of the COVID-19  
16 pandemic, the Governor has repeatedly extended the state of  
17 emergency, including most recently on December 29, 2020, in  
18 Executive Order Number 20-316, and

19 WHEREAS, the State of Florida continues under a declared  
20 state of emergency, and

21 WHEREAS, throughout the declared state of emergency, the  
22 Governor's executive orders included industry-specific  
23 restrictions to prevent the spread of COVID-19 based on the best  
24 information available at the time, allowing and encouraging  
25 certain businesses to continue to safely operate, and

26 WHEREAS, a strong and vibrant economy is essential to  
27 ensure that Floridians may continue in their meaningful work and  
28 ultimately return to the quality of life they enjoyed before the  
29 COVID-19 outbreak, and



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WHEREAS, Floridians must be allowed to earn a living and support their families without unreasonable government intrusion, and

WHEREAS, the Governor's responsible reopening strategy allowed businesses to continue to safely operate, bolstering consumer confidence, while also enforcing reasonable restrictions, and

WHEREAS, the Legislature recognizes that certain businesses, entities, and institutions operating within the state are essential to the state's continuing success and well-being, and

WHEREAS, the Legislature recognizes that many businesses, entities, and institutions accept significant risk in order to provide their services to the public, and

WHEREAS, the Legislature further recognizes that the threat of frivolous and potentially limitless civil liability, especially in the wake of a pandemic, causes businesses, entities, and institutions to react in a manner detrimental to the state's economy and residents, and

WHEREAS, the Legislature recognizes that practical, bright-line guidance protecting prudent businesses, entities, and institutions significantly alleviates such liability concerns, while also continuing to provide for the public health, and

WHEREAS, the Legislature finds that the unprecedented and rare nature of the COVID-19 pandemic, together with the indefinite legal environment that has followed, requires the Legislature to act swiftly and decisively, NOW, THEREFORE,

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

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59  
60 Section 1. Section 768.38, Florida Statutes, is created to  
61 read:

62 768.38 Liability protections for COVID-19-related claims.—

63 (1) The Legislature finds that the COVID-19 outbreak in the  
64 state threatens the continued viability of certain business  
65 entities, educational institutions, governmental entities, and  
66 religious institutions that contribute to the overall well-being  
67 of the state. The threat of unknown and potentially unbounded  
68 liability to such businesses, entities, and institutions, in the  
69 wake of a pandemic that has already left many of these  
70 businesses, entities, and institutions vulnerable, has created  
71 an overpowering public necessity to provide an immediate and  
72 remedial legislative solution. Therefore, the Legislature  
73 intends for certain business entities, educational institutions,  
74 governmental entities, and religious institutions to enjoy  
75 heightened legal protections against liability as a result of  
76 the COVID-19 pandemic. The Legislature also finds that there are  
77 no alternative means to meet this public necessity, especially  
78 in light of the sudden, unprecedented nature of the COVID-19  
79 pandemic. The Legislature finds the public interest as a whole  
80 is best served by providing relief to these businesses,  
81 entities, and institutions so that they may remain viable and  
82 continue to contribute to the state.

83 (2) As used in this section, the term:

84 (a) "Business entity" has the same meaning as provided in  
85 s. 606.03. The term also includes a charitable organization as  
86 defined in s. 496.404 and a corporation not for profit as  
87 defined in s. 617.01401.

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88        (b) "COVID-19-related claim" means a civil liability claim  
89 against a person, including a natural person, a business entity,  
90 an educational institution, a governmental entity, or a  
91 religious institution which arises from or is related to COVID-  
92 19, otherwise known as the novel coronavirus. The term includes  
93 any such claim for damages, injury, or death. Any such claim, no  
94 matter how denominated, is a COVID-19-related claim for purposes  
95 of this section. The term does not include a claim against a  
96 healthcare provider, regardless of whether the healthcare  
97 provider meets one or more of the definitions in this  
98 subsection.

99        (c) "Educational institution" means a school, including a  
100 preschool, elementary school, middle school, junior high school,  
101 secondary school, career center, or postsecondary school,  
102 whether public or nonpublic.

103        (d) "Governmental entity" means the state or any political  
104 subdivision thereof, including the executive, legislative, and  
105 judicial branches of government; the independent establishments  
106 of the state, counties, municipalities, districts, authorities,  
107 boards, or commissions; or any agencies that are subject to  
108 chapter 286.

109        (e) "Healthcare provider" means:

110        1. A provider as defined in s. 408.803.

111        2. A clinical laboratory providing services in the state or  
112 services to health care providers in the state, if the clinical  
113 laboratory is certified by the Centers for Medicare and Medicaid  
114 Services under the federal Clinical Laboratory Improvement  
115 Amendments and the federal rules adopted thereunder.

116        3. A federally qualified health center as defined in 42

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U.S.C. s. 1396d(1)(2)(B), as that definition exists on the effective date of this act.

4. Any site providing health care services which was established for the purpose of responding to the COVID-19 pandemic pursuant to any federal or state order, declaration, or waiver.

5. A health care practitioner as defined in s. 456.001.

6. A health care professional licensed under part IV of chapter 468.

7. A home health aide as defined in s. 400.462(15).

(f) "Religious institution" has the same meaning as provided in s. 496.404.

(3) In a civil action based on a COVID-19-related claim:

(a) The complaint must be pled with particularity.

(b) At the same time the complaint is filed, the plaintiff must submit an affidavit signed by a physician actively licensed in the state which attests to the physician's belief, within a reasonable degree of medical certainty, that the plaintiff's COVID-19-related damages, injury, or death occurred as a result of the defendant's acts or omissions.

(c) The court must determine, as a matter of law, whether:

1. The plaintiff complied with paragraphs (a) and (b). If the plaintiff did not comply with paragraphs (a) and (b), the court must dismiss the action without prejudice.

2. The defendant made a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidance at the time the cause of action accrued.

a. During this stage of the proceeding, admissible evidence



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146 is limited to evidence tending to demonstrate whether the  
147 defendant made such a good faith effort.

148 b. If the court determines that the defendant made such a  
149 good faith effort, the defendant is immune from civil liability.

150 c. If the court determines that the defendant did not make  
151 such a good faith effort, the plaintiff may proceed with the  
152 action. However, absent at least gross negligence proven by  
153 clear and convincing evidence, the defendant is not liable for  
154 any act or omission relating to a COVID-19-related claim.

155 (d) The burden of proof is upon the plaintiff to  
156 demonstrate that the defendant did not make a good faith effort  
157 under subparagraph (c)2.

158 (4) A civil action for a COVID-19-related claim must be  
159 commenced within 1 year after the cause of action accrues.  
160 However, a plaintiff whose cause of action for a COVID-19-  
161 related claim accrued before the effective date of this act must  
162 commence such action within 1 year of the effective date of this  
163 act.

164 Section 2. If any provision of this act or its application  
165 to any person or circumstance is held invalid, the invalidity  
166 does not affect other provisions or applications of the act  
167 which can be given effect without the invalid provision or  
168 application, and to this end the provisions of this act are  
169 severable.

170 Section 3. This act shall take effect upon becoming a law  
171 and shall apply retroactively. However, the provisions of this  
172 act shall not apply in a civil action against a particularly  
173 named defendant which is commenced before the effective date of  
174 this act.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 72

INTRODUCER: Senator Brandes and others

SUBJECT: Civil Liability for Damages Relating to COVID-19

DATE: March 9, 2021

REVISED: 3/1/2021

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Davis   | Cibula         | JU        | <b>Favorable</b>   |
| 2. | Harmsen | McKay          | CM        | <b>Favorable</b>   |
| 3. | Davis   | Phelps         | RC        | <b>Pre-meeting</b> |

## I. Summary:

SB 72 creates civil liability protections for individuals, businesses, governmental entities, and other organizations against COVID-19-related claims. The bill, however, excludes healthcare providers from the liability protections created in the bill.

The bill establishes preliminary requirements that a plaintiff must complete before the case is allowed to proceed. A court must determine whether:

- The complaint was pled with particularity;
- A physician's affidavit was simultaneously submitted stating that, within a reasonable degree of medical certainty, the physician believed that the defendant caused, through acts or omissions, the plaintiff's damages, injury, or death. If the plaintiff did not meet these requirements, the court must dismiss the action, but the plaintiff is not barred from correcting the deficiencies and refile the claim.
- The defendant made a good faith effort to substantially comply with authoritative or controlling health standards when the action accrued. If the court determines that the defendant made the requisite good faith effort, the defendant is immune from civil liability. If, in contrast, the court determines that the defendant did not make the requisite good faith effort, the action may proceed.

If a plaintiff meets these preliminary requirements, then he or she bears the burden of proving that the defendant did not make the good faith effort. Additionally, the plaintiff must meet the heightened standard of proving that the defendant's acts or omissions were grossly negligent by the clear and convincing evidence standard.

A COVID-19-related lawsuit must be brought within 1 year after a cause of action accrues unless the cause of action occurred before the effective date of the bill. However, if a cause accrues before the effective date of the bill, the plaintiff has 1 year from the effective date of the act to bring the claim.

The bill takes effect upon becoming a law and applies retroactively. However, the bill does not apply in a civil action against a particular defendant if the suit is filed before the bill's effective date.

## II. Present Situation:

### Background

The COVID-19 pandemic has affected the state of Florida in ways that were unimaginable one year ago. The toll on individuals, businesses, and the economy has been catastrophic. According to the Department of Health, 1,892,301 positive COVID-19 cases have been diagnosed in the state, 78,744 residents have been hospitalized, and 30,478 people have died of the virus.<sup>1</sup>

As the pandemic forced businesses to close, millions of Americans lost their jobs. The U.S. economy contracted at the greatest rate since World War II. In Florida, general revenue collections for Fiscal Year 2019-20 were down nearly \$1.9 billion from the forecast projections made in January 2020. The vast majority of the loss, 84.7 percent, came from a loss of sales tax revenues, the largest component and category most affected by the pandemic. The Revenue Estimating Conference adopted a forecast for sales tax revenues in December 2020, as compared to the January 2020 forecast, that anticipates a loss to General Revenue of approximately \$2 billion in Fiscal Year 2020-21 and \$1 billion in Fiscal Year 2021-22. The sales tax losses are attributable to a substantial loss in the tourism and recreation areas, often driven by out-of-state tourism, and also by reduced sales to local residents at restaurants and venues, including leisure activities impacted by the pandemic.<sup>2</sup>

Governor DeSantis issued Executive Order No. 20-52 on March 9, 2020, declaring a state of emergency and issuing guidelines to halt, mitigate, or reduce the spread of the outbreak. The order has been extended 5 times,<sup>3</sup> most recently by Executive Order No. 20-316, issued on December 29, 2020.

During the pandemic, government-issued health standards and guidance detailing how to best combat the virus have sometimes been in conflict. They sometimes changed rapidly, making appropriate responses difficult. Businesses and individuals often scurried to provide appropriate responses based upon the information they received at any given time.

As businesses and entities struggle to re-open or keep their doors open, a growing concern has been expressed that unfounded or opportunistic lawsuits for COVID-19-related claims could threaten their financial survival. The concern is that time, attention, and financial resources diverted to respond to the lawsuits could be the difference between individuals and entities

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<sup>1</sup> Florida Department of Health, Division of Disease Control and Health Protection, *Florida's COVID-19 Data and Surveillance Dashboard*, <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429> (last visited Feb. 26, 2021).

<sup>2</sup> *Executive Summary, Revenue Estimating Conference for the General Revenue Fund & Financial Outlook Statement*, August 14, 2020, and subsequently updated. <http://edr.state.fl.us/Content/conferences/generalrevenue/archives/200814gr.pdf> (last visited Mar. 1, 2021).

<sup>3</sup> A state of emergency declared under the State Emergency Management Act may not last for more than 60 days unless it is renewed by the Governor. Section 252.36(2), F.S.

succeeding or failing as they attempt to emerge from the pandemic. One protection that has been offered is the provision of heightened legal immunity from COVID-19 claims to fend off meritless lawsuits and preserve scant resources.

### **COVID-Related Lawsuits**

According to the Congressional Research Service,<sup>4</sup> a growing number of plaintiffs have filed tort lawsuits in hopes of being compensated for personal injuries that resulted from alleged exposure to COVID-19 or from the failure of a defendant to properly treat the virus. Some examples of the lawsuits include:

- The relatives of deceased family members, who allegedly contracted the virus in the workplace, have filed cases stating that the employers caused the decedents' deaths because they failed to implement workplace safety measures.
- Many cruise ship passengers have filed lawsuits against cruise lines alleging that the cruise line exposed them to the virus or caused them to contract the virus while on a cruise.
- Plaintiffs have sued assisted living facilities and nursing homes. They allege that their relatives died because these entities negligently exposed their relatives to the virus or failed to diagnose them in a timely or appropriate manner, and then treat the symptoms.
- Businesses that folded have sued their insurance companies challenging the denial of their coverage for claims of business interruptions.
- Consumers have filed suits seeking financial reimbursement for travel, events, and season passes at recreational venues which were cancelled or closed because of the pandemic.
- Employees have sued their employers alleging that the employer unlawfully terminated them because they contracted the virus.
- Stockholders have sued public companies alleging that the companies violated federal securities laws when they did not accurately state the pandemic's toll on the companies' finances as required in mandatory disclosure statements.<sup>5</sup>

The Congressional Research Service states that proponents of COVID-19 liability protections assert that litigation and the cost of legal fees will cripple businesses, individuals, schools, and non-profit organizations and deter the organizations from reopening. Proponents are concerned that these entities will shape their business decision-making to avoid liability. This unwillingness to continue or reopen businesses will delay the national economic recovery. Others believe that

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<sup>4</sup> The Congressional Research Service works solely for the U.S. Congress and provides policy and legal analysis to both members and committees of the House and Senate. It is a legislative branch agency housed within the Library of Congress. <https://www.loc.gov/crsinfo/>.

<sup>5</sup> Congressional Research Service, *COVID-19 Liability: Tort, Workplace Safety, and Securities Law* (Sept. 24, 2020), <https://crsreports.congress.gov/product/pdf/R/R46540> (last visited Mar. 1, 2021).

many COVID-19-related claims “are generally meritless, and therefore serve primarily to benefit plaintiffs’ lawyers rather than vindicate injured person’s legal rights.”<sup>6</sup>

In contrast, opponents of liability protections disagree. They maintain that organizations would encounter only minimal legal exposure for COVID-19 liability. The opponents also contend that providing a shield for defendants would harm the public by permitting defendants to commit negligent acts with legal protections. It would also remove any incentives for businesses to take precautions against the spread of the virus.<sup>7</sup>

### Florida Lawsuits

It is difficult to determine how many COVID-19-related lawsuits have been filed in the state. Staff contacted the Office of the State Courts Administrator to ask if it could determine how many claims have been filed in the state courts. The office did not have that data available. One database estimates that 582 complaints relating to COVID-19 have been filed in Florida, but this data does not delineate between those which are filed in state courts versus federal courts.<sup>8</sup>

Many of the claims that have been filed in the federal district courts of the state are suits against cruise ship lines where passengers allege that they contracted the virus while on the cruise.

### Legislative and Executive Responses of Other States

At least 17 states have enacted legislation to provide civil liability immunity to individuals and entities from COVID-19-related claims.<sup>9</sup> At least two additional states have issued executive orders to provide liability limitations.<sup>10</sup> These laws do not reflect separate healthcare liability protections. To date, no similar federal legislation has been enacted, although S. 4317 was introduced in the Senate on July 27, 2020, and referred to committee.<sup>11</sup>

In general terms, the legislation enacted by other states provides protections if a defendant acts in good faith to substantially comply with the applicable COVID-19 standards. The immunity does not apply if the defendant’s acts or omissions constitute gross negligence or willful or wanton misconduct.

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<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> Hunton Andrews Kurth LLP, *COVID-19 Complaint Tracker*, <https://www.huntonak.com/en/covid-19-tracker.html> (last visited Mar. 1, 2021).

<sup>9</sup> The states are: Alabama, Georgia, Idaho, Iowa, Kansas, Louisiana, Michigan, Mississippi, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Utah, and Wyoming. Additional, and sometimes separate, legislation has been enacted by 17 states that provides medical liability limitations for health care facilities and workers. The database was current as of December 14, 2020. National Conference of State Legislatures, *State Action on Coronavirus (COVID-19)*, <https://www.ncsl.org/research/health/state-action-on-coronavirus-covid-19.aspx#db> (last visited Mar. 1, 2021).

<sup>10</sup> Alabama Executive Order signed by Governor Kay Ivey on May 8, 2020, and Arkansas Executive Order 20-33 signed by Governor Asa Hutchinson on June 5, 2020.

<sup>11</sup> Safe to Work Act, s. 4317 –116<sup>th</sup> Cong. (2020) <https://www.congress.gov/bill/116th-congress/senate-bill/4317/actions> (last visited Mar. 1, 2021).

## **Torts: Negligence, Elements, and Standards**

A tort is a civil legal action to recover damages for a loss, injury, or death due to the conduct of another. Some have characterized a tort as a civil wrong, other than a claim for breach of contract, in which a remedy is provided through damages.<sup>12</sup> When a plaintiff files a tort claim, he or she alleges that the defendant's "negligence" caused the injury. Negligence is defined as the failure to use reasonable care. It means the care that a reasonably careful person would use under similar circumstances. According to the Florida Standard Jury Instructions, negligence means "doing something that a reasonably careful person would not do" in a similar situation or "failing to do something that a reasonably careful person would do" in a similar situation.<sup>13</sup>

When a plaintiff seeks to recover damages for a personal injury and alleges that the injury was caused by the defendant's negligence, the plaintiff bears the legal burden of proving that the defendant's alleged action was a breach of the duty that the defendant owed to the plaintiff.<sup>14</sup>

### ***Negligence Pleadings***

To establish a claim for relief and initiate a negligence lawsuit, a plaintiff must file a "complaint." The complaint must state a cause of action and contain: a short and plain statement establishing the court's jurisdiction, a short and plain statement of the facts showing why the plaintiff is entitled to relief, and a demand for judgment for relief that the plaintiff deems himself or herself entitled. The defendant responds with an "answer," and provides in short and plain terms the defenses to each claim asserted, admitting or denying the averments in response.<sup>15</sup>

Under the Florida Rules of Civil Procedure, there is a limited group of allegations that must be pled with "particularity." These allegations include allegations of fraud, mistake, and a denial of performance or occurrence.<sup>16</sup>

### ***Four Elements of a Negligence Claim***

To establish liability, the plaintiff must prove four elements:

Duty – That the defendant owed a duty, or obligation, of care to the plaintiff;

Breach – That the defendant breached that duty by not conforming to the standard required;

Causation – That the breach of the duty was the legal cause of the plaintiff's injury; and

Damages – That the plaintiff suffered actual harm or loss.

### ***Burden or Standard of Proof***

A "burden of proof" is the obligation a party bears to prove a material fact. The "standard of proof" is the level or degree to which an issue must be proved.<sup>17</sup> The plaintiff carries the burden

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<sup>12</sup> BLACK'S LAW DICTIONARY (11th ed. 2019).

<sup>13</sup> Fla. Std. Jury Instr. Civil 401.3, *Negligence*.

<sup>14</sup> Florida is a comparative negligence jurisdiction as provided in s. 768.81(2), F.S. In lay terms, if a plaintiff and defendant are both at fault, a plaintiff may still recover damages, but those damages are reduced proportionately by the degree that the plaintiff's negligence caused the injury.

<sup>15</sup> Fla. R. Civ. P. 1.110.

<sup>16</sup> Fla. R. Civ. P. 1.120(b) and (c).

<sup>17</sup> 5 Fla. Prac. Civil Practice s. 16.1, (2020 ed.)



of proving, by a specific legal standard, that the defendant breached the duty that was owed to the plaintiff that resulted in the injury. In civil cases, two standards of proof generally apply:

- The “greater weight of the evidence” standard, which applies most often in civil cases, or
- The “clear and convincing evidence” standard, which applies less often, and is a higher standard of proof.<sup>18</sup>

However, both of these standards are lower than the “reasonable doubt” standard which is used in criminal prosecutions.”<sup>19</sup> Whether the greater weight standard or clear and convincing standard applies is determined by case law or the statutes that govern the underlying substantive issues.<sup>20</sup>

### **Greater Weight of the Evidence**

The greater weight of the evidence standard of proof means “the more persuasive and convincing force and effect of the entire evidence in the case.”<sup>21</sup> Some people explain the “greater weight of the evidence” concept to mean that, if each party’s evidence is placed on a balance scale, the side that dips down, even by the smallest amount, has met the burden of proof by the greater weight of the evidence.

### **Clear and Convincing**

The clear and convincing standard, a higher standard of proof than a preponderance of the evidence, requires that the evidence be credible and the facts which the witness testifies to must be remembered distinctly. The witness’s testimony “must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue.” The evidence must be so strong that it guides the trier of fact to a firm conviction, to which there is no hesitation, that the allegations are true.<sup>22</sup>

### ***Standards of Care and Degrees of Negligence***

Courts have developed general definitions for the degrees of negligence.

#### **Slight Negligence**

Slight negligence is generally defined to mean the failure to exercise a great amount of care.<sup>23</sup>

#### **Ordinary Negligence**

Ordinary negligence, which is also referred to as simple negligence, is the standard of care applied to the vast majority of negligence cases. It is characterized as the conduct that a reasonable and prudent person would know could possibly cause injury to a person or property.<sup>24</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> Thomas D. Sawaya, *Florida Personal Injury Law and Practice with Wrongful Death Actions*, s. 24:4 (2020).

<sup>20</sup> 5 Fla. Prac. Civil Practice s. 16.1 (2020 ed.).

<sup>21</sup> Fla. Std. Jury Instr. 401.3, *Greater Weight of the Evidence*.

<sup>22</sup> *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4<sup>th</sup> DCA 1983) as discussed in the Sawaya treatise, *supra* at note 19.

<sup>23</sup> Sawaya, *supra* at s. 2:12.

<sup>24</sup> *Id.*

**Gross Negligence**

Gross negligence means the failure of a person to exercise slight care. Florida courts have defined gross negligence as the type of conduct that a “reasonably prudent person knows will probably and most likely result in injury to another” person.<sup>25</sup>

In order for a plaintiff to succeed on a claim involving gross negligence, he or she must prove:

- Circumstances, which, when taken together, create a clear and present danger;
- Awareness that the danger exists; and
- A conscious, voluntary act or omission to act, that will likely result in an injury.<sup>26, 27</sup>

**Access to Courts – *Kluger v. White***

The State Constitution provides in Article 1, s. 21, the “Access to courts” section,

The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

Case law has demonstrated, however, that this provision is not absolute. In 1973, the Florida Supreme Court issued an opinion, *Kluger v. White*,<sup>28</sup> a case which construed the access to courts provision. In broad terms, the case before the Court involved the abolition of a statute governing a tort action for property damage in an automobile accident case. When the Legislature abolished the remedy, it did not provide an alternative protection to the injured party.

The Court was confronted with the issue of whether the Legislature could abolish a right of access to the courts. The Court determined that the Legislature may not abolish a pre-1968 common law right or a statutory cause of action unless the Legislature provides a reasonable alternative to that action or unless an overpowering public necessity exists for abolishing the right of action. The Court applies a three-part test to determine whether a statute violates the access to courts provision:

- Does the change abolish a preexisting right of access?
- If so, whether a reasonable alternative exists to protect that preexisting right of access.
- If no reasonable alternative exists, whether an overwhelming public necessity exists.<sup>29</sup>

Restrictions on the ability to bring a lawsuit have been upheld as constitutional, but the point at which a restriction becomes an unconstitutional bar is not well defined.

**Statute of Limitations**

A statute of limitations establishes a time limit for a plaintiff to file an action, or the case will be barred. An action for a negligence claim must be brought within 4 years after the cause of action accrues.<sup>30</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Culpable negligence is a fourth degree of negligence but is not discussed in this analysis.

<sup>28</sup> *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).

<sup>29</sup> *Eller v. Shova*, 630 So. 2d 537 (Fla. 1993).

<sup>30</sup> Section 95.11(3), F.S.

Statutes of limitations are created to encourage a plaintiff to initiate an action while witnesses and evidence can be found. They also serve as a shield to protect a defendant from having to defend against a claim that occurred so long ago that precise memories have grown hazy.<sup>31</sup> A statute of limitations begins to run when the cause of action accrues. A cause of action accrues when the last element constituting the cause of action occurs.<sup>32</sup> In a personal injury action based on the negligent act of another, the last element occurs when the plaintiff is injured.<sup>33</sup>

### **Retroactive Application of a Statute**

Under Florida law, statutes are presumed to operate prospectively, not retroactively. In other words, statutes generally apply only to actions that occur on or after the effective date of the legislation, not before the legislation becomes effective.

The Florida Supreme Court has noted that, under the rules of statutory construction, if statutes are to operate retroactively, the Legislature must clearly express that intent for the statute to be valid.<sup>34</sup> When statutes that are expressly retroactive have been litigated and appealed, the courts have been asked to determine whether the statute applies to cases that were pending at the time the statute went into effect. The conclusion often turns on whether the statute is procedural or substantive.

In a recent Florida Supreme Court case, the Court acknowledged that “[t]he distinction between substantive and procedural law is neither simple nor certain.”<sup>35</sup> The Court further acknowledged that their previous pronouncements regarding the retroactivity of procedural laws have been less than precise and have been unclear.<sup>36</sup>

Courts, however, have invalidated the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties.<sup>37</sup> Still, in other cases, the courts have permitted statutes to be applied retroactively if they do not create new, or take away, vested rights, but only operate to further a remedy or confirm rights that already exist.<sup>38</sup>

In a case challenging the application of an increase in the standard of proof from a preponderance of the evidence to the clear and convincing evidence standard after the plaintiff had filed a complaint, the court concluded that the statute could apply retroactively.<sup>39</sup> The Florida Supreme Court has noted that burden of proof requirements are procedural and may be abrogated retroactively because litigants do not have a vested right in a method of procedure.<sup>40</sup>

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<sup>31</sup> 35 Fla. Jur 2d *Limitations and Laches* s. 1 (2020).

<sup>32</sup> Section 95.031(1), F.S.

<sup>33</sup> 35 Fla. Jur 2d *Limitations and Laches* s. 65 (2020).

<sup>34</sup> *Walker & LaBerge, Inc., v. Halligan*, 344 So. 2d 239 (Fla. 1977).

<sup>35</sup> *Love v. State*, 286 So. 3d 177, 183 (Fla. 2019) quoting *Caple v. Tuttle’s Design-Build, Inc.*, 753 So. 2d 49, 53 (Fa. 2000).

<sup>36</sup> *Love* at 184.

<sup>37</sup> *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210 (Fla 2004).

<sup>38</sup> *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 1990).

