

Tab 1	SB 262 by Bradley; (Similar to CS/H 01547) Technology Transparency						
164120	A	S	RCS	CM, Bradley	Delete L.92 - 108:	04/04 12:49 PM	
Tab 2	SB 1648 by Bradley; (Similar to CS/H 01549) Public Records/Investigations by the Department of Legal Affairs						
963930	A	S	RCS	CM, Bradley	Delete L.110 - 119:	04/04 12:50 PM	
Tab 3	CS/SB 628 by BI, Grall; (Similar to H 00599) Debt Management Services						
Tab 4	CS/SB 712 by TR, Avila (CO-INTRODUCERS) Garcia; (Compare to CS/H 00637) Motor Vehicle Sales						
224252	D	S	RCS	CM, Avila	Delete everything after	04/04 12:51 PM	
335364	AA	S L	FAV	CM, Avila	Delete L.19 - 194:	04/04 12:51 PM	
Tab 5	CS/SB 752 by RI, Calatayud; (Identical to CS/H 00415) Temporary Commercial Kitchens						
892746	A	S	WD	CM, Calatayud	Delete L.77:	04/03 12:58 PM	
358156	A	S L	RCS	CM, Calatayud	Delete L.77:	04/04 12:52 PM	
Tab 6	CS/SB 940 by BI, Calatayud (CO-INTRODUCERS) Rodriguez; (Similar to CS/H 00897) Multiple-employer Welfare Arrangements						
Tab 7	SB 1242 by Boyd; (Compare to CS/H 01203) Registrations and Transfers of Heating, Ventilation, and Air-conditioning System Manufacturer Warranties						
852154	A	S	RCS	CM, Boyd	Delete L.18 - 28:	04/04 12:54 PM	
Tab 8	SB 1246 by Yarborough; (Identical to CS/H 01205) Truth in Legal Advertising						
Tab 9	SB 1308 by Yarborough (CO-INTRODUCERS) Rodriguez; (Similar to CS/H 00761) Telephone Solicitation						
805210	D	S	RCS	CM, Yarborough	Delete everything after	04/04 12:56 PM	
817718	AA	S L	FAV	CM, Gruters	Delete L.48 - 57:	04/04 12:56 PM	
Tab 10	CS/SB 564 by BI, Hutson; (Similar to CS/H 00677) Interchange Fees on Taxes						
648060	A	S L	RCS	CM, Hutson	Delete L.26 - 105:	04/04 04:48 PM	
Tab 11	CS/SB 1636 by TR, Wright; (Similar to CS/CS/H 00973) Rescission or Cancellation of a Motor Vehicle Sale						

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Trumbull, Chair
Senator Wright, Vice Chair

MEETING DATE: Tuesday, April 4, 2023
TIME: 8:30—10:30 a.m.
PLACE: Toni Jennings Committee Room, 110 Senate Building

MEMBERS: Senator Trumbull, Chair; Senator Wright, Vice Chair; Senators DiCeglie, Gruters, Hooper, Hutson, Jones, Rodriguez, Stewart, and Torres

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 262 Bradley (Similar CS/H 1547, Compare CS/H 1549, Linked S 1648)	Technology Transparency; Prohibiting officers or salaried employees of governmental entities from using their positions or state resources to make certain requests of social media platforms; prohibiting governmental entities from initiating or maintaining agreements or working relationships with social media platforms under a specified circumstance; prohibiting a controller from collecting certain consumer information without the consumer's authorization; requiring controllers that collect personal information to implement reasonable security procedures and practices to protect such information, etc. CM 03/13/2023 Not Considered CM 04/04/2023 Fav/CS JU RC	Fav/CS Yeas 9 Nays 0
2	SB 1648 Bradley (Similar CS/H 1549, Compare CS/H 1547, Linked S 262)	Public Records/Investigations by the Department of Legal Affairs; Providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs and law enforcement agencies of certain data privacy violations; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CM 03/13/2023 Not Considered CM 04/04/2023 Fav/CS JU RC	Fav/CS Yeas 9 Nays 0
3	CS/SB 628 Banking and Insurance / Grall (Similar H 599)	Debt Management Services; Increasing the maximum fee that may be charged for debt management services, etc. BI 03/22/2023 Fav/CS CM 04/04/2023 Favorable RC	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, April 4, 2023, 8:30—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 712 Transportation / Avila (Compare CS/H 637)	Motor Vehicle Sales; Prohibiting an applicant or a licensee from certain actions in the allocation or distribution of motor vehicles to franchised motor vehicle dealers; prohibiting applicants and licensees from engaging in certain activities of motor vehicle dealers; revising provisions prohibiting a manufacturer, a distributor, or an importer from owning, operating, or controlling a motor vehicle dealership in this state; requiring the Department of Highway Safety and Motor Vehicles to conduct an inquiry relating to certain written complaints, etc. TR 03/20/2023 Fav/CS CM 04/04/2023 Fav/CS RC	Fav/CS Yeas 8 Nays 0
5	CS/SB 752 Regulated Industries / Calatayud (Identical CS/H 415)	Temporary Commercial Kitchens; Requiring operators of public food service establishments who provide commissary services to maintain a temporary commercial kitchen registry; defining the term "temporary commercial kitchen"; preempting regulation of temporary commercial kitchens to the state; authorizing mobile food dispensing vehicles and temporary commercial kitchens in specified locations to operate during certain hours, etc. RI 03/07/2023 Fav/CS CM 03/27/2023 Temporarily Postponed CM 04/04/2023 Fav/CS RC	Fav/CS Yeas 9 Nays 0
6	CS/SB 940 Banking and Insurance / Calatayud (Similar CS/H 897)	Multiple-employer Welfare Arrangements; Revising eligibility requirements for a bona fide group to qualify as a multiple-employer welfare arrangement, etc. BI 03/29/2023 Fav/CS CM 04/04/2023 Favorable RC	Favorable Yeas 9 Nays 0
7	SB 1242 Boyd (Compare CS/H 1203)	Registrations and Transfers of Heating, Ventilation, and Air-conditioning System Manufacturer Warranties; Requiring manufacturer warranties for heating, ventilation, and air-conditioning (HVAC) systems to be registered to the home or building and not to the owner of the home or building; providing for the automatic effectiveness of such warranties at a specified time; requiring contractors installing HVAC systems to provide certain documentation, etc. CM 04/04/2023 Fav/CS JU RC	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, April 4, 2023, 8:30—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1246 Yarborough (Similar H 1205)	Truth in Legal Advertising; Specifying prohibited practices relating to advertisements for legal services; requiring persons and entities that issue advertisements to solicit certain clients to include specified information and statements in such advertisements; providing that the person or entity that issues an advertisement is solely responsible for ensuring its compliance with specified provisions; prohibiting the use, obtaining, sale, transfer, or disclosure of a consumer's protected health information for a specified purpose without written authorization, etc. JU 03/29/2023 Favorable CM 04/04/2023 Favorable RC	Favorable Yeas 9 Nays 0
9	SB 1308 Yarborough (Similar CS/H 761)	Telephone Solicitation; Prohibiting certain telephonic sales calls; providing retroactive applicability, etc. CM 04/04/2023 Fav/CS RI RC	Fav/CS Yeas 9 Nays 0
10	CS/SB 564 Banking and Insurance / Hutson (Similar CS/H 677)	Interchange Fees on Taxes; Prohibiting issuers, payment card networks, acquirer banks, and processors from receiving or charging merchants interchange fees on the tax amounts of electronic payment transactions if the merchant provides certain information in a specified manner; requiring an issuer to credit a merchant the amount of interchange fees on taxes within a certain timeframe if the merchant meets certain conditions; providing a civil penalty, etc. BI 03/15/2023 Fav/CS CM 04/04/2023 Fav/CS RC	Fav/CS Yeas 7 Nays 2

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, April 4, 2023, 8:30—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	CS/SB 1636 Transportation / Wright (Similar CS/CS/H 973)	Rescission or Cancellation of a Motor Vehicle Sale; Requiring a motor vehicle dealer who rescinds, cancels, or revokes a sale or an application for a certificate of title to be reimbursed by the Department of Revenue for the amount of tax collected or charged for such sale or application; authorizing a motor vehicle dealer, a motor vehicle purchaser, and any person claiming a lien on a motor vehicle to rescind or cancel a motor vehicle sale before an application for a certificate of title is submitted; providing for invalidation of certain subsequent requirements imposed on a motor vehicle dealer under certain circumstances; authorizing the motor vehicle dealer to obtain a duplicate certificate of origin, duplicate certificate of title, or new certificate of title, etc. TR 03/27/2023 Fav/CS CM 04/04/2023 Favorable FP	Favorable Yeas 9 Nays 0

Other Related Meeting Documents

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.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 262

INTRODUCER: Commerce and Tourism Committee and Senator Bradley

SUBJECT: Technology Transparency

DATE: April 5, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 262 prohibits employees of a governmental entity from using their position or any state resources to communicate with a social media platform to request that it remove content or accounts. Additionally, a government entity cannot initiate or maintain any agreements with a social media platform for the purpose of content moderation. The bill provides certain exceptions.

The bill creates a unified scheme to allow Florida's consumers to control the digital flow of their personal information. Specifically, it gives consumers the right to:

- Access their personal information;
- Delete or correct that personal information; and
- Opt out of the sale or sharing of their personal information.

The Act generally applies to businesses that collect Florida consumers' personal information, make in excess of \$1 billion in gross revenues, and meet one of the following thresholds:

- Derives 50 percent or more of its global annual revenues from providing targeted advertising or the sale of ads online; or
- Operated a consumer smart speaker and voice command component service with an integrated virtual assistant connected to a cloud computing service that uses hands-free verbal activation.

The bill prohibits the collection of a consumer's precise geolocation data or personal information through the operation of a voice recognition feature, unless the consumer provides authorization.

The bill requires a search engine to provide a consumer with information on how the search engine algorithm prioritizes or deprioritizes political partisanship or political ideology in its search results.

The Florida Department of Legal Affairs has authority to enforce the bill.

The bill also adds “biometric data,” “genetic information,” and “geolocation data” to the definition of “personal information” under the Florida Information Protection Act. As such, entities that possess fingerprints, DNA, and other biological or physiological identifying information must take reasonable measures to protect that data and report data breaches.

The bill takes effect on July 1, 2023.

II. Present Situation:

Internet and Social Media Platforms

There are many ways in which individuals access computer systems and interact with systems and other individuals on the Internet. Examples include:

- Social media sites, which are websites and applications, that allow users to communicate informally with others, find people, and share similar interests;¹
- Internet platforms, which are servers used by an Internet provider to support Internet access by their customers;²
- Internet search engines, which are computer software used to search data (such as text or a database) for specified information;³ and
- Access software providers, which are providers of software (including client or server software) or enabling tools for content processing.⁴

Such platforms earn revenue through various modes and models. Examples include:

- Data monetization.⁵ This uses data that is gathered and stored on the millions of users that spend time on free content sites, including specific user location, browsing habits, buying behavior, and unique interests. This data can be used to help e-commerce companies tailor

¹ DelValle Institute Learning Center, *Social Media Platforms*, available at <https://delvalle.bphc.org/mod/wiki/view.php?pageid=65> (last visited April 5, 2023).

² IGI Global, *Internet Platform*, available at <https://www.igi-global.com/dictionary/internet-platform/15441> (last visited April 5, 2023).

³ Merriam Webster, *Search Engine*, available at <https://www.merriam-webster.com/dictionary/search%20engine> (last visited April 5, 2023).

⁴ 47 U.S.C. § 230(f)(4) defining “access software provider to mean a provider of software (including client or server software), or enabling tools that do any one or more of the following: (i) filter, screen, allow, or disallow content; (ii) pick, choose, analyze, or digest content; or (iii) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

⁵ The Alexander von Humboldt Institute for Internet and Society, *How do digital platforms make their money?*, July 29, 2019, available at <https://www.hiig.de/en/how-do-digital-platforms-make-their-money/> (last visited April 5, 2023).

their marketing campaigns to a specific set of online consumers. Platforms that use this model are typically free for users to use.⁶

- Subscription or membership fees. This model requires users pay for a particular or unlimited use of the platform infrastructure.⁷
- Transaction fees. This model allows platforms to benefit from every transaction that is enabled between two or more actors. An example is AirBnB, where users transacting on the site are charged a fee.⁸

Freedom of Speech and Internet Platforms

Section 230

The federal Communications Decency Act (CDA) was passed in 1996 “to protect children from sexually explicit Internet content.”⁹ 47 U.S. Code § 230 (Section 230) was added as an amendment to the CDA to maintain the robust nature of Internet communication and, accordingly, to keep government interference in the medium to a minimum.”¹⁰

Congress stated in Section 230 that “[i]t is the policy of the United States—(1) to promote the continued development of the Internet and other interactive computer services and other interactive media; [and] (2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.”¹¹

Specifically, Section 230 states that no provider or user of an interactive computer service may be held liable on account of:¹²

- Any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or
- Any action taken to enable or make available to information content providers or others the technical means to restrict access to material from any person or entity that is responsible for the creation or development of information provided through any interactive computer service.

⁶ Investopedia, *How Do Internet Companies Profit with Free Services?*, available at <https://www.investopedia.com/ask/answers/040215/how-do-internet-companies-profit-if-they-give-away-their-services-free.asp#:~:text=Profit%20Through%20Advertising,content%20is%20through%20advertising%20revenue.&text=Each%20of%20these%20users%20represents,and%20services%20via%20the%20Internet> (last visited April 5, 2023).

⁷ *HIIS*, *supra* note 5.

⁸ *Id.*

⁹ *Force v. Facebook, Inc.*, 934 F.3d 53, 63 (2d Cir. 2019) (citing *FTC v. LeadClick Media, LLC*, 838 F.3d 158, 173 (2d Cir. 2016) (citing 141 Cong. Rec. S1953 (daily ed. Feb. 1, 1995) (statement of Sen. Exon))).

¹⁰ *Force*, 934 F.3d at 63 (quoting *Ricci v. Teamsters Union Local 456*, 781 F.3d 25, 28 (2d Cir. 2015) (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997))).

¹¹ 47 U.S.C. § 230(b)(1)–(2).

¹² 47 U.S.C. § 230(c).

Section 230 “assuaged Congressional concern regarding the outcome of two inconsistent judicial decisions,¹³ both of which “appl[ie]d traditional defamation law to internet providers.”¹⁴ The first decision held that an interactive computer service provider could not be liable for a third party's defamatory statement ... but the second imposed liability where a service provider filtered content in an effort to block obscene material.”¹⁵ To provide clarity, Section 230 provides that “[n]o provider ... of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”¹⁶ In light of Congress's objectives, the Circuits are in general agreement that the text of Section 230(c)(1) should be construed broadly in favor of immunity.¹⁷

Section 230 specifically addresses how the federal law affects other laws. Section 230 prohibits all inconsistent causes of action and prohibits liability imposed under any State or local law.¹⁸ Section 230 does not affect federal criminal law, intellectual property law, the Electronic Communications Privacy Act of 1986, or sex trafficking law.

There have been criticisms of the broad immunity provisions or liability shields which force individuals unhappy with third-party content to sue the user who posted it. While this immunity has fostered the free flow of ideas on the Internet, critics have argued that Section 230 shields publishers from liability for allowing harmful content.¹⁹ Congressional and executive proposals to limit immunity for claims relating to platforms purposefully hosting content from those engaging in child exploitation, terrorism, and cyber-stalking have been introduced.²⁰ Bills have been filed that would require internet platforms to have clear content moderation policies, submit detailed transparency reports, and remove immunity for platforms that engage in certain behavioral advertising practices.²¹ Proposals have also been offered to limit the liability shield for internet providers who restrict speech based on political viewpoints.²²

Recently, the Supreme Court heard oral arguments in *Gonzalez v. Google LLC*, to determine whether online platforms should be held accountable when their algorithms prioritize or recommend certain content to its users.²³ The plaintiff in the case argues that Google aided and abetted international terrorism because its computer algorithms suggest certain content to its

¹³ *Cubby, Inc. v. CompuServe, Inc.*, 776 F. Supp. 135 (S.D.N.Y. 1991) and *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, No. 31063/94, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995).

¹⁴ *Force*, 934 F.3d at 63 (quoting *LeadClick*, 838 F.3d at 173).

¹⁵ *Force*, 934 F.3d at 63 (quoting *LeadClick*, 838 F.3d at 173 (citing 141 Cong. Rec. H8469-70 (daily ed. Aug. 4, 1995) (statement of Rep. Cox))).

¹⁶ 47 U.S.C. § 230(c)(1).

¹⁷ *Force*, 934 F.3d at 63 (quoting *LeadClick*, 838 F.3d at 173).

¹⁸ 47 U.S.C. § 230(e).

¹⁹ Zoe Bedell and John Major, *What's Next for Section 230? A Roundup of Proposals* Lawfare, (July 29, 2020) <https://www.lawfareblog.com/whats-next-section-230-roundup-proposals> (last visited Feb. 25, 2021).

²⁰ *Id.*; United States Department of Justice, Department of Justice's Review of Section 230 of the Communications Decency Act of 1996, <https://www.justice.gov/archives/ag/departments-justice-s-review-section-230-communications-decency-act-1996> (last visited Feb. 25, 2021); EARN IT Act of 2020, S.3398, 116th Cong. (2020).

²¹ Bedell, *supra* note 27; PACT Act, S.4066, 116th Cong. (2020); BAD ADS Act, S.4337, 116th Cong. (2020).

²² Bedell, *supra* note 27; Limiting Section 230 Immunity to Good Samaritans Act, S.3983, 116th Cong. (2020)

²³ See Kaitlyn Tiffany, *The Supreme Court Considers the Algorithm* (Feb. 1, 2023)

<https://www.theatlantic.com/technology/archive/2023/02/supreme-court-section-230-twitter-google-algorithm/672915/> (last visited April 5, 2023).

users based on their viewing history.²⁴ The district court granted Google’s motion to dismiss based on Section 230, and the U.S. Court of Appeals for the Ninth Circuit affirmed.²⁵

Search Engines

Search engines work by crawling billions of webpages, indexing the webpages, and then providing them to the person typing a query into the search engine.²⁶ A web crawler, also known as a bot, is a program that systematically browses the web to copy pages that are then processed by a search engine.²⁷ Next, the pages are indexed for easy retrieval.²⁸

Each search engine uses their own algorithm, which determines the order pages appear.²⁹ Some choose to put emphasis on things like user experience, while others focus on content quality or link building.³⁰ Then a series of equations are used to determine where each piece of content should rank.³¹

Trade Secrets

Generally, trade secrets are intellectual property rights on confidential information that are used by a business and provide an economic advantage to that business.³²

Section 812.081, F.S., defines a “trade secret” as information³³ used in the operation of a business, which provides the business an advantage or an opportunity to obtain an advantage, over those who do not know or use it. The test provided for in statute, and adopted by Florida courts,³⁴ requires that a trade secret be actively protected from loss or public availability to any person not selected by the secret’s owner to have access thereto, and be:

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.³⁵

²⁴ See *Gonzalez v. Google LLC*, 2 F.4th 871 (9th Cir. 2021).

²⁵ *Id.*

²⁶ See Anthony Schultes, *How Do Search Engines Work* (Sep. 9, 2021) available at <https://www.seerinteractive.com/insights/how-do-search-engines-work> (last visited April 5, 2023).

²⁷ See Cem Dilmegani, *Web Crawler: What it is, How it works & Applications in 2023* (March 6, 2023) available at <https://research.aimultiple.com/web-crawler/> (last visited April 5, 2023).

²⁸ *Id.*

²⁹ See Anthony Schultes, *How Do Search Engines Work* (Sep. 9, 2021) <http://www.seerinteractive.com/insights/how-do-search-engines-work> (last visited April 5, 2023).

³⁰ *Id.*

³¹ *Id.*

³² See The Florida Bar, *Trade Secret* (Dec. 14, 2022) <https://www.floridabar.org/practice-areas/trade-secrets/> (last visited April 5, 2023).

³³ A trade secret may manifest as any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Section 812.081, F.S.

³⁴ See, e.g., *Sepro Corp. v. Dep’t. of Env’t. Prot.*, 839 So. 2d 781 (Fla. 1st DCA 2003).

³⁵ Section 812.081(1)(c), F.S.

Penalties

Florida law criminalizes the disclosure or theft of trade secrets. For example:

- Section 815.04, F.S., makes it a third degree felony³⁶ for a person to willfully, knowingly, and without authorization disclose or take data, programs, or supporting documentation that are trade secrets that reside or exist internal or external to a computer, computer system, computer network, or electronic device.³⁷
- Section 812.081, F.S., makes it a third degree felony for a person to steal, embezzle, or copy without authorization an article that represents a trade secret, when done with an intent to:
 - Deprive or withhold from the trade secret's owner the control of a trade secret, or
 - Appropriate a trade secret to his or her own use or to the use of another.

A number of statutes also provide non-criminal protections for trade secrets. The majority of these statutes provide public record exemptions for trade secrets,³⁸ but others provide procedural safeguards or civil remedies instead.³⁹

Consumer Data Privacy Overview

Around 84 percent of Americans say they feel very little or no control over the data that is collected about them by both the government and private companies.⁴⁰ Business technology to collect and analyze data has grown, and companies regularly capture, store, and analyze data on their consumers.⁴¹ While consumers often willingly agree to terms-of-service agreements to provide their data in exchange for free services, they are unaware of the extent to which that data is then used because the agreements are lengthy, overly-complicated, or simply not read by the consumer.⁴²

Consumer data is most commonly tracked through the placement of ‘cookies’—files that a website places in the user’s device that allow for tracking across websites.⁴³ Another common tracker is a “fingerprinter,” which creates a unique profile of the device, and allows the collector to gather information tied to that device.⁴⁴ These technologies allow websites to store a password

³⁶ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. (ss. 775.082 and 775.083, F.S.)

³⁷ The offense is a second degree felony if committed for the purpose of creating or executing any scheme or artifice to defraud or to obtain property.

³⁸ Sections 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174, 381.83, 403.7046(2)-(3), 403.73, 499.012(g), (m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 581.199, 601.10(8)(a), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.045, F.S.

³⁹ Sections 721.071 and 812.035, F.S.

⁴⁰ Brooke Auxier, Lee Rainie, Monica Anderson, Andrew Perrin, Madhu Kumar, and Erica Turner, PEW RESEARCH CENTER, *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over their Personal Information* at 7 (Nov. 15, 2019), available at https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2019/11/Pew-Research-Center_PI_2019.11.15_Privacy_FINAL.pdf (last visited April 5, 2023).

⁴¹ Max Freedman, BUSINESS NEWS DAILY, *How Businesses are Collecting Data (and What They're Doing With It)* (Jun. 17, 2020), available at <https://www.businessnewsdaily.com/10625-businesses-collecting-data.html> (last visited April 5, 2023).

⁴² Jessica Guynn, USA TODAY, *What Your Need to Know Before Clicking 'I Agree' on That Terms of Service Agreement or Privacy Policy* (Jan. 28, 2020), available at <https://www.usatoday.com/story/tech/2020/01/28/not-reading-the-small-print-is-privacy-policy-fail/4565274002/> (last visited April 5, 2023).

⁴³ NPR.org, *Online Trackers Follow our Digital Shadow by 'Fingerprinting' Browsers, Devices* (Sep. 26, 2016), available at <https://www.npr.org/sections/alltechconsidered/2016/09/26/495502526/online-trackers-follow-our-digital-shadow-by-fingerprinting-browsers-devices> (last visited April 5, 2023).

⁴⁴ *Id.*

that a consumer previously entered, and to follow the consumer's use patterns at other websites and to tailor their activities and advertisements to the consumer as a result of information it gleans.⁴⁵ Certain commercial businesses collect this information and create a consumer profile that describes possible interests or characteristics, and ultimately target ads for their products at the consumer.⁴⁶ Other companies—data brokers—collect and sell or share consumer data as their main business operation.⁴⁷

Generally, the types of consumer data that businesses collect are:⁴⁸

- Personal data, which includes personally identifiable information, such as Social Security numbers and gender, as well as identifiable information, including IP addresses, web browser cookies, and device IDs;
- Engagement data, which details how consumers interact with a business' website, mobile apps, social media pages, emails, paid ads, and customer service routes;
- Behavioral data, which includes transactional details such as purchase histories, product usage information, and qualitative data; and
- Attitudinal data, which encompasses metrics on consumer satisfaction, purchase criteria, product desirability, and more.

Federal and state governments have addressed data privacy and security to a certain extent, largely by targeting specific industries (e.g., healthcare and financial institutions) or types of data (such as children's personal information).⁴⁹ However, no federal law exists that comprehensively regulates how entities across all industries collect and use consumer data.⁵⁰ States have recently begun to legislate more comprehensively to protect data privacy.⁵¹

General Data Protection Regulation (GDPR)—European Union

The GDPR protects individual personal data and restricts entities' use of personal data, especially those that exercise overall control over the purpose and means of processing personal data (controllers) or that process data on behalf of, or at the instruction of controllers

⁴⁵ Wharton School of Business, University of Pennsylvania, *Your Data is Shared and Sold...What's Being Done About It?* (Oct. 28, 2019), available at <https://knowledge.wharton.upenn.edu/article/data-shared-sold-whats-done/> (last visited April 5, 2023).

⁴⁶ See *supra*, note 10

⁴⁷ Lois Beckett, PROPUBLICA, *Everything We Know About What Data Brokers Know About You* (June 13, 2014), available at <https://www.propublica.org/article/everything-we-know-about-what-data-brokers-know-about-you> (last visited April 3, 2023). See also Louise Matsakis, Wired, *The WIRED Guide to Your Personal Data (and Who is Using It)*, (Feb. 15, 2019), available at <https://www.wired.com/story/wired-guide-personal-data-collection/> (last visited April 5, 2023).

⁴⁸ Freedman, *supra*, note 10.

⁴⁹ Stephen Mulligan, Wilson Freeman, Chris Linebaugh, Congressional Research Service, *Data Protection Law: An Overview* at 7-8 (Mar. 25, 2019), available at <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited April 5, 2023).

⁵⁰ Wilson Freeman, Congressional Research Service, *California Dreamin' of Privacy Regulation: The California Consumer Privacy Act and Congress* (Nov. 1, 2018), available at <https://crsreports.congress.gov/product/pdf/LSB/LSB10213/3> (last visited April 5, 2023).

⁵¹ NCSL, *2021 Consumer Data Privacy Legislation* (Dec. 27, 2021), available at <https://www.ncsl.org/research/telecommunications-and-information-technology/2021-consumer-data-privacy-legislation.aspx> (last visited April 5, 2023).

(processors).⁵² A controller or processor is required to comply with the GDPR if it has activity in the European Union—even a minimal one, and regardless of where the data processing occurs.⁵³

Personal data is defined as any information that relates to an identified or identifiable person, and can include names, identification numbers, location data, cookies, and any other information through which an individual can be directly or indirectly identified.⁵⁴ A processor and controller must receive express consent from an individual before they can collect or process his or her personal data. The language must give a clear choice that is not based on an overbroad or overly complex question.⁵⁵

The GDPR requires entities subject to the GDPR to provide individuals with a report of their data that is processed, where it is processed, and why it is being processed.⁵⁶ This report must be provided to the individual within one month of his or her request.⁵⁷ If an individual makes a request that an entity correct or delete his or her personal data held by an entity, the entity must do so.⁵⁸

State Data Privacy Regulations

California Consumer Privacy Act (CCPA) and California Privacy Rights Act (CPRA)

The CCPA (2018) defines personal information as that which identifies, relates to, describes, or is capable of being associated with or could reasonably be linked, directly or indirectly, with a particular consumer or household.⁵⁹ The CCPA grants consumers greater control over their personal information by, among other provisions, creating the following consumer rights, to:⁶⁰

- Know about the personal information that a business collects, specifically about the consumer, and how it is used and shared;
- Delete collected personal information with some exceptions;
- Opt out of the *sale* of personal information; and
- Be treated equally by covered businesses, whether or not an individual has exercised a right granted by the CCPA.

Additionally, the CCPA requires business to give consumers certain notices that explain their

⁵² See generally, Stephen Mulligan, Wilson Freeman, Chris Linebaugh, CONGRESSIONAL RESEARCH SERVICE, *Data Protection Law: An Overview* p. 42 (Mar. 25, 2019), available at <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited April 5, 2023).

⁵³ GDPR, art. 3.

⁵⁴ GDPR, art. 4(1). See, U.K. Information Commissioner's Office, *Guide to General Data Protection Regulation: What is Personal Data?* available at <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/key-definitions/what-is-personal-data/> (last visited April 5, 2023).

⁵⁵ U.K. Information Commissioner's Office, *Guide to General Data Protection Regulation: Consent*, available at <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/consent/> (last visited April 5, 2023).

⁵⁶ Mark Kaelin, TECHREPUBLIC, *GDPR: A Cheat Sheet* (May 23, 2019), available at <https://www.techrepublic.com/article/the-eu-general-data-protection-regulation-gdpr-the-smart-persons-guide/> (last visited April 5, 2023).

⁵⁷ GDPR, arts. 12(3), 15.

⁵⁸ U.K. Information Commissioner's Office, *Guide to General Data Protection Regulation: Right to Erasure*, available at [Right to erasure | ICO](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/right-to-erasure/) (last visited April 5, 2023).

⁵⁹ Cal. Civ. Code § 1798.140(v)(1).

⁶⁰ California Department of Justice, Office of the Attorney General, *California Consumer Privacy Act (CCPA)*, available at <https://oag.ca.gov/privacy/ccpa> (last visited April 5, 2023).

privacy practices and provide certain mechanisms to allow consumers to opt-out or exercise other rights regarding their personal information.

The CCPA applies to for-profit businesses that do business in California and that meet any of the following requirements:⁶¹

- Have a gross annual revenue of over \$25 million;
- Buy, receive, or sell the personal information of 100,000 or more California residents, households, or devices; or
- Derive 50 percent or more of their annual revenue from selling California residents' personal information.

The law is largely enforced by the Attorney General, and businesses are subject to fines for violating the law. A consumer may only bring a cause of action against a business if certain categories of personal information tied to his or her name have been stolen in a nonencrypted and nonredacted form.⁶²

The CPRA, which was approved by voters in a 2020 statewide ballot measure and took effect on January 1, 2023, amends and expands upon the CCPA.

The CPRA broadens consumers' rights by allowing them to:⁶³

- Prevent businesses from *sharing* their personal information (CCPA prevents businesses from selling it);
- Correct their inaccurate personal information; and
- Limit a business' use of their sensitive personal information, which includes information such as a consumer's geolocation, race, ethnicity, religion, genetic data, private communications, sexual orientation, and specific health information.

The CPRA now applies to businesses that not only sell personal information, but also ones that share it. Additionally, the CPRA now prohibits sharing of data between different entities that make up a joint venture.⁶⁴

The CPRA also provides that a business that collects personal information cannot retain a consumer's personal information or sensitive personal information for longer than is reasonably necessary.⁶⁵

Virginia Consumer Data Protection Act

The Virginia Consumer Data Protection Act (Virginia Act) takes effect on January 1, 2023. The Virginia act grants consumers the right to access, correct, delete, obtain a copy of, and opt out of

⁶¹ Cal. Civ. Code § 1798.140.

⁶² Cal. Civ. Code ss. 1798.130, 1798.135.

⁶³ Elizabeth Shirley, *Overview of Applicability and Updated Privacy Provisions in the California Privacy Rights and Enforcement Act of 2020 (CPRA)* (Jun. 10, 2021), available at <https://www.jdsupra.com/legalnews/overview-of-applicability-and-updated-5551553/> (last visited April 5, 2023).

⁶⁴ *Id.*

⁶⁵ Mario Meeks, JDSUPRA, *The CPRA's Storage Limitation Requirement is Coming—Practical Tips for Shoring Up Your Record Retention Practices to Comply* (Feb. 18, 2021), available at <https://www.jdsupra.com/legalnews/the-cpra-s-storage-limitation-9898179/> (last visited April 5, 2023).

the processing of their personal data for the purposes of targeted advertising.⁶⁶ The Virginia Act defines “consumer” only as a natural person who is a resident of Virginia and acts only in an individual or household context.⁶⁷

Businesses are subject to the Virginia Act if they operate in Virginia and either (1) control or process personal data of 100,000 or more consumers or (2) derive over 50 percent of their gross revenue from the sale of personal data and control or process personal data of at least 25,000 consumers.⁶⁸

The Virginia Act exempts specific entities that are otherwise regulated by specific federal law, including those regulated by the GLBA and HIPAA. The Virginia Act also exempts Virginia public entities, nonprofit organizations, and higher education institutions.⁶⁹ In a similar vein, the Virginia Act exempts specific personal information, where the collection and use thereof is otherwise regulated by FCRA, FERPA, and COPPA.⁷⁰

The Virginia Attorney General has exclusive authority to enforce the Virginia Act.⁷¹

Colorado Privacy Act

The Colorado Privacy Act (Colorado Act) will take effect on July 1, 2023.⁷² Generally, with regard to personal data, the Colorado Act grants a consumer the right to:⁷³

- Access data;
- Correct data;
- Delete data;
- Data portability;
- Opt out of the sale of personal information, targeted advertising, and profiling;
- Appeal; and
- Non-discrimination.

Like the CCPA and Virginia Act, the Colorado Act contains exceptions for certain types of data and information governed by federal law. It provides that the Attorney General has exclusive

⁶⁶ Va. Code Ann. § 59.1-573 (2020). *See also*, Colleen Brown, Alan Raul, Lauren Kitces, Sidley LLP, *East Coast Meet West Coast: Enter the Virginia Consumer Data Privacy Protection Act* (Mar. 5, 2021), available at <https://www.sidley.com/en/insights/newsupdates/2021/03/east-coast-meets-west-coast-enter-the-virginia-consumer-data-protection-act> (last visited April 5, 2023).

⁶⁷ Va. Code Ann. § 59.1-571 (2020).

⁶⁸ Va. Code Ann. § 59.1-572 A (2020).

⁶⁹ Va. Code Ann. § 59.1-572 B (2020).

⁷⁰ Va. Code Ann. § 59.1-572 C (2020).

⁷¹ *See generally*, Kurt Hunt and Matthew Diaz, JDSUPRA, *Virginia Becomes 2nd State to Adopt a Comprehensive Consumer Data Privacy Law* (Mar. 4, 2022), available at <https://www.natlawreview.com/article/virginia-becomes-2nd-state-to-adopt-comprehensive-consumer-data-privacy-law> (last visited April 5, 2023).

⁷² C.R.S. 1-6-1301-1313, available at https://leg.colorado.gov/sites/default/files/2021a_190_signed.pdf (last visited April 5, 2023).

⁷³ The National Law Review, *And Now There are Three...The Colorado Privacy Act*, July 16, 2021, available at <https://www.natlawreview.com/article/and-now-there-are-three-colorado-privacy-act#:~:text=Colorado%20has%20now%20joined%20California,effect%20on%20July%201%2C%202023>. (last visited April 5, 2023).

authority to enforce violations of the law, and does not provide a private cause of action to a consumer. The Colorado Act applies to persons conducting business in the state that either:⁷⁴

- Control or process personal data of 100,000 or more consumers during a calendar year; or
- Derive revenue or receive discounts from the sale of personal data and control or process data of at least 25,000 consumers.

The Colorado Act does not bestow a private right of action. The Colorado Attorney General has exclusive enforcement authority to prosecute violations as deceptive trade practices.⁷⁵

Utah Consumer Privacy Act

The Utah Consumer Privacy Act (UCPA) will take effect on December 31, 2023.⁷⁶ Generally, with regard to personal data, the UCPA grants a consumer the right to:

- Access data;
- Delete data;
- Obtain a copy of data;
- Opt out of the sale of data; and
- Opt out of targeted advertising.⁷⁷

Unlike the CCPA, the Colorado Act, and the Virginia Act, the UCPA does not provide consumers with the ability to correct personal data.⁷⁸ The UCPA applies to a controller or processor that conducts business in Utah or produces a product or service targeted to Utah residents, has annual revenues of \$25,000,000 or more, and satisfies at least one of the following thresholds:

- During a calendar year, controls or processes the personal data of 100,000 or more Utah residents; or
- Derives over 50% of its gross revenue from the sale of personal data, and controls or processes the personal data of 25,000 or more consumers.⁷⁹

The UCPA does not provide a private right of action. The Utah Attorney General will enforce the law.⁸⁰

Florida Information Protection Act (FIPA)⁸¹

FIPA is a data security measure that requires governmental entities, specific business entities, and any third-party agent that holds or processes personal information on behalf of these entities to take reasonable measures to protect a consumer's personal information. Additionally, FIPA

⁷⁴ *Id.*

⁷⁵ Weiner Brodsky Kider, PC, *Colorado Enhances Data Privacy for Consumers* (Aug. 10, 2021), available at <https://www.jdsupra.com/legalnews/colorado-enhances-data-privacy-for-7292123/> (last visited April 5, 2023).

⁷⁶ The National Law Review, *Utah Becomes Fourth U.S. State to Enact Consumer Privacy Law* (March 24, 2022), available at [Utah Consumer Privacy Act Passed - UCPA Legislation \(natlawreview.com\)](https://www.natlawreview.com/article/utah-consumer-privacy-act-passed-ucpa-legislation) (last visited April 5, 2023).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Section 501.171, F.S.; Chapter 2014-189, Laws of Fla. (FIPA expanded and updated Florida's data breach disclosure laws contained in s. 817.5681, F.S. (2013), which was adopted in 2005 and repealed in 2014).

requires covered business entities⁸² that are subject to data breaches to attempt to remediate the breach by notification to affected consumers in Florida, and in cases where more than 500 individual's information was breached—by additional notification to the Department of Legal Affairs (DLA).⁸³ If the breach affected more than 1,000 individuals in Florida, the entity must also notify credit reporting agencies, with certain exceptions.⁸⁴

FIPA defines “personal information” as:

- Online account information, such as security questions and answers, email addresses, and passwords; and
- An individual's first name or first initial and last name, in combination with any one or more of the following information regarding him or her:
 - A social security number;
 - A driver license or similar identity verification number issued on a government document;
 - A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account;
 - Medical history information or health insurance identification numbers; or
 - An individual's health insurance identification numbers.⁸⁵

Personal information does not include information:

- About an individual that a federal, state, or local governmental entity has made publicly available; or
- That is encrypted, secured, or modified to remove elements that personally identify an individual or that otherwise renders the information unusable.⁸⁶

FIPA does not provide a private cause of action, but authorizes the DLA to file charges against covered entities under Florida's Unfair and Deceptive Trade Practices Act (FDUTPA).⁸⁷

In addition to the remedies provided for under FDUTPA, a covered entity that fails to notify DLA, or an individual whose personal information was accessed, of the data breach is liable for a civil penalty of \$1,000 per day for the first 30 days of any violation; \$50,000 for each subsequent 30-day period of violation; and up to \$500,000 for any violation that continues more than 180 days. These civil penalties apply per breach, not per individual affected by the breach.

Illinois Biometric Information Privacy Act

In 2008, Illinois became the first state to specifically regulate biometric data with the passage of the Biometric Information Privacy Act (BIPA). BIPA puts in place safeguards and procedures

⁸² A “covered entity” is a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. Section 501.171(1)(b), F.S.

⁸³ Florida Office of the Attorney General (OAG), *How to Protect Yourself: Data Security*, available at <http://myfloridalegal.com/pages.nsf/Main/53D4216591361BCD85257F77004BE16C> (last visited April 5, 2023). Section 501.171(3)-(4), F.S.

⁸⁴ Section 501.171(3)-(6), F.S.

⁸⁵ Section 501.171(1)(g)1., F.S.; OAG *supra* note 41.

⁸⁶ Section 501.171(1)(g)2., F.S.

⁸⁷ Section 501.171(9), (10), F.S.; OAG *supra* note 41.

that relate to the retention, collection, disclosure, and destruction of biometric information and specifically protects the biometric information of those in Illinois.

BIPA defines biometric data as a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry.

Under BIPA, a private entity:⁸⁸

- That possesses biometric data must have a written policy that establishes a retention schedule and guidelines for permanent destruction of such data;
- Cannot collect, capture, purchase, receive through trade, or otherwise obtain biometric data unless it receives an informed release from the subject;
- Cannot profit from a person's biometric data;
- Cannot disseminate a person's biometric data unless the subject consents or provides authorization, or the entity is required by law or a valid warrant or subpoena; and
- Must store, transmit, and protect biometric data with a reasonable standard of care and in a manner as or more protective as other confidential and sensitive information.

BIPA provides a private cause of action, with relief including liquidated damages, ranging from \$1,000 to \$5,000 or actual damages (whichever is greater), attorney's fees and costs, and other relief deemed appropriate by a court.⁸⁹

The Illinois Supreme Court found that an individual does not need to allege an actual injury or adverse effect, beyond violation of their rights under BIPA, to qualify as an aggrieved party. Therefore, anyone whose biometric data is affected by a violation of BIPA may seek liquidated damages or injunctive relief under BIPA.⁹⁰ Court documents also tend to support the notion that an individual in Illinois has a valid cause of action if their biometric data is taken without consent by a private entity, including out-of-state entities, but it is subject to a finding of fact.⁹¹

Federal Privacy Regulations

Health Insurance Portability and Accountability Act (HIPAA)⁹² and its Related Rules

HIPPA requires federal agencies to create national standards to protect sensitive patient health information from disclosure without the patient's consent or knowledge. HIPPA's two pertinent implementing rules are the Privacy Rule and the Security Rule.⁹³

⁸⁸ 740 Ill. Comp. Stat. 14/10, 14/15 (2008).

⁸⁹ 740 Ill. Comp. Stat. 14/20 (2008).

⁹⁰ See *Rosenbach v. Six Flags Entertainment Corporation*, 2019 IL 123186.

⁹¹ See *Rivera v. Google, Inc.*, 238 F.Supp.3d 1088 (N.D. Ill. 2017); See also *In re Facebook Biometric Information Privacy Litigation*, 185 F.Supp.3d 1155 (N.D. Cal. (2016).; See also *Norberg v. Shutterfly, Inc.*, 152 F.Supp.3d 1103 (N.D. Ill. 2015).

⁹² 42 U.S.C. § 1320.

⁹³ See generally, Stephen Mulligan, Wilson Freeman, Chris Linebaugh, Congressional Research Service, *Data Protection Law: An Overview* pp. 10-12 (Mar. 25, 2019), available at <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited April 5, 2023).

The Privacy Rule addresses the use and disclosure of individual's protected health information (PHI) by covered entities.^{94, 95} PHI is information, including demographic data, that can be used to identify the individual, and that relates to the individual's:

- Past, present, or future physical or mental health or physical condition;
- Health care; or
- Payment for past, present, or future health care.

A common example of PHI is a patient's name, address, birth date, or social security number. However, PHI does not include deidentified health information or employment-related records.

The Privacy Rule protects PHI that is held or transmitted by a covered entity or its business associate by preventing covered entities from disclosing PHI without the patient's consent or knowledge unless it is being used or shared for treatment, payment, or healthcare operations or for another exempt purpose.

These covered entities must prominently post an electronic notice and give notice upon a specific request to patients regarding the manners in which they use and disclose PHI. A covered entity must also provide an accounting of disclosures it has made of a patient's PHI upon his or her request as well as a copy of his or her PHI.

The Security Rule applies to the subset of identifiable health information that a covered entity creates, receives, maintains, or transmits in electronic form called "electronic protected health information" (e-PHI).⁹⁶ The Security Rule does not apply to PHI that is transmitted orally or in writing. A covered entity must comply with the Security Rule by:

- Ensuring the confidentiality, integrity, and availability of all e-PHI;
- Detecting and safeguarding against anticipated threats to the security of the information;
- Protecting against anticipated uses or disclosures; and
- Certifying compliance by their workforce.

The Department of Health and Human Services may institute a civil enforcement under HIPPA and may seek civil penalties. The Department of Justice may institute criminal proceedings against a violator who knowingly obtained or disclosed PHI. There is no private cause of action under HIPPA.

Federal Policy for the Protection of Human Subjects ("Common Rule")

The Common Rule is promulgated by the U.S. Food and Drug Administration (FDA) and governs the ethical conduct of research involving human subjects.⁹⁷ Fifteen federal agencies and departments are party to this rule. The Common Rule mandates that researchers protect the

⁹⁴ 45 C.F.R. §160 and 164. *See also*, Department of Health and Human Services, *Summary of the HIPPA Privacy Rule*, (Jul. 26, 2013) available at <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html> (last visited April 5, 2023).

⁹⁵ A covered entity is a health plan, health care clearinghouse, health care provider who transmits health information in electronic form, and these entities' business associates.

⁹⁶ 45 C.F.R. §164.302-318.

⁹⁷ 21 C.F.R. §§ 50, 60.

privacy of subjects and maintain confidentiality of human subject data, among other requirements.⁹⁸

The FDA is a member of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use, which brings together the regulatory authorities and the pharmaceutical industry to develop guidelines for pharmaceutical trials.⁹⁹

Fair Credit Reporting Act (FCRA)¹⁰⁰

The FCRA promotes the accuracy, fairness, and privacy of information that consumer reporting agencies and their related entities collect.¹⁰¹ The FCRA governs the acts of credit reporting agencies (CRAs), entities that furnish information to CRAs (furnishers), and individuals who use credit reports issued by CRAs. Specifically, CRAs and their furnishers must adopt methods to ensure the information they collect and report is accurate.

Individuals can review the information a CRA has collected on them to ensure that it is accurate, and may dispute its accuracy—which triggers a CRA’s and furnisher’s duty to reinvestigate the information. Individuals may also request to review the information a CRA has in his or her file, the sources of the information, and the identity of those to whom the information was disclosed.

A CRA cannot provide information in a consumer report to anyone who does not have a specified purpose in the FCRA.¹⁰²

The FTC and Consumer Finance Protection Bureau share civil enforcement authority of the FCRA. A person who willfully obtains consumer information from a CRA under false pretenses is subject to criminal prosecution. An individual may also pursue a private right of action if he or she was injured by willful or negligent actions.¹⁰³

⁹⁸ See generally, Health and Human Services, *Federal Policy for the Protection of Human Subjects* (‘Common Rule’) (Mar. 18, 2016), available at <https://www.hhs.gov/ohrp/regulations-and-policy/regulations/common-rule/index.html> (last visited April 5, 2023).

⁹⁹ International Council for Harmonisation, available at <https://www.ich.org/> (last visited April 5, 2023).

¹⁰⁰ 15 U.S.C. § 1681.

¹⁰¹ Consumer Finance Bureau, *A Summary of Your Rights Under the Fair Credit Reporting Act* (Sept. 18, 2018), 12 CFR 1022, available at [A Summary of Your Rights Under the Fair Credit Reporting Act \(ftc.gov\)](https://www.ftc.gov/ftc/summary-of-your-rights-under-the-fair-credit-reporting-act) (last visited April 5, 2023). See also, Federal Trade Commission, *Fair Credit Reporting Act*, available at <https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act> (last visited April 5, 2023).

¹⁰² Permissible purposes include employment, insurance underwriting that involves the consumer, evaluating the consumer’s eligibility for licensure or other governmental benefit that considers the applicants financial responsibility or status, or a legitimate business need. 15 U.S.C. § 1681b(a).

¹⁰³ An individual may record actual damages, attorney’s fees, litigation costs, and in the case of willful violations—statutory damages ranging from \$100 to \$1,000 and punitive costs as the court deems appropriate. 15 U.S.C. § 1681n(a).

Gramm-Leach Bliley Act (GLBA)¹⁰⁴

The GLBA governs financial institutions' use and protection of nonpublic personal information (NPI).¹⁰⁵ A financial institution is any institution that engages in financial activities, such as banks, real estate appraisers and title companies, consumer-financing companies, insurance underwriters and agents, wire transfer agencies, check cashing stores, and mortgage brokers.¹⁰⁶

A financial institution cannot share (1) NPI with non-affiliated third parties unless they notify the consumer of their intent to do so and provide a chance to opt out; and (2) a consumer's account or credit card numbers with third parties for direct marketing. The financial institution must also send an annual notice to the consumer that clearly and conspicuously describes the institution's privacy policies and practices.¹⁰⁷

The financial institution must also ensure the security and confidentiality of a customer's NPI by establishing concrete security policies, and by designating an information security program coordinator and implementing a risk assessment process.¹⁰⁸

The Consumer Financial Protection Bureau, Federal Trade Commission, and federal banking agencies share civil enforcement authority of the GLBA. Certain civil remedies and criminal liabilities are available for violations of the data security and protection provisions of the GLBA, but there is no private cause of action.

Children's Online Privacy Protection Act (COPPA)¹⁰⁹

COPPA and its related rules regulate websites' collection and use of children's information. The operator of a website or online service that is directed to children, or that has actual knowledge that it collects children's personal information (covered entities), must comply with requirements regarding data collection and use, privacy policy notifications, and data security.

COPPA defines personal information as individually identifiable information about an individual that is collected online, including:

- A first and last name;
- A home or other physical address, e-mail address, telephone number, or any other identifier that the FCC determines could permit one to contact someone physically or online, such as a screen name;
- A social security number;

¹⁰⁴ 15 U.S.C. §§ 6801-6809. *See generally*, Stephen Mulligan, Wilson Freeman, Chris Linebaugh, Congressional Research Service, *Data Protection Law: An Overview* pp. 8-10 (Mar. 25, 2019), available at <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited April 5, 2023).

¹⁰⁵ The GLBA defines "nonpublic personal information" as "personally identifiable information" that is not publicly available and is either provided by the consumer to a financial institution, resulting from any transaction with the consumer or any service performed for the consumer, or otherwise obtained by the financial institution. 15 U.S.C. § 6809(9).

¹⁰⁶ Federal Trade Commission, *Financial Institutions and Customer Information: Complying with the Safeguards Rule: Who Must Comply?*, available at <https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying> (last visited April 5, 2023).

¹⁰⁷ The notice must specifically include the categories of NPI the financial institution collects and discloses, the types of third parties with which it shares NPI, and how it protects consumers' NPI.

¹⁰⁸ *See*, 16 C.F.R. § 314.4

¹⁰⁹ 16 C.F.R. pt. 312.

- A persistent identifier that can be used to recognize a user over time and across different websites;
- A photograph, video, or audio file that contains a child's image or voice;
- A geolocation information that is sufficient to identify the user's location; or
- Information concerning the child or parents that the operator collects from the child and combines with any other identifier described above.