<sup>39</sup> *Stein v. Miller Industries, Inc.*, 564 So. 2d 539 (Fla. 4th DCA 1990).

<sup>40</sup> *Walker & LaBerge, Inc. v. Halligan*, 344 So. 2d 239, 243 (Fla. 1977).

The Court also permitted retroactive application of a statute that altered the plaintiff's burden of proof.<sup>41</sup>

### III. Effect of Proposed Changes:

SB 72 provides heightened liability protections against COVID-19-related claims due to the threat of unknown and potentially unbounded liability claims that may arise from the pandemic. The protections are extended widely to all persons, businesses, or other entities except for healthcare providers.

#### WHEREAS Clauses

According to the "Whereas Clauses" the State continues to operate under a declared state of emergency, but one in which Floridians must be allowed to earn a living and support their families, and one in which businesses are encouraged to operate safely and contribute to the state's success, well-being, and economic recovery. Because the Legislature recognizes the significant risks that businesses, entities, and institutions accept to provide services to the public during the pandemic, the Legislature is willing to extend protections to alleviate liability concerns, while continuing to provide for the public health. The final clause notes that the Legislature finds that the unprecedented nature of the COVID-19 pandemic, and the indefinite legal environment that has followed, require swift and decisive action.

#### Legislative Findings

According to the legislative findings, the creation of heightened legal protections is necessary to reduce the threat of unlimited liability and legal exposure for businesses, educational institutions, governmental entities, and religious institutions as they seek to recover and contribute to the well-being of the state. The legislative findings conclude that there are no alternative means to meet this public necessity of providing legal protections caused by the sudden and unprecedented nature of the COVID-19 pandemic. Therefore, the public interest, as a whole, is best served by providing relief to these entities so that they may remain viable and contribute to the economic recovery of the state.

Legislative findings have a unique place in case law. The Florida Supreme Court has determined that they are to be given great weight. In the case of *University of Miami v. Echarte*, the Court stated that "legislative determinations of public purpose and facts are presumed correct and entitled to deference, unless clearly erroneous."<sup>42</sup> The Court reflected on the *Kluger* decision and referred to its test. The Court also examined whether the Legislature expressly found that no alternative or less onerous method existed, thereby establishing a necessary requirement.

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<sup>41</sup> *Love, supra.*

<sup>42</sup> *University of Miami v. Echarte*, 618 So. 2d 189, 196 (Fla. 1993).

## **Pursuing a COVID-19 –Related Claim**

### ***A COVID-19-related Claim Defined and Who is Protected Under the Bill***

A COVID-19-related claim is defined as a civil liability claim for damages, injury, or death that arises from, or is related to, COVID-19.<sup>43</sup> The bill provides protections for any civil liability claim against a person,<sup>44</sup> a natural person, business entity, including certain charitable organizations and non-profits, a public or non-public educational institution, a governmental entity, or a religious institution. Although the bill extensively defines what or who a healthcare provider is, healthcare providers are excluded from the liability protections established by the bill. The bill provides definitions for an educational institution, governmental entity, healthcare provider, and a religious institution.

### ***Preliminary Procedures for a Plaintiff***

The bill requires two preliminary steps from a plaintiff. In each civil action for a COVID-19-related claim, a plaintiff must:

- Set forth the pleadings with particularity; and
- Provide, at the same time that the complaint is filed, an affidavit signed by a physician, stating that the plaintiff's COVID-19-related claim for damages, injury, or death was caused by the defendant's acts or omissions. The physician who submits an affidavit must be actively licensed in the state. Additionally, the physician must state that it is his or her belief, within a reasonable degree of medical certainty, that the plaintiff's COVID-related damages, injury, or death occurred as a result of the defendant's acts or omissions.

These preliminary procedures are similar to the pre-suit investigation requirements for a claimant filing a medical malpractice claim. According to s. 766.104(1), F.S., the attorney filing the action must make a reasonable investigation to determine that there are grounds for a good-faith belief that negligence has occurred in the care or treatment of the claimant. The complaint or initial pleading must contain a certificate of counsel stating that a reasonable investigation supported the belief that there are grounds for an action against the defendant. Good faith may be demonstrated if the claimant or counsel has received a written opinion from an expert that there appears to be evidence of medical negligence. If the court determines that the certificate was not made in good faith and that there is no justiciable issue presented against the health care provider, the court must award attorney fees and taxable costs against the claimant's counsel and must submit the matter to The Florida Bar for disciplinary review against the attorney.

## **The Court's Responsibilities**

Before a trial may proceed, a court must determine whether:

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<sup>43</sup> A "COVID-19-related claim" is defined as "a civil liability claim against a person, including a natural person, a business entity, an educational institution, a governmental entity, or a religious institution which arises from or is related to COVID-19, otherwise known as the novel coronavirus. The term includes any such claim for damages, injury, or death. Any such claim, no matter how denominated, is a COVID-19 related claim for purposes of this section. The term does not include a claim against a healthcare provider, regardless of whether the healthcare provider meets one or more of the definitions in this subsection."

<sup>44</sup> A "person" is broadly defined in the statutes to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. Section 1.01(3), F.S.

- The plaintiff submitted a complaint that was pled with particularity; and
- The physician's affidavit complied with the necessary requirements.

If the plaintiff did not meet these two requirements, the court must dismiss the case *without* prejudice, meaning that the plaintiff is not prohibited from correcting deficiencies and refile the claim.

The court must also determine whether a defendant made a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidance at the time that the cause of action accrued. At this stage of the proceeding, the only admissible evidence is limited to evidence pertinent to whether the defendant made a good faith effort to comply with the health standards of guidance.

If the court decides that the defendant met the good faith compliance burden, the defendant is immune from civil liability and the proceeding ends. However, if the court determines that the defendant did not make a good faith effort, the plaintiff may proceed. In order to prevail, the plaintiff must demonstrate that the defendant acted with at least gross negligence which is proven by clear and convincing evidence. If these two burdens are not met, the defendant will not be held liable for an act or omission pertaining to a COVID-19-related claim. The plaintiff bears the burden of proving that the defendant did not make a good faith effort to substantially comply with the authoritative or controlling government-issued health standards or guidance that were in place at the time the action accrued.

### **The Plaintiff's Burden to Prove Gross Negligence by the Clear and Convincing Standard**

As discussed above in the "Present Situation," gross negligence is defined as the type of conduct that a reasonably prudent person knows will probably and most likely result in an injury to another person. Under this standard, a plaintiff will need to prove that the defendant's conduct was grossly negligent, meaning that the likelihood of injury to another person was known by the defendant to be imminent.

The plaintiff will need to demonstrate gross negligence by the "clear and convincing" standard of evidence. This is applied less often in civil cases and is a higher standard of proof than the greater weight of the evidence standard. To meet this standard, the plaintiff must provide evidence that is credible, that is remembered distinctly by the witness, and must be so strong that the trier of fact has a firm conviction, without hesitation, that the allegations are true.

Taken together, a plaintiff has high burdens to prevail in a COVID-19-related claim.

### **Statute of Limitations**

SB 72 requires a plaintiff to bring a civil action within 1 year after the cause of action accrues. Generally, a negligence action must be brought within 4 years after a cause of action accrues. Therefore, this bill reduces the amount of time that a plaintiff has to bring an action. If, however, the cause of action accrues before the effective date of the bill, which is the date it becomes law, the plaintiff has one year from the effective date of the bill to bring a claim. While this could be a reduction in the amount of time that a plaintiff has to bring a COVID-19-related claim, there is

precedent for this. Court opinions have held that a reduction in the statute of limitations is not unconstitutional if the claimant is given a reasonable amount of time to file the action.<sup>45</sup>

### **Retroactive Application**

This act takes effect upon becoming a law and applies retroactively. The bill applies retroactively to actions filed after the effective date of the bill even if the action accrued before the effective date. The bill, however, does not apply to a claim that is filed against a particularly named defendant before the effective date of the bill.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

### **D. State Tax or Fee Increases:**

None.

### **E. Other Constitutional Issues:**

None identified.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

The Florida Bar submitted a brief response on the Agency Bill Analysis Request form and stated that it had not identified any fiscal impact with the proposed legislation. The response also stated that The Florida Bar would not be providing an analysis for the bill and does not have an official legislative position for the proposed legislation.<sup>46</sup>

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<sup>45</sup> *Foley v. Morris*, 339 So. 2d 215 (Fla. 1976).

<sup>46</sup> The Florida Bar, *SB 72 Analysis*, (Jan. 12, 2021) (on file with the Senate Committee on Commerce and Tourism).



**C. Government Sector Impact:**

The Office of the State Courts Administrator states that the bill's impact on the judicial workload cannot be quantified with data that is currently available. The analysis stated, however, that the bill is not anticipated to create a significant increase to the judicial workload. The analysis did note that the Rules of Civil Procedure and jury instructions might need to be reviewed and revised to make certain that they accommodate the new procedures created in the bill. The analysis also stated that the additional requirements for plaintiffs could result in fewer COVID-19-related cases being filed, possibly reducing revenues from civil filing fees, but there is not enough information to accurately determine this.<sup>47</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates s. 768.38 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>47</sup> Office of the State Courts Administrator, *2021 Judicial Impact Statement, SB 72* (Jan. 21, 2021) <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=31076> (last visited Mar. 1, 2021).

1                   A bill to be entitled  
2       An act relating to civil liability for damages  
3       relating to COVID-19; creating s. 768.38, F.S.;  
4       providing legislative findings and intent; providing  
5       definitions; providing requirements for a civil action  
6       based on a COVID-19-related claim; providing that the  
7       plaintiff has the burden of proof in such action;  
8       providing a statute of limitations; providing  
9       severability; providing retroactive applicability;  
10      providing an effective date.

11  
12       WHEREAS, on March 9, 2020, Governor Ron DeSantis issued  
13   Executive Order Number 20-52 declaring a state of emergency for  
14   the State of Florida due to the COVID-19 pandemic, and

15       WHEREAS, in light of the ongoing nature of the COVID-19  
16   pandemic, the Governor has repeatedly extended the state of  
17   emergency, including most recently on December 29, 2020, in  
18   Executive Order Number 20-316, and

19       WHEREAS, the State of Florida continues under a declared  
20   state of emergency, and

21       WHEREAS, throughout the declared state of emergency, the  
22   Governor's executive orders included industry-specific  
23   restrictions to prevent the spread of COVID-19 based on the best  
24   information available at the time, allowing and encouraging  
25   certain businesses to continue to safely operate, and

26        WHEREAS, a strong and vibrant economy is essential to  
27        ensure that Floridians may continue in their meaningful work and  
28        ultimately return to the quality of life they enjoyed before the  
29        COVID-19 outbreak, and

30        WHEREAS, Floridians must be allowed to earn a living and  
31        support their families without unreasonable government  
32        intrusion, and

33        WHEREAS, the Governor's responsible reopening strategy  
34        allowed businesses to continue to safely operate, bolstering  
35        consumer confidence, while also enforcing reasonable  
36        restrictions, and

37        WHEREAS, the Legislature recognizes that certain  
38        businesses, entities, and institutions operating within the  
39        state are essential to the state's continuing success and well-  
40        being, and

41        WHEREAS, the Legislature recognizes that many businesses,  
42        entities, and institutions accept significant risk in order to  
43        provide their services to the public, and

44        WHEREAS, the Legislature further recognizes that the threat  
45        of frivolous and potentially limitless civil liability,  
46        especially in the wake of a pandemic, causes businesses,  
47        entities, and institutions to react in a manner detrimental to  
48        the state's economy and residents, and

49        WHEREAS, the Legislature recognizes that practical, bright-  
50        line guidance protecting prudent businesses, entities, and

51 institutions significantly alleviates such liability concerns,  
52 while also continuing to provide for the public health, and

53 WHEREAS, the Legislature finds that the unprecedented and  
54 rare nature of the COVID-19 pandemic, together with the  
55 indefinite legal environment that has followed, requires the  
56 Legislature to act swiftly and decisively, NOW, THEREFORE,

57  
58 Be It Enacted by the Legislature of the State of Florida:

59  
60 Section 1. Section 768.38, Florida Statutes, is created to  
61 read:

62 768.38 Liability protections for COVID-19-related claims.—

63 (1) The Legislature finds that the COVID-19 outbreak in  
64 the state threatens the continued viability of certain business  
65 entities, educational institutions, governmental entities, and  
66 religious institutions that contribute to the overall well-being  
67 of the state. The threat of unknown and potentially unbounded  
68 liability to such businesses, entities, and institutions, in the  
69 wake of a pandemic that has already left many of these  
70 businesses, entities, and institutions vulnerable, has created  
71 an overpowering public necessity to provide an immediate and  
72 remedial legislative solution. Therefore, the Legislature  
73 intends for certain business entities, educational institutions,  
74 governmental entities, and religious institutions to enjoy  
75 heightened legal protections against liability as a result of

76 the COVID-19 pandemic. The Legislature also finds that there are  
77 no alternative means to meet this public necessity, especially  
78 in light of the sudden, unprecedented nature of the COVID-19  
79 pandemic. The Legislature finds the public interest as a whole  
80 is best served by providing relief to these businesses,  
81 entities, and institutions so that they may remain viable and  
82 continue to contribute to the state.

83 (2) As used in this section, the term:

84 (a) "Business entity" has the same meaning as provided in  
85 s. 606.03. The term also includes a charitable organization as  
86 defined in s. 496.404 and a corporation not for profit as  
87 defined in s. 617.01401.

88 (b) "COVID-19-related claim" means a civil liability claim  
89 against a person, including a natural person, a business entity,  
90 an educational institution, a governmental entity, or a  
91 religious institution, which arises from or is related to COVID-  
92 19, otherwise known as the novel coronavirus. The term includes  
93 any such claim for damages, injury, or death. Any such claim, no  
94 matter how denominated, is a COVID-19-related claim for purposes  
95 of this section. The term does not include a claim against a  
96 healthcare provider, regardless of whether the healthcare  
97 provider meets one or more of the definitions in this  
98 subsection.

99 (c) "Educational institution" means a school, including a  
100 preschool, elementary school, middle school, junior high school,

101 secondary school, career center, or postsecondary school,  
102 whether public or nonpublic.

103 (d) "Governmental entity" means the state or any political  
104 subdivision thereof, including the executive, legislative, and  
105 judicial branches of government; the independent establishments  
106 of the state, counties, municipalities, districts, authorities,  
107 boards, or commissions; or any agencies that are subject to  
108 chapter 286.

109 (e) "Healthcare provider" means:

110 1. A provider as defined in s. 408.803.

111 2. A clinical laboratory providing services in the state  
112 or services to health care providers in the state, if the  
113 clinical laboratory is certified by the Centers for Medicare and  
114 Medicaid Services under the federal Clinical Laboratory  
115 Improvement Amendments and the federal rules adopted thereunder.

116 3. A federally qualified health center as defined in 42  
117 U.S.C. s. 1396d(1)(2)(B), as that definition exists on the  
118 effective date of this act.

119 4. Any site providing health care services which was  
120 established for the purpose of responding to the COVID-19  
121 pandemic pursuant to any federal or state order, declaration, or  
122 waiver.

123 5. A health care practitioner as defined in s. 456.001.

124 6. A health care professional licensed under part IV of  
125 chapter 468.

126        7. A home health aide as defined in s. 400.462(15).

127        8. A provider licensed under chapter 394 or chapter 397  
128 and its clinical and nonclinical staff providing inpatient or  
129 outpatient services.

130        9. A continuing care facility licensed under chapter 651.

131        10. A pharmacy permitted under chapter 465.

132        (f) "Religious institution" has the same meaning as  
133 provided in s. 496.404.

134        (3) In a civil action based on a COVID-19-related claim:

135        (a) The complaint must be pled with particularity.

136        (b) At the same time the complaint is filed, the plaintiff  
137 must submit an affidavit signed by a physician actively licensed  
138 in the state which attests to the physician's belief, within a  
139 reasonable degree of medical certainty, that the plaintiff's  
140 COVID-19-related damages, injury, or death occurred as a result  
141 of the defendant's acts or omissions.

142        (c) The court must determine, as a matter of law, whether:

143        1. The plaintiff complied with paragraphs (a) and (b). If  
144 the plaintiff did not comply with paragraphs (a) and (b), the  
145 court must dismiss the action without prejudice.

146        2. The defendant made a good faith effort to substantially  
147 comply with authoritative or controlling government-issued  
148 health standards or guidance at the time the cause of action  
149 accrued.

150        a. During this stage of the proceeding, admissible



151 evidence is limited to evidence tending to demonstrate whether  
152 the defendant made such a good faith effort.

153 b. If the court determines that the defendant made such a  
154 good faith effort, the defendant is immune from civil liability.  
155 If more than one source or set of standards or guidance was  
156 authoritative or controlling at the time the cause of action  
157 accrued, the defendant's good faith effort to substantially  
158 comply with any one of those sources or sets of standards or  
159 guidance confers such immunity from civil liability.

160 c. If the court determines that the defendant did not make  
161 such a good faith effort, the plaintiff may proceed with the  
162 action. However, absent at least gross negligence proven by  
163 clear and convincing evidence, the defendant is not liable for  
164 any act or omission relating to a COVID-19-related claim.

165 (d) The burden of proof is upon the plaintiff to  
166 demonstrate that the defendant did not make a good faith effort  
167 under subparagraph (c)2.

168 (4) A plaintiff must commence a civil action for a COVID-  
169 19-related claim within 1 year after the cause of action accrues  
170 or within 1 year after the effective date of this act if the  
171 cause of action accrued before the effective date of this act.

172 Section 2. If any provision of this act or its application  
173 to any person or circumstance is held invalid, the invalidity  
174 does not affect other provisions or applications of the act  
175 which can be given effect without the invalid provision or

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176 application, and to this end the provisions of this act are  
177 severable.

178       Section 3. This act shall take effect upon becoming a law  
179 and shall apply retroactively. However, the provisions of this  
180 act shall not apply in a civil action against a particularly  
181 named defendant which is commenced before the effective date of  
182 this act.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7 Civil Liability for Damages Relating to COVID-19

**SPONSOR(S):** Judiciary Committee, McClure and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 72

| REFERENCE                                       | ACTION           | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|---|------------------|---------|--|
| 1) Civil Justice & Property Rights Subcommittee | 11 Y, 6 N        | Jones   | Jones                                    |
| 2) Pandemics & Public Emergencies Committee     | 11 Y, 6 N        | Nations | Jones                                    |
| 3) Judiciary Committee                          | 14 Y, 7 N, As CS | Jones   | Kramer                                   |

### SUMMARY ANALYSIS

In the face of the COVID-19 outbreak in Florida, Governor Ron DeSantis declared a state of emergency and issued a series of executive orders directing Floridians to stay at home, with exceptions for essential services and activities. While some of the executive orders eventually expired or were modified, the Governor has continued to extend the state of emergency, with the most recent extension occurring on December 29, 2020.

As COVID-19 spread across the world, the United States, and the State of Florida, information about the virus evolved at a rapid pace. Official guidance came from multiple sources and sometimes changed on a daily basis. Business owners, schools, government leaders, religious organizations, and other entities scrambled to make the best decisions possible based on their knowledge at the time.

CS/HB 7 provides several COVID-19-related liability protections for businesses, educational institutions, government entities, religious organizations, and other entities. Under the bill, a covered entity that makes a good faith effort to substantially comply with applicable COVID-19 guidance is immune from civil liability from a COVID-19-related civil action. The bill also provides that for any COVID-19-related civil action against a covered entity, a plaintiff must:

- Plead his or her complaint with particularity.
- Submit, at the time of filing suit, a physician's affidavit confirming the physician's belief that the plaintiff's COVID-19-related injury occurred because of the defendant's conduct.
- Prove, by clear and convincing evidence, that the defendant was at least grossly negligent.

The bill's liability protections do not apply to a health care provider, such as a hospital, nursing home, assisted living facility, or other health care-related entity. The bill provides a one-year statute of limitations for COVID-19-related claims. For a plaintiff whose cause of action has already accrued, the one-year period does not begin to run until the bill becomes effective.

The bill may have a positive fiscal impact on state government.

The bill provides that it is effective upon becoming a law and applies retroactively. However, the bill's provisions do not apply in a civil action against a particular defendant if the action is filed before the bill's effective date.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background<sup>1</sup>**

##### COVID-19 Outbreak, Spread, & Aftermath

###### *Initial Outbreak*

On December 31, 2019, the Chinese government confirmed that health officials were treating "dozens of cases" of pneumonia of an "unknown cause." A few days later, researchers identified a new virus, which later came to be known as the novel coronavirus, or "COVID-19." It was ultimately determined that the virus had surfaced at a Chinese seafood and poultry market. On January 11, 2020, China reported its first death from a COVID-19 infection.

On January 14, 2020, the World Health Organization ("WHO") reported that preliminary investigations by Chinese authorities had found "no clear evidence of human-to-human transmission." But WHO also stated that it was "certainly possible that there is limited human-to-human transmission," and that further investigation was necessary.

Just a week later, on January 21, 2020, WHO modified its statement and said that it was very clear, based on the latest information, that there was "at least some human-to-human transmission." On January 22 and 23, 2020, WHO convened fifteen experts from around the world to determine if the virus constituted a "public health emergency of international concern," but the experts were unable to reach a consensus opinion. On January 30, 2020, the virus was labeled a public health emergency of international concern; however, by February 4, 2020, ninety-nine percent of the confirmed COVID-19 cases were still in China. As the situation developed, WHO disseminated and updated COVID-19 guidance.

###### *Outbreak & Response in the United States, Europe, and Other Countries*

Several other countries soon began confirming the spread of the virus to their own citizens. The first case in the United States was confirmed on January 21, 2020, after a man in Washington state returned home after having visited Wuhan. On January 30, 2020, WHO declared a global health emergency.

The next day, President Donald Trump suspended entry into the United States for certain foreign nationals who had travelled to China within the previous two weeks. During the month of February, the virus continued its spread to Europe, the Middle East, and Latin America. On February 29, 2020, the United States confirmed what was then believed to be its first COVID-19 related death. President Trump issued a "do not travel" warning for various parts of the world heavily affected by COVID-19. By March 26, 2020, the United States had become the world's hardest-hit country at the time.

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<sup>1</sup> World Health Organization, *Listings of WHO's Response to COVID*, <https://www.who.int/news/item/29-06-2020-covidtimeline> (last visited Feb. 16, 2021); Derrick Bryson Taylor, *A Timeline of the Coronavirus Pandemic*, NEW YORK TIMES, <https://www.nytimes.com/article/coronavirus-timeline.html> (Aug. 6, 2020).

## *Evolving Guidance Regarding Social Distancing and the Use of Masks*

As the virus spread across the world, the United States, and the State of Florida, information about the virus evolved at a rapid pace, with official guidance coming from multiple sources and sometimes changing on a day-to-day basis. Individuals, businesses, churches, schools, and other entities scrambled to make the best decisions possible based on their knowledge of the situation at the time.

On February 27, 2020, in the face of a mask shortage, WHO published guidance stating that "[f]or asymptomatic individuals, wearing a mask of any type is not recommended."<sup>2</sup> Two days later, WHO published additional quarantine guidelines. On March 11, 2020, WHO classified the COVID-19 outbreak as a pandemic.

On March 13, 2020, President Trump declared a national emergency due to COVID-19. On March 15, 2020, the U.S. Center for Disease Control ("CDC") recommended that people should not gather in groups of more than fifty. The next day, President Trump stated an even more cautious number, recommending that people should not gather in groups of more than ten. During the months of March and April, many states put "stay-at-home orders" into effect, requiring their citizens to quarantine, shelter in place, or otherwise limit their normal interactions with others.

On March 23, 2020, WHO launched a joint campaign with the International Federation of Association Football ("FIFA") to stop the spread of COVID-19. The campaign focused on five steps to stop the spread, including:

- Frequent handwashing;
- Containing one's sneezes and coughs;
- Avoiding touching one's face;
- Socially distancing at a distance of one meter (equivalent to a little over three feet); and
- Staying at home when not feeling well.<sup>3</sup>

Notably, the campaign letter did not include any guidance about wearing a face mask.<sup>4</sup>

On March 31, 2020, in response to a growing number of falsified medical products claiming to treat COVID-19, WHO issued a medical product alert. On April 2, 2020, WHO reported that a person who has not yet exhibited symptoms can spread COVID-19.

On April 6, 2020, WHO updated its guidance with respect to the use of face masks, cautioning that "[m]edical masks should be reserved for health care workers" and that "the wide use of masks by healthy people in the community setting is not supported by current evidence and carries uncertainties and critical risks."<sup>5</sup>

About two months later, on June 5, 2020, WHO again updated its guidance for face masks. In this guidance document, WHO acknowledged that a face mask may be used to protect a person when such person is in contact with an infected individual. The guidance ultimately recommended that a person exhibiting symptoms should wear a mask. The guidance deferred, however, on the question of whether a healthy individual should wear a mask, citing a lack of good data and the fact that "there are potential benefits and harms to consider."<sup>6</sup>

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<sup>2</sup> World Health Organization, *Rational Use of Personal Protective Equipment for Coronavirus Disease 2019 (COVID-19): Interim Guidance* (Feb. 27, 2020), [https://apps.who.int/iris/bitstream/handle/10665/331215/WHO-2019-nCov-IPCPPE\\_use-2020.1-eng.pdf?sequence=1&isAllowed=y](https://apps.who.int/iris/bitstream/handle/10665/331215/WHO-2019-nCov-IPCPPE_use-2020.1-eng.pdf?sequence=1&isAllowed=y).

<sup>3</sup> World Health Organization, *Pass the Message—Five Steps to Kicking Out Coronavirus* (Mar. 23, 2020) (emphasis supplied), <https://www.who.int/news/item/23-03-2020-pass-the-message-five-steps-to-kicking-out-coronavirus>.

<sup>4</sup> See *id.*

<sup>5</sup> World Health Organization, *Advice on the Use of Masks in the Context of COVID-19, Interim Guidance* (Apr. 6, 2020) [https://apps.who.int/iris/bitstream/handle/10665/331693/WHO-2019-nCov-IPC\\_Masks-2020.3-eng.pdf?sequence=1&isAllowed=y](https://apps.who.int/iris/bitstream/handle/10665/331693/WHO-2019-nCov-IPC_Masks-2020.3-eng.pdf?sequence=1&isAllowed=y).

<sup>6</sup> World Health Organization, *Advice on the Use of Masks in the Context of COVID-19, Interim Guidance* (June 5, 2020) (emphasis supplied) ([https://apps.who.int/iris/bitstream/handle/10665/332293/WHO-2019-nCov-IPC\\_Masks-2020.4-eng.pdf?sequence=1&isAllowed=y](https://apps.who.int/iris/bitstream/handle/10665/332293/WHO-2019-nCov-IPC_Masks-2020.4-eng.pdf?sequence=1&isAllowed=y)).