A covered entity may not collect a child's (individual under the age of 13) personal information without the prior, verifiable consent of his or her parent.¹¹⁰

COPPA further requires covered entities to:¹¹¹

- Give parents direct notice of their privacy policies, including a description of their data collection and sharing practices;
- Post a clear link to their privacy policies on their home page and at each area of their website where they collect personal information from children;
- Institute procedures to protect the personal information that they hold;
- Ensure that any third party with which they share collected personal information implements the same protection procedures; and
- Delete children's personal information after the purpose for its retention has been fulfilled.

Violations of COPPA are an unfair or deceptive act or practice and are prosecuted by the FTC. COPPA also authorizes state attorneys general to enforce violations that affect residents of their states. There is no criminal prosecution or private right of action provided for under COPPA.¹¹²

Driver's Privacy Protection Act (DPPA)¹¹³

The DPPA prohibits state Departments of Motor Vehicle (DMVs) from releasing an individual's personal information obtained by the DMV in connection with a motor vehicle record, subject to certain exceptions, such as a legitimate government need. Additionally, the DPPA requires DMVs to obtain an individual's consent to enable the sale or release of personal motor vehicle record to a third-party marketer.

Violations of the DPPA are subject to criminal fine. Additionally, a private individual affected by the improper disclosure or use of his or her personal information may bring a private civil action against the violator.¹¹⁴

¹¹⁰ 15 U.S.C. §§ 6502(a)-(b).

¹¹¹ See, Federal Trade Commission, *General Questions About the COPPA Rule: What is the Children's Online Privacy Protection Rule?* (Jul. 2020), available at <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0> (last visited April 5, 2023).

¹¹² Federal Trade Commission, *General Questions About the COPPA Rule: COPPA Enforcement*, available at <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0> (last visited April 5, 2023).

¹¹³ 18 U.S.C. §2721.

¹¹⁴ 18 U.S.C. § 2724. See generally, Electronic Privacy Information Center, *The Drivers Privacy Protection Act (DPPA) and the Privacy of Your State Motor Vehicle Record*, available at [The Drivers Privacy Protection Act \(DPPA\) and the Privacy of Your State Motor Vehicle Record – EPIC – Electronic Privacy Information Center](https://www.epic.org/drivers-privacy-protection-act-dppa/) (last visited April 5, 2023).

Family Educational Rights and Privacy Act (FERPA)¹¹⁵

FERPA protects the privacy of student's education records. The law applies to any school that receives applicable funds from the U.S. Department of Education. FERPA grants parents certain rights respecting their child's education records, and this privacy right transfers to the student when he or she reaches age 18 or attends a post-secondary school.

Schools may disclose, without consent, directory information, such as a student's name, address, telephone number, birthday, place of birth, honors and awards, and dates of attendance. However, schools must disclose and allow parents and students to opt out of the disclosure of their directory information.

Schools must give an annual notice about rights granted by FERPA to affected parties.¹¹⁶

Federal Trade Commission Act (FTC Act)

The FTC protects consumer data privacy by acting under Section 5 of the FTC Act, which bars unfair and deceptive acts and practices that affect commerce.¹¹⁷ Specifically, the FTC prosecutes companies that act unfairly or deceptively when they gather, use, or disclose personal information in a manner that contradicts their posted privacy policy or other statements, or fail to implement reasonable data security safeguards.¹¹⁸

For example, the FTC prosecuted both Sears and Upromise for drafting misleading privacy policies that did not fully disclose the extent to which a consumer's online browsing would be tracked.¹¹⁹

III. Effect of Proposed Changes:**Governmental Content Moderation of Social Media Platforms**

A social media platform is a form of electronic communication through which users create online communities to share information, ideas, personal messages, and other content.

A governmental entity is any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law.

¹¹⁵ 20 U.S.C. § 1232(g); 34 C.F.R. § 99.

¹¹⁶ U.S. Department of Education, *Family Educational Rights and Privacy Act (FERPA)*, (Aug. 25, 2021) available at <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html> (last visited April 5, 2023).

¹¹⁷ 15 U.S.C. § 1681. Federal Trade Commission, *Privacy and Security Enforcement*, available at <https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy/privacy-security-enforcement> (last visited April 5, 2023).

¹¹⁸ Stephen Mulligan, Wilson Freeman, Chris Linebaugh, CONGRESSIONAL RESEARCH SERVICE, *Data Protection Law: An Overview* p. 30-35 (Mar. 25, 2019), available at <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited April 5, 2023).

¹¹⁹ See, e.g., Federal Trade Commission, *Membership Reward Service Upromise Penalized for Violating FTC Order* (Mar. 17, 2017) Stephen Mulligan, Wilson Freeman, Chris Linebaugh, CONGRESSIONAL RESEARCH SERVICE, *Data Protection Law: An Overview* p. 42 (Mar. 25, 2019), available at <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited April 5, 2023); and Complaint *In the Matter of Sears Holdings Mgmt Co.*, No. C-4264 (F.T.C. Aug. 31, 2009).

SB 262 creates s. 112.23, F.S., to prohibit an officer or a salaried employee of a governmental entity from using their position or any state resources to communicate with a social media platform to request that it remove content or accounts from the social media platform. Additionally, a governmental entity, or an officer or a salaried employee acting on behalf of a governmental entity may not initiate or maintain any agreements or working relationships with a social media platform for the purpose of content moderation.

The bill provides that the above prohibitions do not apply if the governmental entity or an officer or a salaried employee acting on behalf of a governmental entity is acting as part of any of the following:

- Routine account management of the government entity's account;
- An attempt to remove content that pertains to the commission of a crime or violation of Florida's public records law;
- An attempt to remove an account that pertains to the commission of a crime or violation of Florida's public records law; or
- An investigation or inquiry related to public safety.

Consumer Data Privacy

The bill creates s. 501.173, F.S., to establish specific consumer rights over their personal information when held by specific controllers or processors, including:

- The right to access personal information that is collected about the individual consumer;
- The right to delete or correct their personal information; and
- The right to opt-out of the sale or sharing of their personal information with third parties.

A "consumer," as defined by the bill, may exercise these rights. A consumer is any natural person who resides in, or is domiciled in, Florida and who acts in his or her personal capacity or household¹²⁰ context. The bill does not contemplate individuals who act in a commercial or employment context.

A controller that receives a verifiable consumer request to access, delete, correct, or opt-out must comply with the request, with certain exceptions.

Personal Information

The bill defines personal information as information, including biometric, genetic, and unique identifiers, that is linked, or reasonably capable of being linked, with a particular consumer or household. The term includes:

- Identifiers such as a real name, alias, postal address, unique identifier,¹²¹ online identifier, internet protocol address, email address, account name, social security number, driver license number, passport number, or other similar identifiers;

¹²⁰ The bill defines "household" as a natural person or a group of people in Florida who reside at the same address, share a common device or the same service provided by a controller, and are identified by a controller as sharing the same group account or unique device.

¹²¹ The bill defines "unique identifier" as a persistent identifier that can be used to recognize a consumer, a family, or a device that is linked to a consumer or a family, over time and across different services.

- Information that identifies, relates to, or describes, or could be associated with, a particular individual, including, but not limited to, a name, signature, social security number, physical characteristics or description, address, location, telephone number, passport number, driver license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information;
- Characteristics of protected classifications under state or federal law;
- Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies;
- Biometric information;
- Internet or other electronic network activity information, including, but not limited to, browsing history, search history, and information regarding a consumer's interaction with an Internet website, application, or advertisement;
- Geolocation data;
- Audio, electronic, visual, thermal, olfactory, or similar information; and
- Inferences drawn from any of the information used to create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

The term does not include:

- Consumer employment contact information and similar information that is used only in an employment context;
- De-identified consumer information or aggregate consumer information; and
- Publicly and lawfully available information reasonably believed to be made available to the general public in a lawful manner and without legal restrictions.

Business Requirements

Controllers

A controller subject to the bill is any sole proprietorship partnership, limited liability company, corporation, association, or legal entity that:

- Is organized or operated for the profit or financial benefit of its shareholders or owners;
- Does business in Florida;
- Collects consumer personal information, or is the entity that directs such collection;
- Determines the purpose and means of processing personal information about consumers, alone or jointly with others;
- Makes in excess of \$1 billion in gross revenues, as adjusted in January of every odd-numbered year to reflect any increase in the Consumer Price Index; and
- Satisfies one of the following:
 - Derives 50 percent or more of its global annual revenues from providing targeted advertising¹²² or the sale of ads online; or

¹²² The bill defines "targeted advertising" as marketing to a consumer or displaying an advertisement to a consumer when the advertisement is selected based on personal information used to predict such consumer's preferences or interests.

- Operates a consumer smart speaker and voice command component service with an integrated virtual assistant connected to a cloud computing service that uses hands-free verbal activation.¹²³

Additionally, any entity that controls or is controlled by a controller is considered a controller for the purposes of the bill.

Processors

A processor is a for-profit business that processes information on behalf of a controller pursuant to a written contract. The contract between the controller and processor must prohibit the processor from retaining, using, or disclosing the information for any reason other than that stated in the contract, and as permitted by the bill.

A processor can only act pursuant to a contract between it and the controller. The contract must include provisions that:

- Prohibit the processor from selling, sharing, retaining, using, or disclosing the personal information for any purpose that violates s. 501.173, F.S.;
- Prohibit the processor from retaining, using, or disclosing the personal information other than for the purposes specified in the contract or agreement;
- Prohibit the processor from combining the personal information that the processor receives from or on behalf of the controller with personal information that the processor receives from or on behalf of another person or that the processor collects from its own interaction with the consumer, provided that the processor may combine personal information to perform any purpose specified in the contract or agreement and such combination is reported to the controller;
- Govern the processor's personal information processing procedures with respect to processing performed on behalf of the controller, including processing instructions, the nature and purpose of processing, the type of information subject to processing, the duration of processing, and the rights and obligations of the controller and processor;
- Require the processor to return or delete all personal information under the contract to the controller as requested by the controller at the end of the provision of services, unless retention of the information is required by law; and
- Require the processor to make available to the controller all personal information in its possession under the contract or agreement, pursuant to the controller's request.

Additionally, the bill provides that determining whether a person is acting as a controller or processor with respect to a specific processing of data is a fact-based determination. A contract between a controller and processor must reflect their respective roles and relationships related to handling personal information.

If the processor engages a subcontractor, it must require it to meet the same obligations it is required to meet under the bill.

¹²³ The bill clarifies that a consumer smart speaker and voice command component service does not include a motor vehicle or speaker or device associated with or connected to a vehicle.

Third Parties

A third party is any person who is neither a controller, nor a processor. This may include subcontractors required to engage in data processing, security auditors, or entities that partner with web retail sites to allow consumers to pay in installments.

A third party is prohibited from selling or sharing personal information about a consumer unless the consumer is provided an opportunity by such third party to opt out.

A third party that has collected personal information from a controller in accordance with the requirements in this bill, may use such personal information to advertise or market products or services that are produced or offered directly by such third party.

A third party that engages a subcontractor must require it to meet the same obligations it is required to meet under the bill.

General Business Obligations

Generally, a controller that buys, sells, or shares Florida consumers' personal information is subject to the bill. The *sale* of personal information includes the transfer by any means, for actual monetary or valuable consideration, of consumer personal information by a controller to another controller or a third party. In contrast, a controller *shares* consumer personal information when it transfers it by any means, or allows access to it, *for the purpose of advertising or marketing*. The bill specifically includes in its definition of "sharing" (1) allowing a third party to advertise or market to a consumer based on the consumer's personal information, without the disclosure of the personal information to the third party, and (2) transactions between a controller and third party for advertising and marketing.

General Exemptions from Provisions of the Bill

Controllers, processors, and third parties may be exempt from the duties created by the bill, depending on the manner in which they use consumer personal information.

The bill does not apply to the collection of personal information:

- Used for transactional payments;
- Deidentified or aggregate consumer information;
- In compliance with federal, state, or local laws;
- In compliance with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities;
- In cooperation with law enforcement agencies concerning conduct reasonably believed to violate laws;
- For the purpose of exercising or defending legal rights, claims, or privileges;
- Collected through direct interactions with the consumer, which is used for advertising or marketing services to advertise or market products or services that are produced or offered directly by the controller;
- Pertaining to a job applicant, employee, owner, director, officer, contractor, volunteer, or intern of a controller, to the extent the personal information is collected and used solely within the context of the person's role or former role with the controller;

- Pertaining to protected health information for purposes of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 and related regulations;
- By a covered entity or business associate governed by the privacy, security, and breach notification rules issued by the U.S. Department of Health and Human Services in 45 C.F.R. parts 160 and 164, or a program or a qualified service program defined in 42 C.F.R. part 2;
- For purposes of research as defined in 45 C.F.R. s. 164.501, conducted in accordance with the Federal Policy for the Protection of Human Subjects for purposes of 45 C.F.R. part 46, the good clinical practice guidelines issued by the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use, or the Protection for Human Subjects for purposes of 21 C.F.R. Parts 50 and 56; or personal information used or shared in research conducted in accordance with one or more of these standards;
- For purposes of compliance with the federal Health Care Quality Improvement Act of 1986 and related regulations, or patient safety work product for purposes of 42 C.F.R. part 3, established pursuant to 42 U.S.C. s. 299b-21 through 299b-26;
- Is deidentified in accordance with 45 C.F.R. part 164 and that is derived from individually identifiable health information, as described in HIPAA, or identifiable personal information, consistent with the Federal Policy for the Protection of Human Subjects or the human subject protection requirements of the United States Food and Drug Administration;
- Used only for public health activities and purposes as described in 45 C.F.R. s. 164.512;
- That is collected, processed, sold, or disclosed pursuant to the federal Fair Credit Reporting Act, 15 U.S.C. s. 1681 and its implementing regulations;
- That is nonpublic personal information collected, processed, sold, or disclosed pursuant to the Gramm-Leach-Bliley Act, 15 U.S.C. s. 6801 et seq. and implementing regulations;
- By a financial institution, as defined in the Gramm-Leach-Bliley Act, 15 U.S.C. ss. 6801 et seq.;
- That is collected, processed, sold, or disclosed pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et. seq.;
- That consists of education information covered by the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232(g) and 34 C.F.R. part 99;
- That is collected as part of public or peer-reviewed scientific or statistical research in the public interest and which adheres to all other applicable ethics and privacy laws, if the consumer has provided informed consent;
- Disclosed for the purpose of responding to an alert of a present risk of harm to a person or property or prosecuting those responsible for such activity;
- Disclosed when a consumer uses or directs a controller to intentionally disclose information to a third party or uses the controller to intentionally interact with a third party;
- That is an identifier used for a consumer how has opted out of the sale or sharing of the consumer's personal information for the sole purpose of alerting processors and third parties that the consumer has opted out of the sale or sharing of the consumer's personal information;
- Transferred by a controller to a third party as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the controller, provided that the information is used or shared consistently;
- Necessary to fulfill the terms of a written warranty when such warranty was purchased by the consumer or the product that is warranted was purchased by the consumer;

- Necessary for a product recall for a product purchased or owned by the consumer conducted in accordance with federal law;
- Processed solely for the purpose of independently measuring or reporting advertising or content performance, reach, or frequency pursuant to a contract with a controller that collected personal information in accordance with this bill;
- Shared between a manufacturer of a tangible product and authorized third party distributors or vendors of the product, as long as such information is used solely for advertising, marketing, or servicing the product that is acquired directly through such manufacturer and such authorized third party distributors or vendors.

Online Privacy Policy

Controllers that collect personal information about a consumer must maintain a current online privacy policy that is available on the controller's homepage.¹²⁴ The privacy policy must include:

- Any Florida-specific consumer privacy rights;
- The types and categories of personal information that they collect, sell, or share, or have collected, sold, or shared in the past about consumers;
- The consumer's right to request deletion or correction of certain personal information; and
- The consumer's right to opt out of the sale or sharing of their personal information to third parties.

A controller that collects personal information must at or before the point of collection, inform the consumer of the categories of personal information that it will collect, and the purposes for which the categories of information will be used. Additionally, such controllers cannot expand the scope of their collection of personal information or use that personal information outside of its initially expressed purpose without first providing the consumer with additional notice consistent with the requirements of the bill.

Notice of Retention of Personal Information

A controller must adopt and implement a retention schedule that prohibits the use or retention of personal information by the controller or processor:

- After the satisfaction of the initial purpose for which the information was collected or obtained;
- After the expiration or termination of the contract pursuant to which the information was collected or obtained; or
- 2 years after the consumer's last interaction with the controller.

The retention schedule requirement does not apply to personal information that is reasonably used or retained to do any of the following:

- Fulfill the terms of a written warranty or product recall conducted in accordance with federal law;

¹²⁴ The bill defines "homepage" as the introductory page of an Internet website and any Internet webpage where personal information is collected. In the case of a mobile application, the homepage is the application's platform page or download page, a link within the application, such as "About" or "Information" application configurations, or the settings page, and any other location that allows consumers to review the notice required by the bill, but not limited to, before downloading the application.

- Provide a good or service requested by the consumer, or reasonably anticipate the request of such good or service within the context of a controller's ongoing business relationship with the consumer;
- Detect security threats or incidents; protect against malicious, deceptive, fraudulent, unauthorized, or illegal activity or access; or prosecute those responsible for such activities.
- Debug to identify and repair errors that impair existing functionality;
- Engage in public or peer-reviewed scientific, historical, or statistical research in the public's interest that adheres to all applicable ethics and privacy laws when the controller's deletion would likely render impossible or seriously impair the achievement of the research, if the consumer first provided informed consent;
- Enable internal uses that are reasonably aligned with the expectations of the consumer based on the relationship with the controller or that are compatible with the context in which the consumer gave the information;
- Comply with a legal obligation, including any state or federal retention laws;
- Protect the controller's interest against existing disputes, legal actions, or governmental investigations; or
- Assure the physical security of persons or property.

Data Security

A controller that collects a consumer's personal information must implement and maintain reasonable security procedures and practices to protect personal information from unauthorized or illegal access, destruction, use, modification, or disclosure. Additionally, a controller must require any processors to implement and maintain the same or similar security procedures and practices.

Consumer Rights Based on the Sale of Personal Information

The bill establishes specific consumer rights regarding their personal information, including:

- The right to access personal information that was collected about them;
- The right to delete or correct their personal information; and
- The right to opt-out of the sale or sharing of their personal information with third parties.

The bill prohibits as contrary to public policy any waiver or limitation of a consumer's rights as provided by the bill, including the waiver or limitation of the consumer's right to a remedy or means of enforcement.

Verifiable Requests

A consumer must make a verifiable request to exercise their rights to know, delete, or correct, their collected personal information.

A "verifiable consumer request" is defined as a request that is submitted to a controller by:

- A consumer;
- A parent or guardian on behalf of a consumer who is a minor child; or
- A person authorized by the consumer to act on the consumer's behalf.

A verifiable consumer request is presumed to have been made when requested through an established account using the controller's established security features to access the account through communication features offered to consumers. However, a controller may not require the consumer to create or have an account with the controller in order to make a verifiable consumer request.

Right to Request a Copy of Personal Information that is Collected, Sold, or Shared

The bill grants consumers the right to request an accounting of certain information from a controller who collects, sells, or shares their personal information. Within 45 calendar days of its receipt of the request, the controller must respond with the following information in a readily usable format:

- The specific pieces of personal information collected about the consumer;
- The categories of sources from which the consumer's personal information was collected;
- The specific pieces of personal information about the consumer that were sold or shared;
- The third parties to which the controller sold or shared the consumer's personal information; and
- The categories of consumer personal information that were disclosed to a processor.

The controller may extend their response period by an additional 45 calendar days (for a total of 90 calendar days) if they inform the consumer of the extension within the first 45 days from receipt of the request. This right does not apply to information that relates solely to households.

Additionally, the controller is not required to provide the above-requested information more than twice in a 12-month period.

This right to request a copy of personal information does not otherwise require controllers to retain, reidentify, or link data that they would not maintain in their ordinary course of business. Additionally, a controller is permitted to provide the data to the consumer in a manner that does not disclose the controller's trade secrets.

Right to Delete and Correct Personal Information

A consumer may request that a controller delete personal information that it collected about the consumer or about the consumer's child younger than 18 years old. After the business receives such a request, it must delete the information and direct any processors to delete the information within 90 days.

A consumer may request to correct personal information about the consumer or about the consumer's child younger than 18 years old that is held by a controller. The controller must use commercially reasonable efforts to correct the inaccurate information as directed by the consumer and direct any processor to correct it as well within 90 days of the request. A controller can allow a consumer to correct information through a self-service mechanism.

Controllers and processors acting pursuant to a contract with the controller are not required to comply with a request to delete or correct information if it is necessary to:

- Complete the transaction for which the personal information was collected;

- Fulfill the terms of a written warranty or product recall that is conducted in accordance with federal law;
- Detect security threats or incidents; protect against malicious, deceptive, fraudulent, unauthorized, or illegal activity or access; or prosecute those responsible for such activity;
- Debug and identify repair errors;
- Engage in public or peer-reviewed scientific, historical, or statistical research that is performed in accordance with applicable ethical standards and privacy laws—only when the deletion of the consumer’s personal information would render such research impossible or seriously impaired and where the consumer previously provided informed consent;
- Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer’s relationship with the controller;
- Comply with a legal obligation, including state or federal retention laws;
- Reasonably protect the controller’s interests against existing disputes, legal action, or governmental investigation; or
- Assure the physical security of persons or property.

Additionally, a controller and contracted-processor are not required to comply with a request to delete a consumer’s personal information if it is required to:

- Provide a good or service requested by the consumer, or reasonably anticipate the request of a good or service within the context of the controller’s ongoing business relationship with the consumer, or otherwise perform a contract between the controller and consumer; or
- Engage in public or peer-reviewed research that adheres to applicable ethics and privacy laws, if the deletion would likely render impossible, or seriously impair the research, and if the consumer initially provided informed consent.

Right to Opt Out of the Sale or Sharing of Personal Information

The bill creates a “right to opt out,” which allows a consumer to instruct a controller that sells personal information to a third party not to sell their personal information. A controller must stop selling and sharing the consumer’s personal information within 4 calendar days after it receives an opt-out request, and cannot begin to sell or share the consumer personal information again unless it receives subsequent express authorization. Additionally, a controller is prohibited from selling or sharing the personal information of a minor consumer if the controller has actual knowledge that the consumer is not at least 18 years old. However, if a consumer who is between 13 and 18 years old, or if the parent or guardian of a consumer who is 12 years old or younger, has affirmatively authorized the sale or sharing of such consumer’s personal information, then a controller may do so pursuant to the requirements under the bill.

The controller must provide a clear and accessible link on its homepage to consumer’s entitled “Do Not Sell or Share My Personal Information” to allow the consumer to opt out. The controller cannot require a consumer to create an account. A consumer’s opt out request may also be made through a user-enabled global privacy control, e.g., a browser plug-in or privacy setting. Any personal information collected from the consumer in connection with an opt out request must solely be used to comply with such request. Additionally, a consumer may authorize another person to opt out on the consumer’s behalf.

The controller must respect the consumer's opt out request for at least 12-months before it can request the consumer's authorization of the sale or sharing of consumer personal information again.

Incentives for Consent to Sell or Share Personal Information

A controller cannot deny goods or services to a consumer because the consumer exercised any rights under the bill.

A controller can charge a consumer who exercised any of the rights granted by the bill a different price or rate, or provide a different level or quality of goods or services to the consumer, only if that difference is:

- Reasonably related to the value provided to the controller by the consumer's data, or
- Related to a consumer's voluntary participation in a financial incentive program, including loyalty, rewards, premium features, discounts, or club card program that is offered by the controller.

A controller can offer additional benefits to consumers who participate in the collection, sharing, sale, or deletion of personal information. This consent must have been granted based on a clear description of the material terms of the incentive program, and the consumer must be permitted to revoke his or her consent at any time. The discount or promotional item must be reasonably related to the value the consumer's data provides to the business and must not be unjust, unreasonable, coercive, or usurious.

Surveillance

A controller is prohibited from collecting a consumer's precise geolocation data or personal information through the operation of a voice recognition feature, unless the consumer provides authorization.

Precise geolocation data is information from technology, such as global positioning system level latitude and longitude coordinates or other mechanisms, which directly identifies the specific location of a person within a radius of 1,750 feet. However, the term does not include information generated by the transmission of communications or any information generated by or connected to advance utility metering infrastructure systems.

A voice recognition feature means the function of a device which enables the collection, recording, storage, analysis, transmission, interpretation, or other use of spoken words or other sounds.

Search Engine Transparency

A controller that operates a search engine must provide a consumer with information of how the controller's search engine algorithm prioritizes or deprioritizes political partisanship or political ideology in its search results.

Agency Enforcement and Implementation

The Department of Legal Affairs (DLA) may prosecute on behalf of a Florida consumer any violation of the bill's provisions as a deceptive and unfair trade practice, pursuant to the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).¹²⁵

The DLA may provide suspected controller, processor, or third party violators a right to cure their violation by providing written notice of the violation and then allowing a 45-day period to cure the alleged violation. However, the DLA cannot offer a right to cure based on an alleged violation that involves a Florida consumer who the controller, processor, or third party has actual knowledge is under 18 years old. If the alleged violator cures the violation to the satisfaction of the DLA, the DLA may issue a letter of guidance. If the violator fails to cure within 45 days, the DLA may commence enforcement against the controller, processor, or third party.

The court may:

- Grant injunctive relief;¹²⁶
- Award actual damages based on the violation;¹²⁷
- Award a civil penalty of not more than \$50,000 for each willful violation; and
- Triple the civil penalty if the violation:
 - Involves a Florida consumer who the controller, processor, or third party has actual knowledge is 18 years of age or younger, or
 - Is based on a controller's, processor's, or third party's failure to delete or correct the consumer's personal information after receiving a verifiable request to delete or correct, unless otherwise exempt; or
 - Is based on the controller's, processor's, or third party's continued sale or sharing of the consumer's personal information after the consumer opted out.

The bill grants the DLA rulemaking authority to implement the bill, including the adoption of standards for verifiable consumer requests, enforcement, data security, and authorized persons who may act on a consumer's behalf. The DLA may employ or use the legal services of outside counsel and the investigative services of outside personnel. Additionally, the DLA may collaborate and cooperate with other enforcement authorities of the federal government or other state governments if such enforcement authorities have restrictions governing confidentiality that are at least as stringent as the restrictions in this bill.

Liability for a tort, contract claim, or consumer protection claim that is unrelated to an action brought under the bill does not arise solely from the failure of a controller, processor, or third party to comply with this bill.

The bill provides that there is not a private cause of action.

¹²⁵ For the purpose of bringing an action pursuant to this bill ss. 501.211 and 501.212, F.S., do not apply.

¹²⁶ Section 501.207(1), F.S.

¹²⁷ Section 501.207(1), F.S.

The bill requires all money recovered by the Attorney General for attorney fees, costs, and penalties in an action for a violation of this bill must be deposited in the Legal Affairs Revolving Trust fund.

Report by the Department of Legal Affairs

The bill requires the DLA to submit a report by February 1 each year to the President of the Senate and the Speaker of the House of Representatives that describes any actions it has undertaken to enforce the bill. The report must include statistics and relevant information that details:

- The number of complaints received and the categories or types of violations alleged by the complainant;
- The number and type of enforcement actions taken and the outcomes of such action;
- The number of complaints resolved without the need for litigation; and
- The status of the development and implementation of rules to implement the bill.

Preemption

The bill provides that consumer data privacy is a matter of statewide concern and the bill supersedes all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the collection, processing, sharing, or sale of consumer personal information by a controller or processor. The regulation of the collection, processing, sharing, or sale of consumer personal information by a controller or processor is preempted to the state.

Florida Information Protection Act

The bill amends s. 501.171, F.S., to define “biometric information” as an individual's physiological, biological, or behavioral characteristics that can be used, singly or in combination with each other or with other identifying data, to establish individual identity. The term includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings, from which an identifier template, such as a face print, a minutiae template, or a voiceprint, can be extracted, and keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain identifying information.

The bill defines “genetic information” as an individual's deoxyribonucleic acid (DNA).

The bill includes biometric information, genetic information, and geolocation in FIPA’s definition of “personal information” so that covered entities are required to notify the affected individual, the DLA, and credit reporting agencies of a breach of biometric information or geolocation paired with an individual’s first name or first initial and last name.

Effective Date

The bill takes effect on July 1, 2023.

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

None.

B. Private Sector Impact:

This will likely have wide-ranging impact on how Florida consumers interact with websites and internet-connected devices.

Businesses will have to adjust their operations to implement the bill's notice and privacy requirements. Many of the businesses subject to the bill's requirements may have already implemented or are in the process of implementing similar privacy practices based on legislation in other states, and the E.U.

Search engines will have to provide information to consumers on how the search engine prioritizes or deprioritizes certain information.

C. Government Sector Impact:

Governmental entities may have to update their policies to reflect the prohibitions in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 16.53 and 501.171.

This bill creates the following sections of the Florida Statutes: 112.23 and 501.173.

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

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

CS by Commerce and Tourism on April 4, 2023:

The committee substitute clarifies that the prohibitions provided in section 1 of the bill do not apply to a governmental entity that is acting as part of any of the following:

- An attempt to remove content that pertains to the commission of a crime or violation of Florida's public records law; or
- An attempt to remove an account that pertains to the commission of a crime or violation of Florida's public records law.

B. Amendments:

None.



164120

LEGISLATIVE ACTION

	Senate	House
Comm: RCS	.	.
04/04/2023	.	.
	.	.
	.	.

The Committee on Commerce and Tourism (Bradley) recommended the following:

Senate Amendment

Delete lines 92 - 108

and insert:

communicate with a social media platform to request the social media platform to remove content or accounts from the social media platform.

(3) A governmental entity, or an officer or a salaried employee acting on behalf of a governmental entity, may not initiate or maintain any agreements or working relationships



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with a social media platform for the purpose of content moderation.

(4) Subsections (2) and (3) do not apply if the governmental entity or an officer or a salaried employee acting on behalf of a governmental entity is acting as part of any of the following:

(a) Routine account management of the governmental entity's account.

(b) An attempt to remove content that pertains to the commission of a crime or violation of this state's public records law.

(c) An attempt to remove an account that pertains to the commission of a crime or violation of this state's public records law.

(d) An investigation or inquiry related to public safety.

By Senator Bradley

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1 A bill to be entitled
 2 An act relating to technology transparency; creating
 3 s. 112.23, F.S.; defining terms; prohibiting officers
 4 or salaried employees of governmental entities from
 5 using their positions or state resources to make
 6 certain requests of social media platforms;
 7 prohibiting governmental entities from initiating or
 8 maintaining agreements or working relationships with
 9 social media platforms under a specified circumstance;
 10 providing exceptions; creating s. 501.173, F.S.;
 11 providing applicability; defining terms; prohibiting a
 12 controller from collecting certain consumer
 13 information without the consumer's authorization;
 14 requiring controllers that collect a consumer's
 15 personal information to disclose certain information
 16 regarding data collection and selling practices to the
 17 consumer at or before the point of collection;
 18 specifying that such information may be provided
 19 through a general privacy policy or through a notice
 20 informing the consumer that additional specific
 21 information will be provided upon a certain request;
 22 prohibiting controllers from collecting additional
 23 categories of personal information or using personal
 24 information for additional purposes without notifying
 25 the consumer; requiring controllers that collect
 26 personal information to implement reasonable security
 27 procedures and practices to protect such information;
 28 authorizing consumers to request controllers to
 29 disclose the specific personal information the

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30 controller has collected about the consumer; requiring
 31 controllers to make available two or more methods for
 32 consumers to request their personal information;
 33 requiring controllers to provide such information free
 34 of charge within a certain timeframe and in a certain
 35 format upon receiving a verifiable consumer request;
 36 specifying requirements for third parties with respect
 37 to consumer information acquired or used; providing
 38 construction; authorizing consumers to request
 39 controllers to delete or correct personal information
 40 collected by the controllers; providing exceptions;
 41 specifying requirements for controllers to comply with
 42 deletion or correction requests; authorizing consumers
 43 to opt out of third-party disclosure of personal
 44 information collected by a controller; prohibiting
 45 controllers from selling or disclosing the personal
 46 information of consumers younger than a certain age,
 47 except under certain circumstances; prohibiting
 48 controllers from selling or sharing a consumer's
 49 information if the consumer has opted out of such
 50 disclosure; prohibiting controllers from taking
 51 certain actions to retaliate against consumers who
 52 exercise certain rights; providing applicability;
 53 providing that a contract or agreement that waives or
 54 limits certain consumer rights is void and
 55 unenforceable; authorizing the Department of Legal
 56 Affairs to bring an action under the Florida Deceptive
 57 and Unfair Trade Practices Act and to adopt rules;
 58 requiring the department to submit an annual report to

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the Legislature; providing report requirements; providing that controllers must have a specified timeframe to cure any violations; providing jurisdiction; declaring that the act is a matter of statewide concern; preempting the collection, processing, sharing, and sale of consumer personal information to the state; amending s. 501.171, F.S.; revising the definition of "personal information"; amending s. 16.53, F.S.; requiring that certain attorney fees, costs, and penalties recovered by the Attorney General be deposited in the Legal Affairs Revolving Trust Fund; providing an effective date.

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

Section 1. Section 112.23, Florida Statutes, is created to read:

112.23 Government-directed content moderation of social media platforms prohibited.—

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

(a) "Social media platform" means a form of electronic communication through which users create online communities to share information, ideas, personal messages, and other content.

(b) "Governmental entity" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law, including, but not limited to, the Commission on Ethics, the Public Service Commission, the Office of Public Counsel, and any other public or private

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agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(2) An officer or a salaried employee of a governmental entity may not use his or her position or any state resources to communicate with a social media platform to request that it remove content or accounts from the social media platform.

(3) A governmental entity, or an officer or a salaried employee acting on behalf of a governmental entity, may not initiate or maintain any agreements or working relationships with a social media platform for the purpose of content moderation.

(4) Subsections (2) and (3) do not apply if the governmental entity or an officer or a salaried employee acting on behalf of a governmental entity is acting as part of any of the following:

(a) Routine account management of the governmental entity's account.

(b) An attempt to remove content or an account that pertains to the commission of a crime or violation of this state's public records law.

(c) An investigation or inquiry related to public safety.

Section 2. Section 501.173, Florida Statutes, is created to read:

501.173 Consumer data privacy.—

(1) APPLICABILITY.—This section does not apply to:

(a) Personal information collected and transmitted which is necessary for the sole purpose of sharing such personal information with a financial service provider solely to facilitate short term, transactional payment processing for the

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117 purchase of products or services.

118 (b) Personal information collected, used, retained, sold,
 119 shared, or disclosed as deidentified personal information or
 120 aggregate consumer information.

121 (c) Compliance with federal, state, or local laws.

122 (d) Compliance with a civil, criminal, or regulatory
 123 inquiry, investigation, subpoena, or summons by federal, state,
 124 or local authorities.

125 (e) Cooperation with law enforcement agencies concerning
 126 conduct or activity that the controller, processor, or third
 127 party reasonably and in good faith believes may violate federal,
 128 state, or local law.

129 (f) Exercising or defending legal rights, claims, or
 130 privileges.

131 (g) Personal information collected through the controller's
 132 direct interactions with the consumer, if collected in
 133 accordance with this section, which is used by the controller or
 134 the processor that the controller directly contracts with for
 135 advertising or marketing services to advertise or market
 136 products or services that are produced or offered directly by
 137 the controller. Such information may not be sold, shared, or
 138 disclosed unless otherwise authorized under this section.

139 (h) Personal information of a person acting in the role of
 140 a job applicant, employee, owner, director, officer, contractor,
 141 volunteer, or intern of a controller which is collected by a
 142 controller, to the extent the personal information is collected
 143 and used solely within the context of the person's role or
 144 former role with the controller. For purposes of this paragraph,
 145 personal information includes employee benefit information.

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146 (i) Protected health information for purposes of the
 147 federal Health Insurance Portability and Accountability Act of
 148 1996 and related regulations, and patient identifying
 149 information for purposes of 42 C.F.R. part 2, established
 150 pursuant to 42 U.S.C. s. 290dd-2.

151 (j) An entity or business associate governed by the
 152 privacy, security, and breach notification rules issued by the
 153 United States Department of Health and Human Services in 45
 154 C.F.R. parts 160 and 164, or a program or a qualified service
 155 program as defined in 42 C.F.R. part 2, to the extent the
 156 entity, business associate, or program maintains personal
 157 information in the same manner as medical information or
 158 protected health information as described in paragraph (i), and
 159 as long as the entity, business associate, or program does not
 160 use personal information for targeted advertising with third
 161 parties and does not sell or share personal information to a
 162 third party unless such sale or sharing is covered by an
 163 exception under this section.

164 (k) Identifiable private information collected for purposes
 165 of research as defined in 45 C.F.R. s. 164.501 conducted in
 166 accordance with the Federal Policy for the Protection of Human
 167 Subjects for purposes of 45 C.F.R. part 46, the good clinical
 168 practice guidelines issued by the International Council for
 169 Harmonisation of Technical Requirements for Pharmaceuticals for
 170 Human Use, or the Federal Policy for the Protection for Human
 171 Subjects for purposes of 21 C.F.R. parts 50 and 56, or personal
 172 information used or shared in research conducted in accordance
 173 with one or more of these standards.

174 (l) Information and documents created for purposes of the

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federal Health Care Quality Improvement Act of 1986 and related regulations, or patient safety work product for purposes of 42 C.F.R. part 3, established pursuant to 42 U.S.C. s. 299b-21 through 299b-26.

(m) Information that is deidentified in accordance with 45 C.F.R. part 164 and derived from individually identifiable health information as described in the Health Insurance Portability and Accountability Act of 1996, or identifiable personal information, consistent with the Federal Policy for the Protection of Human Subjects or the human subject protection requirements of the United States Food and Drug Administration.

(n) Information used only for public health activities and purposes as described in 45 C.F.R. s. 164.512.

(o) Personal information collected, processed, sold, or disclosed pursuant to the federal Fair Credit Reporting Act, 15 U.S.C. s. 1681 and implementing regulations.

(p) Nonpublic personal information collected, processed, sold, or disclosed pursuant to the Gramm-Leach-Bliley Act, 15 U.S.C. s. 6801 et seq., and implementing regulations.

(q) A financial institution as defined in the Gramm-Leach-Bliley Act, 15 U.S.C. s. 6801 et seq., to the extent the financial institution maintains personal information in the same manner as nonpublic personal information as described in paragraph (p), and as long as such financial institution does not use personal information for targeted advertising with third parties and does not sell or share personal information to a third party unless such sale or sharing is covered by an exception under this section.

(r) Personal information collected, processed, sold, or

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disclosed pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. s. 2721 et seq.

(s) Education information covered by the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232(g) and 34 C.F.R. part 99.

(t) Information collected as part of public or peer-reviewed scientific or statistical research in the public interest and which adheres to all other applicable ethics and privacy laws, if the consumer has provided informed consent. Research with personal information must be subjected by the controller conducting the research to additional security controls that limit access to the research data to only those individuals necessary to carry out the research purpose, and such personal information must be subsequently deidentified.

(u) Personal information disclosed for the purpose of responding to an alert of a present risk of harm to a person or property or prosecuting those responsible for that activity.

(v) Personal information disclosed when a consumer uses or directs a controller to intentionally disclose information to a third party or uses the controller to intentionally interact with a third party. An intentional interaction occurs when the consumer intends to interact with the third party, by one or more deliberate interactions. Hovering over, muting, pausing, or closing a given piece of content does not constitute a consumer's intent to interact with a third party.

(w) An identifier used for a consumer who has opted out of the sale or sharing of the consumer's personal information for the sole purpose of alerting processors and third parties that the consumer has opted out of the sale or sharing of the

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consumer's personal information.

(x) Personal information transferred by a controller to a third party as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the controller, provided that the information is used or shared consistently with this section. If a third party materially alters how it uses or shares the personal information of a consumer in a manner that is materially inconsistent with the commitments or promises made at the time of collection, it must provide prior notice of the new or changed practice to the consumer. The notice must be sufficiently prominent and robust to ensure that consumers can easily exercise choices consistent with this section.

(y) Personal information necessary to fulfill the terms of a written warranty when such warranty was purchased by the consumer or the product that is warranted was purchased by the consumer. Such information may not be sold or shared unless otherwise authorized under this section.

(z) Personal information necessary for a product recall for a product purchased or owned by the consumer conducted in accordance with federal law. Such information may not be sold or shared unless otherwise authorized under this section.

(aa) Personal information processed solely for the purpose of independently measuring or reporting advertising or content performance, reach, or frequency pursuant to a contract with a controller that collected personal information in accordance with this section. Such information may not be sold or shared unless otherwise authorized under this section.

(bb) Personal information shared between a manufacturer of

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a tangible product and authorized third-party distributors or vendors of the product, as long as such personal information is used solely for advertising, marketing, or servicing the product that is acquired directly through such manufacturer and such authorized third-party distributors or vendors. Such personal information may not be sold or shared unless otherwise authorized under this section.

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

(a) "Aggregate consumer information" means information that relates to a group or category of consumers, from which the identity of an individual consumer has been removed and is not reasonably capable of being directly or indirectly associated or linked with any consumer, household, or device. The term does not include information about a group or category of consumers used to facilitate targeted advertising or the display of ads online. The term does not include personal information that has been deidentified.

(b) "Biometric information" means an individual's physiological, biological, or behavioral characteristics that can be used, singly or in combination with each other or with other identifying data, to establish individual identity. The term includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings, from which an identifier template, such as a faceprint, a minutiae template, or a voiceprint, can be extracted, and keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain identifying information.

(c) "Collect" means to buy, rent, gather, obtain, receive,

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or access any personal information pertaining to a consumer by any means. The term includes, but is not limited to, actively or passively receiving information from the consumer or by observing the consumer's behavior or actions.

(d) "Consumer" means a natural person who resides in or is domiciled in this state, however identified, including by any unique identifier, who is acting in a personal capacity or household context. The term does not include a natural person acting on behalf of a legal entity in a commercial or employment context.

(e) "Controller" means:

1. A sole proprietorship, partnership, limited liability company, corporation, association, or legal entity that meets the following requirements:

a. Is organized or operated for the profit or financial benefit of its shareholders or owners;

b. Does business in this state;

c. Collects personal information about consumers, or is the entity on behalf of which such information is collected;

d. Determines the purposes and means of processing personal information about consumers alone or jointly with others;

e. Makes in excess of \$1 billion in gross revenues, as adjusted in January of every odd-numbered year to reflect any increase in the Consumer Price Index; and

f. Satisfies one of the following:

(I) Derives 50 percent or more of its global annual revenues from providing targeted advertising or the sale of ads online; or

(II) Operates a consumer smart speaker and voice command

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component service with an integrated virtual assistant connected to a cloud computing service that uses hands-free verbal activation. For purposes of this sub-sub-subparagraph, a consumer smart speaker and voice command component service does not include a motor vehicle or speaker or device associated with or connected to a vehicle.

2. Any entity that controls or is controlled by a controller. As used in this subparagraph, the term "control" means:

a. Ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a controller;

b. Control in any manner over the election of a majority of the directors, or of individuals exercising similar functions; or

c. The power to exercise a controlling influence over the management of a company.

(f) "Deidentified" means information that cannot reasonably be used to infer information about or otherwise be linked to a particular consumer, provided that the controller that possesses the information:

1. Takes reasonable measures to ensure that the information cannot be associated with a specific consumer;

2. Maintains and uses the information in deidentified form and does not attempt to reidentify the information, except that the controller may attempt to reidentify the information solely for the purpose of determining whether its deidentification processes satisfy the requirements of this paragraph;

3. Contractually obligates any recipients of the

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information to comply with all this paragraph to avoid reidentifying such information; and

4. Implements business processes to prevent the inadvertent release of deidentified information.

(g) "Department" means the Department of Legal Affairs.

(h) "Device" means a physical object associated with a consumer or household capable of directly or indirectly connecting to the Internet.

(i) "Genetic information" means information about an individual's deoxyribonucleic acid (DNA).

(j) "Homepage" means the introductory page of an Internet website and any Internet webpage where personal information is collected. In the case of a mobile application, the homepage is the application's platform page or download page, a link within the application, such as the "About" or "Information" application configurations, or the settings page, and any other location that allows consumers to review the notice required by subsection (7), including, but not limited to, before downloading the application.

(k) "Household" means a natural person or a group of people in this state who reside at the same address, share a common device or the same service provided by a controller, and are identified by a controller as sharing the same group account or unique identifier.

(l) "Personal information" means information that is linked or reasonably linkable to an identified or identifiable consumer or household, including biometric information, genetic information, and unique identifiers to the consumer.

1. The term includes, but is not limited to, the following:

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a. Identifiers such as a real name, alias, postal address, unique identifier, online identifier, internet protocol address, email address, account name, social security number, driver license number, passport number, or other similar identifiers.

b. Information that identifies, relates to, or describes, or could be associated with, a particular individual, including, but not limited to, a name, signature, social security number, physical characteristics or description, address, location, telephone number, passport number, driver license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information.

c. Characteristics of protected classifications under state or federal law.

d. Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.

e. Biometric information.

f. Internet or other electronic network activity information, including, but not limited to, browsing history, search history, and information regarding a consumer's interaction with an Internet website, application, or advertisement.

g. Geolocation data.

h. Audio, electronic, visual, thermal, olfactory, or similar information.

i. Inferences drawn from any of the information identified

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in this paragraph to create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

2. The term does not include consumer information that is:

a. Consumer employment contact information, including a position name or title, employment qualifications, emergency contact information, business telephone number, business electronic mail address, employee benefit information, and similar information used solely in an employment context.

b. Deidentified or aggregate consumer information.

c. Publicly and lawfully available information reasonably believed to be made available to the general public in a lawful manner and without legal restrictions:

(I) From federal, state, or local government records.

(II) By a widely distributed media source.

(III) By the consumer or by someone to whom the consumer disclosed the information unless the consumer has purposely and effectively restricted the information to a certain audience on a private account.

(m) "Precise geolocation data" means information from technology, such as global positioning system level latitude and longitude coordinates or other mechanisms, which directly identifies the specific location of a natural person with precision and accuracy within a radius of 1,750 feet. The term does not include information generated by the transmission of communications or any information generated by or connected to advance utility metering infrastructure systems or equipment for use by a utility.

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(n) "Processing" means any operation or set of operations performed on personal information or on sets of personal information, regardless of whether by automated means.

(o) "Processor" means a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that processes information on behalf of a controller and to which the controller discloses a consumer's personal information pursuant to a written contract, provided that the contract prohibits the entity receiving the information from retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract for the controller, as authorized by this section.

(p) "Sell" means to sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally, in writing, or by electronic or other means, a consumer's personal information or information that relates to a group or category of consumers by a controller to another controller or a third party for monetary or other valuable consideration.

(q) "Share" means to share, rent, release, disclose, disseminate, make available, transfer, or access a consumer's personal information for advertising or marketing. The term includes:

1. Allowing a third party to advertise or market to a consumer based on a consumer's personal information without disclosure of the personal information to the third party.

2. Monetary transactions, nonmonetary transactions, and

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transactions for other valuable consideration between a controller and a third party for advertising or marketing.

(r) "Targeted advertising" means marketing to a consumer or displaying an advertisement to a consumer when the advertisement is selected based on personal information used to predict such consumer's preferences or interests.

(s) "Third party" means a person who is not a controller or a processor.

(t) "Unique identifier" means a persistent identifier that can be used to recognize a consumer, a family, or a device that is linked to a consumer or a family, over time and across different services, including, but not limited to, a device identifier; an Internet Protocol address; cookies, beacons, pixel tags, mobile ad identifiers, or similar technology; a customer number, unique pseudonym, or user alias; telephone numbers, or other forms of persistent or probabilistic identifiers that can be used to identify a particular consumer, family, or device that is linked to a consumer or family. As used in this paragraph, the term "family" means a custodial parent or guardian and any minor children of whom the parent or guardian has custody, or a household as defined in paragraph (k).

(u) "Verifiable consumer request" means a request made by a consumer, by a parent or guardian on behalf of a consumer who is a minor child, or by a person authorized by the consumer to act on the consumer's behalf, that the controller can reasonably verify to be the consumer, pursuant to rules adopted by the department. A verifiable consumer request is presumed to have been made when requested through an established account using

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the controller's established security features to access the account through communication features offered to consumers, but a controller may not require the consumer to create or have an account with the controller in order to make a verifiable consumer request.

(v) "Voice recognition feature" means the function of a device which enables the collection, recording, storage, analysis, transmission, interpretation, or other use of spoken words or other sounds.

(3) CONTROLLER REQUIREMENTS; CONSUMER DATA COLLECTION REQUIREMENTS AND RESPONSIBILITIES.—

(a) A controller may not collect, without the consumer's authorization, a consumer's precise geolocation data or personal information through the operation of a voice recognition feature.

(b) A controller that operates a search engine shall provide a consumer with information of how the controller's search engine algorithm prioritizes or deprioritizes political partisanship or political ideology in its search results.

(c) A controller that collects personal information about consumers shall maintain an up-to-date online privacy policy and make such policy available on its homepage. The online privacy policy must include the following information:

1. Any Florida-specific consumer privacy rights.

2. A list of the types and categories of personal information that the controller collects, sells, or shares, or has collected, sold, or shared, about consumers.

3. The consumer's right to request deletion or correction of certain personal information.

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4. The consumer's right to opt out of the sale or sharing to third parties.

(d) A controller that collects personal information from the consumer shall, at or before the point of collection, inform, or direct the processor to inform, consumers of the categories of personal information to be collected and the purposes for which such categories of personal information will be used.

(e) A controller may not collect additional categories of personal information or use personal information collected for additional purposes without providing the consumer with notice consistent with this section.

(f) A controller that collects a consumer's personal information shall implement and maintain reasonable security procedures and practices appropriate to the nature of the personal information to protect such personal information from unauthorized or illegal access, destruction, use, modification, or disclosure. A controller shall require any processors to implement and maintain the same or similar security procedures and practices for personal information.