On August 5, 2020, WHO launched the "#WearAMask Challenge" on social media "to help spread the word about how and when to use a mask to protect against COVID-19."<sup>7</sup> On November 10, 2020, WHO launched the "#WeAreInThisTogether" campaign to "promote collaboration and adherence to five key measures to counter COVID-19: cleaning hands, wearing masks, coughing and sneezing safely, keeping distant[,], and opening windows."<sup>8</sup>

On December 1, 2020, WHO again updated its mask guidance, advising that wearing a mask is a good idea and should be "a normal part of being around other people."<sup>9</sup>

### *Outbreak & Response in Florida*

In the face of the COVID-19 outbreak in Florida, Governor Ron DeSantis declared a state of emergency and issued a series of executive orders, including the following:

- March 1, 2020:<sup>10</sup> Directing the State Health Officer to declare a public health emergency pursuant to the State Health Officer's authority under s. 381.00315, F.S.; and directing the Department of Health to take action pursuant to its authority under ch. 381. Accordingly, the State Health Officer immediately declared a public health emergency.<sup>11</sup>
- March 9, 2020:<sup>12</sup> Declaring a general state of emergency in Florida under ch. 252, F.S.
- March 23-24, 2020:<sup>13</sup> Directing certain individuals travelling from out of state into Florida to self-quarantine for a period of time.
- April 1, 2020:<sup>14</sup> Directing Floridians to stay at home, with exceptions for "essential" services and activities.

While some of the Governor's executive orders eventually expired or were modified, the Governor has continued to extend the state of emergency, with the most recent extension occurring on December 29, 2020.

### *Economic Impacts*

On April 14, 2020, the International Monetary Fund warned that the global economy was headed for its worst economic downturn since the Great Depression, and predicted that the economy would shrink by three percent. Businesses, churches, schools, and other important American entities debated how best to react to the situation. Some of these entities closed for a period of time; some began to require face coverings; some began to focus on online sales rather than storefront sales; and some closed but never reopened. Faced with the crisis of a sort not seen for the past one hundred years, many entities were forced to make important decisions with incomplete, ever-evolving information. Many of these entities, which did not staff doctors or lawyers, were not naturally equipped to make these decisions. As Americans settled into a new state of "normalcy," some entities were put into the position of choosing between continuing business operations with safeguards in place or shuttering completely.

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<sup>7</sup> World Health Organization, *Listings of WHO's Response to COVID*, <https://www.who.int/news/item/29-06-2020-covidtimeline> (last visited Feb. 16, 2021).

<sup>8</sup> *Id.*

<sup>9</sup> World Health Organization, *Coronavirus Disease (COVID-19) Advice for the Public: When and How to Use Masks* (Dec. 1, 2020), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/when-and-how-to-use-masks>. (last visited Feb. 16, 2021).

<sup>10</sup> Fla. Exec. Order 20-51 (Mar. 1, 2020).

<sup>11</sup> See Fla. Exec. Order 20-83 (Mar. 24, 2020) (indicating the State Health Officer's declaration of public health emergency).

<sup>12</sup> Fla. Exec. Order 20-52 (Mar. 9, 2020).

<sup>13</sup> Fla. Exec. Order 20-80 (Mar. 23, 2020) and 20-82 (Mar. 24, 2020).

<sup>14</sup> Fla. Exec. Order 20-91 and 20-92 (Apr. 1, 2020).

## Tort Liability and Negligence

A "tort" is a wrong for which the law provides a remedy. The purpose of tort law is to fairly compensate a person harmed by another person's wrongful acts, whether intentional, reckless, or negligent, through a civil action or other comparable process. A properly-functioning tort system:

- Provides a fair and equitable forum to resolve disputes;
- Appropriately compensates legitimately harmed persons;
- Shifts the loss to responsible parties;
- Provides an incentive to prevent future harm; and
- Deters undesirable behavior.<sup>15</sup>

"Negligence" is a legal term for a type of tort action that is unintentionally committed. In a negligence action, the plaintiff is the party that brings the lawsuit, and the defendant is the party that defends against it. To prevail in a negligence lawsuit, a plaintiff must demonstrate that the:

- Defendant had a legal duty of care requiring the defendant to conform to a certain standard of conduct for the protection of others, including the plaintiff, against unreasonable risks;
- Defendant breached his or her duty of care by failing to conform to the required standard;
- Defendant's breach caused the plaintiff's injury; and
- Plaintiff suffered actual damage or loss resulting from his or her injury.<sup>16</sup>

### *Duty of Care*

The first of the four elements a plaintiff must show to prevail in a negligence action is that the defendant owed the plaintiff a "duty of care" to do something or refrain from doing something. The existence of a legal duty is a threshold requirement that, if satisfied, "merely opens the courthouse doors."<sup>17</sup> Whether a duty sufficient to support a negligence claim exists is a matter of law<sup>18</sup> determined by the court.<sup>19</sup> A duty may arise from many sources, including:

- Legislative enactments or administrative regulations;
- Judicial interpretations of such enactments or regulations;
- Other judicial precedent; and
- The general facts of the case.<sup>20</sup>

In determining whether a duty arises from the general facts of the case, courts look to whether the defendant's conduct foreseeably created a broader "zone of risk" that posed a general threat of harm to others, i.e., the likelihood that the defendant's conduct would result in the type of injury suffered by the plaintiff.<sup>21</sup> Such zone of risk defines the scope of the defendant's legal duty, which is typically to either lessen the risk or ensure that sufficient precautions are taken to protect others from the harm the risk poses.<sup>22</sup> However, it is not enough that a risk merely exists or that a particular risk is foreseeable; rather, the defendant's conduct must create or control the risk before liability may be imposed.<sup>23</sup>

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<sup>15</sup> Am. Jur. 2d Torts s. 2.

<sup>16</sup> 6 *Florida Practice Series* s. 1.1; see *Barnett v. Dept. of Financial Services*, 303 So. 3d 508 (Fla. 2020).

<sup>17</sup> See *Kohl v. Kohl*, 149 So. 3d 127 (Fla. 4th DCA 2014).

<sup>18</sup> A matter of law is a matter determined by the court, unlike a matter of fact which must be determined by the jury. Matters of law include issues regarding a law's application or interpretation, issues regarding what the relevant law is, and issues of fact reserved for judges to resolve. Legal Information Institute, *Question of Law*, [https://www.law.cornell.edu/wex/question\\_of\\_law](https://www.law.cornell.edu/wex/question_of_law) (last visited Feb. 16, 2021); Legal Information Institute, *Question of Fact*, [https://www.law.cornell.edu/wex/Question\\_of\\_fact](https://www.law.cornell.edu/wex/Question_of_fact) (last visited Feb. 16, 2021).

<sup>19</sup> See *Kohl*, 149 So. 3d at 135; *Goldberg v. Fla. Power & Light Co.*, 899 So. 2d 1110.

<sup>20</sup> See *Goldberg*, 899 So. 2d at 1105, citing *Clay Elec. Co-op., Inc. v. Johnson*, 873 So. 2d 1182 (Fla. 2003).

<sup>21</sup> See *Kohl*, 149 So. 3d at 135, citing *McCain v. Fla. Power Corp.*, 593 So. 2d 500 (Fla. 1992); see also *Whitt v. Silverman*, 788 So. 2d 210 (Fla. 2001).

<sup>22</sup> See *Kohl*, 149 So. 3d at 135; see also *Whitt*, 788 So. 2d at 217.

<sup>23</sup> See *Bongiorno v. Americorp, Inc.*, 159 So. 3d 1027 (Fla. 5th DCA 2015), citing *Demelus v. King Motor Co. of Fort Lauderdale*, 24 So. 3d 759 (Fla. 4th DCA 2009).



## *Breach of Duty of Care*

The second element a plaintiff must prove is that the defendant "breached," or failed to discharge, the duty of care. Whether a breach occurred is generally a matter of fact for the jury to determine.<sup>24</sup>

## *Causation*

The third element is that the defendant's breach of the duty of care "proximately caused" the plaintiff's injury. Like a breach, whether or not proximate causation exists is generally a matter of fact for the jury to determine.<sup>25</sup> Florida follows the "more likely than not" standard in proving causation; thus, the inquiry is whether the negligence probably caused the plaintiff's injury.<sup>26</sup> In determining whether a defendant's conduct proximately caused a plaintiff's injury, the factfinder must analyze whether the injury was a foreseeable consequence of the danger created by the defendant's negligent act or omission.<sup>27</sup> This analysis does not require the defendant's conduct to be the exclusive or even the primary cause of the injury suffered; instead, the plaintiff must only show that the defendant's conduct was a substantial cause of the injury.<sup>28</sup>

## *Damages*

The final element a plaintiff must show to prevail in a negligence action is that the plaintiff suffered some harm, or "damages." Actual damages, also called compensatory damages, are those damages actually suffered by a plaintiff as the result of the injury alleged and proved.<sup>29</sup> Juries award actual damages to compensate an injured person for a defendant's negligent acts.<sup>30</sup> Factors considered when calculating actual damages include lost wages or income, medical bills connected to the injury, the cost of repair to damaged property, and costs for coping with an injury (such as the cost of a wheelchair or prosthetic limb).<sup>31</sup>

## *Degrees of Negligence*

Courts distinguish varying degrees of civil negligence by using terms such as "slight negligence," "ordinary negligence," and "gross negligence." Slight negligence is the failure to exercise great care and often applies to injuries caused by common carriers charged with the duty to exercise the highest degree of care toward their passengers.<sup>32</sup> Ordinary negligence is the failure to exercise that degree of care which an ordinary prudent person would exercise; or, in other words, a course of conduct which a reasonable and prudent person would know might possibly result in injury to others.<sup>33</sup> Gross negligence is a course of conduct which a reasonable and prudent person knows would probably and most likely result in injury to another.<sup>34</sup> To prove gross negligence, a plaintiff must usually show that the defendant had knowledge or awareness of imminent danger to another and acted or failed to act with a conscious disregard for the consequences.<sup>35</sup> Once proven, gross negligence may support a punitive<sup>36</sup> damages award.<sup>37</sup> Beyond gross negligence are several other degrees of misconduct, such as "recklessness" and "intentional actions."

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<sup>24</sup> See *Wallace v. Dean*, 3 So. 3d 1035 (Fla. 2009).

<sup>25</sup> See *Sanders v. ERP Operating Ltd. Partnership*, 157 So. 3d 273 (Fla. 2015).

<sup>26</sup> See *Ruiz v. Tenent Hialeah Healthsystem, Inc.*, 260 So. 3d 977 (Fla. 2018).

<sup>27</sup> See *id.* at 981-982.

<sup>28</sup> See *id.* at 982.

<sup>29</sup> See *Birdsall v. Coolidge*, 93 U.S. 64 (1876).

<sup>30</sup> See *St. Regis Paper Co. v. Watson*, 428 So. 2d 243 (Fla. 1983).

<sup>31</sup> See Legal Information Institute, *Actual Damages*, [https://www.law.cornell.edu/wex/actual\\_damages](https://www.law.cornell.edu/wex/actual_damages) (last visited Feb. 16, 2021).

<sup>32</sup> See *Faircloth v. Hill*, 85 So. 2d 870 (Fla. 1956); see also, e.g., *Holland America Cruises, Inc. v. Underwood*, 470 So. 2d 19 (Fla. 2d DCA 1985); see also, e.g., *Werndli v. Greyhound Corp.*, 365 So. 2d 177 (Fla. 2d DCA 1978); 6 *Florida Practice Series* s. 1.2.

<sup>33</sup> See *De Wald v. Quarnstrom*, 60 So. 2d 919 (Fla. 1952); see also *Clements v. Deeb*, 88 So. 2d 505 (Fla. 1956); 6 *Florida Practice Series* s. 1.2.

<sup>34</sup> See *Clements*, 88 So. 2d 505; 6 *Florida Practice Series* s. 1.2.

<sup>35</sup> See *Carraway v. Revell*, 116 So. 2d 16 (Fla. 1959).

<sup>36</sup> Punitive damages are awarded in addition to actual damages to punish a defendant for behavior considered especially harmful. Florida generally caps punitive damage awards at \$500,000 or triple the value of compensatory damages, whichever is greater, and caps cases of intentional misconduct with a financial motivation at two million dollars or four times the amount of compensatory damages, whichever is greater. S. 768.73(1), F.S.

<sup>37</sup> See *Glaab v. Caudill*, 236 So. 2d 180 (Fla. 2d DCA 1970); 6 *Florida Practice Series* s. 1.2; s. 768.72(2), F.S.

## *Comparative Negligence in Florida*

In Florida, before the court awards damages in a negligence action, the jury generally assigns a fault percentage to each party under the comparative negligence rule. Florida applies<sup>38</sup> a "pure" comparative negligence rule, which allows a plaintiff to recover damages proportional to his or her fault percentage.<sup>39</sup> For example, if a plaintiff is 40 percent at fault for an accident causing the plaintiff's injury and the defendant is 60 percent at fault, the plaintiff would recover 60 percent of his or her damages.

### *Statute of Limitations*

A statute of limitations bars the filing of civil claims after the passing of a specified time period and begins to run from the date the cause of action accrues, which is usually when the last element constituting the cause of action occurs.<sup>40</sup> Under Florida law, a negligence action, including a COVID-19 related claim based on negligence, must be brought within four years of when the cause of action accrues.<sup>41</sup> A cause of action generally accrues when "the last element constituting the cause of action accrues";<sup>42</sup> practically speaking, in a negligence action, this is usually when the plaintiff is injured.<sup>43</sup>

### *Pleading a Negligence Claim*

The Florida Rules of Civil Procedure generally require a plaintiff in a civil action to file a complaint, and require a defendant to file an answer to the complaint.<sup>44</sup> A lawsuit begins when a complaint is filed, and a plaintiff may amend the complaint to add a defendant or additional claims once as a matter of course at any time before a responsive pleading, such as an answer, is served.<sup>45</sup> A plaintiff may otherwise only amend a complaint with the permission of the court or the defendant.<sup>46</sup>

Florida is a "fact-pleading jurisdiction." This means that a pleading setting forth a claim for relief, including a complaint, must generally state a cause of action and contain a:

- Short and plain statement of the grounds on which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds to support it;
- Short and plain statement of the ultimate facts<sup>47</sup> showing that the pleader is entitled to relief; and
- Demand for the relief to which the pleader believes he or she is entitled to.<sup>48</sup>

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<sup>38</sup> The comparative negligence standard does not apply to any action brought to recover economic damages from pollution, based on an intentional tort, or to which the joint and several liability doctrine is specifically applied in chs. 403, 498, 517, 542, and 895, F.S. S. 768.81(4), F.S.

<sup>39</sup> S. 768.81(2), F.S.; see *Williams v. Davis*, 974 So. 2d 1052 (Fla. 2007).

<sup>40</sup> Ss. 95.011 and 95.031(1), F.S.

<sup>41</sup> S. 95.11(3)(a), F.S.; see *R.R. v. New Life Community Church of CMA, Inc.*, 303 So. 3d 916 (Fla. 2020).

<sup>42</sup> S. 95.031(1), F.S.

<sup>43</sup> See *R.R.*, 303 So. 3d at 921; see also *Am. Op. Corp. v. Spiewak*, 73 So. 3d 120, 126 (Fla. 2011) (stating generally that "[i]t is axiomatic that a cause of action for negligence . . . does not accrue until the complaining party sustains some type of damage" but acknowledging the Court's past holding that in a case for damages for exposure to an asbestos-related disease, "an action accrues when the accumulated effects of the substance manifest in a way which supplies some evidence of the causal relationship to the manufactured product").

<sup>44</sup> Fla. R. Civ. P. 1.100.

<sup>45</sup> Fla. R. Civ. P. 1.100 and 1.190.

<sup>46</sup> Fla. R. Civ. P. 1.190.

<sup>47</sup> Ultimate facts are facts that must be accepted for a claim to prevail, usually inferred from a number of supporting evidentiary facts, which themselves are facts making other facts more probable. See Legal Information Institute, *Ultimate Fact*, [https://www.law.cornell.edu/wex/ultimate\\_fact](https://www.law.cornell.edu/wex/ultimate_fact) (last visited Feb. 16, 2021); see also Legal Information Institute, *Evidentiary Facts*, [https://www.law.cornell.edu/wex/evidentiary\\_fact](https://www.law.cornell.edu/wex/evidentiary_fact) (last visited Feb. 16, 2021).

<sup>48</sup> See *Goldschmidt v. Holman*, 571 So. 2d 422 (Fla. 1990); Fla. R. Civ. P. 1.110.

However, certain allegations<sup>49</sup> must be plead with "particularity," which is a heightened level of pleading requiring a statement of facts sufficient to satisfy the elements of each claim.

### *Burden of Proof*

The burden of proof is an obligation to prove a material fact in issue.<sup>50</sup> Generally, the party who asserts the material fact in issue has the burden of proof.<sup>51</sup> Thus, in a criminal proceeding, the burden is on the state to prove that the defendant committed the crime with which he or she was charged, while in a civil proceeding, the burden of proof is on the plaintiff to prove the allegations contained in his or her complaint. Further, a defendant in either a criminal or a civil proceeding has the burden to prove any affirmative defenses<sup>52</sup> he or she may raise in response to the charges or allegations. However, there are certain statutory and common law presumptions<sup>53</sup> that may shift the burden of proof from the party asserting the material fact in issue to the party defending against such fact.<sup>54</sup> These presumptions remain in effect following the introduction of evidence rebutting the presumption, and the factfinder must decide if such evidence is strong enough to overcome the presumption.<sup>55</sup>

### *Standard of Proof*

A standard of proof is the level or degree of proof necessary to meet the burden of proof for a particular issue.<sup>56</sup> In criminal actions, the standard of proof necessary for a conviction<sup>57</sup> is beyond a reasonable doubt, meaning that the factfinder must be virtually certain of the defendant's guilt in order to render a guilty verdict. In most civil actions, the standard of proof is by the preponderance of the evidence, meaning the burden of proof is met when the party with the burden convinces the factfinder that there is a greater than 50 percent chance that the claim is true.<sup>58</sup> However, certain civil actions<sup>59</sup> are subject to a heightened standard of proof, requiring the plaintiff to prove the allegations by clear and convincing evidence. This standard requires the evidence to be highly and substantially more likely to be true than untrue.<sup>60</sup> The clear and convincing evidence standard is an intermediate-level standard. It is more rigorous than the "preponderance" standard but less rigorous than the "beyond a reasonable doubt" standard.

### *Evidence Admissibility*

In general, not all evidence is admissible in a civil proceeding for consideration by the factfinder. Florida law provides that all relevant evidence is generally admissible, except as provided by law.<sup>61</sup> Relevant evidence is evidence tending to prove or disprove a material fact.<sup>62</sup>

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<sup>49</sup> These allegations include fraud, mistake, condition of the mind, and denial of performance or occurrence. Fla. R. Civ. P. 1.120(b), (c).

<sup>50</sup> 5 *Florida Practice Series* s. 16:1.

<sup>51</sup> *Id.*; see *Berg v. Bridle Path Homeowners Ass'n, Inc.*, 809 So. 2d 32 (Fla. 4th DCA 2002).

<sup>52</sup> An affirmative defense is a defense which, if proven, negates criminal or civil liability even if it is proven that the defendant committed the acts alleged. Examples include self-defense, entrapment, insanity, necessity, and *respondeat superior*. Legal Information Institute, *Affirmative Defense*, [https://www.law.cornell.edu/wex/affirmative\\_defense](https://www.law.cornell.edu/wex/affirmative_defense) (last visited Feb. 16, 2021).

<sup>53</sup> These presumptions tend to be social policy expressions, such as the presumption that all people are sane or that all children born in wedlock are legitimate. 5 *Florida Practice Series* s. 16:1.

<sup>54</sup> 5 *Florida Practice Series* s. 16:1.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> The standard of proof for proving affirmative defenses raised in a criminal trial may vary.

<sup>58</sup> 5 *Florida Practice Series* s. 16:1.

<sup>59</sup> These actions typically include actions to impose a civil penalty, civil actions based on conduct amounting to a criminal law violation, and actions in which the effect of a civil ruling might be deprive a party of a protected interest. 5 *Florida Practice Series* s. 16:1.

<sup>60</sup> 5 *Florida Practice Series* s. 16:1; see *Colorado v. New Mexico*, 467 U.S. 310 (1984).

<sup>61</sup> S. 90.402, F.S.

<sup>62</sup> S. 90.401, F.S.

## Access to Courts

The Florida Constitution broadly protects the right to access the courts, which "shall be open to every person for redress of any injury . . . ." <sup>63</sup> However, this constitutional right is not unlimited.

In *Kluger v. White*,<sup>64</sup> the Florida Supreme Court evaluated to what extent the Legislature may alter a civil cause of action. The Court stated that it would not completely prohibit the Legislature from altering a cause of action, but neither would it allow the Legislature "to destroy a traditional and long-standing cause of action upon mere legislative whim . . . ." The takeaway from *Kluger* and other relevant case law is that the Legislature may:

- Reduce the right to bring a cause of action as long as the right is not entirely abolished.<sup>65</sup>
- Abolish a cause of action that is not "traditional and long-standing"—that is, a cause of action that did not exist at common law, and that did not exist in statute before the adoption of the Florida Constitution's Declaration of Rights.<sup>66</sup>
- Abolish a cause of action if the Legislature either:
  - Provides a reasonable commensurate benefit in exchange;<sup>67</sup> or
  - Shows an "overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown."<sup>68</sup>

## Retroactive Application of a Statute and Due Process

In Florida, absent an express statement of legislative intent, a statute is presumed to operate only prospectively, not retroactively.<sup>69</sup> Both the Florida and U.S. Constitutions explicitly forbid passage of a law criminalizing past conduct (an "*ex post facto* law");<sup>70</sup> but the Legislature may provide that a non-criminal law applies retroactively in certain situations. But even a non-criminal law may be held unconstitutional if its retroactive application impermissibly burdens existing constitutional rights.<sup>71</sup>

The Florida Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law . . . ." <sup>72</sup> In turn, the Florida Supreme Court has held that in certain situations, a person whose legal cause of action has already accrued may have a due process right to bring such action.<sup>73</sup> Florida courts have sometimes invalidated the retroactive application of laws when such due process rights are implicated.<sup>74</sup> On other occasions, the courts have signaled that certain statutory provisions may be applied retroactively, including a statute retroactively:

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<sup>63</sup> Art. I, s. 21, Fla. Const.

<sup>64</sup> *Kluger*, 281 So. 2d 1.

<sup>65</sup> See *Achord v. Osceola Farms Co.*, 52 So. 3d 699 (Fla. 2010).

<sup>66</sup> See *Anderson v. Gannett Comp.*, 994 So. 2d 1048 (Fla. 2008) (false light was not actionable under the common law); *McPhail v. Jenkins*, 382 So. 2d 1329 (Fla. 1980) (wrongful death was not actionable under the common law); see also *Kluger*, 281 So. 2d at 4 ("We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State . . . the Legislature is without power to abolish such a right without providing a reasonable alternative . . . unless the Legislature can show an overpowering public necessity . . .").

<sup>67</sup> *Kluger*, 281 So. 2d at 4; see *Univ. of Miami v. Echarte*, 618 So. 2d 189 (Fla. 1993) (upholding statutory cap on medical malpractice damages because the Legislature provided arbitration, which is a "commensurate benefit" for a claimant); accord *Lasky v. State Farm Ins. Co.*, 296 So. 2d 9 (Fla. 1974); but see *Smith v. Dept. of Ins.*, 507 So. 2d 1080 (Fla. 1992) (striking down noneconomic cap on damages, which, although not wholly abolishing a cause of action, did not provide a commensurate benefit).

<sup>68</sup> *Kluger*, 281 So. 2d at 4-5 (noting that in 1945, the Legislature abolished the right to sue for several causes of action, but successfully demonstrated "the public necessity required for the total abolition of a right to sue") (citing *Rotwein v. Gersten*, 36 So. 2d 419 (Fla. 1948); see *Echarte*, 618 So. 2d at 195 ("Even if the medical malpractice arbitration statutes at issue did not provide a commensurate benefit, we would find that the statutes satisfy the second prong of *Kluger* which requires a legislative finding that an 'overpowering public necessity' exists, and further that 'no alternative method of meeting such public necessity can be shown'").

<sup>69</sup> *Fla. Ins. Guar. Ass'n, Inc. v. Devon Neighborhood Ass'n, Inc.*, 67 So. 3d 187, 194-95 (Fla. 2011).

<sup>70</sup> U.S. Const. art. I, ss. 9, 10; Art. I, s. 10, Fla. Const.

<sup>71</sup> See *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873, 877 (Fla. 2010) ("[E]ven where the Legislature has expressly stated that a statute will have retroactive application, this Court will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty").

<sup>72</sup> Art. I, s. 9, Fla. Const.

<sup>73</sup> See, e.g., *Spiewak*, 73 So. 3d 120 ("a cause of action constitutes an intangible property right that is grounded in tort").

<sup>74</sup> See, e.g., *R.A.M. of S. Fla., Inc. v. WCI Cmtys., Inc.*, 869 So. 2d 1210 (Fla. 2d DCA 2004).

- Raising the standard of proof from "preponderance of the evidence" to "clear and convincing evidence,"<sup>75</sup> with the statutory change becoming effective after the plaintiff had already filed a civil complaint;<sup>76</sup> and
- Altering the plaintiff's burden of proof.<sup>77</sup>

The Florida Supreme Court has recently acknowledged that Florida case law on this subject is "less than precise" and that the Court has sometimes "been unclear about what it means to give retroactive application" to a law.<sup>78</sup>

### Other State Laws Relating to COVID Liability

Soon after the COVID-19 pandemic began, state governments began responding to the ever-changing landscape. Some states passed laws; other states' governor's issued executive orders. The types of protection against COVID-19-related civil liability vary from state to state.

By early January 2021, several states had enacted COVID-19 liability protection for businesses. Many of these states require either a showing of willful, reckless, or intentional misconduct or gross negligence by clear and convincing evidence before a plaintiff can prevail in a COVID-19-related claim against a covered business. For instance, in 2020, Tennessee enacted SB 8002, which requires a plaintiff bringing a COVID-19-related claim against specified entities and institutions to:

- Plead with particularity;
- Prove gross negligence or willful misconduct by clear and convincing evidence to recover damages; and
- File with the complaint a certificate of good faith stating that the plaintiff has obtained a physician's affidavit attesting that the defendant's act or omission caused the plaintiff's injury.

### **Effect of Proposed Changes**

CS/HB 7 provides civil immunity from COVID-19 liability to business entities, educational institutions, religious institutions, governmental entities, and other covered entities that acted in good faith during the COVID-19 pandemic. The bill protects reasonably-acting covered entities and institutions so that they can predict their COVID-19-related litigation risks, remain viable, and continue to contribute to the state's well-being.