(g) A controller shall adopt and implement a retention schedule that prohibits the use or retention of personal information not subject to an exemption by the controller or processor after the satisfaction of the initial purpose for which such information was collected or obtained, after the expiration or termination of the contract pursuant to which the information was collected or obtained, or 2 years after the consumer's last interaction with the controller. This paragraph does not apply to personal information reasonably used or

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retained to do any of the following:

1. Fulfill the terms of a written warranty or product recall conducted in accordance with federal law.

2. Provide a good or service requested by the consumer, or reasonably anticipate the request of such good or service within the context of a controller's ongoing business relationship with the consumer.

3. Detect security threats or incidents; protect against malicious, deceptive, fraudulent, unauthorized, or illegal activity or access; or prosecute those responsible for such activity or access.

4. Debug to identify and repair errors that impair existing intended functionality.

5. Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest which adheres to all other applicable ethics and privacy laws when the controller's deletion of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided informed consent.

6. Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the controller or that are compatible with the context in which the consumer provided the information.

7. Comply with a legal obligation, including any state or federal retention laws.

8. Protect the controller's interests against existing disputes, legal action, or governmental investigations.

9. Assure the physical security of persons or property.

(4) CONSUMER RIGHT TO REQUEST COPY OF PERSONAL INFORMATION

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COLLECTED, SOLD, OR SHARED.—

(a) A consumer has the right to request that a controller that collects, sells, or shares personal information about the consumer disclose the following to the consumer:

1. The specific pieces of personal information which have been collected about the consumer.

2. The categories of sources from which the consumer's personal information was collected.

3. The specific pieces of personal information about the consumer which were sold or shared.

4. The third parties to which the personal information about the consumer was sold or shared.

5. The categories of personal information about the consumer which were disclosed to a processor.

(b) A controller that collects, sells, or shares personal information about a consumer shall disclose the information specified in paragraph (a) to the consumer upon receipt of a verifiable consumer request.

(c) This subsection does not require a controller to retain, reidentify, or otherwise link any data that, in the ordinary course of business is not maintained in a manner that would be considered personal information.

(d) The controller shall deliver to a consumer the information required under this subsection or act on a request made under this subsection by a consumer free of charge within 45 calendar days after receiving a verifiable consumer request. The response period may be extended once by 45 additional calendar days when reasonably necessary, provided the controller informs the consumer of any such extension within the initial

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45-day response period and the reason for the extension. The information must be delivered in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the data to another entity without hindrance. A controller may provide the data to the consumer in a manner that does not disclose the controller's trade secrets. A controller is not obligated to provide information to the consumer if the consumer or a person authorized to act on the consumer's behalf does not provide verification of identity or verification of authorization to act with the permission of the consumer.

(e) A controller may provide personal information to a consumer at any time, but is not required to provide personal information to a consumer more than twice in a 12-month period.

(f) This subsection does not apply to personal information relating solely to households.

(5) RIGHT TO HAVE PERSONAL INFORMATION DELETED OR CORRECTED.—

(a) A consumer has the right to request that a controller delete any personal information about the consumer or about the consumer's child younger than 18 years of age which the controller has collected.

1. A controller that receives a verifiable consumer request to delete the consumer's personal information shall delete the consumer's personal information from its records and direct any processors to delete such information within 90 calendar days after receipt of the verifiable consumer request.

2. A controller or a processor acting pursuant to its contract with the controller may not be required to comply with

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639 a consumer's request to delete the consumer's personal
 640 information if it is reasonably necessary for the controller or
 641 processor to maintain the consumer's personal information to do
 642 any of the following:

643 a. Complete the transaction for which the personal
 644 information was collected.

645 b. Fulfill the terms of a written warranty or product
 646 recall conducted in accordance with federal law.

647 c. Provide a good or service requested by the consumer, or
 648 reasonably anticipate the request of such good or service within
 649 the context of a controller's ongoing business relationship with
 650 the consumer, or otherwise perform a contract between the
 651 controller and the consumer.

652 d. Detect security threats or incidents; protect against
 653 malicious, deceptive, fraudulent, unauthorized, or illegal
 654 activity or access; or prosecute those responsible for such
 655 activity or access.

656 e. Debug to identify and repair errors that impair existing
 657 intended functionality.

658 f. Engage in public or peer-reviewed scientific,
 659 historical, or statistical research in the public interest which
 660 adheres to all other applicable ethics and privacy laws when the
 661 controller's deletion of the information is likely to render
 662 impossible or seriously impair the achievement of such research,
 663 if the consumer has provided informed consent.

664 g. Enable solely internal uses that are reasonably aligned
 665 with the expectations of the consumer based on the consumer's
 666 relationship with the controller or that are compatible with the
 667 context in which the consumer provided the information.

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668 h. Comply with a legal obligation, including any state or
 669 federal retention laws.

670 i. Protect the controller's interests against existing
 671 disputes, legal action, or governmental investigations.

672 j. Assure the physical security of persons or property.

673 (b) A consumer has the right to request that a controller
 674 correct inaccurate personal information maintained by the
 675 controller about the consumer or about the consumer's child
 676 younger than 18 years of age. A controller that receives a
 677 verifiable consumer request to correct inaccurate personal
 678 information shall use commercially reasonable efforts to correct
 679 the inaccurate personal information as directed by the consumer
 680 and shall direct any processors to correct such information
 681 within 90 calendar days after receipt of the verifiable consumer
 682 request. If a controller maintains a self-service mechanism to
 683 allow a consumer to correct certain personal information, the
 684 controller may require the consumer to correct their own
 685 personal information through such mechanism. A controller or a
 686 processor acting pursuant to its contract with the controller
 687 may not be required to comply with a consumer's request to
 688 correct the consumer's personal information if it is reasonably
 689 necessary for the controller or processor to maintain the
 690 consumer's personal information to do any of the following:

691 1. Complete the transaction for which the personal
 692 information was collected.

693 2. Fulfill the terms of a written warranty or product
 694 recall conducted in accordance with federal law.

695 3. Detect security threats or incidents; protect against
 696 malicious, deceptive, fraudulent, unauthorized, or illegal

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activity or access; or prosecute those responsible for such activity or access.

4. Debug to identify and repair errors that impair existing intended functionality.

5. Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the controller or that are compatible with the context in which the consumer provided the information.

6. Comply with a legal obligation, including any state or federal retention laws.

7. Protect the controller's interests against existing disputes, legal action, or governmental investigations.

8. Assure the physical security of persons or property.

(6) RIGHT TO OPT OUT OF THE SALE OR SHARING OF PERSONAL INFORMATION.—

(a) A consumer has the right at any time to direct a controller not to sell or share the consumer's personal information to a third party. This right may be referred to as the right to opt out.

(b) Notwithstanding paragraph (a), a controller may not sell or share the personal information of a minor consumer if the controller has actual knowledge that the consumer is not 18 years of age or older. However, if a consumer who is between 13 and 18 years of age, or if the parent or guardian of a consumer who is 12 years of age or younger, has affirmatively authorized the sale or sharing of such consumer's personal information, then a controller may sell or share such information in accordance with this section. A controller that willfully disregards the consumer's age is deemed to have actual knowledge

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of the consumer's age. A controller that complies with the verifiable parental consent requirements of the Children's Online Privacy Protection Act, 15 U.S.C. s. 6501 et seq., shall be deemed compliant with any obligation to obtain parental consent.

(c) A controller that has received direction from a consumer opting out of the sale or sharing of the consumer's personal information is prohibited from selling or sharing the consumer's personal information beginning 4 calendar days after receipt of such direction, unless the consumer subsequently provides express authorization for the sale or sharing of the consumer's personal information.

(7) FORM TO OPT OUT OF SALE OR SHARING OF PERSONAL INFORMATION.—

(a) A controller shall:

1. In a form that is reasonably accessible to consumers, provide a clear and conspicuous link on the controller's Internet homepage, entitled "Do Not Sell or Share My Personal Information," to an Internet webpage that enables a consumer, a parent or guardian of a minor who is a consumer, or a person authorized by the consumer, to opt out of the sale or sharing of the consumer's personal information. A controller may not require a consumer to create an account in order to direct the controller not to sell or share the consumer's personal information. A controller may accept a request to opt out received through a user-enabled global privacy control, such as a browser plug-in or privacy setting, device setting, or other mechanism, which communicates or signals the consumer's choice to opt out.

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2. For consumers who opted out of the sale or sharing of their personal information, respect the consumer's decision to opt out for at least 12 months before requesting that the consumer authorize the sale or sharing of the consumer's personal information.

3. Use any personal information collected from the consumer in connection with the submission of the consumer's opt-out request solely for the purposes of complying with the opt-out request.

(b) A consumer may authorize another person to opt out of the sale or sharing of the consumer's personal information on the consumer's behalf pursuant to rules adopted by the department.

(8) ACTIONS RELATED TO CONSUMERS WHO EXERCISE PRIVACY RIGHTS.-

(a) A controller may not deny goods or services to a consumer because the consumer exercised any of the consumer's rights under this section.

(b) A controller may charge a consumer who exercised any of the consumer's rights under this section a different price or rate, or provide a different level or quality of goods or services to the consumer, only if that difference is reasonably related to the value provided to the controller by the consumer's data or is related to a consumer's voluntary participation in a financial incentive program, including a bona fide loyalty, rewards, premium features, discounts, or club card program offered by the controller.

(c) A controller may offer financial incentives, including payments to consumers as compensation, for the collection,

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sharing, sale, or deletion of personal information if the consumer gives the controller prior consent that clearly describes the material terms of the financial incentive program. The consent may be revoked by the consumer at any time.

(d) A controller may not use financial incentive practices that are unjust, unreasonable, coercive, or usurious in nature.

(9) CONTRACTS AND ROLES.-

(a) Any contract or agreement between a controller and a processor must:

1. Prohibit the processor from selling, sharing, retaining, using, or disclosing the personal information for any purpose that violates this section;

2. Prohibit the processor from retaining, using, or disclosing the personal information other than for the purposes specified in the contract or agreement;

3. Prohibit the processor from combining the personal information that the processor receives from or on behalf of the controller with personal information that the processor receives from or on behalf of another person or that the processor collects from its own interaction with the consumer, provided that the processor may combine personal information to perform any purpose specified in the contract or agreement and such combination is reported to the controller;

4. Govern the processor's personal information processing procedures with respect to processing performed on behalf of the controller, including processing instructions, the nature and purpose of processing, the type of information subject to processing, the duration of processing, and the rights and obligations of both the controller and processor;

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813 5. Require the processor to return or delete all personal
 814 information under the contract to the controller as requested by
 815 the controller at the end of the provision of services, unless
 816 retention of the information is required by law; and

817 6. Upon request of the controller, require the processor to
 818 make available to the controller all personal information in its
 819 possession under the contract or agreement.

820 (b) Determining whether a person is acting as a controller
 821 or processor with respect to a specific processing of data is a
 822 fact-based determination that depends upon the context in which
 823 personal information is to be processed. The contract between a
 824 controller and processor must reflect their respective roles and
 825 relationships related to handling personal information. A
 826 processor that continues to adhere to a controller's
 827 instructions with respect to a specific processing of personal
 828 information remains a processor.

829 (c) A third party that has collected personal information
 830 from a controller in accordance with this section:

831 1. May not sell or share personal information about a
 832 consumer unless the consumer is provided an opportunity by such
 833 third party to opt out under this section. Once a third party
 834 sells or shares personal information after providing the
 835 opportunity to opt out, the third party becomes a controller
 836 under this section if the entity meets the definition of
 837 controller in subsection (2).

838 2. May use such personal information from a controller to
 839 advertise or market products or services that are produced or
 840 offered directly by such third party.

841 (d) A processor or third party must require any

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842 subcontractor to meet the same obligations of such processor or
 843 third party with respect to personal information.

844 (e) A processor or third party or any subcontractor thereof
 845 who violates any of the restrictions imposed upon it under this
 846 section is liable or responsible for any failure to comply with
 847 this section. A controller that discloses personal information
 848 to a third party or processor in compliance with this section is
 849 not liable or responsible if the person receiving the personal
 850 information uses it without complying with the restrictions
 851 under this section if, provided that at the time of disclosing
 852 the personal information, the controller does not have actual
 853 knowledge or reason to believe that the person does not intend
 854 to comply with this section.

855 (f) Any provision of a contract or agreement of any kind
 856 that waives or limits in any way a consumer's rights under this
 857 section, including, but not limited to, any right to a remedy or
 858 means of enforcement, is deemed contrary to public policy and is
 859 void and unenforceable. This section does not prevent a consumer
 860 from declining to exercise the consumer's rights under this
 861 section.

862 (10) ENFORCEMENT AND IMPLEMENTATION BY THE DEPARTMENT.-

863 (a) Any violation of this section is an unfair and
 864 deceptive trade practice actionable under part II of chapter 501
 865 solely by the department against a controller, processor, or
 866 third party. If the department has reason to believe that any
 867 controller, processor, or third party is in violation of this
 868 section, the department, as the enforcing authority, may bring
 869 an action against such controller, processor, or third party for
 870 an unfair or deceptive act or practice. For the purpose of

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871 bringing an action pursuant to this section, ss. 501.211 and
872 501.212 do not apply. In addition to other remedies under part
873 II of chapter 501, the department may collect a civil penalty of
874 up to \$50,000 per violation of this section. Civil penalties may
875 be tripled for the following violations:

876 1. Any violation involving a Florida consumer who the
877 controller, processor, or third party has actual knowledge is 18
878 years of age or younger.

879 2. Failure to delete or correct the consumer's personal
880 information pursuant to this section after receiving a
881 verifiable consumer request or directions from a controller to
882 delete or correct such personal information unless the
883 controller, processor, or third party qualifies for an exception
884 to the requirements to delete or correct such personal
885 information under this section.

886 3. Continuing to sell or share the consumer's personal
887 information after the consumer chooses to opt out under this
888 section.

889 (b) After the department has notified a controller,
890 processor, or third party in writing of an alleged violation,
891 the department may in its discretion grant a 45-day period to
892 cure the alleged violation. The 45-day cure period does not
893 apply to a violation of subparagraph (a)1. The department may
894 consider the number and frequency of violations, the substantial
895 likelihood of injury to the public, and the safety of persons or
896 property when determining whether to grant 45 calendar days to
897 cure and the issuance of a letter of guidance. If the violation
898 is cured to the satisfaction of the department and proof of such
899 cure is provided to the department, the department may not bring

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900 an action for the alleged violation but in its discretion may
901 issue a letter of guidance that indicates that the controller,
902 processor, or person will not be offered a 45-day cure period
903 for any future violations. If the controller, processor, or
904 third party fails to cure the violation within 45 calendar days,
905 the department may bring an action against the controller,
906 processor, or third party for the alleged violation.

907 (c) Any action brought by the department may be brought
908 only on behalf of a Florida consumer.

909 (d) By February 1 of each year, the department shall submit
910 a report to the President of the Senate and the Speaker of the
911 House of Representatives describing any actions taken by the
912 department to enforce this section. Such report must be made
913 publicly available on the department's website. The report must
914 include statistics and relevant information detailing:

915 1. The number of complaints received and the categories or
916 types of violations alleged by the complainant;

917 2. The number and type of enforcement actions taken and the
918 outcomes of such actions, including the amount of penalties
919 issued and collected;

920 3. The number of complaints resolved without the need for
921 litigation; and

922 4. The status of the development and implementation of
923 rules to implement this section.

924 (e) The department may adopt rules to implement this
925 section, including standards for verifiable consumer requests,
926 enforcement, data security, and authorized persons who may act
927 on a consumer's behalf.

928 (f) The department may collaborate and cooperate with other

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929 enforcement authorities of the federal government or other state
 930 governments concerning consumer data privacy issues and consumer
 931 data privacy investigations if such enforcement authorities have
 932 restrictions governing confidentiality at least as stringent as
 933 the restrictions provided in this section.

934 (g) Liability for a tort, contract claim, or consumer
 935 protection claim that is unrelated to an action brought under
 936 this subsection does not arise solely from the failure of a
 937 controller, processor, or third party to comply with this
 938 section.

939 (h) This section does not establish a private cause of
 940 action.

941 (i) The department may employ or use the legal services of
 942 outside counsel and the investigative services of outside
 943 personnel to fulfill the obligations of this section.

944 (11) JURISDICTION.—For purposes of bringing an action
 945 pursuant to subsection (10), any person who meets the definition
 946 of controller as defined in this section which collects, shares,
 947 or sells the personal information of Florida consumers is
 948 considered to be both engaged in substantial and not isolated
 949 activities within this state and operating, conducting, engaging
 950 in, or carrying on a business, and doing business in this state,
 951 and is therefore subject to the jurisdiction of the courts of
 952 this state.

953 (12) PREEMPTION.—This section is a matter of statewide
 954 concern and supersedes all rules, regulations, codes,
 955 ordinances, and other laws adopted by a city, county, city and
 956 county, municipality, or local agency regarding the collection,
 957 processing, sharing, or sale of consumer personal information by

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958 a controller or processor. The regulation of the collection,
 959 processing, sharing, or sale of consumer personal information by
 960 a controller or processor is preempted to the state.

961 Section 3. Paragraph (g) of subsection (1) of section
 962 501.171, Florida Statutes, is amended to read:

963 501.171 Security of confidential personal information.—
 964 (1) DEFINITIONS.—As used in this section, the term:

965 (g)1. "Personal information" means either of the following:

966 a. An individual's first name or first initial and last
 967 name in combination with any one or more of the following data
 968 elements for that individual:

969 (I) A social security number;

970 (II) A driver license or identification card number,
 971 passport number, military identification number, or other
 972 similar number issued on a government document used to verify
 973 identity;

974 (III) A financial account number or credit or debit card
 975 number, in combination with any required security code, access
 976 code, or password that is necessary to permit access to an
 977 individual's financial account;

978 (IV) Any information regarding an individual's medical
 979 history, mental or physical condition, or medical treatment or
 980 diagnosis by a health care professional; ~~or~~

981 (V) An individual's health insurance policy number or
 982 subscriber identification number and any unique identifier used
 983 by a health insurer to identify the individual;

984 (VI) An individual's biometric information or genetic
 985 information as defined in s. 501.173(2); or

986 (VII) Any information regarding an individual's

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987 geolocation.

988 b. A user name or e-mail address, in combination with a
989 password or security question and answer that would permit
990 access to an online account.

991 2. The term does not include information about an
992 individual that has been made publicly available by a federal,
993 state, or local governmental entity. The term also does not
994 include information that is encrypted, secured, or modified by
995 any other method or technology that removes elements that
996 personally identify an individual or that otherwise renders the
997 information unusable.

998 Section 4. Subsection (1) of section 16.53, Florida
999 Statutes, is amended, and subsection (8) is added to that
1000 section, to read:

1001 16.53 Legal Affairs Revolving Trust Fund.—

1002 (1) There is created in the State Treasury the Legal
1003 Affairs Revolving Trust Fund, from which the Legislature may
1004 appropriate funds for the purpose of funding investigation,
1005 prosecution, and enforcement by the Attorney General of the
1006 provisions of the Racketeer Influenced and Corrupt Organization
1007 Act, the Florida Deceptive and Unfair Trade Practices Act, the
1008 Florida False Claims Act, ~~or~~ state or federal antitrust laws, or
1009 s. 501.173.

1010 (8) All moneys recovered by the Attorney General for
1011 attorney fees, costs, and penalties in an action for a violation
1012 of s. 501.173 must be deposited in the fund.

1013 Section 5. This act shall take effect July 1, 2023.

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.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 1648

INTRODUCER: Commerce and Tourism Committee and Senator Bradley

SUBJECT: Public Records/Investigations by the Department of Legal Affairs

DATE: April 5, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1648 creates a public records exemption for information received by the Department of Legal Affairs (DLA) pursuant to a notification of a violation under s. 501.173, F.S., or received pursuant to an investigation made by the DLA or a law enforcement agency.

The bill permits the DLA to disclose this confidential and exempt information during an active investigation under specific circumstances.

Once an investigation is completed or once an investigation ceases to be active, the following information received by the DLA will remain confidential and exempt:

- All information to which another public record exemption applies;
- Personal information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in a business' data security; and
- Information that would disclose a business' proprietary information.

The bill provides for the repeal of the exemption on October 2, 2028, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect on the same date that linked bill SB 262, relating to technology transparency, takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Current Public Records Exemptions for Investigations Conducted by the Department of Legal Affairs

Florida's public records laws currently make most information obtained by the DLA open to the public.²⁷ In the absence of a specific legislative exemption, investigative records made or received by public agencies are open to public inspection pursuant to ch. 119, F.S.²⁸ Further, an agency's disclosure of records of its investigative proceedings upon the completion of a preliminary investigation does not violate an individual's right of privacy.²⁹

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ See *State ex rel. Veale v. City of Boca Raton*, 353 So. 2d 1194 (Fla. 4th DCA 1977), *cert. denied* 360 So. 2d 1247 (Fla. 1978).

²⁸ See *State ex rel. Veale v. City of Boca Raton*, 353 So.2d 1194 (Fla. 4th DCA 1977), *cert. denied*, 360 So.2d 1247 (Fla. 1978).

²⁹ See *Garner v. Florida Comm'n. on Ethics*, 415 So.2d 67 (Fla. 1st DCA 1982), *rev. denied*, 424 So.2d 761 (Fla. 1983).

Section 119.071(2), F.S., exempts various records and information from public inspection, including the following information when held by the DLA:

- Complaint and information held pursuant to an investigation of a violation of the Florida False Claims Act—this information may be disclosed after the completion of the DLA’s investigation, or as otherwise provided in the exemption.³⁰
- Information received pursuant to a notice of a data breach or pursuant to certain investigation is confidential until the investigation is completed or ceases to be active. Disclosure of this information is authorized under specific circumstance.³¹
- Criminal or civil intelligence, investigative information, or any other information held by any state or federal agency that is obtained by the DLA in the course of an investigation under Part II of Ch. 501, regarding Deceptive and Unfair Trade Practices. If this information is confidential or exempt from disclosure pursuant to s. 119.07(1), F.S., when held by the originating agency, it will retain that exemption when obtained by the DLA.³²

Consumer Data Privacy

SB 262 grants consumers specific rights relating to their personal information, namely (1) the right to opt-out of the sale or sharing of their personal information, and (2) the right to correct or delete their personal information held by a business.

Specific businesses must act to accommodate these consumer privacy rights and provide notice to consumers about their collection and sale of personal information. Additionally, the businesses cannot discriminate against consumers based on their decision to opt-out of the sale or sharing of their personal information.

SB 262 grants the Florida Department of Legal Affairs (DLA) (also known as the Office of the Attorney General) authority to institute appropriate legal proceedings against businesses that it believes have violated or are violating the provisions in SB 262 relating to consumer data privacy.

As created, then, any information obtained by the DLA during an investigation of the consumer data privacy provisions in SB 262 is subject to disclosure under ch. 119, F.S. This could present a hurdle to the DLA’s investigation and enforcement because it could stifle the disclosure of pertinent information from law enforcement or consumers to the DLA. Additionally, the release of consumer personal information could subject them to identity theft or further harm.

III. Effect of Proposed Changes:

SB 1648 makes information received by the DLA pursuant to a notification of a violation of certain statutory requirements or received by the DLA pursuant to an investigation by the DLA or a law enforcement agency confidential and exempt.

During an active investigation, the DLA may disclose confidential and exempt information:

³⁰ Section 68.083(8), F.S.

³¹ Section 501.171(11), F.S.

³² Section 501.2065, F.S.

- In furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the DLA determines that such release would assist in notifying the public or locating or identifying a person believed to be a victim of the improper use or disposal of customer records; or
- To another governmental entity in the furtherance of its official duties and responsibilities.

Once an investigation is completed or once an investigation ceases to be active, the following information received by the DLA will remain confidential and exempt:

- All information to which another public record exemption applies;
- Personal information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in a business' data security; and
- Information that would disclose a business' proprietary information.

For purposes of this public records exemption, "proprietary information" means information that:

- Is owned or controlled by the business
- Is intended to be private and treated as such by the business because disclosure would harm the business or its business operations;
- Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public;
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as it was received by the DLA; and
- Includes trade secrets and competitive interests.

This provision will be subject to an Open Government Sunset Review in accordance with s. 119.15, F.S., and will stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill will become effective on the same date that SB 262 (2023) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the

public records requirements. This bill creates a new record exemption; thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill creates a new public records exemption. Thus, the bill includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for information relating communications services locations, project proposals, and challenges submitted to the department under the Broadband Opportunity Program. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 501.173(13) 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.)

CS by Commerce and Tourism on April 4, 2023:

The committee substitute deletes a comma and removes unnecessary verbiage to clarify the public necessity statement.

B. Amendments:

None.



963930

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2023	.	
	.	
	.	

The Committee on Commerce and Tourism (Bradley) recommended the following:

Senate Amendment

Delete lines 110 - 119
and insert:
economic value, actual or potential, from being generally
unknown to, and not readily ascertainable by, other persons who
might obtain economic value from its disclosure or use. Allowing
public access to proprietary information, including a trade
secret, through a public records request could destroy the value
of the proprietary information and cause a financial loss to the



963930

11 controller, processor, or third party. Release of such
12 information could give business competitors an unfair advantage.

By Senator Bradley

6-00671-23

20231648__

A bill to be entitled

An act relating to public records; amending s. 501.173, F.S.; providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs and law enforcement agencies of certain data privacy violations; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (13) is added to section 501.173, Florida Statutes, as created by SB 262 or similar legislation, to read:

501.173 Consumer data privacy.—

(13) PUBLIC RECORDS EXEMPTION.—

(a) All information received by the department pursuant to a notification of a violation under this section, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of this section, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

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

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1. In the furtherance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of a data breach or improper use or disposal of customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information received by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. All information to which another public records exemption applies.

2. Personal information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in the data security of a controller, processor, or third party.

5. Information that would disclose the proprietary information of a controller, processor, or third party.

(d) For purposes of this subsection, the term "proprietary information" means information that:

1. Is owned or controlled by the controller, processor, or third party.

2. Is intended to be private and is treated by the

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

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controller, processor, or third party as private because disclosure would harm the controller, processor, or third party or its business operations.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Includes:

a. Trade secrets as defined in s. 688.002.

b. Competitive interests, the disclosure of which would impair the competitive advantage of the controller, processor, or third party who is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all information received by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.173, Florida Statutes, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of s. 501.173, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.173, Florida Statutes, may result in an investigation of such violation. The

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premature release of such information could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer s. 501.173, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) Release of information to which another public record exemption applies once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information.

(3) An investigation of a violation of s. 501.173, Florida Statutes, is likely to result in the gathering of sensitive personal information, including identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject possible victims of data privacy violations to further harm.

(4) Notices received by the department and information received during an investigation of a violation of s. 501.173, Florida Statutes, are likely to contain proprietary information. Such information, including trade secrets, derives independent, economic value, actual, or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information, including a trade secret, through a public records request could destroy the value of the proprietary information and cause a financial loss to the controller, processor, or third party submitting the

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117 information. Release of such information could give business
118 competitors an unfair advantage and weaken the position of the
119 entity supplying the proprietary information in the marketplace.

120 (5) Information received by the department may contain a
121 computer forensic report or information that could reveal
122 weaknesses in the data security of a controller, processor, or
123 third party. The release of this information could result in the
124 identification of vulnerabilities in the cybersecurity system of
125 the controller, processor, or third party and be used to harm
126 the controller, processor, or third party and clients.

127 (6) The harm that may result from the release of
128 information received by the department pursuant to a
129 notification or investigation by the department or a law
130 enforcement agency of a violation of s. 501.173, Florida
131 Statutes, could impair the effective and efficient
132 administration of the investigation and thus, outweighs the
133 public benefit that may be derived from the disclosure of the
134 information.

135 Section 3. This act shall take effect on the same date that
136 SB 262 or similar legislation takes effect, if such legislation
137 is adopted in the same legislative session or an extension
138 thereof and becomes a law.

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.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 628

INTRODUCER: Banking and Insurance Committee and Senator Grall

SUBJECT: Debt Management Services

DATE: April 3, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	<u>Favorable</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

Debt management services laws regulate the fees credit counseling organizations may charge debtors for debt management services and credit counseling services. Non-profit credit counseling agencies work with debtors' creditors, educate debtors about credit practices, and enroll qualifying debtors in debt management plans tailored to their specific situation and budget.

The bill revises the fee chargeable by a credit counseling agency to a debtor for receiving from the debtor, and subsequently disbursing to a creditor, money or anything of value. The maximum fee will now be up to the lesser of 15 percent of the monthly payment or \$75 monthly. Under current law, the maximum fee is the greater of 7.5 percent of the monthly payment or \$35 monthly.

This bill will not have a fiscal impact on state and local governments but will have both positive and negative fiscal impacts on the private sector.

The bill provides an effective date of July 1, 2023.

II. Present Situation:

Credit Counseling Organizations

Debtors seeking to manage and reduce their debts often engage credit counseling organizations who provide debt management services and credit counseling services.¹ Non-profit credit counseling agencies assist debtors with managing and reducing their debt by offering free counseling on credit practices, enrolling qualifying debtors in debt management plans, and providing community education to individuals and families on money management skills.²

Floridians are among the many individuals who can be expected to use services from non-profit credit counseling organizations. According to Experian, the average Floridian carried \$84,926 in debt in 2021,³ and the average mortgage was \$208,536.⁴ Credit card debt, student loans, and auto loans accounted for the other main sources of debt for Floridians, with a state average of \$5,620, \$41,300, and \$21,341, respectively.⁵ In 2022, the average Floridian carried \$89,195 in debt, a 5% increase from 2021.⁶

Debt Management Services

Debt management services is defined by Florida statute as services provided for a fee to “effect the adjustment, compromise, or discharge of any unsecured note, account, or other indebtedness of the debtor; or receive from the debtor and disburse to a creditor any money or other item of value.”⁷

Credit counseling agencies and creditors may classify individuals who find it particularly difficult to manage their debt, whether due to their health or other specific situation, as “vulnerable.”⁸ Credit counseling agencies encourage creditors to take, and do take, extra measures to ensure an individual who is vulnerable receives the same services as others.⁹

¹ Consumer Financial Protection Bureau, *What is credit counseling?*, available at <https://www.consumerfinance.gov/ask-cfpb/what-is-credit-counseling-en-1451/> (last visited April 3, 2023).

² See Financial Counseling Association of America, available at <https://fcaa.org/> (last visited April 3, 2023).

³ Experian, *Average Consumer Debt Levels Increase in 2022*, available at <https://www.experian.com/blogs/ask-experian/research/consumer-debt-study/> (hereinafter cited as “Experian’s Article on Average Consumer Debt Levels”) (last visited April 3, 2023).

⁴ Horymski, C., *Total Mortgage Debt Increases to \$10.3 Trillion in 2021*, Experian, Jun. 4, 2022, available at [Total Mortgage Debt Increases to \\$10.3 Trillion in 2021 - Experian](#) (last visited April, 2023).

⁵ Horymski, C., *Credit Card Debt in 2021: Balances Slightly Decline*, Experian, Jun. 23, 2022, available at [Credit Card Debt in 2021: Balances Slightly Decline - Experian](#) (last visited April 3, 2023); Horymski, C., *Student Loan Balances Barely Budge in 2021*, Experian, Aug. 23, 2022, available at [Student Loan Debt Increases Slightly in 2021 - Experian](#) (last visited April 3, 2023); Horymski, C., *Auto Loan Debt Reaches a Record-High \$1.43 Trillion*, Experian, Jul. 29, 2022, available at [Auto Loan Debt Reaches a Record-High \\$1.43 Trillion - Experian](#) (last visited April 3, 2023).

⁶ Experian’s Article on Average Consumer Debt Levels.

⁷ Section 817.801(4), F.S.

⁸ See Step Change: Debt Charity, *Dealing with the debts of a vulnerable person*, available at <https://www.stepchange.org/debt-info/dealing-with-the-debts-of-vulnerable-people.aspx> (last visited April 3, 2023).

⁹ *Id.*

Unlike for-profit debt settlement companies,¹⁰ credit counseling agencies are non-profit organizations whose fees are regulated and vary across jurisdiction.¹¹ According to Cambridge Credit Counseling Corp., many states set maximum rates regulating the initial fee a credit counseling agency may impose on a consumer, and of the states who have set a maximum rate, the rates range between \$25 and \$100.¹² Other states generally also allow credit counseling agencies to charge a monthly fee up to a certain amount which is usually a flat rate or a percentage of the monthly amount paid by the debtor to repay the debt, or both.¹³ The lowest rate cap is \$25 per month and the highest rate cap is \$75 per month.¹⁴

Florida's Limitations on Fees for Debt Management Services

In 2004, the Legislature recognized the importance of easy access to debt management services, while also acknowledging the vulnerability of debtors, by prescribing the maximum fees a person or entity could charge a debtor for debt management services.¹⁵

Specifically, the 2004 legislation made it unlawful for any entity or individual engaging in debt management services or credit counseling services, to charge a debtor:

- A fee greater than \$50 for an initial consultation;¹⁶ and
- A fee greater than \$120 per year for additional consultations or, alternatively, in the case of receiving debt payments from the debtor and disbursing to a creditor any money or other item of value, the greater of 7.5% of the amount paid monthly by the debtor or \$35 per month.¹⁷

No state agency directly regulates credit counseling organizations. Regulation is self-executing by means of private civil actions under part II of ch. 501, F.S., including possible action by the Attorney General or local prosecutors.¹⁸ Any person in violation of the debt services statute “commits an unfair or deceptive trade practice.”¹⁹ A violation results in criminal and civil penalties. Namely, a violation is a third-degree felony,²⁰ and an individual injured by a violation can bring an action for damages, where judgement is entered for actual damages no less than the amount paid by the aggrieved individual to the credit counseling organization.²¹

¹⁰ Consumer Financial Protection Bureau, *What are Debt Settlement/Debt Relief Services and Should I Use Them?*, Aug. 24, 2022, available at [What are debt settlement/debt relief services and should I use them? | Consumer Financial Protection Bureau \(consumerfinance.gov\)](https://www.consumerfinance.gov/what-are-debt-settlement-debt-relief-services-and-should-i-use-them/) (last visited April 3, 2023) (defining debt settlement companies as “companies that say they can renegotiate, settle, or in some way change the terms of a person’s debt to a creditor or debt collector, and noting that dealing with debt settlement companies can be risky and often charge expensive fees.)

¹¹ Email from Kelly Mallette, Ronald L. Book, P.A., to Jacqueline Moody, Florida Senate Committee on Banking and Insurance, *State Based Fees*, Mar. 17, 2023 (on file with Senate Committee on Banking and Insurance)

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Chapter 2004-351, Laws of Florida, created s. 817.802, F.S.

¹⁶ Section 817.802(1), F.S.

¹⁷ *Id.*

¹⁸ Chapter 501, part II, F.S., relating to the protection of consumers from unfair trade practices, and remedies for violations thereof, similar to federal policies relating to consumer protection.

¹⁹ Section 817.806, F.S.

²⁰ A third degree felony is generally punishable by not more than five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

²¹ Section 817.806, F.S.

Although a 2006 amendment narrowed the scope of debtors protected to those debtors specifically residing in the state of Florida,²² the limitation on fees for debt management services has not been increased since its enactment in 2004.

III. Effect of Proposed Changes:

Section 1 changes the fee a person or entity may charge for the debt management services described in s. 817.802(4)(b), F.S., (namely, receiving from the debtor and disbursing to a creditor any money or item of value) up to the lesser of 15 percent of the amount paid monthly by the debtor or \$75 per month, rather than the greater of 7.5 percent of the amount paid or \$35 per month. The following table illustrates the current and proposed fees.

Monthly Payment	Current			SB 628			Result of Current vs. SB 628
	Greater of 7.5% of monthly \$35		Monthly Fee Allowed	Lesser of 15% of monthly \$75		Monthly Fee Allowed	
\$100	\$ 7.50	\$ 35.00	\$ 35.00	\$ 15.00	\$ 75.00	\$ 15.00	Reduction
\$500	\$ 37.50	\$ 35.00	\$ 37.50	\$ 75.00	\$ 75.00	\$ 75.00	Increase
\$1,000	\$ 75.00	\$ 35.00	\$ 75.00	\$ 150.00	\$ 75.00	\$ 75.00	No Change
\$1,500	\$ 112.50	\$ 35.00	\$ 112.50	\$ 225.00	\$ 75.00	\$ 75.00	Reduction

Section 2 provides an effective date of July 1, 2023.

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.

²² Chapter 2006-136, Laws of Florida, amended s. 817.802, F.S.

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

None.

B. Private Sector Impact:

Credit counseling organizations and debtors residing in Florida would experience a fiscal impact from this bill. Specifically, the change in fees to the lesser of 15% of the amount paid monthly by the debtor or \$75 per month would likely result in an increase in some revenue for credit counseling organizations. On the other hand, the increase in the maximum chargeable amount might have a negative fiscal impact on debtors residing in Florida.²³ The bill results in increased maximum fees for payment amounts greater than \$233.33 but less than \$1,000.00; maximum fees are reduced for payment amounts less than \$233.33 or greater than \$1,000.00.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 817.802 of the Florida Statutes.

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

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

CS by Banking and Insurance Committee on March 22, 2023:

- Clarifies that the fee a person or entity may charge for the debt management services is “up to” the lesser of 15 percent of the amount paid monthly by the debtor or \$75 per month.

B. Amendments:

None.

²³ Florida Office of Financial Regulations, *2023 Agency Legislative Bill Analysis for HB 599*, p. 3, Mar. 3, 2023 (on file with Senate Committee on Banking and Insurance).

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

By the Committee on Banking and Insurance; and Senator Grall

597-02912-23

2023628c1

A bill to be entitled

An act relating to debt management services; amending s. 817.802, F.S.; increasing the maximum fee that may be charged for debt management services; providing an effective date.

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

Section 1. Subsection (1) of section 817.802, Florida Statutes, is amended to read:

817.802 Unlawful fees and costs.—

(1) It is unlawful for any person, while engaging in debt management services or credit counseling services, to charge or accept from a debtor residing in this state, directly or indirectly, a fee or contribution greater than \$50 for the initial setup or initial consultation. Subsequently, the person may not charge or accept a fee or contribution from a debtor residing in this state greater than \$120 per year for additional consultations or, alternatively, if debt management services as defined in s. 817.801(4)(b) are provided, the person may charge up to the lesser ~~greater~~ of 15 ~~7.5~~ percent of the amount paid monthly by the debtor to the person or \$75 ~~\$35~~ per month.

Section 2. This act shall take effect July 1, 2023.

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.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/CS/SB 712

INTRODUCER: Commerce and Tourism Committee; Transportation Committee; and Senator Avila and others

SUBJECT: Motor Vehicle Sales

DATE: April 5, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Vickers	TR	Fav/CS
2.	McMillan	McKay	CM	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 712 amends the Florida Automobile Dealers Act (Act), which primarily regulates the contractual business relationship between franchised motor vehicle dealers (dealers), and manufacturers, factory branches, distributors, and importers (manufacturers) and provides for the licensure of manufacturers. The Act prohibits certain manufacturers with established dealerships from conducting direct-sales or owning or operating a motor vehicle dealership; however, a manufacturer without a franchised dealership is exempt from this prohibition.

The bill revises provisions related to the licensure of, and contractual agreements between, dealers and manufacturers, as follows:

- Broadens the definition of “common entity” and expands the prohibitions on direct-to-consumer motor vehicle sales, and dealer ownership, by manufacturers that have established dealers.
- Broadens the definition of “sell” to include additional types of financial agreements.
- Prohibits new franchise agreements with manufacturers that do not include all types of “line-make.”
- Prohibits manufacturers from reserving or incentivizing the sale or lease of a motor vehicle.
- Prohibits manufacturers from requiring or incentivizing dealers to sell or lease vehicles at a specified price or profit margin, or restricts the price that a dealer may sell or lease a vehicle.
- Prohibits manufacturers from engaging in certain motor vehicle dealer activities.

- Authorizes manufacturers to sell certain motor vehicle features or improvements through remote electronic transmission;
- Requires the manufacturer to pay the dealer a percentage of at least eight percent of the payment received from the sale of a motor vehicle feature or improvement through remote electronic transmission if it is made within three years after the sale or lease of the new vehicle.
- Prohibits manufacturers from refusing to provide a dealer with an “equitable supply” of new vehicles by model, mix, or color as it offers or allocates to dealers.
- Prohibits manufacturers from using the number of motor vehicles pre-ordered or reserved by consumers when determining allocations to dealers.
- Provides that neither a distributor nor an affiliate thereof may be licensed as a motor vehicle dealer or own or operate a dealership that sells or services motor vehicles of the line-make of motor vehicles distributed by the distributor.
- Limits the administrative authority of the Department of Highway Safety and Motor Vehicles (DHSMV) to provide certain exceptions to the restriction on dealer ownership by manufacturers that have established dealers.
- Prohibits manufacturers from controlling by contract, agreement or otherwise a dealership for any “line-make” which is or has been offered for sale in Florida by a franchise agreement with an “independent person.”
- Creates a timeline and process for DHSMV to conduct an inquiry of a manufacturer relating to a written complaint alleging a violation of the Act, when such complaint is made by a franchised motor vehicle dealer or a motor vehicle dealer association with at least one member with a current franchise agreement issued by the manufacturer.

The bill may have a negative indeterminate fiscal impact on DHSMV to the extent that the bill results in increased written complaints against manufacturers.

The bill takes effect July 1, 2023.

II. Present Situation:

Background of Motor Vehicle Dealer Franchise Agreements

The first automobile franchise in the United States was established by General Motors in 1898.¹ Franchise agreements were initially voluntary.² Most state auto franchise laws now extensively regulate the contractual obligations between manufacturers and dealers. In an effort to protect consumers, these laws prevent manufacturers from selling new vehicles, new brands, and related services directly to the public.³

¹ Francine Lafontaine and Fiona Scott Morton, *State Franchise Laws, Dealer Terminations, and the Auto Crisis*, 24 J. ECON. PERSP. 233, 234 (2010), available at <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.24.3.233> (last visited April 5, 2023).

² *Id.* at 238-239.

³ Congressional Research Service, R40712, *U.S. Motor Vehicle Industry Restructuring and Dealership Terminations* (January 8, 2010), available at https://www.everycrsreport.com/files/20100108_R40712_461532aa2624faaa80c6e8f950d6b0ad0719195e.pdf (last visited April 5, 2023).

Florida has substantially regulated motor vehicle manufacturers and dealers since before 1950.⁴ Initially, Florida implemented consumer protections aimed at preventing consumer abuse by dealers.⁵ In 1970, more comprehensive regulations were adopted, embodied in Ch. 320, F.S.,⁶ which regulates the contractual relationship between manufacturers and franchised dealers,⁷ requires the licensing of manufacturers, and regulates numerous aspects of the contracts between the manufacturers and dealers.

Florida's Automobile Dealer Franchise Law states that "it is the intent of the Legislature to protect the public health, safety, and welfare of the citizens of the state by regulating the licensing of motor vehicle dealers and manufacturers, maintaining competition, providing consumer protection and fair trade and providing minorities with opportunities for full participation as motor vehicle dealers."⁸

Certain manufacturers with established dealer franchises have recently indicated an intent to separate their electric vehicle (EV) and internal combustion vehicle business models, similar to how they currently separate cars and trucks into separate dealership agreements. Some manufacturers indicate they plan to offer a business model that is a hybrid between the current model and the direct-to-consumer model used by some EV manufacturers for both EV and internal combustion vehicle lines.⁹ Certain EV manufactures have developed a cost-effective method of auto distribution known as build-to-order.¹⁰

Newer automakers that do not have franchise agreements with auto dealers have been using captive (manufacturer-owned) dealerships and the direct-to-consumer model in which consumers custom-design their vehicles on the internet and receive them directly from the manufacturer. However, for in-person needs, these automakers provide their own dealerships and service centers. State franchise laws protect independent dealerships and thus, auto manufacturers that already have franchise agreements with dealers are unable to offer this new way of buying a vehicle to consumers.¹¹

Recently, manufacturers and dealers have engaged in public disputes about how vehicles should be sold in the future, and about whether dealer franchise laws have contributed to dealers pricing their new cars at an all-time high.¹² Ford Motor Company recently wrote a formal letter to its

⁴ Chapter 9157, Laws of Fla. (1923); Chapter 20236, Laws of Fla. (1941).

⁵ Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 FLA. ST. UNIV. LAW REV. 1058, 1064 (2002), available at <http://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1632&context=lr> (last visited April 5, 2023).

⁶ Ch. 70-424, Laws of Fla.

⁷ Section 320.60(11), F.S.

⁸ Section 320.605, F.S.

⁹ Greg Rosalsky, *Inside the rise of 'stealerships' and the shady economics of car buying*, National Public Radio (NPR) (August 30, 2022), available at <https://www.npr.org/sections/money/2022/08/30/1119715886/inside-the-rise-of-stealerships-and-the-shady-economics-of-car-buying> (last visited April 5, 2023).

¹⁰ The United States Department of Justice, *Economic Effects of State Bans on Direct Manufacturer Sales to Car Buyers* (May 2009), available at <https://www.justice.gov/sites/default/files/atr/legacy/2009/05/28/246374.pdf> (last visited April 5, 2023).

¹¹ Rosalsky, *supra* note 9.

¹² Motor Biscuit, *Ford Threatens to Cut Dealer Inventories to Demolish Price Markups* (February 9, 2022), available at <https://www.motorbiscuit.com/ford-threatens-cut-dealer-inventories-demolish-price->

dealers asking them to cut down on markups, additional waiting list fees and deposits for EVs, and gave notice to dealers that it would cut back on sending them Ford's most popular vehicles if prices did not come down.¹³ Dealers have responded by arguing that manufacturer actions will not solve pricing issues and will interfere with market competition.

Florida Automobile Dealers Act

Manufacturers must be licensed to engage in business in Florida.¹⁴ The “Florida Automobile Dealers Act”¹⁵ (Act), primarily regulates the contractual business relationship between dealers and manufacturers; and provides for the licensure of the manufacturers. The Department of Highway Safety and Motor Vehicles (DHSMV) is responsible for administering and enforcing the Act.¹⁶ The Act specifies, in part:¹⁷

- The conditions and situations under which the DHSMV may deny, suspend, or revoke a regulated license;
- The process, timing, and notice requirements for manufacturers who wish to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a request;
- The procedures manufacturers must follow to add a franchised dealership in an area already served by a franchised dealer, the protest process, and the DHSMV’s role in these circumstances;
- The damages that can be assessed against a manufacturer who is in violation of Florida Statutes; and
- The DHSMV’s authority to adopt rules to implement these sections of law.

The Act applies to all presently existing or future systems of distribution of motor vehicles in Florida, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. Generally, all agreements that are renewed, amended, or entered into subsequent to October 1, 1988, are governed by the Act, including amendments to the Act, unless the amendment specifically provides otherwise.¹⁸

Definitions

The Act provides definitions for several terms used throughout it, which are described below.

“Agreement” or “Franchise agreement” is defined as “a contract, franchise, new motor vehicle franchise, sales and service agreement, or dealer agreement or any other terminology used to describe the contractual relationship between a manufacturer, factory branch, distributor, or

[markups/?utm_source=npr_newsletter&utm_medium=email&utm_content=20220826&utm_term=7163011&utm_campaign=money&utm_id=4320608&orgid=&utm_att1=](https://www.npr.org/newsletters/markups/?utm_source=npr_newsletter&utm_medium=email&utm_content=20220826&utm_term=7163011&utm_campaign=money&utm_id=4320608&orgid=&utm_att1=) (last visited April 5, 2023).

¹³ *Id.*

¹⁴ Section 320.61(1), F.S.

¹⁵ Forehand, *supra* note 5, at 1065.

¹⁶ Section 320.011, F.S.

¹⁷ *See* ss. 320.60-320.70, F.S.

¹⁸ Section 320.6992, F.S.

importer, and a motor vehicle dealer, pursuant to which the motor vehicle dealer is authorized to transact business pertaining to motor vehicles of a particular line-make.”¹⁹

“Common entity” is defined as a person:²⁰

- Who “is either controlled or owned, beneficially or of record, by one or more persons who also control or own more than 40 percent of the voting equity interests of a manufacturer;” or
- Who “shares directors or officers or partners with a manufacturer.”

“Distributor” is defined as “a person, resident or nonresident, who, in whole or in part, sells or distributes motor vehicles to motor vehicle dealers or who maintains distributor representatives.”²¹

“Factory branch” is defined as “a branch office maintained by a manufacturer, distributor, or importer for the sale of motor vehicles to distributors or to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives in this state.”²²

“Importer” is defined as “any person who imports vehicles from a foreign country into the United States or into this state for the purpose of sale or lease.”²³

“Licensee” is defined as “any person licensed or required to be licensed under s. 320.61, F.S., which includes motor vehicle manufacturers, distributors, and importers.”²⁴

“Manufacturer” is defined as “any person, whether a resident or nonresident of this state, who manufactures or assembles motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment which, when installed, form an integral part of the motor vehicle and which constitute a major manufacturing alteration. The term “manufacturer” includes a central or principal sales corporation or other entity through which, by contractual agreement or otherwise, it distributes its products.”²⁵

“Line-make vehicles” are defined as “motor vehicles which are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the manufacturer of same” (such as Ford, General Motors, or Honda). “However, motor vehicles sold or leased under multiple brand names or marks shall constitute a single line-make when they are included in a single franchise agreement and every motor vehicle dealer in this state authorized to sell or lease any such vehicles has been offered the right to sell or lease all of the multiple brand names or marks covered by the single franchise agreement.”²⁶

¹⁹ Section 320.60(1), F.S.

²⁰ Section 320.60(2), F.S.

²¹ Section 320.60(5), F.S.

²² Section 320.60(6), F.S.

²³ Section 320.60(7), F.S.

²⁴ Section 320.60(8), F.S.

²⁵ Section 320.60(9), F.S.

²⁶ Section 320.60(14), F.S.

“Motor vehicle dealer” is defined as “any person, firm, company, corporation, or other entity, who:”²⁷

- Is licensed as a “franchised motor vehicle dealer” and, “for commission, money, or other things of value, repairs or services motor vehicles or used motor vehicles pursuant to a franchise agreement;”
- Who “sells, exchanges, buys, leases or rents, or offers, or attempts to negotiate a sale or exchange of any interest in, motor vehicles;” or
- Who “is engaged wholly or in part in the business of selling motor vehicles, whether or not such motor vehicles are owned by such person, firm, company, or corporation.”