### Covered Entities and Institutions

The bill provides civil COVID-19 liability protection to business entities, educational institutions, religious institutions, governmental entities, and other covered entities ("covered entities and institutions"). However, the bill specifically excepts health care providers from COVID-19 liability protection even if a health care provider otherwise meets the definition of a business entity, educational institution, religious institution, or governmental entity. For the purposes of the bill, a:

- "Business entity" means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state. The term also includes a charitable organization as defined in s. 496.404, F.S., and a corporation not for profit as defined in s. 617.01401, F.S.
- "Educational institution" means a school, preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or private.
- "Religious institution" means a church, ecclesiastical or denominational organization, or established physical place for worship in this state at which nonprofit religious services and

<sup>75</sup> See *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 2d DCA 1990); *Stuart L. Stein, P.A. v. Miller Indus., Inc.*, 564 So. 2d 539 (Fla. 4th DCA 1990).

<sup>76</sup> See *Stuart L. Stein, P.A.*, 564 So. 2d at 540.

<sup>77</sup> See *Walker & LaBerge, Inc. v. Halligan*, 344 So. 2d 239, 243 (Fla. 1977) ("Burden of proof requirements are procedural in nature" and may "be abrogated retroactively because no one has a vested right in any given mode of procedure") (internal citations and punctuation omitted).

<sup>78</sup> See *Love v. State*, 286 So. 3d 177, 183-84 (Fla. 2019).

activities are regularly conducted and carried on and includes those bona fide religious groups that do not maintain specific places of worship. The term also includes a separate group or corporation that forms an integral part of a religious institution that is exempt from federal income tax and that is not primarily supported by funds solicited outside its own membership or congregation.

- “Governmental entity” means the state or any political subdivision thereof, including the executive, legislative, and judicial branches of government; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; or any agencies subject to ch. 286, F.S.
- “Health care provider” means:
  - Any activity, service, agency, or facility regulated by the Agency for Healthcare Administration and listed in s. 408.802, F.S., including hospitals, health care clinics, nursing homes, assisted living facilities, and home health agencies.
  - A clinical laboratory providing services in the state or services to health care providers in the state, if the clinical laboratory is certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder.
  - A federally qualified health care center as defined in 42 U.S.C. s. 1396d(1)(2)(B), as that definition exists on the bill’s effective date.
  - Any site providing health care services which was established for the purpose of responding to the COVID-19 pandemic under any federal or state order, declaration, or waiver.
  - Licensed acupuncturists, medical physicians, osteopathic physicians, chiropractors, podiatrists, naturopathic physicians, optometrists, nurses, pharmacists, dentists, dental hygienists, midwives, electrologists, massage therapists, opticians, physical therapists, psychologists, clinical social workers, mental health counselors, marriage and family therapists, speech-language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dietitians, nutritionists, athletic trainers, orthotists, pedorthists, prosthetists, clinical laboratory personnel, medical physicists, radiological personnel, and home health aides.
  - A provider licensed under chapter 394 (relating to mental health) or chapter 397 (relating to substance abuse services).
  - A continuing care facility.
  - A pharmacy.

### Pleading, Burdens of Proof, and Standards of Proof

Instead of generally allowing COVID-19-related claims to be heard by a jury, the bill creates a bifurcated proceeding for COVID-19-related claims against covered entities and institutions. The initial stage of this proceeding is heard only by a judge. In this initial stage, a plaintiff must:

- Plead a COVID-19-related claim with particularity, instead of merely providing the short and plain statement of facts required under current law.
- Submit with the complaint an affidavit from a Florida-licensed physician attesting that, within a reasonable degree of medical certainty, the defendant caused the plaintiff’s COVID-19-related damages.
- Prove that the defendant did not make a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidance available at the time the plaintiff’s cause of action accrued.

The bill also limits the evidence admissible during the initial stage of the proceeding to evidence tending to show whether the defendant made a good faith effort as described above. If the plaintiff fails to show that the defendant did not make a good faith effort, the defendant is immune from civil immunity. Thus, under the bill, a plaintiff may only proceed to the jury stage of a COVID-19-related claim if the court determines that the defendant did not make a good faith effort as described above. The bill clarifies that if there was more than one authoritative source of government standards or guidance during the relevant time period, the defendant’s good faith effort with respect to any one of those sources is sufficient to confer immunity from liability.

In the second stage of the proceeding, the bill requires the plaintiff to prove that the defendant was at least grossly negligent, instead of at least ordinarily negligent as required under current law. The bill also raises the standard of proof from the "preponderance of the evidence" standard to the more rigorous "clear and convincing evidence" standard.

### Statute of Limitations

The bill decreases the applicable statute of limitations for COVID-19-related claims against covered entities and institutions to one year running from the:

- Time the cause of action accrues for an injured person whose cause of action accrues after the bill's effective date.
- Bill's effective date for an injured person whose cause of action accrued before the bill's effective date.

This ensures that all persons with COVID-19-related claims against covered entities and institutions have a reasonable amount of time to bring their lawsuits, while also providing a measure of certainty to such entities and institutions as to the scope of their potential COVID-19 liability.

### Access to Courts

The bill does not eliminate all civil liability for COVID-19-related claims, but rather provides a safe harbor for covered entities who have acted in good faith to comply with applicable health guidelines. Thus, a plaintiff may bring a COVID-19-related claim against an entity not covered by the bill. Further, the bill preserves civil COVID-19-related liability for covered entities that do not act in good faith and commit at least gross negligence, ensuring that plaintiffs harmed by truly bad actors may still recover damages. For those COVID-19-related claims the bill would bar, the bill provides a statement of overpowering public necessity to justify the restriction and explains that there is no alternative method for meeting that necessity.

### Effective Date and Retroactivity

The bill provides that its effective date is upon becoming a law. The bill applies retroactively to a COVID-19-related civil action that is filed after the bill's effective date, even if the cause of action accrued before the bill's effective date, but not to a COVID-19-related civil action filed before the bill's effective date.

## B. SECTION DIRECTORY:

**Section 1:** Creates s. 768.38, F.S., relating to civil liability for damages relating to COVID-19.

**Section 2:** Creates an unnumbered section of law providing for severability.

**Section 3:** Provides that the effective date is upon becoming a law and applies retroactively, except with respect to a civil action against a defendant which was commenced before the bill's effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill requires a trial judge to make an initial determination of whether the plaintiff in a COVID-19 related lawsuit has met certain requirements before sending the case to a jury. As such, the bill may reduce the need for jury trials and may have a positive fiscal impact on the state courts system.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill provides a bright-line safe harbor for businesses and other entities that contribute to the well-being of the Florida economy. In turn, this will give such entities a better way to predict their COVID-19-related litigation risks, which may have a positive economic impact on the private sector.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Access to Courts

The Florida Constitution provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."<sup>79</sup> In *Kluger v. White*, 281 So. 2d 1 (Fla. 1973), the Florida Supreme Court established a test to determine when the Legislature may restrict a judicial remedy. Where citizens have had a historical right of access to the courts, whether through statute or common law, the Legislature can only eliminate a judicial remedy under two circumstances. First, if it asserts a valid public purpose, the Legislature may restrict access to the courts if it provides a reasonable alternative to litigation.<sup>80</sup> Second, if the Legislature finds that there is an overpowering public necessity and that there is no alternative method for meeting that necessity, it may restrict access to the courts.<sup>81</sup>

CS/HB 7 makes legislative findings of an overpowering public necessity, in light of the unprecedented nature of the COVID-19 pandemic. Moreover, the bill does not eliminate all civil liability for a COVID-19-related claim, but rather provides a safe harbor for covered entities and institutions acting in good faith to comply with applicable health guidelines.

Due Process

The Florida Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law . . . ."<sup>82</sup> In turn, the Florida Supreme Court has held that in certain situations, a

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<sup>79</sup> Art. I, s. 21, Fla. Const.

<sup>80</sup> See *Kluger*, 281 So. 2d at 4.

<sup>81</sup> *Id.*

<sup>82</sup> Art. I, s. 9, Fla. Const.



person whose legal cause of action has already accrued may have a due process right to bring such action.<sup>83</sup> Florida courts have sometimes invalidated the retroactive application of laws when such due process rights are implicated.<sup>84</sup> The Florida Supreme Court has recently acknowledged, however, that Florida case law on this subject is "less than precise" and that the Court has sometimes "been unclear about what it means to give retroactive application" to a law.<sup>85</sup>

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 16, 2021, the Judiciary Committee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Add to the list of "healthcare providers" excluded from the bill:
  - A provider licensed under chapter 394 (relating to mental health) or 397 (relating to substance abuse services).
  - A continuing care facility.
  - A pharmacy.
- Clarify that a defendant making a good faith effort to substantially comply with any one source or set of government standards or guidelines is immune from liability.
- Make a technical change to the statute of limitations provision.

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<sup>83</sup> See, e.g., *Spiewak*, 73 So. 3d at 123 ("a cause of action constitutes an intangible property right that is grounded in tort").

<sup>84</sup> See, e.g., *R.A.M.*, 869 So. 2d 1210.

<sup>85</sup> See *Love*, 286 So. 3d at 183-84.

By Senator Wright

14-00622-21

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1                   A bill to be entitled  
2       An act relating to marina evacuations; amending s.  
3       327.59, F.S.; prohibiting vessels under a specified  
4       weight from remaining in certain marinas that have  
5       been deemed unsuitable for refuge during a hurricane  
6       after the issuance of a hurricane watch; requiring a  
7       marina owner, operator, employee, or agent to remove  
8       specified vessels under certain circumstances;  
9       providing that such owner, operator, employee, or  
10      agent may charge the vessel owner a reasonable fee for  
11      such removal and may not be held liable for any  
12      damages as a result of such removal; providing  
13      construction; providing that the owners or operators  
14      of certain vessels may be subject to a fine that the  
15      deepwater seaport issuing an evacuation order is  
16      required to impose and collect; providing an effective  
17      date.

18  
19   Be It Enacted by the Legislature of the State of Florida:

20  
21       Section 1. Subsection (1) of section 327.59, Florida  
22   Statutes, is amended, and subsection (5) is added to that  
23   section, to read:

24       327.59 Marina evacuations.—

25       (1) Except as provided in this section ~~After June 1, 1994,~~  
26   marinas may not adopt, maintain, or enforce policies pertaining  
27   to evacuation of vessels which require vessels to be removed  
28   from marinas following the issuance of a hurricane watch or  
29   warning, in order to ensure that protecting the lives and safety

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of vessel owners is placed before interests of protecting property.

(5) Upon the issuance of a hurricane watch affecting the waters of marinas located in a deepwater seaport, vessels under 500 gross tons may not remain in the waters of such marinas that have been deemed not suitable for refuge during a hurricane. Vessel owners shall promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport. If the United States Coast Guard captain of the port sets the port condition to "Yankee" and a vessel owner has failed to remove a vessel from the waterway, the marina owner, operator, employee, or agent, regardless of any existing contractual provisions between the marina owner and the vessel owner, shall remove the vessel, or cause the vessel to be removed, if reasonable, from its slip and may charge the vessel owner a reasonable fee for any such services rendered. A marina owner, operator, employee, or agent may not be held liable for any damage incurred to a vessel from a hurricane and is held harmless as a result of such actions to remove the vessel from the waterways. Nothing in this section may be construed to provide immunity to a marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel pursuant to this section. After the hurricane watch has been issued, the owner or operator of any vessel that has not been removed from the waterway of the marina, pursuant to an order from the deepwater seaport, may be subject to a fine, which must be imposed and collected by the deepwater seaport that issued the evacuation order if assessed, in an amount not exceeding three times the cost associated with

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59 removing the vessel from the waterway.

60 Section 2. This act shall take effect July 1, 2021.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 578

INTRODUCER: Senator Wright

SUBJECT: Marina Evacuations

DATE: March 2, 2021

REVISED: \_\_\_\_\_

| ANALYST     | STAFF DIRECTOR | REFERENCE | ACTION           |
|-------------|----------------|-----------|------------------|
| 1. Anderson | Rogers         | EN        | <b>Favorable</b> |
| 2. Proctor  | Vickers        | TR        | <b>Favorable</b> |
| 3. Anderson | Phelps         | RC        | <b>Favorable</b> |

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**I. Summary:**

SB 578 prohibits, upon the issuance of a hurricane watch that affects the waters of marinas located in a deepwater seaport, vessels under 500 gross tons from remaining in the waters of such marinas that have been deemed not suitable for refuge during a hurricane. The bill requires that vessel owners promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport.

If the Coast Guard Captain of the Port sets the port condition to “Yankee”<sup>1</sup> and a vessel owner has failed to remove his or her vessel from the waterway, a marina owner, operator, employee, or agent, is required to remove the vessel, if reasonable, from its slip. The marina owner may charge the vessel owner a reasonable fee for the service of removing the vessel.

The bill provides that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to the vessel from a hurricane and is held harmless from removing the vessel from the waterways. However, the bill does not provide immunity to the marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel.

The bill provides that after a watch has been issued, if an owner or operator has not removed the vessel pursuant to an order from the seaport, the owner or operator may be subject to a fine, in an amount not exceeding three times the cost associated with removing the vessel from the waterway.

The bill has an effective date of July 1, 2021.

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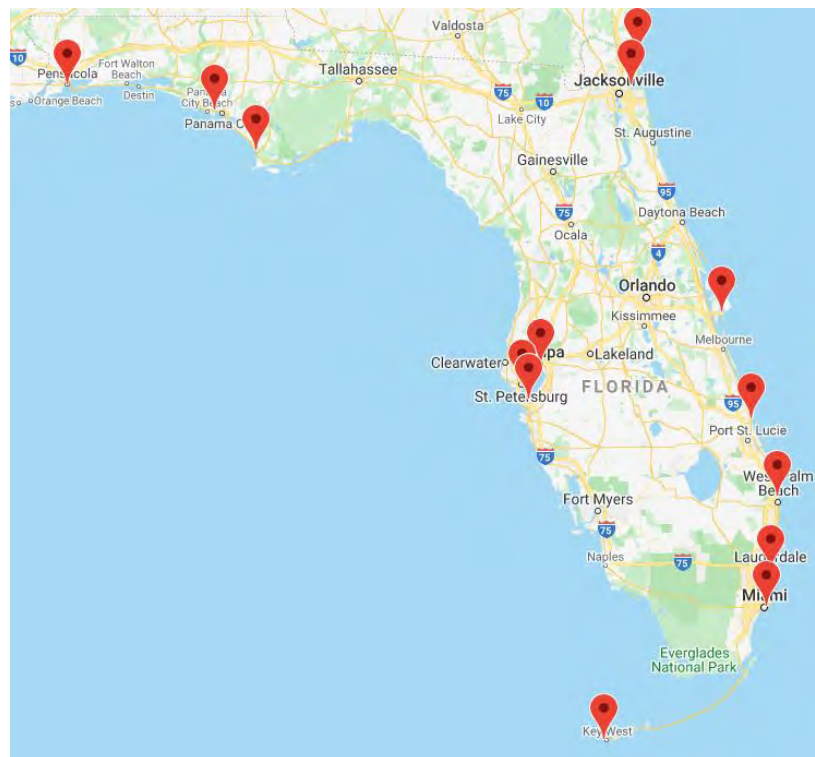
<sup>1</sup> Gale force winds are predicted to arrive within 24 hours, the port is closed to inbound traffic, and vessel traffic control measures are in effect on vessel movements within the port.

## II. Present Situation:

### Deepwater Ports in Florida

Under Florida law, a “port” means a port authority or district.<sup>2</sup> Ports are created by and given authority under general or special law. Each port, in agreement with the United States Coast Guard (Coast Guard), state pilots, and other ports in its operating port area, is required to adopt guidelines for minimum bottom clearance for each berth and channel, for the movement of vessels, and for radio communications of vessel traffic for all commercial vessels entering and leaving its harbor channels.<sup>3</sup>

There are 14 deepwater seaports in Florida, indicated in the map below:<sup>4</sup>



### Port Canaveral

One example of a deepwater seaport impacted by the bill is Port Canaveral, which was dedicated on November 4, 1953.<sup>5</sup> It is a gateway for Central Florida and the world’s second busiest cruise port.<sup>6</sup> Annually, Port Canaveral moves nearly 4 million tons of cargo and sees 4 million cruise

<sup>2</sup> Section 313.21, F.S.; see also s. 315.02, F.S. “Port authority” means a port authority in Florida created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law. “Port district” means any district created by or pursuant to the provisions of any general or special law and authorized to own or operate any port facilities.

<sup>3</sup> Section 313.23, F.S.

<sup>4</sup> Florida Ports Council, *Seaports*, <https://flaports.org/seaports/> (last visited Jan. 22, 2021).

<sup>5</sup> Port Canaveral, *History*, <https://www.portcanaveral.com/About/History> (last visited Jan. 22, 2021).

<sup>6</sup> Port Canaveral, *Port and Cruise Facts*, <https://www.portcanaveral.com/Cruise/Port-Cruise-Facts> (last visited Jan. 22, 2021).

passengers.<sup>7</sup> It also houses United States Army, Navy, and Air Force facilities.<sup>8</sup> Port Canaveral is a key part of Florida's gasoline supply system. Gasoline and other petroleum products are primarily delivered by marine tankers and barges to the state's ports, including Port Canaveral, where the products are offloaded and later stored and distributed around the state.<sup>9</sup> Additionally, 200 small businesses ranging from marinas, restaurants, retail, and charter boats currently lease and operate at Port Canaveral.<sup>10</sup>

In fiscal year 2019, Port Canaveral reported \$110 million in revenues, the highest in its history.<sup>11</sup>

### ***Canaveral Port Authority***

The Canaveral Port District (Port District) was created by the Legislature by special act in 1953, as amended in 2014.<sup>12</sup> It is an independent special taxing district and political subdivision of the state.<sup>13</sup> The Canaveral Port Authority (Port Authority) has the power to make rules and regulations for the promotion and conduct of navigation, commerce, and industry in the Port District.<sup>14</sup> The Port Authority also has the power to make rules and regulations governing the docking, storing, mooring, and anchoring of vessels within the Port District and to remove all obstacles to navigation, commerce, and industry in the waters of the port.<sup>15</sup>

The Port Canaveral Tariff No. 16 provides the current rates, rules, and regulations governing its marine and port services.<sup>16</sup> Anyone who uses the waterways and facilities under the jurisdiction of the Port Authority consents to the terms and conditions of the tariff.<sup>17</sup> According to the tariff, Port Canaveral is not a suitable refuge during hurricanes or tropical storms. All Port Canaveral waterway tenants and users must comply with evacuation orders and storm preparation directives given by the Port Authority, the Coast Guard, the Brevard County Sheriff's Office, and Canaveral Fire Rescue.<sup>18</sup>

The tariff specifically states that recreational and commercial vessels under 500 gross tons are not eligible to remain in Port and must be removed from the waters of the Port, at the expense of the vessel owner or operator, before hurricane condition Zulu is set by the Coast Guard (see discussion below of Hurricane Season Port Conditions and Categories).<sup>19</sup> The Port Authority is

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<sup>7</sup> *Supra* note 5.

<sup>8</sup> Port Canaveral, *About Us*, <https://www.portcanaveral.com/About/> (last visited Jan. 22, 2021).

<sup>9</sup> Office of Program Policy Analysis and Government Accountability, Florida Legislature, *Feasibility Analysis for Petroleum Distribution Centers*, 11 (Nov. 29, 2018), available at <https://oppaga.fl.gov/Documents/Reports/18-PETRO.pdf>.

<sup>10</sup> *Supra* note 8.

<sup>11</sup> Florida Ports Council, *Port Canaveral*, <https://flaports.org/ports/port-canaveral/> (last visited Jan. 22, 2021).

<sup>12</sup> Ch. 2014-241, Laws of Fla. Each special district in existence at the time was required to submit to the Legislature a draft codified charter so that its special acts could be codified into a single act for reenactment by the Legislature.

<sup>13</sup> Section 189.403(1), F.S., defines a "special district" as a confined local government unit established for a special purpose. The public policy intent of special districts is to provide private and public sectors an alternative governing method to "manage, own, operate, construct and finance basic capital infrastructure, facilities and services."

<sup>14</sup> Art. IV, s. 9 of the Canaveral Port Authority Charter, as amended by Ch. 2014-241, Laws of Fla.

<sup>15</sup> Art. IV, s. 10 of the Canaveral Port Authority Charter, as amended by Ch. 2014-241, Laws of Fla.

<sup>16</sup> Canaveral Port Authority, *Tariff No. 16 – Governing Rates, Rules, & Regulations of the Marine and Port Services*, Rule 520 (Oct. 1, 2020), available at [https://www.portcanaveral.com/Cargo/Port-Tariff/CPA-Tariff-16-FY21-FINAL-\(1\).aspx](https://www.portcanaveral.com/Cargo/Port-Tariff/CPA-Tariff-16-FY21-FINAL-(1).aspx).

<sup>17</sup> *Id.*, Rule 100.

<sup>18</sup> *Id.*, Rule 520.

<sup>19</sup> *Id.*

authorized to issue penalties to vessel owners or operators in accordance with statutory provisions (see discussion below of Vessel Movements and Penalties for Delay).<sup>20</sup>

### **Vessel Movements and Penalties for Delay**

Pursuant to Florida law, each port may regulate vessel movements within its jurisdiction, whether involving public or private facilities or areas, by:

- Scheduling vessels for use of berths, anchorages, or other facilities at the port.
- Ordering and enforcing a vessel, at its own expense and risk, to vacate or change position at a berth, anchorage, or facility, whether public or private, in order to facilitate navigation, commerce, protection of other vessels or property, or dredging of channels or berths.
- Designating port facilities for the loading or discharging of vessels.
- Assigning berths at wharves for arriving vessels.<sup>21</sup>

Ports are authorized to establish fees and compensation for the services regulating vessel movements provided by the port.<sup>22</sup>

A port may impose and collect a penalty from a vessel that unnecessarily delays in moving under an order to vacate or change position. This penalty may not exceed \$1,000 per hour or fraction thereof, plus 150 percent of the demurrage costs incurred by a waiting vessel, until the order is complied with.<sup>23</sup>

### **Marinas**

A marina is a licensed commercial facility that provides secured public moorings or dry storage for vessels on a leased basis.<sup>24</sup> There are five marinas within Port Canaveral, with approximately 260 wet slips hosted on Port property for recreational vessels under 500 gross tons.<sup>25</sup> This number does not include boats in marina storage within Port property. The map below shows Port Canaveral, including its marina district.<sup>26</sup>

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<sup>20</sup> Section 313.22(3), F.S.

<sup>21</sup> Section 313.22(1), F.S.

<sup>22</sup> Section 313.22(2), F.S.

<sup>23</sup> *Supra* note 20.

<sup>24</sup> Section 327.02(25), F.S.

<sup>25</sup> Email from Caitlin Lewis, Government Relations Manager, Canaveral Port Authority, to Senate Environment and Natural Resources Committee (Jan. 22, 2020), available at [http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4857/8671\\_MeetingPacket\\_4857.03.20.pdf](http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4857/8671_MeetingPacket_4857.03.20.pdf) on page 218-219 (last visited Jan. 22, 2021).

<sup>26</sup> *Supra* note 6.





## Marina Evacuations

### *Storm Condition Effects on Vessels and Marinas*

Hurricanes and storm conditions can include high winds, storm surges, wave action, and heavy rainfall.<sup>27</sup> These conditions can cause catastrophic damage to marinas and vessels. Vessels that are left in a marina during hurricane and storm conditions can lead to problems in the port, including the inability to secure docks, causing potential damage to infrastructure such as piers, and other harm to persons or property. Weather during a storm event can force a vessel into an obstruction, propel objects into the vessel, or sink or damage a boat.<sup>28</sup> A moored vessel can repeatedly collide with a stationary dock, leading to damage to both the vessel and dock. Storm surges can even lift entire floating docks above their pilings or knock boats off their cradles.<sup>29</sup>

Vessels left in the harbor can also pose navigational issues and cause problems and delays in clearing channels. However, boater preparedness education and preparation can reduce the loss of property for both the vessel owner and others.<sup>30</sup> To this end, marinas and ports have an interest in requiring vessel owners to secure their vessels during a storm to prevent damage to persons or property.

### *Safe Haven*

Some marina docking contracts contain “safe haven” or “hurricane” clauses. These clauses provide that, when a hurricane watch is issued, boat owners shall immediately remove their vessels and all personal property from the marina and seek safe haven somewhere else. Failure to comply with this requirement, according to the clauses, will result in the boat owner being liable for all damage to docks, piers, other vessels, or any other property damage directly caused by the owner's vessel or resulting from its presence in the marina.<sup>31</sup>

<sup>27</sup> UF/IFAS, *Hurricane Manual for Marine Interest*, available at [https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-\(2\).pdf](https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-(2).pdf).

<sup>28</sup> *Id.*; Florida Keys National Marine Sanctuary, *Protect your Boat in a Hurricane: Making a Plan (Part I)*, <https://floridakeys.noaa.gov/whatsnew/around/2015/boathurricane1.html> (last visited Jan. 22, 2021).

<sup>29</sup> *Id.*

<sup>30</sup> *Supra* note 27.

<sup>31</sup> Mercante, James, *Hurricanes and Act of God: When the Best Defense is a Good Offense*, 18 U.S.F. MAR. L.J. (2006).

### ***Marina Evacuation Statute***

Florida enacted a law designed to prevent marinas from using safe haven clauses as a basis for recovering their property damage from vessel owners after a hurricane.<sup>32</sup> Florida law emphasizes the protection of life over property by prohibiting marinas from requiring vessel owners to remove their vessels from a marina following the issuance of a hurricane watch or warning.<sup>33</sup>

However, after a tropical storm or hurricane watch has been issued, a marina owner or operator, or their employee or agent, may take reasonable actions to further secure a vessel within the marina to minimize damage to the vessel and to protect marina property, private property, and the environment.<sup>34</sup> The owner or operator may charge a reasonable fee for such services.<sup>35</sup> A marina owner may include this in a contractual agreement with a vessel owner.<sup>36</sup> Marina owners are not able to be held liable for damage to a vessel from a storm or hurricane, but may be liable for damage due to intentional acts or negligence when removing or securing a vessel.<sup>37</sup>

*Burklow & Associates, Inc. v. Belcher* is the only Florida state court decision that specifically mentions Florida's marina evacuation statute.<sup>38</sup> A marina owner sued owners of 16 stored vessels for damages allegedly caused by the vessel owners' failure to move their vessels after a hurricane warning was issued as was required by their marina contracts.<sup>39</sup> The court upheld the state statute and found that the vessel owners had no duty, contractually or otherwise, to move their vessels following the issuance of a hurricane watch or warning.<sup>40</sup> The court's analysis pointed to the clear legislative policy "to ensure that protecting lives and safety of vessel owners is placed before interests of protecting property" when a hurricane approaches.<sup>41</sup>

### **Hurricane Season Port Conditions and Categories**

Port conditions are set by the Coast Guard Captain of the Port of a sector, or regulated area. Port conditions are explained in the table below.<sup>42</sup> "Gale force winds" mean winds of 34 knots or 39 miles per hour.