Such persons, or persons who buy, sell, or deal in three or more motor vehicles in any 12-month period or who offer or display for sale three or more motor vehicles in any 12-month period are prima facie presumed to be a motor vehicle dealer.²⁸

The terms “selling” and “sale” “include lease-purchase transactions.”²⁹

The term “motor vehicle dealer” does not include:³⁰

- “Public officers while performing their official duties;”
- “Receivers, trustees, administrators, executors, guardians, or other persons appointed by, or acting under the judgment or order of, any court;”
- “Banks, finance companies, or other loan agencies that acquire motor vehicles as an incident to their regular business;” or
- “Motor vehicle rental and leasing companies that sell motor vehicles to licensed motor vehicle dealers.”

The terms “sell,” “selling,” “sold,” “exchange,” “retail sales,” and “leases” are defined, as follows:³¹

- “Any transaction where the title of motor vehicle or used motor vehicle is transferred to a retail consumer.”
- “Any retail lease transaction where a retail customer leases a vehicle for a period of at least 12 months.”
- “Establishing a price for sale when an applicant or licensee has sold a motor vehicle to any retail consumer in the state except through a motor vehicle dealer holding a franchise agreement for the line-make that includes the motor vehicle does not constitute a sale or lease.”³²

Grounds for Denial, Suspension, or Revocation of a License

An application for a manufacturer, distributor, and importer license (license) may be denied, or a license may be revoked or suspended, on various grounds. Denials, suspensions, or revocations

²⁷ Section 320.60(11), F.S.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Section 320.60(15), F.S.

³² *Id.*

of licenses can be based on consumer protection; however, the grounds for acting against manufacturers arise principally out of their dealings with motor vehicle franchised dealers with whom the manufacturers have a contractual relationship allowing the dealer to sell and service the manufacturer's new motor vehicles.^{33, 34}

Currently, there are 42 different criteria that may cause the DHSMV to deny, suspend, or revoke a manufacturer's license. The criteria cross many topics, including: contractual obligations; coercion or threats; discontinuation, canceling, non-renewing, modifying, or replacing franchise agreements; requiring changes to a dealer's sales or service facility; reducing the supply of new vehicles or parts to a franchised dealer; audits; disclosure of confidential financial information; failure to pay the dealer; and denying a warranty repair claim.³⁵

An applicant or manufacturer is prohibited from establishing or implementing a system of motor vehicle allocation or distribution to its franchised motor vehicle dealers which reduces or alters allocations or supplies of new motor vehicles to the dealer to achieve, directly or indirectly, a purpose that is prohibited by the Act, or which otherwise is unfair,³⁶ inequitable, unreasonably discriminatory, or not supportable by reason and good cause after considering the equities of the affected motor vehicles dealer or dealers.³⁷

An applicant or manufacturer is required to maintain for three years records that describe its methods or formula of allocation and distribution of its motor vehicles, and records of its actual allocation and distribution of motor vehicles, to its dealers in this state.³⁸

An applicant or manufacturer is prohibited from competing (with respect to any activity covered by the franchise agreement) with a franchised dealer of the same line-make located in this state with whom the manufacturer has entered into a franchise agreement.³⁹

An applicant or manufacturer is prohibited from selling a motor vehicle to any retail consumer in the state except through a dealer holding a franchise agreement for the line-make that includes the motor vehicle. This does not apply to sales by the applicant or manufacturer to its current employees, employees of companies affiliated by common ownership, charitable not-for-profit organizations, and the federal government.⁴⁰

Dealer Licenses in Areas Previously Served

Any manufacturer who proposes to establish an additional motor vehicle dealership, or relocate an existing dealer, to a location within a community or territory where the same line-make

³³ Section 320.64, F.S.

³⁴ Section 320.60(1) (defining "agreement" or "franchise agreement").

³⁵ Section 320.64, F.S.

³⁶ As used in this provision, "unfair" includes, without limitation, the refusal or failure to offer to any dealer an equitable supply of new vehicles under its franchise, by model, mix, or colors as the manufacturer offers or allocates to its other same line-make dealers in the state. *See* s. 320.64(18), F.S.

³⁷ Section 320.64(18), F.S.

³⁸ *Id.*

³⁹ Section 320.64(23), F.S.

⁴⁰ Section 320.64(24), F.S.

vehicle is presently represented by a franchised dealer, is required to give written notice of its intention to the DHSMV.⁴¹

An existing franchised dealer or dealers has standing to protest a proposed additional or relocated motor vehicle dealer when the existing dealer or dealers have a franchise agreement for the same line-make vehicle to be sold or serviced by the proposed dealer and certain physical location mileage requirements are met. Specific mileage requirements that are based on county population are as follows:⁴²

- In counties with a population of less than 300,000, the existing dealer has standing if the existing dealer of the same line-make has a licensed franchise location within a radius of 20 miles of the location of the proposed dealer.⁴³
- In counties with a population over 300,000, an existing dealer has standing if the existing dealer of the same line-make has a licensed franchise location within a radius of 12.5 miles of the location of the proposed additional or relocated motor vehicle dealer.⁴⁴

When a proposed addition or relocation concerns a dealership that performs or is to perform only service and not the sale or lease of new motor vehicles, the proposal is subject to the notice and protest provisions. Standing to protest the addition or relocation of a service-only dealership is limited to those instances in which the applicable mileage requirements based on county populations are met.⁴⁵

The addition or relocation of a service-only dealership is not subject to protest if:

- The applicant for the service-only dealership location is an existing motor vehicle dealer of the same line-make as the proposed additional or relocated service-only dealership;
- There is no existing dealer of the same line-make closer than the applicant to the proposed location of the additional or relocated service-only dealership; and
- The proposed location of the additional or relocated service-only dealership is at least seven miles from all existing motor vehicle dealerships of the same line-make, other than motor vehicle dealerships owned by the applicant.⁴⁶

In determining whether existing franchised dealers are providing adequate representations in the community or territory for the line-make in question in a protest of the proposed addition or relocation of a service-only dealership, the DHSMV is authorized to consider certain elements.⁴⁷

If an application for a service-only dealership is granted, the DHSMV is required to issue a license which permits only service, and does not permit the selling or leasing of new motor vehicles. If a service-only dealership subsequently seeks to sell new motor vehicles at its location, the notice and protest provisions apply.⁴⁸

⁴¹ Section 320.642(1), F.S.

⁴² Section 320.642(3), F.S.

⁴³ Section 320.642(3)(a)2., F.S.

⁴⁴ Section 320.642(3)(b)1., F.S.

⁴⁵ Section 320.642(6)(a), F.S.

⁴⁶ Section 320.642(6)(b), F.S.

⁴⁷ Section 320.642(6)(c), F.S.

⁴⁸ Section 320.642(6)(d), F.S.

Restriction on Ownership of Dealerships

Current law prohibits the following entities from owning or operating a dealership in this state for the sale or service of motor vehicles that are already offered for sale under a franchise agreement with a dealer in this state:⁴⁹

- “Licensees;”
- “Distributors;”
- “Manufacturers;”
- “Agents of a manufacturer or distributor;” or
- “Any parent, subsidiary, common entity, or officer or representative of the licensee.”

In such cases, manufacturers may not be issued a dealer license. However, manufacturers are not deemed to be in violation under the following circumstances:⁵⁰

- When operating a dealership for a temporary period of up to a year, during the transition from one owner of the dealership to another;
- When operating a dealership temporarily for a reasonable period for the exclusive purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who:
 - Are part of a group that has historically been underrepresented in its dealer body; or
 - The licensee “deems lack the resources to purchase or capitalize the dealership outright; or
- If the DHSMV determines, after an administrative hearing on the matter, at the request of any person, that there is no independent person available in the community or territory to own and operate the dealership in a manner consistent with the public interest.

In any such case, the manufacturer is required to continue to make the dealership available for sale to an independent person at a fair and reasonable price, and approval of the sale may not be unreasonably withheld.

“Independent person” is defined as a person who is not an officer, director, or employee of the manufacturer.⁵¹

Procedure for Administrative Hearings and Adjudications

A franchised dealer who is directly and adversely affected by the action or conduct of a manufacturer, which is alleged to be in violation of the Act, may seek a declaration and adjudication of its rights by filing one of the following with the DHSMV: ⁵²

- Request for a proceeding and administrative hearing; or
- Written objection or notice of protest.

⁴⁹ Section 320.645(1), F.S.

⁵⁰ *Id.*

⁵¹ Section 320.645(2)(a), F.S.

⁵² Section 320.699(1), F.S.

Hearings are held no sooner than 180 days, or later than 240 days, from the date a written objection or notice of protest is filed, unless extended with good cause by the administrative law judge.⁵³

Civil Damages

A franchised dealer who can demonstrate that a violation of, or failure to comply with, any of the provisions of the Act by an applicant or manufacturer will or can adversely and pecuniarily affect the dealer, is entitled to pursue treble damages and attorney's fees in civil court.⁵⁴ The manufacturer has the burden to prove that such violation did not occur upon a prima facie showing by the person bringing the action.⁵⁵

Injunctions

A franchised dealer may make an application to any circuit court of the state for a temporary or permanent injunction, or both, restraining any manufacturer from violating or continuing to violate any of the provisions of the Act or from failing or refusing to comply with these statutory requirements.⁵⁶

Market Background

Electric Vehicle Sales

In the United States revenue in the electric vehicles (EV) market is projected to reach approximately \$61 billion in 2023, and will result in a market volume of \$139 billion by 2027.⁵⁷ The growth of the EV market has been significant despite the COVID-19 pandemic and the resulting supply chain bottlenecks. Despite such challenges and rising production costs as a result of increasing raw material prices, EV sales are still increasing.⁵⁸

As more automakers introduce EVs, they are rethinking the sales process, including selling new vehicles largely, if not fully, online. Historically, dealers rely on automakers for product to fill and move off lots, and the automakers rely on dealers to sell and service the vehicles and customers. How that historical relationship fits into an all-electric future is at the forefront of discussions between automakers and dealers.⁵⁹

⁵³ Section 320.699(2), F.S.

⁵⁴ Sections 320.64, 320.694, and 320.697, F.S.

⁵⁵ Section 320.697, F.S.

⁵⁶ Section 320.695, F.S.

⁵⁷ Statista, *Electric Vehicles – United States*, available at <https://www.statista.com/outlook/mmo/electric-vehicles/united-states> (last visited April 5, 2023).

⁵⁸ *Id.*

⁵⁹ Michael Wayland, *Carmakers face a crossroads as they work to fit auto dealers into their EV plans*, CNBC (Jan. 28, 2023), available at https://www.cnbc.com/2023/01/28/ev-sales-automakers-dealers.html?_source=sharebar&email&par=sharebar (last visited April 5, 2023).

Direct-Sales

According to the National Conference of State Legislatures (NCSL),⁶⁰ a number of states have amended dealer franchise laws to either explicitly prohibit or allow for direct-sales of motor vehicles. Most enacted state laws authorizing limited direct-sales appear to be narrowly tailored to apply to Tesla by requiring that a manufacturer either have no existing franchise agreements in a relevant market area and/or have an existing direct-sales operation. Recently, legislation has trended toward providing for new manufacturers to engage in direct-sales.⁶¹

The NCSL provides that:⁶²

- Approximately 17 states have laws that expressly ban direct-sales.
- Approximately 18 states have laws that expressly allow for manufacturers to directly sell vehicles to consumers.
- Approximately nine states have laws prohibiting all new direct-sales, while allowing for manufacturers already engaged in direct-sales in the state to maintain a certain number of sales locations.
- Of the states that provide for direct-sales, at least eight states tied their direct-sales provisions to a requirement that the manufacturer exclusively sell non-fossil-fuel, electric, or zero-emission vehicles.
- Most states that provide for the direct-sales model still require a manufacturer to obtain a dealer license or permit to be able to operate in the state. Some states, like Utah, restrict the use of the direct-sales model to only those manufacturers that sell new non-fossil fuel powered vehicles, like those that rely on electricity or hydrogen fuel.
- Other states, like Ohio, provide for the direct-sales model, but only for manufacturers engaged in the market by a certain date and place a limit on the number of dealerships that direct-sale manufacturers may operate within the state.
- In states like Arizona, Tesla’s ability to sell vehicles through its direct-sales model is a result of a favorable judicial or administrative ruling regarding the applicability of state law as opposed to changes in the statutory text. In these states, the question of whether manufacturers may sell vehicles directly to consumers would likely be decided on a case-by-case basis.
- Some states, like Louisiana, have recently enhanced protections for franchise dealerships by explicitly prohibiting direct-sales.

III. Effect of Proposed Changes:

Definitions

The bill expands the definition of “common entity” to mean a person who:

- Is directly or indirectly controlled by or has more than 30 percent of his or her equity interest directly or indirectly owned, beneficially or of record, through any form of ownership structure, by a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof; or

⁶⁰ National Conference of State Legislatures, *State Laws on Direct Sales*, available at <https://www.wispolitics.com/wp-content/uploads/2021/08/State-Laws-on-Direct-Sales.pdf> (last visited April 5, 2023).

⁶¹ *Id.*

⁶² *Id.*

- Has more than 30 percent of his or her equity interest directly or indirectly controlled or owned, beneficially or of record, through any form of ownership structure, by one or more persons who also directly or indirectly control or own, beneficially or of record, more than 30 percent of equity interests of a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof.

However, the bill provides exceptions for certain common entities of distributors. An entity that would otherwise be considered a common entity of a distributor is not considered a common entity of the distributor if:

- The distributor that the entity is related to was a licensed distributor on March 1, 2023;
- The entity is not a common entity of a manufacturer or importer; and
- The distributor is not, and has never been, a common entity of a manufacturer or importer.

The bill deletes the provision in the definition of “common entity” that includes a person who shares directors or officers or partners with a manufacturer.

The bill defines an “independent person” as a person who is not an agent, parent, subsidiary, common entity, officer, director, or employed representative of a licensee, manufacturer, importer, or distributor.

The bill defines a “motor vehicle dealer association” as a not-for-profit entity organized under the laws of this state which:

- Is qualified for tax-exempt status under s. 501(c)(6) of the Internal Revenue Code;
- Acts as a trade association that primarily represents the interests of franchised motor vehicle dealers; and
- Has a membership of at least 500 franchised motor vehicle dealers.

The bill expands the definition of “sell,” “selling,” “sold,” “exchange,” “retail sales,” and “leases,” as follows:

- Includes:
 - Accepting a deposit or receiving a payment for the purchase, lease, or other use of a motor vehicle, but does not include facilitating a motor vehicle dealer’s acceptance of a deposit or receipt of a payment from a consumer and does not include receiving payment under a installment sale contract;
 - Accepting a reservation from a retail consumer for a specific motor vehicle identified by a vehicle identification number or other product identifier;
 - Setting the retail price for the purchase, lease, or other use of a motor vehicle, but does not include setting a manufacturer’s suggested retail price;
 - Offering or negotiating with a retail consumer the terms for the purchase, lease, or other use of a motor vehicle;
 - Offering or negotiating with a retail consumer the value of a motor vehicle being traded in as part of the purchase, lease, or other use of a motor vehicle, but does not include a website or other means of electronic communication that identifies to a consumer a conditional trade-in value that is not binding on a motor vehicle dealer;
- Clarifies that the reference to a “retail customer” refers to a “retail consumer” in the provision describing a 12-month lease, and that the definition does not include administering

lease agreements, taking assignments of leases, performing required actions pursuant to such leases, or receiving payments under a lease agreement originated by a motor vehicle dealer; and

- Removes a provision that exempts the establishment of a price for sale under certain circumstances from the definition of sell.

Legislative Intent

The bill adds to the statement of legislative intent that ss. 320.61-320.70, F.S., are intended to apply solely to the licensing of manufacturers, factory branches, distributors, and importers and do not apply to non-motor-vehicle-related businesses.

Grounds for Denial, Suspension, or Revocation of a License

The bill includes additional actions that constitute grounds for which a license of a motor vehicle manufacturer, distributor, or importer may be denied, suspended, or revoked, as follows:

- Conditionally or unconditionally reserving a specific motor vehicle identified by a vehicle identification number or other unique identifier for a specifically named person, except for purposes of replacing a consumer's vehicle pursuant to chapter 681, F.S., relating to motor vehicle sale warranties;
- Requiring or incentivizing a motor vehicle dealer to sell or lease, or to negotiate the sale or lease of, a specific motor vehicle identified by a vehicle identification number or other unique identifier to a specifically named person; or
- Requiring or incentivizing a motor vehicle dealer to sell or lease a motor vehicle at a specified price or profit margin, or restricting the price at which a motor vehicle dealer may sell a motor vehicle.

The bill revises the term "unfair" for purposes of this provision to include using the number of motor vehicles pre-ordered or reserved by consumers as a factor in determining the allocation of motor vehicles to motor vehicle dealers.

The bill revises the violation criteria related to competition, as follows:

- Specifies that it is a violation for the applicant or licensee to engage in any of the activities of a motor vehicle dealer as defined in s. 320.60, F.S.
- Creates an exception for the remote electronic transmission of a permanent or temporary motor vehicle feature or improvement.

The bill revises the violation criteria relating to selling a motor vehicle to any retail consumer in the state except through a motor vehicle dealer holding a franchise agreement for the line-make that includes the motor vehicle, as follows:

- Prohibits the applicant or licensee, or a common entity thereof, from selling or leasing a motor vehicle of a line-make manufactured, imported, or distributed by the applicant or licensee.
- Prohibits, for a motor vehicle of such line-make, activation for a fee or sale of, any permanent or temporary motor vehicle feature or improvement, to any retail consumer in the state except through a motor vehicle dealer properly licensed and holding a franchise agreement for the line-make that includes the motor vehicle.

- Provides an exception if the feature or improvement is provided directly to the motor vehicle through remote electronic transmission. Requires, if such motor vehicle was sold or leased as new by a franchised motor vehicle dealer in this state within three years before such remote electronic transmission, the applicant, licensee, or common entity thereof must pay such franchised motor vehicle dealer a minimum of eight percent of the payment received for the feature or improvement. Payments must be made to the dealer within 30 days of the date of sale of the feature or improvement.

The bill provides that the term “feature or improvement” includes the activation or use of motor vehicle components or hardware, but does not include services that require transmission of data or information to or from the motor vehicle while the service is being used.

Restriction on Ownership of Dealerships

The bill revises the restriction on ownership of dealerships by licensees, distributors, manufacturers, or agents of a manufacturer or distributor, or any parent, subsidiary, common entity, or officer or representative of the licensee, as follows:

- Adds “importer” to the list of entities that are restricted;
- Specifies that a manufacturer, importer, or distributor may not directly or indirectly own, operate, or control by contract, agreement, or otherwise a motor vehicle dealership for any line-make in this state if the licensee, manufacturer, importer, or distributor has manufactured, imported, or distributed motor vehicles of any line-make which have been offered for sale under a franchise agreement in this state with an independent person;
- Specifies that a person not prohibited from owning, operating, or controlling a motor vehicle dealership may be issued a motor vehicle dealer license; and
- Specifies that a person prohibited from owning, operating, or controlling a motor vehicle dealership may not be issued a motor vehicle dealer license.

The bill limits the administrative authority of the DHSMV to provide an exception to the ownership requirements in situations where no independent person is available in the community or territory to own and operate a motor vehicle dealership in a manner consistent with the public interest. The bill:

- Specifies that the DHSMV’s authority only applies in these situations if the motor vehicle dealership sells motor vehicles of a line-make which, at the time of the hearing, are offered for sale by at least one other existing motor vehicle dealership not owned, operated, or controlled by:
 - The licensee;
 - An officer or employed representative of the licensee;
 - A parent, subsidiary, or common entity of the licensee; or
 - A manufacturer, an importer, or a distributor.

The bill clarifies that dealerships that are owned and operated under any of the three exceptions to the restriction on dealership ownership requirements must be continually made available for sale to an independent person at a fair and reasonable price.

The bill also provides that neither a distributor nor an affiliate thereof may be licensed as a motor vehicle dealer or own or operate a dealership that sells or services motor vehicles of the line-make of motor vehicles distributed by the distributor.

DHSMV Inquiry of Written Complaints

The bill requires the DHSMV to conduct an inquiry of a manufacturer relating to a written complaint alleging a violation of any provision of the Act is made by a Florida-franchised motor vehicle dealer or a motor vehicle dealer association with at least one member with a current franchise agreement issued by the manufacturer.

The DHSMV may use its subpoena power to compel production of, inspect pertinent books, records, letters, and contracts of a licensee, and compel attendance of witnesses at deposition.

The DHSMV must commence the inquiry within 30 days after receipt of the written complaint, and may allow the licensee subject of the complaint no more than 60 days to provide a written response. Within, 30 days following the deadline to receive a written response, the DHSMV must provide a written response to the complainant stating whether the DHSMV intends to take action against the manufacturer and what action the DHSMV intends to take. Such actions may include license suspension or revocation; denial of a license renewal application; assessment, imposition, levy, and collection of an appropriate civil fine; or instituting a civil action for issuance of an injunction.

The bill takes effect July 1, 2023.

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:

The bill appears to apply only prospectively.⁶³ Accordingly, it would apply only to contracts entered into after the bill's effective date.⁶⁴ Thus, the bill does not appear to impair existing contracts in violation of the contracts clauses of the Florida Constitution or the United States Constitution.⁶⁵

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

None.

B. Private Sector Impact:

The bill appears to further prevent manufacturers with established dealer franchises from conducting direct-to-consumer sales or operating a dealership regardless of the type of product being sold. Some manufacturers have indicated an intent to separate their electric vehicle and internal combustion vehicle business models, similar to how they currently separate cars and trucks, and some plan to offer a business model that is a hybrid between the current model and the direct-to-consumer model used by some EV manufacturers.

There is debate about the economic impacts from allowing manufacturers to sell their vehicles directly to consumers or changing current practices. Proponents generally argue that the direct sales model lowers end prices for consumers, increases consumer choice between industry brands, and gives manufacturers greater control over marketing and sales. Opponents argue that the model reduces price competition, lowers consumer safety, and reduces investments in local communities.⁶⁶

The Federal Trade Commission (FTC) has advocated relaxing state franchise laws so that manufacturers can create new, direct-to-consumer business models: "States should allow consumers to choose not only the cars they buy, but also how they buy them."⁶⁷

⁶³ See, e.g., *Yamaha Parts Distributors Inc. v. Ehrman*, 316 So. 2d 557, 559 ("Florida legislation is presumed to operate prospectively unless there exists a showing on the face of the law that retroactive application is intended."); *Young v. Altenhaus*, 472 So. 2d 1152, 1153 (Fla. 1985) (stating that "in the absence of an explicit legislative expression to the contrary, a substantive law is to be construed as having prospective effect only."); *Fla. Ins. Guar. Ass'n., Inc. v. Devon Neighborhood Ass'n., Inc.* 67 So. 3d 187, 196 (Fla. 2011) (stating that the inclusion of effective date generally rebuts intent for retroactive application of law).

⁶⁴ See, e.g., *Yamaha Parts Distributors Inc. v. Ehrman*, 316 So. 2d 557, 559 (stating that a law affecting contracts which applies prospectively does not apply to contracts entered before the law's effective date); *State Farm Mut. Auto. Ins. Co. v. Hassen*, 650 So. 2d 128, 134 (Fla. 2d DCA 1995) (inferring that prospective application of a law affecting contracts means applying it only to contracts arising after the law's effective date).

⁶⁵ See Fla. Const. art. I s. 10; U.S. Const. art. I s. 10.

⁶⁶ Connecticut General Assembly, Office of Legislative Research, *Arguments For and Against Direct Sales by Motor Vehicle Manufacturers* (Feb. 27, 2019), available at <https://www.cga.ct.gov/2019/rpt/pdf/2019-R-0088.pdf> (last visited April 5, 2023).

⁶⁷ Marina, et al., *Direct-to-consumer auto sales: It's not just about Tesla*, Federal Trade Commission (May 11, 2015), available at <https://www.ftc.gov/enforcement/competition-matters/2015/05/direct-consumer-auto-sales-its-not-just-about-tesla> (last visited April 5, 2023).

The FTC has also proposed new rules aimed at combating rising consumer prices.⁶⁸ The FTC's new rules propose to ban deceptive advertising in which dealerships market cars as cheaper than they actually intend to sell them for; ban "junk fees for fraudulent add-on products and services that provide no benefit to the consumer"; and require dealerships to disclose all upfront costs and conditions for buying their vehicles.⁶⁹

The National Auto Dealers Association (NADA) opposes these proposed rules: "The FTC's proposed rules would cause great harm to consumers by significantly extending transaction times, making the customer experience much more complex, inefficient, and increasing prices. The NADA again urges the FTC to go back to the drawing board before forcing implementation of a series of unstudied and untested mandates that will have such significant negative impacts on customers."⁷⁰

C. Government Sector Impact:

The bill may have a negative indeterminate fiscal impact on the DHSMV to the extent that the bill results in increased written complaints against manufacturers. Under the bill, the DHSMV will be required to conduct an inquiry of a manufacturer if a written complaint is made against such manufacturer.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 320.60, 320.605, 320.64, 320.642, 320.645, 320.67, 681.102 and 681.113.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Transportation on March 20, 2023:

The CS makes numerous changes to the bill. Specifically, it:

- Clarifies that certain entities that would otherwise be considered a common entity of a motor vehicle distributor are not a common entity under specified conditions.