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<sup>32</sup> Ch. 93-211, s. 22, Laws of Fla. (creating s. 327.59, F.S.).

<sup>33</sup> Section 327.59(1), F.S.

<sup>34</sup> Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(2), F.S., effective Jul. 1, 2006).

<sup>35</sup> *Id.*

<sup>36</sup> Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(3), F.S., effective Jul. 1, 2006).

<sup>37</sup> Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(4), F.S., effective Jul. 1, 2006).

<sup>38</sup> 719 So.2d 31 (Fla. Dist. Ct. App. 1998).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> 33 C.F.R. s. 165.720; 33 C.F.R. 165.781; see also Brazos Pilots Association, *Hurricane Season Port Conditions and Categories*, available at <http://www.brazospilots.com/Hurricane-Season.pdf>.

| Port Condition | Storm Status  | Port Status   |
|----------------|---|---|
| Whiskey        | Gale force winds are predicted to arrive within 72 hours  | Open to all commercial and recreational traffic   |
| X-Ray          | Gale force winds are predicted to arrive within 48 hours  | Open to all commercial and recreational traffic   |
| Yankee         | Gale force winds are predicted to arrive within 24 hours  | Closed to inbound traffic and vessel traffic control measures in effect on vessel movements within the port                                     |
| Zulu           | Gale force winds are predicted to arrive within 12 hours  | Closed to all inbound and outbound traffic  |
| Recovery       | The storm is no longer a threat to the area, but response and recovery operations may be in progress to address damage. | Reopened to outbound traffic at completion of port survey; vessel traffic control measures remain in effect on vessel movements within the port |

### III. Effect of Proposed Changes:

The bill amends s. 327.59, F.S., to prohibit, upon the issuance of a hurricane watch that affects the waters of marinas located in a deepwater seaport, vessels under 500 gross tons from remaining in the waters of such marinas that have been deemed not suitable for refuge during a hurricane.

The bill requires that vessel owners promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport. If the Coast Guard Captain of the Port sets the port condition to “Yankee” and a vessel owner has failed to remove his or her vessel from the waterway, a marina owner, operator, employee, or agent, regardless of any existing contractual provisions between the marina owner and vessel owner, is required to remove the vessel, or cause the vessel to be removed, if reasonable, from its slip. The marina owner may charge the vessel owner a reasonable fee for the service of removing the vessel.

The bill provides that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to the vessel from a hurricane and is held harmless from removing the vessel from the waterways. However, the bill does not provide immunity to the marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel.

The bill provides that after a hurricane watch has been issued, if an owner or operator of a vessel has not removed the vessel pursuant to an order from the seaport, the owner or operator may be subject to a fine, which must be imposed and collected by the deepwater seaport that issued the evacuation order. The amount of the fine may not exceed three times the cost associated with removing the vessel from the waterway.

The bill takes effect on July 1, 2021.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Vessel owners may incur increased costs from moving their vessel pursuant to a movement order, from fees charged by a marina owner for the service of moving a vessel, or due to penalties incurred from noncompliance with a movement order.

**C. Government Sector Impact:**

Ports may see a positive fiscal impact due to increased collection of penalties from vessel owners that do not comply with a movement order and cost savings associated with prevention of damage to port facilities and infrastructure.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 327.59 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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1                           A bill to be entitled  
2       An act relating to marina evacuations; amending s.  
3       327.59, F.S.; prohibiting vessels under a specified  
4       weight from remaining in certain marinas that have  
5       been deemed unsuitable for refuge during a hurricane  
6       after the issuance of a hurricane watch; requiring a  
7       marina owner, operator, employee, or agent to remove  
8       specified vessels under certain circumstances;  
9       providing that such owner, operator, employee, or  
10      agent may charge the vessel owner a reasonable fee for  
11      such removal and may not be held liable for any  
12      damages as a result of such removal; providing that  
13      the owners or operators of certain vessels may be  
14      subject to a fine that the deepwater seaport issuing  
15      an evacuation order may impose and collect; providing  
16      construction; providing an effective date.

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

19  
20       Section 1. Subsection (1) of section 327.59, Florida  
21   Statutes, is amended, and subsection (5) is added to that  
22   section, to read:

23       327.59 Marina evacuations.—

24       (1) Except as provided in this section ~~After June 1, 1994,~~  
25   marinas may not adopt, maintain, or enforce policies pertaining

26 to evacuation of vessels which require vessels to be removed  
27 from marinas following the issuance of a hurricane watch or  
28 warning, in order to ensure that protecting the lives and safety  
29 of vessel owners is placed before interests of protecting  
30 property.

31 (5) Upon the issuance of a hurricane watch affecting the  
32 waters of marinas located in a deepwater seaport, vessels under  
33 500 gross tons may not remain in the waters of such marinas that  
34 have been deemed not suitable for refuge during a hurricane.  
35 Vessel owners shall promptly remove their vessels from the  
36 waterways upon issuance of an evacuation order by the deepwater  
37 seaport. If the United States Coast Guard captain of the port  
38 sets the port condition to "Yankee" and a vessel owner has  
39 failed to remove a vessel from the waterway, the marina owner,  
40 operator, employee, or agent, regardless of any existing  
41 contractual provisions between the marina owner and the vessel  
42 owner, shall remove the vessel, or cause the vessel to be  
43 removed, if reasonable, from its slip and may charge the vessel  
44 owner a reasonable fee for any such services rendered. A marina  
45 owner, operator, employee, or agent may not be held liable for  
46 any damage incurred to a vessel from a hurricane and is held  
47 harmless as a result of such actions to remove the vessel from  
48 the waterways. After the hurricane watch has been issued, the  
49 owner or operator of any vessel that has not been removed from  
50 the waterway of the marina, pursuant to an order from the

51 deepwater seaport, may be subject to a fine, which may be  
52 imposed and collected by the deepwater seaport that issued the  
53 evacuation order if assessed, in an amount not exceeding three  
54 times the cost associated with removing the vessel from the  
55 waterway. This section does not provide immunity to a marina  
56 owner, operator, employee, or agent for any damage caused by  
57 intentional acts or negligence when removing a vessel pursuant  
58 to this section; require a deepwater seaport to issue an order  
59 to evacuate vessels; or require a deepwater seaport to impose  
60 and collect fines for failure to remove vessels from its  
61 waterways.

62       Section 2.   This act shall take effect July 1, 2021.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 223 Marina Evacuations

**SPONSOR(S):** Pandemics & Public Emergencies Committee, Plasencia

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 578

| REFERENCE  | ACTION           | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|------------------|---------|--|
| 1) Environment, Agriculture & Flooding<br>Subcommittee | 18 Y, 0 N        | Melkun  | Moore                                    |
| 2) Pandemics & Public Emergencies Committee            | 15 Y, 0 N, As CS | Skinner | Dearden                                  |
| 3) State Affairs Committee                             |                  |         |  |

### SUMMARY ANALYSIS

Under Florida law, the term “port” is defined as a port authority or district. Each port, in agreement with the United States Coast Guard, state pilots, and other ports in its operating port area, is required to adopt guidelines for minimum bottom clearance of each berth and channel, for the movement of vessels, and for radio communications of vessel traffic for all commercial vessels entering and leaving its harbor channels. There are 14 deepwater seaports in Florida.

A marina is a licensed commercial facility that provides secured public moorings or dry storage for vessels on a leased basis. Vessels that are left in a marina during hurricane and storm conditions can cause problems in the port, including the inability to secure docks, causing potential damage to infrastructure such as piers, and other harm to people or property. Vessels left in the harbor can also pose navigational issues and cause problems and delays in clearing channels.

Some marina docking contracts contain “safe haven” or “hurricane” clauses. These clauses provide that, when a hurricane watch is issued, boat owners must immediately remove their vessels and all personal property from the marina and seek safe haven somewhere else. In 1993, Florida enacted a law designed to prevent marinas from using safe haven clauses as a basis for recovering the costs of property damage from vessel owners after a hurricane.

Upon the issuance of a hurricane watch affecting the waters of marinas located in a deepwater seaport, the bill prohibits vessels under 500 gross tons from remaining in the waters of marinas that have been deemed not suitable for refuge during a hurricane. In addition, the bill requires vessel owners to promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport.

The bill specifies that if the Coast Guard captain of the port sets the port condition to “Yankee” and a vessel owner has failed to remove a vessel from the waterway, the marina owner must remove the vessel and may charge the vessel owner a reasonable fee for the removal. In addition, the bill specifies that a marina owner may not be held liable for any damage incurred to a vessel from a hurricane and is held harmless as a result of such actions to remove the vessel from the waterways, unless the damage was caused by intentional acts or negligence.

Finally, the bill authorizes the deepwater seaport to impose and collect a fine in an amount not to exceed three times the cost associated with removing a vessel from the waterway if, after the hurricane watch has been issued, the owner or operator of a vessel has not removed the vessel from the waterway of the marina pursuant to an order from the deepwater seaport. The bill specifies that a deepwater seaport is not required to issue an order to evacuate vessels or impose and collect fines for failure to remove vessels from its waterways.

The bill may have an indeterminate positive fiscal impact on the state.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

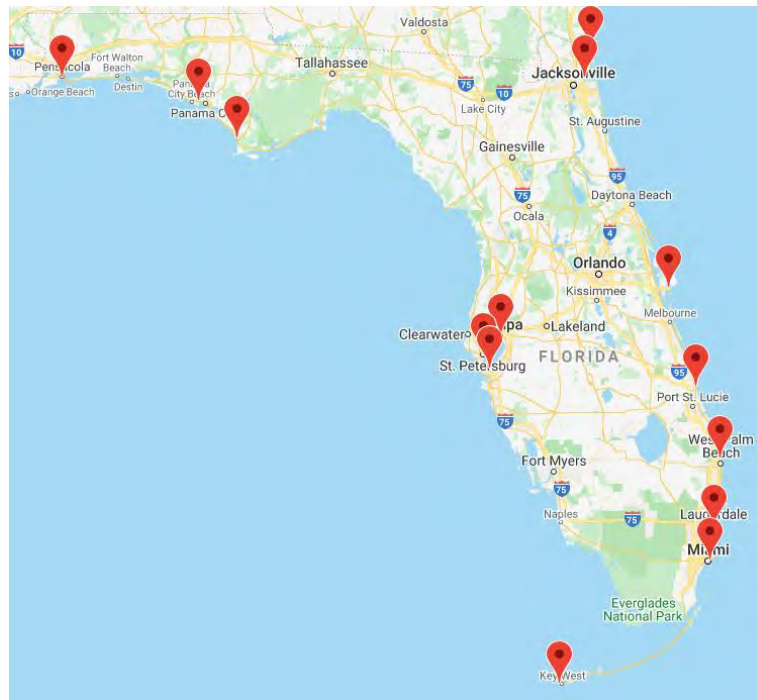
### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Deepwater Seaports

Under Florida law, the term “port” is defined as a port authority or district.<sup>1</sup> Ports are created by and given authority under general or special law. Each port, in agreement with the United States Coast Guard (Coast Guard), state pilots, and other ports in its operating port area, is required to adopt guidelines for minimum bottom clearance of each berth and channel, for the movement of vessels, and for radio communications of vessel traffic for all commercial vessels entering and leaving its harbor channels.<sup>2</sup>

There are 14 deepwater seaports in Florida, which are depicted in the following map:<sup>3</sup>



Deepwater seaports serve as maritime facilities that consist of one or more marinas where ships can dock to load and discharge cargo, such as gasoline and other petroleum products, and cruise passengers.<sup>4</sup> These seaports also serve as hubs for small businesses such as restaurants, retail facilities, and charter boats.<sup>5</sup> Currently, Florida’s deepwater seaports support nearly 900,000 jobs and contribute \$117.6 billion in economic value through cargo and cruise activities.<sup>6</sup>

<sup>1</sup> Section 313.21, F.S.; *see also* s. 315.02, F.S. “Port authority” means a port authority in Florida created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law. “Port district” means any district created by or pursuant to the provisions of any general or special law and authorized to own or operate any port facilities.

<sup>2</sup> Section 313.23, F.S.

<sup>3</sup> Florida Ports Council, *Seaports*, available at <https://flaports.org/seaports/> (last visited Mar. 5, 2021).

<sup>4</sup> United States Department of Transportation, *Frequently Asked Questions*, available at <https://www.maritime.dot.gov/ports/deepwater-ports-and-licensing/frequently-asked-questions> (last visited Mar. 5, 2021).

<sup>5</sup> Port Canaveral, *About Us*, available at <https://www.portcanaveral.com/About> (last visited Mar. 5, 2021).

<sup>6</sup> Florida Ports Council, *Seaports*, available at <https://flaports.org/about/the-florida-system-of-seaports/> (last visited Mar. 5, 2021).

### Vessel Movements and Penalties for Delay

Pursuant to s. 313.22(1), F.S., each port may regulate vessel movements within its jurisdiction, whether involving public or private facilities or areas, by:

- Scheduling vessels for use of berths, anchorages, or other facilities at the port.
- Ordering and enforcing a vessel, at its own expense and risk, to vacate or change position at a berth, anchorage, or facility, whether public or private, in order to facilitate navigation, commerce, protection of other vessels or property, or dredging of channels or berths.
- Designating port facilities for the loading or discharging of vessels.
- Assigning berths at wharves for arriving vessels.<sup>7</sup>

Ports are also authorized to establish fees and compensation for the services regulating vessel movements provided by the port.<sup>8</sup> Additionally, a port may impose and collect a penalty from a vessel that unnecessarily delays moving under an order to vacate or change position. This penalty may not exceed \$1,000 per hour or fraction thereof, plus 150 percent of the demurrage costs incurred by a waiting vessel, until the order is complied with.<sup>9</sup>

### Marina Evacuations

A marina is a licensed commercial facility that provides secured public moorings or dry storage for vessels on a leased basis.<sup>10</sup> When hurricanes and storm conditions threaten the coast, marinas and vessels are vulnerable to catastrophic damage from the high winds, storm surges, wave action, and heavy rainfall these storms bring.<sup>11</sup> Vessels that are left in a marina during hurricane and storm conditions can also cause problems in the port, including the inability to secure docks, causing potential damage to infrastructure such as piers, and other harm to people or property. Storm conditions can also force a vessel into another object, propel objects into the vessel, or sink or damage a vessel.<sup>12</sup> Storm surges can even lift entire floating docks above their pilings or knock boats off their cradles.<sup>13</sup> Vessels left in the harbor can also pose navigational issues and cause problems and delays in clearing channels.<sup>14</sup>

### Safe Haven

Some marina docking contracts contain “safe haven” or “hurricane” clauses. These clauses provide that, when a hurricane watch is issued, boat owners must immediately remove their vessels and all personal property from the marina and seek safe haven somewhere else. Failure to comply with this requirement, according to the clauses, results in the boat owner’s liability for all damage to docks, piers, other vessels, or any other property damage directly caused by the owner’s vessel or resulting from its presence in the marina.<sup>15</sup>

In 1993, Florida enacted a law designed to prevent marinas from using safe haven clauses as a basis for recovering the costs of property damage from vessel owners after a hurricane, emphasizing the protection of life over property by prohibiting marinas from requiring vessel owners to remove their vessels from a marina following the issuance of a hurricane watch or warning.<sup>16</sup>

However, after a tropical storm or hurricane watch has been issued, a marina owner or operator, or their employee or agent, is authorized to take reasonable actions to further secure a vessel within the marina to minimize damage to the vessel and to protect marina property, private property, and the

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<sup>7</sup> Section 313.22(1), F.S.

<sup>8</sup> Section 313.22(2), F.S.

<sup>9</sup> Section 313.22(3), F.S.

<sup>10</sup> Section 327.02(25), F.S.

<sup>11</sup> University of Florida (UF), *Hurricane Manual for Marine Interests*, available at [https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-\(2\).pdf](https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-(2).pdf) (last visited Mar. 5, 2021).

<sup>12</sup> *Id.*; Florida Keys National Marine Sanctuary, *Protect your Boat in a Hurricane: Making a Plan (Part I)*, available at <https://floridakeys.noaa.gov/whatsnew/around/2015/boathurricane1.html> (last visited Mar. 5, 2021).

<sup>13</sup> *Id.*

<sup>14</sup> UF, *Hurricane Manual for Marine Interests*, available at [https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-\(2\).pdf](https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-(2).pdf) (last visited Mar. 5, 2021).

<sup>15</sup> Mercante, James, *Hurricanes and Act of God: When the Best Defense is a Good Offense*, 18 U.S.F. MAR. L.J. (2006).

<sup>16</sup> Chapter 93-211, s. 22, Laws of Fla.; s. 327.59(1), F.S.

environment. The owner or operator may charge a reasonable fee for securing the vessel, which can be included in a contractual agreement with the vessel owner.<sup>17</sup> While marina owners may not be held liable for damage to a vessel from a storm or hurricane, they may be still be held liable for damage due to intentional acts or negligence when removing or securing a vessel.<sup>18</sup>

#### Hurricane Season Port Conditions and Categories

Port conditions, which are set by the Coast Guard captain of the port of a particular sector, or regulated area, are indicated in the table below.<sup>19</sup>

| Port Condition | Storm Status   | Port Status   |
|----------------|--|---|
| Whiskey        | Gale force winds <sup>20</sup> are predicted to arrive within 72 hours   | Open to all commercial and recreational traffic   |
| X-Ray          | Gale force winds are predicted to arrive within 48 hours   | Open to all commercial and recreational traffic   |
| Yankee         | Gale force winds are predicted to arrive within 24 hours   | Closed to inbound traffic and vessel traffic control measures in effect on vessel movements within the port                                     |
| Zulu           | Gale force winds are predicted to arrive within 12 hours   | Closed to all inbound and outbound traffic  |
| Recovery       | The storm is no longer a threat to the area, but response and recovery operations may be in progress to address damage | Reopened to outbound traffic at completion of port survey; vessel traffic control measures remain in effect on vessel movements within the port |

#### **Effect of the Bill**

Upon the issuance of a hurricane watch affecting the waters of marinas located in a deepwater seaport, the bill prohibits vessels under 500 gross tons from remaining in the waters of such marinas that have been deemed not suitable for refuge during a hurricane. In addition, the bill requires vessel owners to promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport.

The bill specifies that if the Coast Guard captain of the port sets the port condition to “Yankee” and a vessel owner has failed to remove a vessel from the waterway, the marina owner, operator, employee, or agent, regardless of any existing contractual provisions between the marina owner and the vessel owner, must remove the vessel, or cause the vessel to be removed, if reasonable, from its slip and may charge the vessel owner a reasonable fee for any such services rendered.

The bill authorizes the deepwater seaport to impose and collect a fine in an amount not to exceed three times the cost associated with removing a vessel from the waterway if, after the hurricane watch has been issued, the owner or operator of a vessel has not removed the vessel from the waterway of the marina pursuant to an order from the deepwater seaport. The bill specifies that a deepwater seaport is

<sup>17</sup> Chapter 2006-309, s. 2, Laws of Fla.; s. 327.59(2)-(3), F.S.

<sup>18</sup> Section 327.59(4), F.S.

<sup>19</sup> 33 C.F.R. s. 165.720; 33 C.F.R. 165.781; *See also* Brazos Pilots Association, *Hurricane Season Port Conditions and Categories*, available at [Hurricane-Season \(brazospilots.com\)](https://www.brazospilots.com/Hurricane-Season) (last visited Mar. 5, 2021).

<sup>20</sup> “Gale force winds” mean winds of 34 knots or 39 miles per hour. National Oceanic and Atmospheric Administration, *Beaufort Wind Scale*, available at <https://www.spc.noaa.gov/faq/tornado/beaufort.html> (last visited Mar. 5, 2021).

not required to issue an order to evacuate vessels or impose and collect fines for failure to remove vessels from its waterways.

The bill specifies that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to a vessel from a hurricane and is held harmless as a result of such actions to remove the vessel from the waterways. However, the bill clarifies that this provision does not provide immunity to a marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 327.59, F.S., to prohibit certain vessels from remaining in marinas under specified conditions.

Section 2. Provides an effective date of July 1, 2021.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive fiscal impact on the state because deepwater seaports may impose and collect fines from vessel owners that do not comply with a movement order. In addition, the seaports may have to spend less on repairing damage to seaport facilities and infrastructure.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have an indeterminate negative fiscal impact on vessel owners due to the costs associated with moving their vessels pursuant to a movement order, the fees charged by a marina owner for the service of moving a vessel, or the fines incurred from noncompliance with a movement order.

**D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 9, 2021, the Pandemics & Public Emergencies Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that a deepwater seaport that issued the evacuation order may impose and collect fines from vessels in violation of said order; and
- Specified that deepwater seaports are not required to issue an order to evacuate vessels or to impose and collect fines for a failure to remove vessels from its waterways.

This analysis is drafted to the committee substitute as approved by the Pandemics & Public Emergencies Committee.

By Senator Bradley

5-01601-21

20211658\_\_

1 A bill to be entitled  
2 An act relating to power-driven vessel safety  
3 requirements; providing a short title; creating s.  
4 327.396, F.S.; prohibiting sitting in a specified  
5 manner upon the bow, transom, or gunwale of a power-  
6 driven vessel while the vessel is making way;  
7 prohibiting a power-driven vessel operator from  
8 allowing a person to sit in such a way; defining  
9 terms; providing a noncriminal infraction; amending s.  
10 327.73, F.S.; providing a noncriminal infraction for  
11 violations relating to power-driven vessel safety  
12 requirements; providing an effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16 Section 1. This act may be cited as the "Limb Preservation  
17 Act."

18 Section 2. Section 327.396, Florida Statutes, is created to  
19 read:

20 327.396 Power-driven vessel safety requirements.—

21 (1) A person may not sit upon the bow, transom, or gunwale  
22 of a power-driven vessel with any portion of his or her foot or  
23 leg over the uppermost outside edge of the vessel while the  
24 vessel is making way.

25 (2) The operator of a power-driven vessel may not allow a  
26 person to sit upon the bow, transom, or gunwale of the vessel  
27 with any portion of his or her foot or leg over the uppermost  
28 outside edge of the vessel while the vessel is making way.

29 (3) As used in this section, the term:

5-01601-21

20211658\_\_

30       (a) "Making way" means moving relative to the surface of  
31 the water as a result of a power-driven vessel's machinery.

32       (b) "Power-driven vessel" means a vessel propelled by  
33 machinery.

34       (4) A person who violates this section commits a  
35 noncriminal infraction, punishable as provided in s. 327.73.

36       Section 3. Paragraph (cc) is added to subsection (1) of  
37 section 327.73, Florida Statutes, to read:

38       327.73 Noncriminal infractions.—

39       (1) Violations of the following provisions of the vessel  
40 laws of this state are noncriminal infractions:

41       (cc) Section 327.396, relating to power-driven vessel  
42 safety requirements.

43  
44       Any person cited for a violation of any provision of this  
45 subsection shall be deemed to be charged with a noncriminal  
46 infraction, shall be cited for such an infraction, and shall be  
47 cited to appear before the county court. The civil penalty for  
48 any such infraction is \$50, except as otherwise provided in this  
49 section. Any person who fails to appear or otherwise properly  
50 respond to a uniform boating citation shall, in addition to the  
51 charge relating to the violation of the boating laws of this  
52 state, be charged with the offense of failing to respond to such  
53 citation and, upon conviction, be guilty of a misdemeanor of the  
54 second degree, punishable as provided in s. 775.082 or s.  
55 775.083. A written warning to this effect shall be provided at  
56 the time such uniform boating citation is issued.

57       Section 4. This act shall take effect July 1, 2021.



HB 271

2021

1                   A bill to be entitled  
2       An act relating to power-driven vessel safety  
3       requirements; providing a short title; creating s.  
4       327.396, F.S.; prohibiting sitting in a specified  
5       manner upon the bow, transom, or gunwale of a power-  
6       driven vessel while the vessel is making way;  
7       providing definitions; providing penalties; amending  
8       s. 327.73, F.S.; providing penalties for violations  
9       relating to power-driven vessel safety requirements;  
10      providing an effective date.

11  
12   Be It Enacted by the Legislature of the State of Florida:

13  
14       Section 1.   This act may be cited as the "Limb Preservation  
15   Act."

16       Section 2.   Section 327.396, Florida Statutes, is created  
17   to read:

18       327.396 Power-driven vessel safety requirements.—

19       (1) A person may not sit upon the bow, transom, or gunwale  
20   of a power-driven vessel with any portion of his or her foot or  
21   leg over the uppermost outside edge of the vessel while the  
22   vessel is making way.

23       (2) The operator of a power-driven vessel may not allow a  
24   person to sit upon the bow, transom, or gunwale of the vessel  
25   with any portion of his or her foot or leg over the uppermost

26 outside edge of the vessel while the vessel is making way.

27 (3) As used in this section, the term:

28 (a) "Making way" means moving relative to the surface of  
29 the water as a result of a power-driven vessel's machinery.

30 (b) "Power-driven vessel" means a vessel propelled by  
31 machinery.

32 (4) A person who violates this section commits a  
33 noncriminal infraction, punishable as provided in s. 327.73.

34 Section 3. Paragraph (cc) is added to subsection (1) of  
35 section 327.73, Florida Statutes, to read:

36 327.73 Noncriminal infractions.—

37 (1) Violations of the following provisions of the vessel  
38 laws of this state are noncriminal infractions:

39 (cc) Section 327.396, relating to power-driven vessel  
40 safety requirements.

41  
42 Any person cited for a violation of any provision of this  
43 subsection shall be deemed to be charged with a noncriminal  
44 infraction, shall be cited for such an infraction, and shall be  
45 cited to appear before the county court. The civil penalty for  
46 any such infraction is \$50, except as otherwise provided in this  
47 section. Any person who fails to appear or otherwise properly  
48 respond to a uniform boating citation shall, in addition to the  
49 charge relating to the violation of the boating laws of this  
50 state, be charged with the offense of failing to respond to such

HB 271

2021

51 citation and, upon conviction, be guilty of a misdemeanor of the  
52 second degree, punishable as provided in s. 775.082 or s.  
53 775.083. A written warning to this effect shall be provided at  
54 the time such uniform boating citation is issued.

55       Section 4. This act shall take effect July 1, 2021.

By Senator Gruters

23-01256-21

20211562\_\_

1 A bill to be entitled  
2 An act relating to motorboat engine cutoff switches;  
3 providing a short title; amending s. 327.02, F.S.;  
4 defining terms; amending s. 327.50, F.S.; requiring  
5 the use of an engine cutoff switch when operating  
6 certain motorboats that are making way; providing  
7 applicability; providing penalties; amending s.  
8 327.391, F.S.; conforming a cross-reference; amending  
9 s. 327.73, F.S.; conforming provisions to changes made  
10 by the act; reenacting s. 327.54(1)(c), F.S., relating  
11 to liveries and safety regulations, to incorporate the  
12 amendment made to s. 327.50, F.S., in a reference  
13 thereto; reenacting s. 327.731(1), F.S., relating to  
14 mandatory education for violators, to incorporate the  
15 amendment made to s. 327.73, F.S., in a reference  
16 thereto; providing an effective date.

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

19  
20 Section 1. This act may be cited as "Ethan's Law."

21 Section 2. Present subsections (14) through (23), (24)  
22 through (44), and (45), (46), and (47) of section 327.02,  
23 Florida Statutes, are redesignated as subsections (15) through  
24 (24), (26) through (46), and (48), (49), and (50), respectively,  
25 and new subsections (14), (25), and (47) are added to that  
26 section, to read:

27 327.02 Definitions.—As used in this chapter and in chapter  
28 328, unless the context clearly requires a different meaning,  
29 the term:

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(14) "Engine cutoff switch" means an emergency switch installed on a vessel or motor which is designed to immediately shut off the engine if the vessel operator falls overboard, whether triggered by a physical attachment such as a lanyard or wirelessly through electronic means.

(25) "Making way" means that a vessel is being propelled through the water by engaging the use of an equipped sail or mechanical machinery.

(47) "Trolling motor" means a self-contained unit that contains an electric motor, a propeller, and controls which affixes to a vessel's bow or stern and which is used to move the vessel.

Section 3. Subsection (4) is added to section 327.50, Florida Statutes, to read:

327.50 Vessel safety regulations; equipment and lighting requirements.—

(4) A person operating a motorboat less than 26 feet in length upon the waters of this state shall use an engine cutoff switch while the vessel is making way. This subsection does not apply to motorboats making way solely by the use of a trolling motor or to vessels with a main helm installed within an enclosed cabin. If a person violates this subsection and:

(a) Does not cause a boating accident as defined in s. 327.02, the person commits a noncriminal infraction, punishable as provided in s. 327.73.

(b) Causes damage to the property of another or causes injury to another less severe than serious bodily injury as defined in s. 327.353, the person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s.

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59 775.083.

60 (c) Causes serious bodily injury to another as defined in  
61 s. 327.353, the person commits a misdemeanor of the first  
62 degree, punishable as provided in s. 775.082 or s. 775.083.

63 (d) Causes death, the person commits vessel homicide as  
64 defined in s. 782.072, punishable as provided in s. 782.072.

65 Section 4. Subsection (1) of section 327.391, Florida  
66 Statutes, is amended to read:

67 327.391 Airboats regulated.—

68 (1) The exhaust of every internal combustion engine used on  
69 any airboat operated on the waters of this state shall be  
70 provided with an automotive-style factory muffler, underwater  
71 exhaust, or other manufactured device capable of adequately  
72 muffling the sound of the exhaust of the engine as described in  
73 s. 327.02(32) ~~s. 327.02(30)~~. The use of cutouts or flex pipe as  
74 the sole source of muffling is prohibited, except as provided in  
75 subsection (4). Any person who violates this subsection commits  
76 a noncriminal infraction punishable as provided in s. 327.73(1).

77 Section 5. Paragraph (m) of subsection (1) of section  
78 327.73, Florida Statutes, is amended to read:

79 327.73 Noncriminal infractions.—

80 (1) Violations of the following provisions of the vessel  
81 laws of this state are noncriminal infractions:

82 (m) Section 327.50(1), ~~and~~ (2), and (4)(a), relating to  
83 required safety equipment, lights, and shapes.

84  
85 Any person cited for a violation of any provision of this  
86 subsection shall be deemed to be charged with a noncriminal  
87 infraction, shall be cited for such an infraction, and shall be

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88 cited to appear before the county court. The civil penalty for  
89 any such infraction is \$50, except as otherwise provided in this  
90 section. Any person who fails to appear or otherwise properly  
91 respond to a uniform boating citation shall, in addition to the  
92 charge relating to the violation of the boating laws of this  
93 state, be charged with the offense of failing to respond to such  
94 citation and, upon conviction, be guilty of a misdemeanor of the  
95 second degree, punishable as provided in s. 775.082 or s.  
96 775.083. A written warning to this effect shall be provided at  
97 the time such uniform boating citation is issued.

98 Section 6. For the purpose of incorporating the amendment  
99 made by this act to section 327.50, Florida Statutes, in a  
100 reference thereto, paragraph (c) of subsection (1) of section  
101 327.54, Florida Statutes, is reenacted to read:

102 327.54 Liveries; safety regulations; penalty.—

103 (1) A livery may not knowingly lease, hire, or rent a  
104 vessel to any person:

105 (c) When the vessel does not contain the required safety  
106 equipment required under s. 327.50.

107 Section 7. For the purpose of incorporating the amendment  
108 made by this act to section 327.73, Florida Statutes, in a  
109 reference thereto, subsection (1) of section 327.731, Florida  
110 Statutes, is reenacted to read:

111 327.731 Mandatory education for violators.—

112 (1) A person convicted of a criminal violation under this  
113 chapter, convicted of a noncriminal infraction under this  
114 chapter if the infraction resulted in a reportable boating  
115 accident, or convicted of two noncriminal infractions as  
116 specified in s. 327.73(1)(h)-(k), (m), (o), (p), and (s)-(y),

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117 said infractions occurring within a 12-month period, must:

118 (a) Enroll in, attend, and successfully complete, at his or  
119 her own expense, a classroom or online boating safety course  
120 that is approved by and meets the minimum standards established  
121 by commission rule;

122 (b) File with the commission within 90 days proof of  
123 successful completion of the course; and

124 (c) Refrain from operating a vessel until he or she has  
125 filed proof of successful completion of the course with the  
126 commission.

127 Section 8. This act shall take effect July 1, 2021.



HB 1099

2021

1 A bill to be entitled  
2 An act relating to vessel safety equipment; providing  
3 a short title; amending s. 327.50, F.S.; providing  
4 definitions; requiring operators of certain motorboats  
5 to use an engine cutoff switch while the motorboat is  
6 making way; providing applicability; providing  
7 penalties; amending s. 327.73, F.S.; conforming  
8 provisions to changes made by the act; providing an  
9 effective date.

10  
11 Be It Enacted by the Legislature of the State of Florida:

12  
13 Section 1. This act may be cited as "Ethan's Law."

14 Section 2. Subsection (4) is added to section 327.50,  
15 Florida Statutes, to read:

16 327.50 Vessel safety regulations; equipment and lighting  
17 requirements.—

18 (4) (a) As used in this subsection, the term:

19 1. "Engine cutoff switch" means an emergency switch  
20 installed on a motorboat or motorboat engine that is designed to  
21 immediately shut off the engine if the motorboat operator falls  
22 overboard, whether triggered by a physical attachment such as a  
23 lanyard or wirelessly through some electronic means.

24 2. "Making way" means that a motorboat is being propelled  
25 through the water by the use of mechanical machinery.

26        3. "Trolling motor" means a self-contained unit that  
27        contains an electric motor, a propeller, and controls that affix  
28        to the bow or stern of a motorboat and are used to move the  
29        motorboat.

30        (b) A person operating a motorboat less than 26 feet in  
31        length upon the waters of this state shall use an engine cutoff  
32        switch while the motorboat is making way. This paragraph does  
33        not apply to a motorboat making way solely by the use of a  
34        trolling motor.

35        (c) A person who violates this subsection and:

36        1. Does not cause a boating accident as defined s. 327.02  
37        commits a noncriminal infraction, punishable as provided in s.  
38        327.73.

39        2. Causes damage to the property of another or causes an  
40        injury less than serious bodily injury as defined in s.  
41        327.353(1)(b) to another commits a misdemeanor of the second  
42        degree, punishable as provided in s. 775.082 or s. 775.083.

43        3. Causes serious bodily injury as defined in s.  
44        327.353(1)(b) to another commits a misdemeanor of the first  
45        degree, punishable as provided in s. 775.082 or s. 775.083.

46        4. Causes the death of another commits vessel homicide,  
47        punishable as provided in s. 782.072.

48        (d) This subsection does not apply to a vessel with a main  
49        helm installed within an enclosed cabin.

50        Section 3. Paragraph (m) of subsection (1) of section

51     327.73, Florida Statutes, is amended to read:

52             327.73 Noncriminal infractions.—

53             (1) Violations of the following provisions of the vessel  
54 laws of this state are noncriminal infractions:

55             (m) Section 327.50(1), and (2), and (4), relating to  
56 required safety equipment, lights, and shapes.

57  
58 Any person cited for a violation of any provision of this  
59 subsection shall be deemed to be charged with a noncriminal  
60 infraction, shall be cited for such an infraction, and shall be  
61 cited to appear before the county court. The civil penalty for  
62 any such infraction is \$50, except as otherwise provided in this  
63 section. Any person who fails to appear or otherwise properly  
64 respond to a uniform boating citation shall, in addition to the  
65 charge relating to the violation of the boating laws of this  
66 state, be charged with the offense of failing to respond to such  
67 citation and, upon conviction, be guilty of a misdemeanor of the  
68 second degree, punishable as provided in s. 775.082 or s.  
69 775.083. A written warning to this effect shall be provided at  
70 the time such uniform boating citation is issued.

71             Section 4. This act shall take effect July 1, 2021.

By Senator Pizzo

38-01262-21

20211834\_\_

A bill to be entitled

An act relating to vessel safety; amending s. 327.30, F.S.; revising the penalties for persons operating a vessel involved in an accident or injury who leave the scene of the accident or injury under certain circumstances; providing graduated penalties depending on the level of damage to property or person; defining the term "serious bodily injury"; providing a mandatory minimum sentence for a person who willfully commits such violation resulting in the death of another while boating under the influence; amending s. 327.33, F.S.; providing increased criminal penalties for the reckless operation of a vessel which causes seriously bodily injury to another; defining the term "serious bodily injury"; amending s. 327.35, F.S.; providing that a person commits boating under the influence manslaughter when their impaired operation of a vessel causes the death of an unborn child; defining the term "unborn child"; providing a mandatory minimum sentence for a conviction for such a violation; amending s. 782.072, F.S.; revising the definition of the term "vessel homicide" to include the killing of an unborn child by causing injury to the mother by operation of a vessel in a reckless manner under certain circumstances; defining the term "unborn child"; providing an effective date.

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

38-01262-21

20211834\_\_

Section 1. Subsection (5) of section 327.30, Florida Statutes, is amended to read:

327.30 Collisions, accidents, and casualties.—

(5) It is unlawful for a person operating a vessel involved in an accident or injury to leave the scene of the accident or injury without giving all possible aid to all persons involved and making a reasonable effort to locate the owner or persons affected and subsequently complying with and notifying the appropriate law enforcement official as required under this section. If a ~~Any~~ person who violates this subsection and the ~~with respect to an accident results resulting in: personal injury commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who violates this subsection with respect to an accident resulting in property damage only commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

(a) Property damage, the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084;

(b) Injury to a person other than serious bodily injury, the person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084;

(c) Serious bodily injury, the person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this paragraph, the term "serious bodily injury" means an injury to a person, including the operator, which consists of a physical condition that creates a substantial risk of death, serious personal

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disfigurement, or protracted loss or impairment of the function  
of a bodily member or organ; or

(d) The death of another person, the person commits a  
felony of the first degree, punishable as provided in s.  
775.082, s. 775.083, or s. 775.084. A person who willfully  
commits such a violation of this subsection while operating a  
vessel under the influence as set forth in s. 327.35 shall be  
sentenced to a mandatory minimum term of imprisonment of 4  
years.

Section 2. Subsection (1) of section 327.33, Florida  
Statutes, is amended to read:

327.33 Reckless or careless operation of vessel.—

(1) It is unlawful to operate a vessel in a reckless  
manner. A person who operates any vessel, or manipulates any  
water skis, aquaplane, or similar device, in willful or wanton  
disregard for the safety of persons or property at a speed or in  
a manner as to endanger, or likely to endanger, life or limb, or  
damage the property of, or injure a person is guilty of reckless  
operation of a vessel. Reckless operation of a vessel includes,  
but is not limited to, a violation of s. 327.331(6). A person  
who violates this subsection:

(a) Except as provided in paragraph (b), commits a  
misdemeanor of the first degree, punishable as provided in s.  
775.082 or s. 775.083; or—

(b) While operating a vessel and who, by reason of such  
operation causes serious bodily injury to another, commits a  
felony of the third degree, punishable as provided in s.  
775.082, s. 775.083, or s. 775.084. As used in this paragraph,  
the term "serious bodily injury" means an injury to another

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person which consists of a physical condition that creates a serious personal disfigurement or protracted loss or impairment of the function of a bodily member or organ.

Section 3. Subsection (3) of section 327.35, Florida Statutes, is amended to read:

327.35 Boating under the influence; penalties; "designated drivers."—

(3) Any person:

(a) Who is in violation of subsection (1);

(b) Who operates a vessel; and

(c) Who, by reason of such operation, causes or contributes to causing:

1. Damage to the property or person of another commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. Serious bodily injury to another, as defined in s. 327.353, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. The death of any human being or unborn child commits BUI manslaughter, and commits:

a. A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:

(I) At the time of the accident, the person knew, or should have known, that the accident occurred; and

(II) The person failed to give information and render aid as required by s. 327.30.

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This sub-subparagraph does not require that the person knew that the accident resulted in injury or death.

For the purposes of this subsection, the term "unborn child" has the same meaning as in s. 775.021(5)(e). A person who is convicted of BUI manslaughter shall be sentenced to a mandatory minimum term of imprisonment of 4 years.

Section 4. Section 782.072, Florida Statutes, is amended to read:

782.072 Vessel homicide.—"Vessel homicide" is the killing of a human being, or the killing of an unborn child by causing an injury to the mother, by the operation of a vessel as defined in s. 327.02 by another in a reckless manner likely to cause the death of, or great bodily harm to, another. Vessel homicide is:

(1) A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:

(a) At the time of the accident, the person knew, or should have known, that the accident occurred; and

(b) The person failed to give information and render aid as required by s. 327.30(1).

This subsection does not require that the person knew that the accident resulted in injury or death.

(3) For purposes of this section, the term "unborn child" has the same meaning as in s. 775.021(5)(e).

Section 5. This act shall take effect July 1, 2021.



1                   A bill to be entitled  
2       An act relating to vessel collisions, accidents, and  
3       casualties; amending s. 327.30, F.S.; revising and  
4       providing penalties for a vessel operator who is  
5       involved in an accident that causes damage, injury, or  
6       death and leaves the scene of the accident without  
7       complying with certain requirements; providing  
8       mandatory minimum sentencing for a specified  
9       violation; amending s. 327.33, F.S.; providing  
10      penalties for reckless or careless operation of a  
11      vessel that causes serious bodily injury; reenacting  
12      and amending s. 327.35, F.S.; relating to boating  
13      under the influence to incorporate amendments made by  
14      the act; providing penalties for operation of a vessel  
15      while under the influence that causes the death of an  
16      unborn child; providing mandatory minimum sentencing  
17      for a specified violation; providing a definition;  
18      amending s. 782.072, F.S.; revising and providing  
19      definitions; providing an effective date.

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

22  
23       Section 1.   Subsection (5) of section 327.30, Florida  
24   Statutes, is amended to read:

25       327.30   Collisions, accidents, and casualties.—

26       (5) (a) It is unlawful for a person operating a vessel  
27 involved in an accident that causes damage, or injury, or death  
28 to leave the scene of the accident ~~or injury~~ without giving all  
29 possible aid to all persons involved and making a reasonable  
30 effort to locate the owner or persons affected and subsequently  
31 complying with and notifying the appropriate law enforcement  
32 official as required under this section.

33       (b) A person who violates this subsection with respect to  
34 an accident that results in:

35       1. Only property damage commits a misdemeanor of the first  
36 degree, punishable as provided in s. 775.082, or s. 775.083.

37       2. Injury to a person other than serious bodily injury as  
38 defined in s. 327.353(1)(b) commits a felony of the third  
39 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
40 775.084.

41       3. Serious bodily injury as defined in s. 327.353(1)(b)  
42 commits a felony of the second degree, punishable as provided in  
43 s. 775.082, s. 775.083, or s. 775.084.

44       4. The death of another person commits a felony of the  
45 first degree, punishable as provided in s. 775.082, s. 775.083,  
46 or s. 775.084. A person who willfully commits a violation of  
47 this subparagraph while operating a vessel under the influence  
48 as set forth in s. 327.35 shall be sentenced to a mandatory  
49 minimum term of imprisonment of 4 years ~~Any person who violates~~  
50 ~~this subsection with respect to an accident resulting in~~

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2021

~~personal injury commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who violates this subsection with respect to an accident resulting in property damage only commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

Section 2. Subsection (1) of section 327.33, Florida Statutes, is amended to read:

327.33 Reckless or careless operation of vessel.—

(1) It is unlawful to operate a vessel in a reckless manner. A person who operates any vessel, or manipulates any water skis, aquaplane, or similar device, in willful or wanton disregard for the safety of persons or property at a speed or in a manner as to endanger, or likely to endanger, life or limb, or damage the property of, or injure a person is guilty of reckless operation of a vessel. Reckless operation of a vessel includes, but is not limited to, a violation of s. 327.331(6).

(a) A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who violates this subsection and by reason of such operation causes serious bodily injury as defined in s. 327.353(1)(b) to another person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

76           Section 3. For the purpose of incorporating the amendment  
77 made by this act to section 327.30, Florida Statutes, in a  
78 reference thereto, section 327.35, Florida Statutes, is  
79 reenacted, and subsection (3) of that section is amended, to  
80 read:

81           327.35 Boating under the influence; penalties; "designated  
82 drivers."—

83           (1) A person is guilty of the offense of boating under the  
84 influence and is subject to punishment as provided in subsection

85 (2) if the person is operating a vessel within this state and:

86           (a) The person is under the influence of alcoholic  
87 beverages, any chemical substance set forth in s. 877.111, or  
88 any substance controlled under chapter 893, when affected to the  
89 extent that the person's normal faculties are impaired;

90           (b) The person has a blood-alcohol level of 0.08 or more  
91 grams of alcohol per 100 milliliters of blood; or

92           (c) The person has a breath-alcohol level of 0.08 or more  
93 grams of alcohol per 210 liters of breath.

94           (2)(a) Except as provided in paragraph (b), subsection  
95 (3), or subsection (4), any person who is convicted of a  
96 violation of subsection (1) shall be punished:

97           1. By a fine of:

98           a. Not less than \$500 or more than \$1,000 for a first  
99 conviction.

100           b. Not less than \$1,000 or more than \$2,000 for a second

conviction; and

2. By imprisonment for:

a. Not more than 6 months for a first conviction.

b. Not more than 9 months for a second conviction.

The portion of a fine imposed in excess of \$500 pursuant to sub-subparagraph 1.a. and the portion of a fine imposed in excess of \$1,000 pursuant to sub-subparagraph 1.b., shall be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund.

(b)1. Any person who is convicted of a third violation of this section for an offense that occurs within 10 years after a prior conviction for a violation of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Any person who is convicted of a third violation of this section for an offense that occurs more than 10 years after the date of a prior conviction for a violation of this section shall be punished by a fine of not less than \$2,000 or more than \$5,000 and by imprisonment for not more than 12 months. The portion of a fine imposed in excess of \$2,500 pursuant to this subparagraph shall be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund.

3. Any person who is convicted of a fourth or subsequent violation of this section, regardless of when any prior

conviction for a violation of this section occurred, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

However, the fine imposed for such fourth or subsequent violation may not be less than \$2,000. The portion of such fine imposed in excess of \$1,000 shall be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund.

(3) Any person:

(a) Who is in violation of subsection (1);

(b) Who operates a vessel; and

(c) Who, by reason of such operation, causes or contributes to causing:

1. Damage to the property or person of another commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. Serious bodily injury to another, as defined in s. 327.353, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. The death of any human being or unborn child commits BUI manslaughter, and commits:

a. A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. A felony of the first degree, punishable as provided in

151 s. 775.082, s. 775.083, or s. 775.084, if:

152 (I) At the time of the accident, the person knew, or  
153 should have known, that the accident occurred; and

154 (II) The person failed to give information and render aid  
155 as required by s. 327.30.

156  
157 As used in this subsection, the term "unborn child" has the same  
158 meaning as in s. 775.021(5)(e). ~~This~~ Sub-subparagraph 3. does  
159 not require that the person knew that the accident resulted in  
160 injury or death. A person who is convicted of BUI manslaughter  
161 shall be sentenced to a mandatory minimum term of imprisonment  
162 of 4 years.

163 (4) Any person who is convicted of a violation of  
164 subsection (1) and who has a blood-alcohol level or breath-  
165 alcohol level of 0.15 or higher, or any person who is convicted  
166 of a violation of subsection (1) and who at the time of the  
167 offense was accompanied in the vessel by a person under the age  
168 of 18 years, shall be punished:

169 (a) By a fine of:

170 1. Not less than \$1,000 or more than \$2,000 for a first  
171 conviction.

172 2. Not less than \$2,000 or more than \$4,000 for a second  
173 conviction.

174 3. Not less than \$4,000 for a third or subsequent  
175 conviction.

(b) By imprisonment for:

1. Not more than 9 months for a first conviction.

2. Not more than 12 months for a second conviction.

The portion of a fine imposed in excess of \$1,000 pursuant to subparagraph (a)1. and the portion of a fine imposed in excess of \$2,000 pursuant to subparagraph (a)2. or subparagraph (a)3., shall be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund. For the purposes of this subsection, only the instant offense is required to be a violation of subsection (1) by a person who has a blood-alcohol level or breath-alcohol level of 0.15 or higher.

(5) In addition to any sentence or fine, the court shall place any offender convicted of violating this section on monthly reporting probation and shall require attendance at a substance abuse course specified by the court; and the agency conducting the course may refer the offender to an authorized service provider for substance abuse evaluation and treatment, in addition to any sentence or fine imposed under this section. The offender shall assume reasonable costs for such education, evaluation, and treatment, with completion of all such education, evaluation, and treatment being a condition of reporting probation. Treatment resulting from a psychosocial evaluation may not be waived without a supporting psychosocial evaluation conducted by an agency appointed by the court and



201 with access to the original evaluation. The offender shall bear  
202 the cost of this procedure. The term "substance abuse" means the  
203 abuse of alcohol or any substance named or described in  
204 Schedules I-V of s. 893.03.

205 (6) With respect to any person convicted of a violation of  
206 subsection (1), regardless of any other penalty imposed:

207 (a) For the first conviction, the court shall place the  
208 defendant on probation for a period not to exceed 1 year and, as  
209 a condition of such probation, shall order the defendant to  
210 participate in public service or a community work project for a  
211 minimum of 50 hours. The court must also, as a condition of  
212 probation, order the impoundment or immobilization of the vessel  
213 that was operated by or in the actual control of the defendant  
214 or any one vehicle registered in the defendant's name at the  
215 time of impoundment or immobilization, for a period of 10 days  
216 or for the unexpired term of any lease or rental agreement that  
217 expires within 10 days. The impoundment or immobilization must  
218 not occur concurrently with the incarceration of the defendant.  
219 The impoundment or immobilization order may be dismissed in  
220 accordance with paragraph (e) or paragraph (f). The total period  
221 of probation and incarceration may not exceed 1 year.

222 (b) For the second conviction for an offense that occurs  
223 within a period of 5 years after the date of a prior conviction  
224 for violation of this section, the court shall order  
225 imprisonment for not less than 10 days. The court must also, as

226 a condition of probation, order the impoundment or  
227 immobilization of the vessel that was operated by or in the  
228 actual control of the defendant or any one vehicle registered in  
229 the defendant's name at the time of impoundment or  
230 immobilization, for a period of 30 days or for the unexpired  
231 term of any lease or rental agreement that expires within 30  
232 days. The impoundment or immobilization must not occur  
233 concurrently with the incarceration of the defendant. The  
234 impoundment or immobilization order may be dismissed in  
235 accordance with paragraph (e) or paragraph (f). At least 48  
236 hours of confinement must be consecutive.

237 (c) For the third or subsequent conviction for an offense  
238 that occurs within a period of 10 years after the date of a  
239 prior conviction for violation of this section, the court shall  
240 order imprisonment for not less than 30 days. The court must  
241 also, as a condition of probation, order the impoundment or  
242 immobilization of the vessel that was operated by or in the  
243 actual control of the defendant or any one vehicle registered in  
244 the defendant's name at the time of impoundment or  
245 immobilization, for a period of 90 days or for the unexpired  
246 term of any lease or rental agreement that expires within 90  
247 days. The impoundment or immobilization must not occur  
248 concurrently with the incarceration of the defendant. The  
249 impoundment or immobilization order may be dismissed in  
250 accordance with paragraph (e) or paragraph (f). At least 48

251 hours of confinement must be consecutive.

252       (d) The court must at the time of sentencing the defendant  
253 issue an order for the impoundment or immobilization of a  
254 vessel. Within 7 business days after the date that the court  
255 issues the order of impoundment, and once again 30 business days  
256 before the actual impoundment or immobilization of the vessel,  
257 the clerk of the court must send notice by certified mail,  
258 return receipt requested, to the registered owner of each  
259 vessel, if the registered owner is a person other than the  
260 defendant, and to each person of record claiming a lien against  
261 the vessel.

262       (e) A person who owns but was not operating the vessel  
263 when the offense occurred may submit to the court a police  
264 report indicating that the vessel was stolen at the time of the  
265 offense or documentation of having purchased the vessel after  
266 the offense was committed from an entity other than the  
267 defendant or the defendant's agent. If the court finds that the  
268 vessel was stolen or that the sale was not made to circumvent  
269 the order and allow the defendant continued access to the  
270 vessel, the order must be dismissed and the owner of the vessel  
271 will incur no costs. If the court denies the request to dismiss  
272 the order of impoundment or immobilization, the petitioner may  
273 request an evidentiary hearing.

274       (f) A person who owns but was not operating the vessel  
275 when the offense occurred, and whose vessel was stolen or who

276 purchased the vessel after the offense was committed directly  
277 from the defendant or the defendant's agent, may request an  
278 evidentiary hearing to determine whether the impoundment or  
279 immobilization should occur. If the court finds that either the  
280 vessel was stolen or the purchase was made without knowledge of  
281 the offense, that the purchaser had no relationship to the  
282 defendant other than through the transaction, and that such  
283 purchase would not circumvent the order and allow the defendant  
284 continued access to the vessel, the order must be dismissed and  
285 the owner of the vessel will incur no costs.

286       (g) All costs and fees for the impoundment or  
287 immobilization, including the cost of notification, must be paid  
288 by the owner of the vessel or, if the vessel is leased or  
289 rented, by the person leasing or renting the vessel, unless the  
290 impoundment or immobilization order is dismissed.

291       (h) The person who owns a vessel that is impounded or  
292 immobilized under this paragraph, or a person who has a lien of  
293 record against such a vessel and who has not requested a review  
294 of the impoundment pursuant to paragraph (e) or paragraph (f),  
295 may, within 10 days after the date that person has knowledge of  
296 the location of the vessel, file a complaint in the county in  
297 which the owner resides to determine whether the vessel was  
298 wrongfully taken or withheld from the owner or lienholder. Upon  
299 the filing of a complaint, the owner or lienholder may have the  
300 vessel released by posting with the court a bond or other

adequate security equal to the amount of the costs and fees for impoundment or immobilization, including towing or storage, to ensure the payment of the costs and fees if the owner or lienholder does not prevail. When the bond is posted and the fee is paid as set forth in s. 28.24, the clerk of the court shall issue a certificate releasing the vessel. At the time of release, after reasonable inspection, the owner or lienholder must give a receipt to the towing or storage company indicating any loss or damage to the vessel or to the contents of the vessel.

(i) A defendant, in the court's discretion, may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced pursuant to this section in a residential alcoholism treatment program or a residential drug abuse treatment program. Any time spent in such a program must be credited by the court toward the term of imprisonment.

For the purposes of this section, any conviction for a violation of s. 316.193, a previous conviction for the violation of former s. 316.1931, former s. 860.01, or former s. 316.028, or a previous conviction outside this state for driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, driving with an unlawful breath-alcohol level, or any other similar alcohol-related or drug-related

326 traffic offense, is also considered a previous conviction for  
327 violation of this section.

328 (7) A conviction under this section does not bar any civil  
329 suit for damages against the person so convicted.

330 (8) A person who is arrested for a violation of this  
331 section may not be released from custody:

332 (a) Until the person is no longer under the influence of  
333 alcoholic beverages, any chemical substance set forth in s.  
334 877.111, or any substance controlled under chapter 893 and  
335 affected to the extent that his or her normal faculties are  
336 impaired;

337 (b) Until the person's blood-alcohol level or breath-  
338 alcohol level is less than 0.05; or

339 (c) Until 8 hours have elapsed from the time the person  
340 was arrested.

341 (9) Notwithstanding any other provision of this section,  
342 for any person convicted of a violation of subsection (1), in  
343 addition to the fines set forth in subsections (2) and (4), an  
344 additional fine of \$60 shall be assessed and collected in the  
345 same manner as the fines set forth in subsections (2) and (4).  
346 All fines collected under this subsection shall be remitted by  
347 the clerk of the court to the Department of Revenue for deposit  
348 into the Brain and Spinal Cord Injury Program Trust Fund and  
349 used for the purposes set forth in s. 381.79, after 5 percent is  
350 deducted therefrom by the clerk of the court for administrative

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costs.

(10) It is the intent of the Legislature to encourage boaters to have a "designated driver" who does not consume alcoholic beverages.

Section 4. Section 782.072, Florida Statutes, is amended to read:

782.072 Vessel homicide.—

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

(a) "Vessel homicide" means ~~is~~ the killing of a human being or an unborn child by the operation of a vessel as defined in s. 327.02 by another in a reckless manner likely to cause the death of, or great bodily harm to, another.

(b) "Unborn child" has the same meaning as in s. 775.021(5)(e).

(2) Vessel homicide is:

(a) ~~(1)~~ A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) ~~(2)~~ A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:

1. ~~(a)~~ At the time of the accident, the person knew, or should have known, that the accident occurred; and

2. ~~(b)~~ The person failed to give information and render aid as required by s. 327.30(1).

Paragraph (b) ~~This subsection~~ does not require that the person

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376 | knew that the accident resulted in injury or death.

377 |       Section 5. This act shall take effect July 1, 2021.



By Senator Rodriguez

39-01124-21

20211668\_\_

A bill to be entitled

An act relating to seagrass mitigation banks; amending  
s. 253.03, F.S.; authorizing the Board of Trustees of  
the Internal Improvement Trust Fund to establish  
seagrass mitigation banks under certain conditions;  
providing construction; providing an effective date.

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

Section 1. Subsection (17) is added to section 253.03,  
Florida Statutes, to read:

253.03 Board of trustees to administer state lands; lands  
enumerated.—

(17) The board of trustees may establish seagrass  
mitigation banks under s. 373.4136 to ensure the preservation  
and regeneration of seagrass, as defined in s. 253.04(3)(a), and  
to offset the unavoidable impacts of projects when seagrass  
banks meet the public interest criteria under chapters 253 and  
258. This subsection does not prohibit mitigation for impacts to  
seagrass or other habitats on sovereignty or nonsovereignty  
submerged lands, upon approval of the board of trustees.

Section 2. This act shall take effect July 1, 2021.

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1                   A bill to be entitled  
2       An act relating to seagrass mitigation banks; amending  
3       s. 253.03, F.S.; authorizing the Board of Trustees of  
4       the Internal Improvement Trust Fund to establish  
5       seagrass mitigation banks under certain conditions;  
6       providing construction; providing an effective date.

7  
8   Be It Enacted by the Legislature of the State of Florida:

9  
10       Section 1. Subsection (17) is added to section 253.03,  
11       Florida Statutes, to read:

12           253.03 Board of trustees to administer state lands; lands  
13       enumerated.—

14           (17) The board of trustees may establish seagrass  
15       mitigation banks under s. 373.4136 to ensure the preservation  
16       and regeneration of seagrass, as defined in s. 253.04(3)(a), and  
17       to offset the unavoidable impacts of projects when seagrass  
18       banks meet the public interest criteria under chapters 253 and  
19       258. This subsection does not prohibit mitigation for impacts to  
20       seagrass or other habitats on sovereignty or nonsovereignty  
21       submerged lands, upon approval of the board of trustees.

22       Section 2. This act shall take effect July 1, 2021.

By Senator Pizzo

38-01663A-21

20211652\_\_

A bill to be entitled  
An act relating to anchoring limitation areas;  
amending s. 327.4108, F.S.; designating specified  
waterways in densely populated urban areas as  
anchoring limitation areas; providing an effective  
date.

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

Section 1. Paragraph (c) of subsection (1) of section  
327.4108, Florida Statutes, is amended, and paragraphs (d) and  
(e) are added to that subsection, to read:

327.4108 Anchoring of vessels in anchoring limitation  
areas.—

(1) The following densely populated urban areas, which have  
narrow state waterways, residential docking facilities, and  
significant recreational boating traffic, are designated as  
anchoring limitation areas:

(c) The sections of Biscayne Bay in Miami-Dade County, as  
follows ~~lying between~~:

1. Between Rivo Alto Island and Di Lido Island.
2. Between San Marino Island and San Marco Island.
3. Between San Marco Island and Biscayne Island.
4. Surfside, south of 88th Street/Biscaya Drive and north  
of Stillwater in Miami Beach.
5. Biscaya Lake in Surfside.
6. Indian Creek Lake between Indian Creek and Bay Harbor  
Islands.

(d) North and South Lake areas of Hollywood in Broward

38-01663A-21

20211652\_\_

30 County.

31 (e) Lake Sylvia in Broward County.

32 Section 2. This act shall take effect July 1, 2021.

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1                   A bill to be entitled  
2       An act relating to anchoring limitation areas;  
3       amending s. 327.4108, F.S.; designating specified  
4       waterways as anchoring limitation areas; providing an  
5       effective date.

6  
7   Be It Enacted by the Legislature of the State of Florida:  
8

9       Section 1. Paragraph (c) of subsection (1) of section  
10      327.4108, Florida Statutes, is amended, and paragraphs (d)  
11      through (g) are added to that subsection, to read:

12       327.4108 Anchoring of vessels in anchoring limitation  
13      areas.—

14       (1) The following densely populated urban areas, which  
15      have narrow state waterways, residential docking facilities, and  
16      significant recreational boating traffic, are designated as  
17      anchoring limitation areas:

18       (c) The sections of Biscayne Bay in Miami-Dade County  
19      lying between:

- 20       1. Rivo Alto Island and Di Lido Island.  
21       2. San Marino Island and San Marco Island.  
22       3. San Marco Island and Biscayne Island.  
23       4. Surfside, south of 88th Street/Biscaya Drive and north  
24      of Stillwater in Miami Beach.

25       (d) Indian Creek Lake in Miami-Dade County.

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26        (e)   Biscaya Lake in Miami-Dade County.

27        (f)   North Lake and South Lake in Broward County.

28        (g)   Lake Sylvia in Broward County.

29        Section 2.   This act shall take effect July 1, 2021.

By Senator Polsky

29-01494-21

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A bill to be entitled  
An act relating to anchoring limitation areas;  
amending s. 327.4108, F.S.; authorizing counties to  
establish anchoring limitation areas that meet certain  
requirements; providing that specified established  
anchoring limitation areas are exempt from specified  
provisions; specifying size requirements for the  
anchoring limitation areas; requiring the anchoring  
limitation areas to be marked with signs and buoys  
that meet certain requirements; prohibiting vessels  
from anchoring in such areas for longer than a  
specified time; defining the term "law enforcement or  
code enforcement officer or agency"; requiring vessel  
owners or operators to be allowed to provide specified  
proof of compliance with certain provisions; providing  
that vessels with repeat offenses within a specified  
timeframe shall be declared public nuisances and  
subject to certain provisions; providing that code  
enforcement officers or agencies, in addition to law  
enforcement officers or agencies, will be held  
harmless for removal actions under certain  
circumstances; requiring the Fish and Wildlife  
Conservation Commission to initiate rulemaking by a  
certain date; providing requirements for such  
rulemaking; removing applicability provisions relating  
to the commission's recommendations; reenacting s.  
327.73(1)(z), F.S., relating to noncriminal  
infractions, to incorporate the amendment made to s.  
327.4108, F.S., in a reference thereto; providing an

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effective date.

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

Section 1. Section 327.4108, Florida Statutes, is amended to read:

327.4108 Anchoring of vessels in anchoring limitation areas.—

(1) Notwithstanding s. 327.60(2)(f), a county may establish, in accordance with this section, an anchoring limitation area within ~~The following~~ densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic. The following areas previously designated as anchoring limitation areas are grandfathered-in anchoring limitation areas for which subsections (2), (3), (6), and (7) do not apply, ~~are designated as anchoring limitation areas:~~

(a) The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.

(b) Sunset Lake in Miami-Dade County.

(c) The sections of Biscayne Bay in Miami-Dade County lying between:

1. Rivo Alto Island and Di Lido Island.

2. San Marino Island and San Marco Island.

3. San Marco Island and Biscayne Island.

(2) Each anchoring limitation area must:

(a) Be less than 200 acres in size;

(b) Comprise less than 10 percent of the county's navigable waterways; and



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(c) Be clearly marked with all of the following:

1. Signs that provide reasonable notice to boaters which identify the duration of time beyond which anchoring is limited and identify the county ordinance with its enacting date by which the anchoring limitation area was created. Any ordinance adopted pursuant to this section may not take effect until reviewed and approved as consistent with this section by the commission.

2. Buoys. The county that has created an anchoring limitation area shall install and maintain buoys marking the boundary of the anchoring limitation area.

~~(3)(2) To promote the public's use and enjoyment of the designated waterway,~~ Except as provided in subsections (4) (3) and (5) (4), a person may not anchor a vessel for more than 30 consecutive days in any 6-month ~~at any time during the period between one-half hour after sunset and one-half hour before sunrise~~ in an anchoring limitation area.

~~(4)(3)~~ Notwithstanding the limitations described in subsection (3) (2), a person may anchor a vessel in an anchoring limitation area:

(a) If the vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor for 3 business days or until the vessel is repaired, whichever occurs first.

(b) If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor until weather conditions no longer pose such

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88 risk. During a hurricane or tropical storm, weather conditions  
89 are deemed to no longer pose an unreasonable risk of harm when  
90 the hurricane or tropical storm warning affecting the area has  
91 expired.

92 (c) During events described in s. 327.48 or other special  
93 events, including, but not limited to, public music  
94 performances, local government waterfront activities, or  
95 fireworks displays. A vessel may anchor for the lesser of the  
96 duration of the special event or 3 days.

97 ~~(5)(4)~~ This section does not apply to:

98 (a) Vessels owned or operated by a governmental entity for  
99 law enforcement, firefighting, military, or rescue purposes.

100 (b) Construction or dredging vessels on an active job site.

101 (c) Vessels actively engaged in commercial fishing.

102 (d) Vessels engaged in recreational fishing if the persons  
103 onboard are actively tending hook and line fishing gear or nets.

104 ~~(6)(a)(5)(a)~~ As used in this subsection, the term "law  
105 enforcement or code enforcement officer or agency" means the  
106 Fish and Wildlife Conservation Commission, the county sheriff,  
107 the United States Coast Guard, a county code compliance agency,  
108 and authorized enforcement personnel of any of the foregoing ~~an~~  
109 ~~officer or agency authorized to enforce this section pursuant to~~  
110 ~~s. 327.70.~~

111 (b) Upon an inquiry by a law enforcement or code  
112 enforcement officer or agency, a vessel owner or operator shall  
113 be given an opportunity to provide proof that the vessel has not  
114 exceeded the limitations described in subsection (3). Such proof  
115 may include any of the following:

116 1. Documentation showing that the vessel was in another

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location at least 1 mile away within a period of less than 30 days before the inquiry.

2. Electronic evidence, including, but not limited to, navigational devices or tracking devices that show the vessel was in another location at least 1 mile away within a period of less than 30 days before the inquiry.

(c)(b) If a vessel owner or operator fails or refuses to provide proof that the vessel has not exceeded the limitations prescribed in subsection (3), the a law enforcement or code enforcement officer or agency may remove a vessel from an anchoring limitation area and impound the vessel for up to 48 hours, or cause such removal and impoundment, if the vessel operator, after being issued a citation for a violation of this section:

1. Anchors the vessel in violation of this section within 12 hours after being issued the citation; or

2. Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement or code enforcement officer or agency.

(d) A vessel that is the subject of more than three violations within 12 months which resulted in dispositions other than acquittal or dismissal shall be declared to be a public nuisance and subject to ss. 705.103 and 823.11.

(e)(e) A law enforcement or code enforcement officer or agency acting under this subsection to remove or impound a vessel, or to cause such removal or impoundment, shall be held harmless for any damage to the vessel resulting from such removal or impoundment unless the damage results from gross negligence or willful misconduct.

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146        (f)~~(d)~~ A contractor performing removal or impoundment  
147 services at the direction of a law enforcement or code  
148 enforcement officer or agency pursuant to this subsection must:

149            1. Be licensed in accordance with United States Coast Guard  
150 regulations, as applicable.

151            2. Obtain and carry a current policy issued by a licensed  
152 insurance carrier in this state to insure against any accident,  
153 loss, injury, property damage, or other casualty caused by or  
154 resulting from the contractor's actions.

155            3. Be properly equipped to perform such services.

156        (g)~~(e)~~ In addition to the civil penalty imposed under s.  
157 327.73(1)(z), the operator of a vessel that is removed and  
158 impounded pursuant to paragraph (c) ~~(b)~~ must pay all removal and  
159 storage fees before the vessel is released. A vessel removed  
160 pursuant to paragraph (c) ~~(b)~~ may not be impounded for longer  
161 than 48 hours.

162        (7) The commission shall initiate rulemaking by July 1,  
163 2021, to provide criteria and procedures for reviewing  
164 applications and procedures for public notice and participation  
165 pursuant to this subsection. The rulemaking must include, at a  
166 minimum, all of the following:

167            (a) Notice to the public. The Boating and Waterways Section  
168 of the Fish and Wildlife Conservation Commission shall provide  
169 notice of completed applications received, public meetings or  
170 hearings concerning applications, and denial or approval of  
171 applications on the section's web page and to all parties listed  
172 in the Boating and Waterways Section's public distribution list  
173 for ordinances, which any member of the public may join.

174            (b) An opportunity for public participation. Members of the

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public may provide written comments, recommendations, requests, inquiries, or other correspondence to the Boating and Waterways Section. If a public hearing is requested or a review by the agency head is requested, members of the public may testify at the hearing or commission meeting and may submit relevant and material exhibits to the record of the proceeding.

~~(8)(6)~~ A violation of this section is punishable as provided in s. 327.73(1)(z).

~~(7) This section shall remain in effect notwithstanding the Legislature's adoption of the commission's recommendations for the regulation of mooring vessels outside of public mooring fields pursuant to s. 327.4105.~~

Section 2. For the purpose of incorporating the amendment made by this act to section 327.4108, Florida Statutes, in a reference thereto, paragraph (z) of subsection (1) of section 327.73, Florida Statutes, is reenacted to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(z) Section 327.4108, relating to the anchoring of vessels in anchoring limitation areas, for which the penalty is:

1. For a first offense, up to a maximum of \$50.
2. For a second offense, up to a maximum of \$100.
3. For a third or subsequent offense, up to a maximum of \$250.

Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be

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cited to appear before the county court. The civil penalty for any such infraction is \$50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

Section 3. This act shall take effect upon becoming a law.

1                   A bill to be entitled  
2     An act relating to anchoring limitation areas;  
3     amending s. 327.4108, F.S.; authorizing counties to  
4     establish anchoring limitation areas that meet certain  
5     requirements; providing that specified established  
6     anchoring limitation areas are exempt from specified  
7     provisions; specifying size requirements for the  
8     anchoring limitation areas; requiring the anchoring  
9     limitation areas to be marked with signs and buoys  
10    that meet certain requirements; prohibiting vessels  
11    from anchoring in such areas for longer than a  
12    specified time; defining the term "law enforcement or  
13    code enforcement officer or agency"; requiring vessel  
14    owners or operators to be allowed to provide specified  
15    proof of compliance with certain provisions; providing  
16    that vessels with repeat offenses within a specified  
17    timeframe shall be declared public nuisances and  
18    subject to certain provisions; providing that code  
19    enforcement officers or agencies, in addition to law  
20    enforcement officers or agencies, will be held  
21    harmless for removal actions under certain  
22    circumstances; requiring the Fish and Wildlife  
23    Conservation Commission to initiate rulemaking by a  
24    certain date; reenacting s. 327.73(1)(z), F.S.,  
25    relating to noncriminal infractions, to incorporate

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the amendment made to s. 327.4108, F.S., in a  
reference thereto; providing an effective date.

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

Section 1. Section 327.4108, Florida Statutes, is amended  
to read:

327.4108 Anchoring of vessels in anchoring limitation  
areas.—

(1) Notwithstanding s. 327.60(2)(f), a county may  
establish, in accordance with this section, an anchoring  
limitation area within ~~The following~~ densely populated urban  
areas, which have narrow state waterways, residential docking  
facilities, and significant recreational boating traffic. The  
following areas previously designated as anchoring limitation  
areas are grandfathered-in anchoring limitation areas for which  
subsections (2), (3), (6), and (7) do not apply, ~~are designated~~  
~~as anchoring limitation areas:~~

(a) The section of Middle River lying between Northeast  
21st Court and the Intracoastal Waterway in Broward County.

(b) Sunset Lake in Miami-Dade County.

(c) The sections of Biscayne Bay in Miami-Dade County  
lying between:

1. Rivo Alto Island and Di Lido Island.

2. San Marino Island and San Marco Island.



51 3. San Marco Island and Biscayne Island.

52 (2) Each anchoring limitation area must:

53 (a) Be less than 200 acres in size;

54 (b) Comprise less than 10 percent of the county's  
55 navigable waterways; and

56 (c) Be clearly marked with all of the following:

57 1. Signs that provide reasonable notice to boaters which  
58 identify the duration of time beyond which anchoring is limited  
59 and identify the county ordinance with its enacting date by  
60 which the anchoring limitation area was created. Any ordinance  
61 adopted pursuant to this section may not take effect until  
62 reviewed and approved as consistent with this section by the  
63 commission.

64 2. Buoys. The county that has created an anchoring  
65 limitation area shall install and maintain buoys marking the  
66 boundary of the anchoring limitation area.

67 ~~(3)(2) To promote the public's use and enjoyment of the~~  
68 ~~designated waterway,~~ Except as provided in subsections (4) ~~(3)~~  
69 and (5) ~~(4)~~, a person may not anchor a vessel for more than 30  
70 consecutive days in any 6-month ~~at any time during the period~~  
71 ~~between one-half hour after sunset and one-half hour before~~  
72 ~~sunrise~~ in an anchoring limitation area.

73 (4)(3) Notwithstanding the limitations described in  
74 subsection (3) (2), a person may anchor a vessel in an anchoring  
75 limitation area:

76           (a) If the vessel suffers a mechanical failure that poses  
77 an unreasonable risk of harm to the vessel or the persons  
78 onboard unless the vessel anchors. The vessel may anchor for 3  
79 business days or until the vessel is repaired, whichever occurs  
80 first.

81           (b) If imminent or existing weather conditions in the  
82 vicinity of the vessel pose an unreasonable risk of harm to the  
83 vessel or the persons onboard unless the vessel anchors. The  
84 vessel may anchor until weather conditions no longer pose such  
85 risk. During a hurricane or tropical storm, weather conditions  
86 are deemed to no longer pose an unreasonable risk of harm when  
87 the hurricane or tropical storm warning affecting the area has  
88 expired.

89           (c) During events described in s. 327.48 or other special  
90 events, including, but not limited to, public music  
91 performances, local government waterfront activities, or  
92 fireworks displays. A vessel may anchor for the lesser of the  
93 duration of the special event or 3 days.

94           (5)~~(4)~~ This section does not apply to:

95           (a) Vessels owned or operated by a governmental entity for  
96 law enforcement, firefighting, military, or rescue purposes.

97           (b) Construction or dredging vessels on an active job  
98 site.

99           (c) Vessels actively engaged in commercial fishing.

100           (d) Vessels engaged in recreational fishing if the persons

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onboard are actively tending hook and line fishing gear or nets.

(6) (a) ~~(5) (a)~~ As used in this subsection, the term "law enforcement or code enforcement officer or agency" means the Fish and Wildlife Conservation Commission, the county sheriff, the United States Coast Guard, a county code compliance agency, and authorized enforcement personnel of any of the foregoing ~~an officer or agency authorized to enforce this section pursuant to s. 327.70.~~

(b) Upon an inquiry by a law enforcement or code enforcement officer or agency, a vessel owner or operator shall be given an opportunity to provide proof that the vessel has not exceeded the limitations described in subsection (3). Such proof may include any of the following:

1. Documentation showing that the vessel was in another location at least 1 mile away within a period of less than 30 days before the inquiry.

2. Electronic evidence, including, but not limited to, navigational devices or tracking devices that show the vessel was in another location at least 1 mile away within a period of less than 30 days before the inquiry.

(c) ~~(b)~~ If a vessel owner or operator fails or refuses to provide proof that the vessel has not exceeded the limitations prescribed in subsection (3), the ~~a~~ law enforcement or code enforcement officer or agency may remove a vessel from an anchoring limitation area and impound the vessel for up to 48

126 hours, or cause such removal and impoundment, if the vessel  
127 operator, after being issued a citation for a violation of this  
128 section:

129 1. Anchors the vessel in violation of this section within  
130 12 hours after being issued the citation; or

131 2. Refuses to leave the anchoring limitation area after  
132 being directed to do so by a law enforcement or code enforcement  
133 officer or agency.

134 (d) A vessel that is the subject of more than three  
135 violations within 12 months which resulted in dispositions other  
136 than acquittal or dismissal shall be declared to be a public  
137 nuisance and subject to ss. 705.103 and 823.11.

138 (e)~~(e)~~ A law enforcement or code enforcement officer or  
139 agency acting under this subsection to remove or impound a  
140 vessel, or to cause such removal or impoundment, shall be held  
141 harmless for any damage to the vessel resulting from such  
142 removal or impoundment unless the damage results from gross  
143 negligence or willful misconduct.

144 (f)~~(d)~~ A contractor performing removal or impoundment  
145 services at the direction of a law enforcement or code  
146 enforcement officer or agency pursuant to this subsection must:

147 1. Be licensed in accordance with United States Coast  
148 Guard regulations, as applicable.

149 2. Obtain and carry a current policy issued by a licensed  
150 insurance carrier in this state to insure against any accident,

151 loss, injury, property damage, or other casualty caused by or  
152 resulting from the contractor's actions.

153 3. Be properly equipped to perform such services.

154 (g)~~(e)~~ In addition to the civil penalty imposed under s.  
155 327.73(1)(z), the operator of a vessel that is removed and  
156 impounded pursuant to paragraph (c) ~~(b)~~ must pay all removal and  
157 storage fees before the vessel is released. A vessel removed  
158 pursuant to paragraph (c) ~~(b)~~ may not be impounded for longer  
159 than 48 hours.

160 (7) The commission shall initiate rulemaking by July 1,  
161 2021, to provide criteria and procedures for reviewing  
162 applications and procedures for public notice and participation  
163 pursuant to this subsection. The rulemaking must include, at a  
164 minimum, all of the following:

165 (a) Notice to the public. The Boating and Waterways  
166 Section of the Fish and Wildlife Conservation Commission shall  
167 provide notice of completed applications received, public  
168 meetings or hearings concerning applications, and denial or  
169 approval of applications on the section's web page and to all  
170 parties listed in the Boating and Waterways Section's public  
171 distribution list for ordinances, which any member of the public  
172 may join.

173 (b) An opportunity for public participation. Members of  
174 the public may provide written comments, recommendations,  
175 requests, inquiries, or other correspondence to the Boating and

176 Waterways Section. If a public hearing is requested or a review  
177 by the agency head is requested, members of the public may  
178 testify at the hearing or commission meeting and may submit  
179 relevant and material exhibits to the record of the proceeding.

180 (8)(6) A violation of this section is punishable as  
181 provided in s. 327.73(1)(z).

182 ~~(7) This section shall remain in effect notwithstanding~~  
183 ~~the Legislature's adoption of the commission's recommendations~~  
184 ~~for the regulation of mooring vessels outside of public mooring~~  
185 ~~fields pursuant to s. 327.4105.~~

186 Section 2. For the purpose of incorporating the amendment  
187 made by this act to section 327.4108, Florida Statutes, in a  
188 reference thereto, paragraph (z) of subsection (1) of section  
189 327.73, Florida Statutes, is reenacted to read:

190 327.73 Noncriminal infractions.—

191 (1) Violations of the following provisions of the vessel  
192 laws of this state are noncriminal infractions:

193 (z) Section 327.4108, relating to the anchoring of vessels  
194 in anchoring limitation areas, for which the penalty is:

- 195 1. For a first offense, up to a maximum of \$50.
- 196 2. For a second offense, up to a maximum of \$100.
- 197 3. For a third or subsequent offense, up to a maximum of  
198 \$250.

199  
200 Any person cited for a violation of any provision of this

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subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is \$50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

Section 3. This act shall take effect upon becoming a law.

# MIAF Bill Tracking

Ordered by Bill Number

|  |  |
|--|--|
| <b>HB 0007</b>   | <b>Civil Liability for Damages Relating to COVID-19</b> by McClure |
| Civil Liability for Damages Relating to COVID-19: Provides requirements for civil action based on COVID-19-related claim; provides that plaintiff has burden of proof in such action; provides statute of limitations. Effective Date: upon becoming a law   |  |
| <b>Actions</b>   |  |
| 03/05/2021 HOUSE Read Third Time; Passed (Vote: 83 Yeas / 31 Nays)   |  |
| <b>HB 0015</b>   | <b>Sales and Use Tax</b> by Clemons                                |
| Sales and Use Tax: Revises conditions for certain dealers subject to sales tax; deletes exemption for certain dealers from collecting local option surtaxes; provides certain marketplace providers are subject to registration, collection, & remittance requirements for sales taxes; requires marketplace providers to provide certification to marketplace sellers; specifies requirements for marketplace sellers; requires marketplace providers to allow DOR to audit books & records; provides that marketplace seller is liable for sales tax collection & remittance; authorizes marketplace providers & marketplace sellers to enter into agreements to recover certain taxes, interest, & penalties; grants DOR settlement & compromise authority for marketplace sales; removes authority of DOR to negotiate collection allowance with certain dealers. Effective Date: July 1, 2021 |  |
| <b>Actions</b>   |  |
| 03/09/2021 HOUSE On Committee agenda - Ways & Means Committee, 03/11/21, 9:00 am, 17 H   |  |
| <b>SB 0050</b>   | <b>Sales and Use Tax</b> by Gruters                                |
| Sales and Use Tax; Expanding the definition of the term "retail sale" to include sales facilitated through a marketplace; defining the terms "remote sale" and "substantial number of remote sales"; providing that every person making a substantial number of remote sales is a dealer for purposes of the sales and use tax; providing that certain marketplace providers are dealers for purposes of the sales and use tax; providing that a marketplace seller, rather than the marketplace provider, is liable for sales tax collection and remittance under certain circumstances, etc. Effective Date: Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2021   |  |
| <b>Actions</b>   |  |
| 03/08/2021 SENATE Placed on Special Order Calendar, 03/11/21   |  |
| <b>HB 0059</b>   | <b>Growth Management</b> by McClain                                |
| Growth Management: Requires comprehensive plans & certain land development regulations of municipalities established after certain date to incorporate certain development orders; requires local governments to include property rights element in their comprehensive plans; provides statement of rights; requires local government to adopt property rights element by specified date; provides that certain property owners are not required to consent to development agreement changes; provides requirements & procedures for right of first refusal; authorizes certain developments of regional impact agreements to be amended. Effective Date: July 1, 2021  |  |
| <b>Actions</b>   |  |
| 03/10/2021 HOUSE Favorable with CS by State Affairs Committee; 20 Yeas, 3 Nays   |  |
| <b>SB 0072</b>   | <b>Civil Liability for Damages Relating to COVID-19</b> by Brandes |
| Civil Liability for Damages Relating to COVID-19; Providing requirements for a civil action based on a COVID-19-related claim; providing that the plaintiff has the burden of proof in such action; providing a statute of limitations; providing severability; providing retroactive applicability, etc. Effective Date: This act shall take effect upon becoming a law and shall apply retroactively. However, the provisions of this act shall not apply in a civil action against a particularly named defendant which is commenced before the effective date of this act  |  |



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**Actions**

03/08/2021 SENATE On Committee agenda - Rules, 03/11/21, 8:15 am, 412 K

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**SB 0094 Water Storage North of Lake Okeechobee** by Brodeur

Water Storage North of Lake Okeechobee; Requiring the South Florida Water Management District to request that the United States Army Corps of Engineers seek congressional approval of a project implementation report for the Lake Okeechobee Watershed Restoration Project by a specified date; requiring the district, in partnership with the corps, to expedite the development and implementation of aquifer storage and recovery wells; requiring the district to expedite implementation of the aquifer storage and recovery science plan developed by the district and the corps, etc. Effective Date: Upon becoming a law

**Actions**

03/02/2021 SENATE Now in Appropriations

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**HB 0139 Electronic Transactions for Title Certificates and Registrations** by Fernandez-Barquin

Electronic Transactions for Title Certificates and Registrations: Authorizes tax collectors to accept applications for motor vehicle & vessel certificates of title by electronic or telephonic means, to collect electronic mail addresses for use as method of notification, & to contract with vendors to provide electronic & telephonic transactions; provides that electronic signature that meets certain requirements satisfies signature required for application for certificate of title; specifies tax collection systems for which certain fees may be used for integration with Florida Real Time Vehicle Information System; requires DHSMV to provide tax collectors & approved vendors with certain data access & interface functionality; specifies authorized uses; requires DHSMV to ensure approved vendors protect customer privacy & data collection. Effective Date: July 1, 2021

**Actions**

03/09/2021 HOUSE Temporarily Postponed by Tourism, Infrastructure & Energy Subcommittee

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**HB 0217 Conservation Area Designations** by Hunschofsky

Conservation Area Designations: Designates Southeast Florida Coral Reef Ecosystem Conservation Area as Kristin Jacobs Coral Reef Ecosystem Conservation Area; directs DEP to erect suitable markers. Effective Date: July 1, 2021

**Actions**

03/10/2021 HOUSE Placed on Calendar, on 2nd reading

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**HB 0223 Marina Evacuations** by Plasencia

Marina Evacuations: Prohibits vessels under specified weight from remaining in certain marinas deemed unsuitable for refuge during hurricane after issuance of hurricane watch; requires specified persons to remove vessels upon failure of vessel owners or operators to remove such vessels; provides that such persons may charge reasonable removal fee & are not liable for damages resulting from such removal; provides that owners or operators of certain vessels may be subject to specified fines. Effective Date: July 1, 2021

**Actions**

03/10/2021 HOUSE Committee Substitute Text (C1) Filed

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**SB 0256 Discrimination in Labor and Employment** by Stewart

Discrimination in Labor and Employment; Creating the "Senator Helen Gordon Davis Fair Pay Protection Act"; prohibiting an employer from providing less favorable employment opportunities to employees based on their sex; prohibiting an employer from engaging in certain activities relating to wages and benefits; prohibiting an employer from requiring employees to sign certain waivers and documents, etc. Effective Date: 7/1/2021

**Actions**

12/21/2020 SENATE Referred to Commerce and Tourism; Judiciary; Rules

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|--|---|
| <b>HB 0271</b>   | <b>Power-driven Vessel Safety Requirements</b> by Botana                                      |
| Power-driven Vessel Safety Requirements: Prohibits sitting in specified manner on bow, transom, or gunwale of power-driven vessel while vessel is making way; provides penalties. Effective Date: July 1, 2021   |   |
| <b>Actions</b>   |   |
| 02/03/2021 HOUSE Now in Tourism, Infrastructure & Energy Subcommittee  |   |
| <b>HB 0287</b>   | <b>Liability of Persons Providing Areas for Public Outdoor Recreational Purposes</b> by Shoaf |
| Liability of Persons Providing Areas for Public Outdoor Recreational Purposes: Limits liability for persons who enter into written agreements with state agencies to provide areas for public outdoor recreational purposes without charge. Effective Date: July 1, 2021   |   |
| <b>Actions</b>   |   |
| 03/09/2021 HOUSE On Committee agenda - Environment, Agriculture & Flooding Subcommittee, 03/11/21, 12:45 pm, 17 H  |   |
| <b>SB 0302</b>   | <b>Small Business Saturday Sales Tax Holiday</b> by Taddeo                                    |
| Small Business Saturday Sales Tax Holiday; Defining the term “small business”; providing that small businesses are not required to collect the sales and use tax on the retail sale of certain items of tangible personal property during a specified timeframe; authorizing the Department of Revenue to adopt emergency rules; providing an appropriation, etc. APPROPRIATION: \$200,000 Effective Date: 7/1/2021  |   |
| <b>Actions</b>   |   |
| 03/10/2021 SENATE On Committee agenda - Commerce and Tourism, 03/15/21, 3:30 pm, 110 S   |   |
| <b>SB 0304</b>   | <b>Wage and Employment Benefits Requirements</b> by Taddeo                                    |
| Wage and Employment Benefits Requirements; Repealing provisions relating to restrictions on the establishment of minimum wage and employment benefits requirements by political subdivisions, etc. Effective Date: 7/1/2021  |   |
| <b>Actions</b>   |   |
| 01/11/2021 SENATE Referred to Commerce and Tourism; Community Affairs; Rules   |   |
| <b>HB 0323</b>   | <b>Fish and Wildlife Conservation Commission Trust Funds</b> by Drake                         |
| Fish and Wildlife Conservation Commission Trust Funds: Revises sources & use of funds for Florida Panther Research & Management Trust Fund; authorizes FWCC to invest & reinvest funds & interest of Marine Resources Conservation Trust Fund, Nongame Wildlife Trust Fund, State Game Trust Fund, Save Manatee Trust Fund, & Invasive Plant Control Trust Fund; revises use of certain funding sources for Save Manatee Trust Fund. Effective Date: July 1, 2021  |   |
| <b>Actions</b>   |   |
| 03/03/2021 HOUSE Now in Appropriations Committee   |   |
| <b>SB 0342</b>   | <b>Vehicle and Vessel Registration</b> by Diaz  |
| Vehicle and Vessel Registration; Requiring tax collectors to determine service charges collected by privately owned license plate agents for motor vehicle titles; requiring that additional service charges be itemized and disclosed to the person paying them; requiring a license plate agent to enter into a contract with the tax collector for a certain purpose; requiring tax collectors and approved license plate agents to enter into a memorandum of understanding with the department for a certain purpose, etc. Effective Date: 7/1/2021 |   |
| <b>Actions</b>   |   |
| 03/05/2021 SENATE Now in Finance and Tax   |   |
| <b>SB 0364</b>   | <b>Discrimination on the Basis of Personal Health Information</b> by Gruters                  |
| Discrimination on the Basis of Personal Health Information; Prohibiting business and governmental entities   |   |

that require individuals to present driver licenses and identification cards for specified purposes from taking certain actions on the basis of individuals' vaccination status and proof of immunity from any virus; prohibiting public accommodations from discriminating against individuals on the basis of vaccination or immunity status, etc. Effective Date: 7/1/2021

#### **Actions**

01/11/2021 SENATE Referred to Commerce and Tourism; Governmental Oversight and Accountability; Rules

#### **SB 0384 Unlawful Employment Practices by Rodriguez (A)**

Unlawful Employment Practices; Expanding the list of unlawful employment practices to include certain actions against employees and job applicants with medical needs related to pregnancy; requiring employers to provide a written notice of certain rights relating to pregnancy to employees and to post such notice in conspicuous places on the premises; requiring the Florida Commission on Human Relations to develop certain education and outreach programs, etc. Effective Date: 7/1/2021

#### **Actions**

01/11/2021 SENATE Referred to Commerce and Tourism; Governmental Oversight and Accountability; Rules

#### **SB 0430 Petroleum Fuel Measuring Devices by Rodriguez (A)**

Petroleum Fuel Measuring Devices; Preempting the regulation of petroleum fuel measuring devices to the state and the Department of Agriculture and Consumer Services; prohibiting the department from enforcing certain provisions for violations of rules relating to petroleum fuel measuring devices; exempting department petroleum fuel measuring device rules from enforcement under specified provisions, etc. Effective Date: 7/1/2021

#### **Actions**

03/05/2021 SENATE Now in Transportation

#### **SB 0496 Growth Management by Perry**

Growth Management; Specifying requirements for certain comprehensive plans effective, rather than adopted, after a specified date and for associated land development regulations; requiring local governments to include a property rights element in their comprehensive plans; prohibiting a local government's property rights element from conflicting with the statement of rights contained in the act; providing that the consent of certain property owners is not required for development agreement changes under certain circumstances; requiring the Department of Transportation to afford a right of first refusal to certain individuals under specified circumstances, etc. Effective Date: 7/1/2021

#### **Actions**

03/10/2021 SENATE On Committee agenda - Judiciary, 03/15/21, 3:30 pm, 412 K

#### **SB 0524 Fish and Wildlife Conservation Commission Trust Funds by Hooper**

Fish and Wildlife Conservation Commission Trust Funds; Revising the sources of funds that may be used for specified purposes for the Florida Panther Research and Management Trust Fund; authorizing the commission to invest and reinvest funds and the interest thereof of the Marine Resources Conservation Trust Fund and the Nongame Wildlife Trust Fund, respectively; revising the use of such funds for the marketing of the license plates; authorizing such funds to be used for commission administrative costs, etc. Effective Date: 7/1/2021

#### **Actions**

02/18/2021 SENATE Now in Appropriations

#### **SB 0578 Marina Evacuations by Wright**

Marina Evacuations; Prohibiting vessels under a specified weight from remaining in certain marinas that have been deemed unsuitable for refuge during a hurricane after the issuance of a hurricane watch; requiring a marina owner, operator, employee, or agent to remove specified vessels under certain circumstances; providing that such owner, operator, employee, or agent may charge the vessel owner a

reasonable fee for such removal and may not be held liable for any damages as a result of such removal, etc. Effective Date: 7/1/2021

#### **Actions**

03/04/2021 SENATE Placed on Calendar, on 2nd reading

#### **SB 0588 Conservation Area Designations/Kristin Jacobs Coral Reef Ecosystem Conservation Area by Book**

Conservation Area Designations/Kristin Jacobs Coral Reef Ecosystem Conservation Area; Designating the Southeast Florida Coral Reef Ecosystem Conservation Area as the Kristin Jacobs Coral Reef Ecosystem Conservation Area; directing the Department of Environmental Protection to erect suitable markers, etc. Effective Date: 7/1/2021

#### **Actions**

02/18/2021 SENATE Now in Appropriations

#### **HB 0669 Largemouth Bass by Trabulsy**

Largemouth Bass: Provides for sale of largemouth bass as food fish. Effective Date: July 1, 2021

#### **Actions**

02/18/2021 HOUSE Now in Environment, Agriculture & Flooding Subcommittee

#### **SB 0854 Minimum Wage Rate by Brandes**

Minimum Wage Rate; Proposing an amendment to the State Constitution to authorize the Legislature to provide a reduced minimum wage rate for prisoners in the state correctional system, for employees convicted of a felony, for employees under 21 years of age, and for other hard-to-hire employees, etc.

#### **Actions**

02/04/2021 SENATE Referred to Commerce and Tourism; Appropriations; Rules

#### **HB 0969 Consumer Data Privacy by McFarland**

Consumer Data Privacy: Requires certain businesses to provide notice to consumers about data collection & selling practices; provides consumers right to request that certain data be disclosed, deleted, or corrected & to opt-in or opt-out of sale or sharing of such data; provides nondiscrimination measures, methods for requesting data & opting-in or opting-out of sale or sharing of such data, exemptions, applicability, contracts, & private cause of action, & enforcement & implementation; authorizes DLA to adopt rules. Effective Date: January 1, 2022

#### **Actions**

03/10/2021 HOUSE Favorable with CS by Regulatory Reform Subcommittee; 18 Yeas, 0 Nays

#### **HB 0971 Pub. Rec./Consumer Data Privacy by McFarland**

Pub. Rec./Consumer Data Privacy: Provides exemption from public records requirements for information relating to investigations by DLA & law enforcement agencies of certain data privacy violations; provides for future review & repeal; provides statement of public necessity. Effective Date: on the same date that HB 969 or similar legislation takes effect

#### **Actions**

03/10/2021 HOUSE Favorable by Regulatory Reform Subcommittee; 16 Yeas, 0 Nays

#### **SB 1018 Sale of Aquaculture Products by Boyd**

Sale of Aquaculture Products; Authorizing certified aquaculture producers and certain licensed dealers to sell largemouth bass without restriction under certain circumstances; making technical changes, etc. Effective Date: 7/1/2021

#### **Actions**

03/04/2021 SENATE Now in Environment and Natural Resources

|   |  |
|---|--|
| <b>HB 1099</b>  | <b>Vessel Safety Equipment</b> by McFarland  |
| Vessel Safety Equipment: Requires operators of certain motorboats to use engine cutoff switch while motorboat is making way. Effective Date: July 1, 2021   |  |
| <b>Actions</b>  |  |
| 02/26/2021    HOUSE Now in Tourism, Infrastructure & Energy Subcommittee  |  |
| <b>SB 1126</b>  | <b>Department of Transportation</b> by Harrell   |
| Department of Transportation; Clarifying that the Department of Revenue is responsible for a certain transfer from the State Treasury to the General Revenue Fund of a portion of documentary stamp tax distributions credited to the State Transportation Trust Fund; deleting a requirement that the department provide space and video conference capability at each of the department's district offices as an alternative to physical appearance by a person requesting a hearing before the Commercial Motor Vehicle Review Board within the department; requiring the department, when proposing any project on the State Highway System which will close or modify an existing access to an abutting property owner, to provide notice to affected property owners, municipalities, and counties at least 180 days before the design phase of the project is completed, etc. Effective Date: 7/1/2021 |  |
| <b>Actions</b>  |  |
| 03/10/2021    SENATE Favorable by Transportation; 7 Yeas, 0 Nays  |  |
| <b>HB 1133</b>  | <b>Coastal Construction and Preservation</b> by Leek   |
| Coastal Construction and Preservation: Defines terms for purposes of Dennis L. Jones Beach & Shore Preservation Act; requires DEP to issue permits for certain rigid coastal armoring structures; provides DEP may only order removal of certain public rigid coastal armoring structures. Effective Date: July 1, 2021   |  |
| <b>Actions</b>  |  |
| 02/28/2021    HOUSE Now in Environment, Agriculture & Flooding Subcommittee   |  |
| <b>HB 1225</b>  | <b>Implementation of the Recommendations of the Blue-Green Algae Task Force</b> by Goff-Marcil |
| Implementation of the Recommendations of the Blue-Green Algae Task Force: Requires DEP to implement stormwater system inspection & monitoring program; requires owners of onsite sewage treatment & disposal systems to have system periodically inspected; requires department to administer inspection program pursuant to certain standards, procedures, & requirements; provides for rulemaking; provides requirements for basin management action plans; provides notices requirements for certain notices of intent to implement pollution reduction measures; provides that verification of certain programs must have been completed by specified date to be presumed to be in compliance with state water quality standards; requires DEP to provide all records promptly & in unadulterated form. Effective Date: July 1, 2021  |  |
| <b>Actions</b>  |  |
| 02/28/2021    HOUSE Now in Environment, Agriculture & Flooding Subcommittee   |  |
| <b>HB 1275</b>  | <b>Vessel Collisions, Accidents, and Casualties</b> by Grieco                                  |
| Vessel Collisions, Accidents, and Casualties: Provides penalties for vessel operators who leave scene of vessel accident that causes damage, injury, or death without complying with certain requirements, who operate vessel in reckless or careless manner & cause serious bodily injury, or who operate vessel while under influence & cause death of unborn child; provides mandatory minimum sentencing for specified violations. Effective Date: July 1, 2021   |  |
| <b>Actions</b>  |  |
| 02/28/2021    HOUSE Now in Criminal Justice & Public Safety Subcommittee  |  |
| <b>SB 1324</b>  | <b>Digital Driver Licenses and Identification Cards</b> by Harrell                             |
| Digital Driver Licenses and Identification Cards; Requiring the Department of Highway Safety and Motor Vehicles to establish a secure and uniform system for issuing optional digital proofs of driver licenses and identification cards; authorizing the department to contract with one or more private entities to develop an electronic credentialing system; authorizing the department to enter into contracts with private entities for a  |  |

specified purpose; prohibiting such private entities from storing, selling, or sharing personal information collected from scanning the digital proofs of driver licenses and identification cards, etc. Effective Date: 7/1/2021

#### **Actions**

03/10/2021 SENATE Favorable by Transportation; 7 Yeas, 0 Nays

#### **SB 1326**

##### **Public Records/Department of Highway Safety and Motor Vehicles** by Harrell

Public Records/Department of Highway Safety and Motor Vehicles; Providing exemptions from public records requirements for secure login credentials, Internet protocol addresses, and geolocation data held by the Department of Highway Safety and Motor Vehicles; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. Effective Date: On the same date that SB 1324 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law

#### **Actions**

03/10/2021 SENATE Favorable with CS by Transportation; 7 Yeas, 0 Nays

#### **HB 1335**

##### **Seagrass Mitigation Banks** by Sirois

Seagrass Mitigation Banks: Authorizes Board of Trustees of Internal Improvement Trust Fund to establish seagrass mitigation banks under certain conditions. Effective Date: July 1, 2021

#### **Actions**

03/05/2021 HOUSE Now in Environment, Agriculture & Flooding Subcommittee

#### **HB 1337**

##### **Anchoring Limitation Areas** by Geller

Anchoring Limitation Areas: Designates specified waterways as anchoring limitation areas. Effective Date: July 1, 2021

#### **Actions**

03/05/2021 HOUSE Now in Environment, Agriculture & Flooding Subcommittee

#### **HB 1385**

##### **Department of Transportation** by LaMarca

Department of Transportation: Revises provisions relating to transfer of moneys to & from State Transportation Trust Fund; removes requirements related to deduction of service charges; requires DOT to allow person to appear remotely before Commercial Motor Vehicle Review Board via communications media technology; requires DOT to adopt rules to implement airport zoning provisions; requires department, when proposing certain projects on State Highway System, to provide notice to affected property owners, municipalities, & counties; provides public meeting requirements; removes expiration of provisions authorizing LBC to authorize approval of work program amendments; revises date by which M. P.O. must submit list of project priorities to DOT district. Effective Date: July 1, 2021

#### **Actions**

03/05/2021 HOUSE Now in Tourism, Infrastructure & Energy Subcommittee

#### **SB 1504**

##### **Coastal Construction and Preservation** by Wright

Coastal Construction and Preservation; Defining the terms "upland structure," "vulnerable," and "wave runoff" as those terms are used in the Dennis L. Jones Beach and Shore Preservation Act; requiring, rather than authorizing, the Department of Environmental Protection to issue permits for present installations of rigid coastal armoring structures under certain circumstances; providing that the department may only order permitted public structures to be removed under certain circumstances, etc. Effective Date: 7/1/2021

#### **Actions**

03/02/2021 SENATE Referred to Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

#### **HB 1515**

##### **Anchoring Limitation Areas** by Duggan



Anchoring Limitation Areas: Authorizes local governments to establish anchoring limitation areas; revises provisions prohibiting & authorizing anchoring of vessels in anchoring limitation areas; provides for vessel owners & operators to present certain proof that vessel has not exceeded certain anchoring limitations; revises provisions authorizing removal & impoundment of certain vessels from anchoring limitation areas; declaring that certain vessels are public nuisance; directs FWCC to adopt specified rules. Effective Date: upon becoming a law

#### **Actions**

03/05/2021 HOUSE Now in Environment, Agriculture & Flooding Subcommittee

### **SB 1522 Implementation of the Recommendations of the Blue-Green Algae Task Force by Stewart**

Implementation of the Recommendations of the Blue-Green Algae Task Force; Citing this act as the "Implementation of Governor DeSantis' Blue-Green Algae Task Force Recommendations Act"; requiring the Department of Environmental Protection to implement a stormwater system inspection and monitoring program for a specified purpose by a specified date; requiring owners of onsite sewage treatment and disposal systems to have the system periodically inspected, beginning on a specified date; requiring basin management action plans to describe potential future increases in pollutant loading and provide a comprehensive analysis of options to mitigate such increases, etc. Effective Date: 7/1/2021

#### **Actions**

03/02/2021 SENATE Referred to Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

### **SB 1550 Public Financing of Potentially At-risk Structures by Rodriguez (A)**

Public Financing of Potentially At-risk Structures; Providing that coastal building zones are areas at risk due to sea level rise and coastal structures within those areas are potentially at-risk structures; requiring state-financed constructors to include certain flood mitigation strategies in sea level impact projection studies, etc. Effective Date: 7/1/2021

#### **Actions**

03/02/2021 SENATE Referred to Environment and Natural Resources; Community Affairs; Appropriations

### **SB 1562 Motorboat Engine Cutoff Switches by Gruters**

Motorboat Engine Cutoff Switches; Citing this act as the "Ethan's Law"; requiring the use of an engine cutoff switch when operating certain motorboats that are making way; providing penalties, etc. Effective Date: 7/1/2021

#### **Actions**

03/02/2021 SENATE Referred to Environment and Natural Resources; Criminal Justice; Rules

### **SB 1652 Anchoring Limitation Areas by Pizzo**

Anchoring Limitation Areas; Designating specified waterways in densely populated urban areas as anchoring limitation areas, etc. Effective Date: 7/1/2021

#### **Actions**

03/04/2021 SENATE Referred to Environment and Natural Resources; Community Affairs; Rules

### **SB 1658 Power-driven Vessel Safety Requirements by Bradley**

Power-driven Vessel Safety Requirements; Citing this act as the "Limb Preservation Act"; prohibiting sitting in a specified manner upon the bow, transom, or gunwale of a power-driven vessel while the vessel is making way; prohibiting a power-driven vessel operator from allowing a person to sit in such a way; providing a noncriminal infraction for violations relating to power-driven vessel safety requirements, etc. Effective Date: 7/1/2021

#### **Actions**

03/04/2021 SENATE Referred to Environment and Natural Resources; Community Affairs; Rules

**SB 1834****Vessel Safety** by Pizzo

Vessel Safety; Revising the penalties for persons operating a vessel involved in an accident or injury who leave the scene of the accident or injury under certain circumstances; providing graduated penalties depending on the level of damage to property or person; providing a mandatory minimum sentence for a person who willfully commits such violation resulting in the death of another while boating under the influence; providing that a person commits boating under the influence manslaughter when their impaired operation of a vessel causes the death of an unborn child; revising the definition of the term "vessel homicide" to include the killing of an unborn child by causing injury to the mother by operation of a vessel in a reckless manner under certain circumstances, etc. Effective Date: 7/1/2021

**Actions**

03/04/2021 SENATE Referred to Environment and Natural Resources; Criminal Justice; Rules

**SB 1946****Anchoring Limitation Areas** by Polsky

Anchoring Limitation Areas; Authorizing counties to establish anchoring limitation areas that meet certain requirements; providing that specified established anchoring limitation areas are exempt from specified provisions; specifying size requirements for the anchoring limitation areas; prohibiting vessels from anchoring in such areas for longer than a specified time; requiring the Fish and Wildlife Conservation Commission to initiate rulemaking by a certain date, etc. Effective Date: Upon becoming a law

**Actions**

03/04/2021 SENATE Referred to Environment and Natural Resources; Community Affairs; Rules