⁶⁸ Federal Trade Commission, *FTC Proposes Rule to Ban Junk Fees, Bait-and-Switch Tactics Plaguing Car Buyers* (June 23, 2022, available at <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-proposes-rule-ban-junk-fees-bait-switch-tactics-plaguing-car-buyers> (last visited April 5, 2023)).

⁶⁹ *Id.*

⁷⁰ Rosalsky, *supra* note 9.

- Revises the definition of “sell,” “selling,” “sold,” “exchange,” “retail sales,” and “leases” to except facilitating a motor vehicle dealer’s acceptance of a deposit or receipt of a payment from a customer, and excludes a website or other electronic communication that identifies certain consumer-related information from the definition.
- Adds to the statement of legislative intent that ss. 320.61-320.70, F.S., are intended to apply solely to the licensing of motor vehicles dealers and manufacturers and do not apply to non-motor-vehicle-related businesses.
- Prohibits a manufacturer from restricting the price that a dealer may sell or lease a vehicle.
- Revises the provision relating to the activation for a fee or sale of a motor vehicle accessory, option, add-on, feature, improvement, or upgrade to provide that the manufacturer must pay a Florida-franchised motor vehicle dealer a percentage of the gross sale price for the accessory, option, add-on, feature, improvement, or upgrade which is commensurate with the dealer margin structure applicable to the vehicle.
- Provides that neither a distributor nor an affiliate thereof may be licensed as a motor vehicle dealer or own or operate a dealership that sells or services motor vehicles of the line-make of motor vehicles distributed by the distributor.
- Requires the DHSMV to conduct an inquiry of a manufacturer relating to a written complaint alleging a violation of any provision of the Act is made by a Florida-franchised motor vehicle dealer or a motor vehicle dealer association with at least one member with a current franchise agreement issued by the manufacturer.
- Provides a timeframe for such inquiry and requires a written response to the complainant stating whether DHSMV intends to take action against the manufacturer. If DHSMV determines the manufacturer has violated the Act, DHSMV must take appropriate action against the licensee. If the complainant is a motor vehicle dealer association and the inquiry determines a violation has occurred, the motor vehicle dealer association may seek a declaration and adjudication through an administrative hearing.
- Removes provisions from the bill authorizing motor vehicle dealer associations to seek injunctive relief against manufacturers in specified situations.

CS by Commerce and Tourism on April 4, 2023:

The CS makes the following changes to the bill:

- Clarifies that a manufacturer receiving payment under a retail installment sale contract is not prohibited under the bill;
- Adds to the legislative intent section that the Florida Automobile Dealers Act applies solely to the licensing of manufacturers, factory branches, distributors, and importers and does not apply to non-motor-vehicle-related businesses;
- Removes the motor vehicle dealer association’s standing to intervene in hearings pursuant to restrictions upon ownership of a dealership; and
- Modifies changes made by the bill to the remote electronic transmission of permanent or temporary features or improvements of a motor vehicle by:
 - Providing that the manufacturer or common entity thereof is prohibited from selling or activating such feature or improvement for a fee directly to the retail consumer unless the manufacturer or common entity provides the dealer who sold

the vehicle a minimum of eight percent of the payment received for such feature or improvement on any vehicle sold or leased as new in this state within the preceding 3-year period.

- Clarifying the term “feature or improvement” includes the activation or use of motor vehicle components or hardware, but does not includes services that require the transmission of data or information to or from the motor vehicle while the service is being used.
- Requires such payments be made to the dealer within 30 days of the date of sale of the feature or improvement.

B. Amendments:

None.



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LEGISLATIVE ACTION

	Senate	House
Comm: RCS	.	.
04/04/2023	.	.
	.	.
	.	.

The Committee on Commerce and Tourism (Avila) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsections (8), (9), (10), (11), (12), (13), (14), (15), and (16) of section 320.60, Florida Statutes, are redesignated as subsections (9), (11), (12), (13), (14), (18), (10), (16), and (17), respectively, new subsections (8) and (14) are added to that section, and subsections (2) and present subsection (15) of that section are amended, to read:

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320.60 Definitions for ss. 320.61-320.70.—Whenever used in ss. 320.61-320.70, unless the context otherwise requires, the following words and terms have the following meanings:

(2) "Common entity" means a person:

(a) Who is directly or indirectly either controlled by or has more than 30 percent of its equity interest directly or indirectly owned, beneficially or of record, through any form of ownership structure, by a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof.

(b) Who has more than 30 percent of its equity interest directly or indirectly controlled or owned, beneficially or of record, through any form of ownership structure, by one or more persons who also directly or indirectly control or own, beneficially or of record, more than 30 40 percent of the voting equity interests of a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof, or

(b) Who shares directors or officers or partners with a manufacturer.

(c) Notwithstanding the foregoing, an entity that would otherwise be considered a common entity of a distributor under paragraph (a) or paragraph (b) because of its relation to a distributor is not considered a common entity of that distributor if:

1. The distributor that the entity is related to was a licensed distributor on March 1, 2023;

2. The entity is not a common entity of a manufacturer or importer; and

3. The distributor that the entity is related to is not, and has never been, a common entity of a manufacturer or

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importer.

(8) "Independent person" means a person who is not an agent, parent, subsidiary, common entity, officer, director, or an employed representative of a licensee, manufacturer, importer, or distributor.

(14) "Motor vehicle dealer association" means a not-for-profit entity organized under the laws of this state and qualified as tax-exempt under s. 501(c)(6) of the Internal Revenue Code which acts as a trade association that primarily represents the interests of franchised motor vehicle dealers and has a membership of at least 500 franchised motor vehicle dealers as defined in s. 320.27(1)(c)1.

(16)(15) "Sell," "selling," "sold," "exchange," "retail sales," and "leases" includes:

(a) Accepting a deposit or receiving a payment for the retail purchase, lease, or other use of a motor vehicle, but does not include facilitating a motor vehicle dealer's acceptance of a deposit or receipt of a payment from a consumer and does not include receiving payment under a retail installment sale contract;

(b) Accepting a reservation from a retail consumer for a specific motor vehicle identified by a vehicle identification number or other product identifier;

(c) Setting the retail price for the purchase, lease, or other use of a motor vehicle, but does not include setting a manufacturer's suggested retail price;

(d) Offering or negotiating with a retail consumer terms for the purchase, lease, or other use of a motor vehicle;

(e) Offering or negotiating with a retail consumer a value

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for a motor vehicle being traded in as part of the purchase, lease, or other use of a motor vehicle, but does not include a website or other means of electronic communication that identifies to a consumer a conditional trade-in value and that contains language informing the consumer that the trade-in value is not binding on any motor vehicle dealer;

(f) Any transaction where the title of a motor vehicle or a used motor vehicle is transferred to a retail consumer; ~~or, and also~~

(g) Any retail lease transaction where a retail consumer ~~customer~~ leases a vehicle for a period of at least 12 months, but does not include administering lease agreements, taking assignments of leases, performing required actions pursuant to such leases, or receiving payments under a lease agreement that was originated by a motor vehicle dealer. ~~Establishing a price for sale pursuant to s. 320.64(24) does not constitute a sale or lease.~~

Section 2. Section 320.605, Florida Statutes, is amended to read:

320.605 Legislative intent.—It is the intent of the Legislature to protect the public health, safety, and welfare of the citizens of the state by regulating the licensing of motor vehicle dealers and manufacturers, maintaining competition, providing consumer protection and fair trade and providing minorities with opportunities for full participation as motor vehicle dealers. Sections 320.61-320.70 are intended to apply solely to the licensing of manufacturers, factory branches, distributors, and importers and do not apply to non-motor-vehicle-related businesses.

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98 Section 3. Subsections (18), (23), and (24) of section
99 320.64, Florida Statutes, are amended to read:
100 320.64 Denial, suspension, or revocation of license;
101 grounds.—A license of a licensee under s. 320.61 may be denied,
102 suspended, or revoked within the entire state or at any specific
103 location or locations within the state at which the applicant or
104 licensee engages or proposes to engage in business, upon proof
105 that the section was violated with sufficient frequency to
106 establish a pattern of wrongdoing, and a licensee or applicant
107 shall be liable for claims and remedies provided in ss. 320.695
108 and 320.697 for any violation of any of the following
109 provisions. A licensee is prohibited from committing the
110 following acts:
111 (18) The applicant or licensee has established a system of
112 motor vehicle allocation or distribution or has implemented a
113 system of allocation or distribution of motor vehicles to one or
114 more of its franchised motor vehicle dealers which:
115 (a) Reduces or alters allocations or supplies of new motor
116 vehicles to the dealer to achieve, directly or indirectly, a
117 purpose that is prohibited by ss. 320.60-320.70;
118 (b) Conditionally or unconditionally reserves a specific
119 motor vehicle identified by vehicle identification number or
120 other unique identifier for a specifically named person, except
121 for purposes of replacing a consumer's vehicle pursuant to
122 chapter 681;
123 (c) Requires or incentivizes motor vehicle dealers to sell
124 or lease, or to negotiate the sale or lease of, a specific motor
125 vehicle identified by vehicle identification number or other
126 unique identifier to a specifically named person;

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127 (d) Requires or incentivizes motor vehicle dealers to sell
128 or lease a motor vehicle at a specified price or profit margin
129 or restricts the price at which a motor vehicle dealer may sell
130 or lease a motor vehicle; or
131 (e) Is, ~~or which~~ otherwise is unfair, inequitable,
132 unreasonably discriminatory, or not supportable by reason and
133 good cause after considering the equities of the affected motor
134 vehicles dealer or dealers. As used in this paragraph, "unfair"
135 includes, but is not limited to, refusing or failing to offer to
136 any dealer an equitable supply of new vehicles under its
137 franchise, by model, mix, or color, as the licensee offers or
138 allocates to its other same line-make dealers in this state or
139 using the number of motor vehicles preordered or reserved by
140 consumers as a factor in determining the allocation of motor
141 vehicles to motor vehicle dealers.
142
143 An applicant or licensee shall maintain for 3 years records that
144 describe its methods or formula of allocation and distribution
145 of its motor vehicles and records of its actual allocation and
146 distribution of motor vehicles to its motor vehicle dealers in
147 this state. As used in this subsection, "unfair" includes,
148 without limitation, the refusal or failure to offer to any
149 dealer an equitable supply of new vehicles under its franchise,
150 by model, mix, or color as the licensee offers or allocates to
151 its other same line-make dealers in the state.
152 (23) The applicant or licensee has engaged in any of the
153 activities of a motor vehicle dealer as defined in s.
154 320.60(13)(a) and (16) or has competed or is competing with
155 respect to any activity covered by the franchise agreement with

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156 a motor vehicle dealer of the same line-make located in this
157 state with whom the applicant or licensee has entered into a
158 franchise agreement, except as permitted in s. 320.645 or in
159 subsection (24) with respect to the remote electronic
160 transmission of a permanent or temporary feature or improvement
161 of a motor vehicle.
162 (24) (a) Except as provided in paragraph (b), the applicant
163 or licensee, or common entity thereof, has sold or leased a
164 motor vehicle to any retail consumer in the state, or has sold
165 or activated for a fee to any retail consumer in this state any
166 permanent or temporary motor vehicle feature or improvement that
167 functions through hardware or components installed on the motor
168 vehicle, except through a motor vehicle dealer properly licensed
169 pursuant to s. 320.27 and holding a franchise agreement for the
170 line-make that includes the motor vehicle. Notwithstanding this
171 subsection, an applicant or a licensee, or common entity
172 thereof, may sell or activate for a fee a permanent or temporary
173 motor vehicle feature or improvement to a retail consumer in
174 this state only if the feature or improvement is provided
175 directly to the motor vehicle through remote electronic
176 transmission, provided that if such motor vehicle was sold or
177 leased as new by a motor vehicle dealer in this state within the
178 3-year period preceding such remote electronic transmission,
179 then the applicant or licensee must pay the such motor vehicle
180 dealer a minimum of 8 percent of the payment received by the
181 applicant, licensee, or common entity from the sale of the
182 feature or improvement. As used in this subsection, the term
183 "feature or improvement" includes the activation or use of motor
184 vehicle components or hardware, but does not include services

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185 that require the transmission of data or information to or from
186 the motor vehicle while the service is being used. Payments
187 required under this subsection shall be made within 30 days of
188 the date of sale of the feature or improvement.
189 (b) For motorcycle dealers, manufacturers, factory
190 branches, distributors, or importers, such applicant or licensee
191 has sold a motorcycle to any retail consumer in the state except
192 through a dealer holding a franchise agreement for the line-make
193 that includes the motorcycle.
194 (c) This subsection ~~section~~ does not apply to sales by the
195 applicant or licensee of motor vehicles to its current
196 employees, employees of companies affiliated by common
197 ownership, charitable not-for-profit organizations, and the
198 Federal Government.
199
200 A motor vehicle dealer who can demonstrate that a violation of,
201 or failure to comply with, any of the preceding provisions by an
202 applicant or licensee will or may adversely and pecuniarily
203 affect the complaining dealer, shall be entitled to pursue all
204 of the remedies, procedures, and rights of recovery available
205 under ss. 320.695 and 320.697.
206 Section 4. Subsection (6) of section 320.642, Florida
207 Statutes, is amended to read:
208 320.642 Dealer licenses in areas previously served;
209 procedure.—
210 (6) When a proposed addition or relocation concerns a
211 dealership that performs or is to perform only service, as
212 defined in s. 320.60 ~~s. 320.60(16)~~, and will not or does not
213 sell or lease new motor vehicles, as defined in s. 320.60 ~~s.~~

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214 ~~320.60(15)~~, the proposal shall be subject to notice and protest
215 pursuant to the provisions of this section.
216 (a) Standing to protest the addition or relocation of a
217 service-only dealership shall be limited to those instances in
218 which the applicable mileage requirement established in
219 subparagraphs (3) (a)2. and (3) (b)1. is met.
220 (b) The addition or relocation of a service-only dealership
221 shall not be subject to protest if:
222 1. The applicant for the service-only dealership location
223 is an existing motor vehicle dealer of the same line-make as the
224 proposed additional or relocated service-only dealership;
225 2. There is no existing dealer of the same line-make closer
226 than the applicant to the proposed location of the additional or
227 relocated service-only dealership; and
228 3. The proposed location of the additional or relocated
229 service-only dealership is at least 7 miles from all existing
230 motor vehicle dealerships of the same line-make, other than
231 motor vehicle dealerships owned by the applicant.
232 (c) In determining whether existing franchised motor
233 vehicle dealers are providing adequate representations in the
234 community or territory for the line-make in question in a
235 protest of the proposed addition or relocation of a service-only
236 dealership, the department may consider the elements set forth
237 in paragraph (2) (b), provided:
238 1. With respect to subparagraph (2) (b)1., only the impact
239 as it relates to service may be considered;
240 2. Subparagraph (2) (b)3. shall not be considered;
241 3. With respect to subparagraph (2) (b)9., only service
242 facilities shall be considered; and

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243 4. With respect to subparagraph (2) (b)11., only the volume
244 of service business transacted shall be considered.
245 (d) If an application for a service-only dealership is
246 granted, the department shall issue a license which permits only
247 service, as defined in s. 320.60 ~~s. 320.60(16)~~, and does not
248 permit the selling or leasing of new motor vehicles, as defined
249 in s. 320.60 ~~s. 320.60(15)~~. If a service-only dealership
250 subsequently seeks to sell new motor vehicles at its location,
251 the notice and protest provisions of this section shall apply.
252 Section 5. Subsection (1), paragraph (a) of subsection (2),
253 and subsection (4) of section 320.645, Florida Statutes, are
254 amended to read:
255 320.645 Restriction upon ownership of dealership by
256 licensee.—
257 (1) ~~A~~ ~~No~~ licensee, ~~manufacturer, importer, or distributor,~~
258 ~~manufacturer,~~ or agent of the licensee, a manufacturer,
259 importer, or distributor, or any parent, subsidiary, common
260 entity, an officer, or employed representative of the licensee,
261 manufacturer, importer, or distributor may not directly or
262 indirectly shall own, or operate, or control, by contract,
263 agreement, or otherwise either directly or indirectly, a motor
264 vehicle dealership for any line-make in this state if the
265 licensee, manufacturer, importer, or distributor has
266 manufactured, imported, or distributed for the sale or service
267 of motor vehicles of any line-make which have been or are
268 offered for sale under a franchise agreement with a motor
269 vehicle dealer in this state with an independent person. Any
270 person who is not prohibited by this section from owning,
271 operating, or controlling a motor vehicle dealership may be

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272 issued a license pursuant to s. 320.27. Any person prohibited by
273 this section from owning, operating, or controlling a motor
274 vehicle dealership. A licensee may not be issued a motor vehicle
275 dealer license pursuant to s. 320.27. However, a no such
276 licensee subject to the prohibition in this section is not will
277 be deemed to be in violation of this section:
278 (a) When operating a motor vehicle dealership for a
279 temporary period, not to exceed 1 year, during the transition
280 from one owner of the motor vehicle dealership to another;
281 (b) When operating a motor vehicle dealership temporarily
282 for a reasonable period for the exclusive purpose of broadening
283 the diversity of its dealer body and enhancing opportunities for
284 qualified persons who are part of a group that has historically
285 been underrepresented in its dealer body, or for other qualified
286 persons who the licensee deems lack the resources to purchase or
287 capitalize the dealership outright, in a bona fide relationship
288 with an independent person, other than a licensee or its agent
289 or affiliate, who has made a significant investment that is
290 subject to loss in the dealership within the dealership's first
291 year of operation and who can reasonably expect to acquire full
292 ownership of the dealership on reasonable terms and conditions;
293 or
294 (c) If the department determines, after a hearing on the
295 matter, pursuant to chapter 120, at the request of any person,
296 that there is no independent person available in the community
297 or territory to own and operate the motor vehicle dealership in
298 a manner consistent with the public interest. This paragraph
299 shall apply only if the motor vehicle dealership at issue sells
300 motor vehicles of a line-make that, at the time of the hearing,

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301 is offered for sale by at least one other existing motor vehicle
302 dealership not owned, operated, or controlled by the licensee,
303 an officer or employed representative of the licensee, a parent,
304 subsidiary, or common entity of the licensee, or a manufacturer,
305 importer, or distributor.
306
307 In the any such case of a, the licensee must continue to make
308 the motor vehicle dealership owned or operated pursuant to
309 paragraph (a), paragraph (b), or paragraph (c), the dealership
310 must be continually made available for sale to an independent
311 person at a fair and reasonable price. Approval of the sale of
312 such a motor vehicle dealership to a proposed motor vehicle
313 dealer shall not be unreasonably withheld.
314 (2) As used in this section, the term:
315 (a) "Independent person" is a person who is not an officer,
316 director, or employee of the licensee.
317 (4) Nothing in this chapter shall prohibit a distributor as
318 defined in s. 320.60 ~~s. 320.60(5)~~ or common entity an affiliate
319 thereof that is not a manufacturer or importer, a division of a
320 manufacturer or importer, an entity that is controlled by a
321 manufacturer or importer, or a common entity of a manufacturer
322 or importer, and that is not owned, in whole or in part,
323 directly or indirectly, by a manufacturer or importer, as
324 defined in s. 320.60 ~~s. 320.60(9)~~, from receiving a license or
325 licenses as defined in s. 320.27 and owning and operating a
326 motor vehicle dealership or dealerships that sell or service
327 motor vehicles other than any line-make of motor vehicles
328 distributed by the distributor. Neither a distributor nor an
329 affiliate thereof may receive a license pursuant to s. 320.27

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330 for a motor vehicle dealership, or own or operate a motor
331 vehicle dealership, that sells or services motor vehicles of the
332 line-make of motor vehicles distributed by the distributor.
333 Section 6. Section 320.67, Florida Statutes, is amended to
334 read:
335 320.67 Inquiry and inspection of books or other documents
336 of licensee.—
337 (1) The department shall conduct an inquiry of a licensee
338 may inspect the pertinent books, records, letters, and contracts
339 of a licensee relating to any written complaint alleging a
340 violation of any provision of ss. 320.60-320.70 made to it
341 against such licensee made by a motor vehicle dealer with a
342 current franchise agreement issued by the licensee, or a motor
343 vehicle dealer association with at least one member with a
344 current franchise agreement issued by the licensee.
345 (2) In the exercise of its duties under this section, the
346 department is granted and authorized to exercise the power of
347 subpoena for the purposes of compelling production of and
348 inspecting pertinent books, records, letters, and contracts of a
349 licensee and compelling the attendance of witnesses at
350 deposition and the production of any documentary evidence
351 necessary to the disposition by it of any written complaint
352 under this section. The inquiry required by this section must be
353 commenced within 30 days after receipt of the written complaint.
354 The department may allow the licensee that is the subject of the
355 complaint no more than 60 days from commencement of the inquiry
356 to provide a written response. Within 30 days after the deadline
357 for a written response by the licensee, the department must
358 provide a written response to the complainant stating whether

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359 the department intends to take action against the licensee under
360 subsection (3) and, if so, what action the department intends to
361 take. Any information obtained may not be used against the
362 licensee as the basis for a criminal prosecution under the laws
363 of this state.
364 (3) If, as the result of an inquiry conducted under this
365 section, the department determines that a licensee has violated
366 ss. 320.60-320.70, the department must take appropriate action
367 against the licensee, which may include license suspension or
368 revocation; denial of a license renewal application; assessment,
369 imposition, levy, and collection of an appropriate civil fine;
370 or instituting a civil action for issuance of an injunction
371 pursuant to s. 320.695.
372 (4) This section does not alter or affect the rights of a
373 motor vehicle dealer to bring a claim or action against a
374 licensee pursuant to any other provision of ss. 320.60-320.70.
375 Section 7. Subsection (13) of section 681.102, Florida
376 Statutes, is amended to read:
377 681.102 Definitions.—As used in this chapter, the term:
378 (13) "Manufacturer" means any person, whether a resident or
379 nonresident of this state, who manufactures or assembles motor
380 vehicles, or who manufactures or assembles chassis for
381 recreational vehicles, or who manufactures or installs on
382 previously assembled truck or recreational vehicle chassis
383 special bodies or equipment which, when installed, forms an
384 integral part of the motor vehicle, or a distributor or an
385 importer as those terms are defined in s. 320.60 or 320.60(5),
386 or an importer as defined in s. 320.60(7). A dealer as defined
387 in s. 320.60 or 320.60(11) (a) shall not be deemed to be a

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388 manufacturer, distributor, or importer as provided in this
389 section.
390 Section 8. Section 681.113, Florida Statutes, is amended to
391 read:
392 681.113 Dealer liability.—Except as provided in ss.
393 681.103(3) and 681.114(2), nothing in this chapter imposes any
394 liability on a dealer as defined in s. 320.60 or 320.60(11) (a)
395 or creates a cause of action by a consumer against a dealer,
396 except for written express warranties made by the dealer apart
397 from the manufacturer's warranties. A dealer may not be made a
398 party defendant in any action involving or relating to this
399 chapter, except as provided in this section. The manufacturer
400 shall not charge back or require reimbursement by the dealer for
401 any costs, including, but not limited to, any refunds or vehicle
402 replacements, incurred by the manufacturer arising out of this
403 chapter, in the absence of evidence that the related repairs had
404 been carried out by the dealer in a manner substantially
405 inconsistent with the manufacturer's published instructions.
406 Section 9. This act shall take effect July 1, 2023.
407
408 ===== T I T L E A M E N D M E N T =====
409 And the title is amended as follows:
410 Delete everything before the enacting clause
411 and insert:
412 A bill to be entitled
413 An act relating to motor vehicle sales; amending s.
414 320.60, F.S.; revising and providing definitions;
415 amending s. 320.605, F.S.; providing legislative
416 intent; amending s. 320.64, F.S.; prohibiting an

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417 applicant or a licensee from certain actions in the
418 allocation or distribution of motor vehicles to
419 franchised motor vehicle dealers; revising the
420 definition of the term "unfair"; prohibiting
421 applicants and licensees from engaging in certain
422 activities of motor vehicle dealers; authorizing an
423 applicant or licensee, or common entity thereof, to
424 sell or activate certain motor vehicle features or
425 improvements through remote electronic transmission;
426 providing for a payment of the percentage of such sale
427 or activation to a motor vehicle dealer; providing
428 applicability; amending s. 320.642, F.S.; conforming
429 cross-references; amending s. 320.645, F.S.; revising
430 provisions prohibiting a manufacturer, a distributor,
431 or an importer from owning, operating, or controlling
432 a motor vehicle dealership in this state; specifying
433 when certain licenses may be and are prohibited from
434 being issued; revising exceptions to certain
435 prohibitions on licensees; providing applicability;
436 making technical changes; deleting the definition of
437 the term "independent person"; conforming cross-
438 references; amending s. 320.67, F.S.; requiring the
439 Department of Highway Safety and Motor Vehicles to
440 conduct an inquiry relating to certain written
441 complaints; providing purposes of the department's use
442 of a subpoena; authorizing the department to allow a
443 written response to the complaint; requiring the
444 department to commence the inquiry by a certain
445 timeframe; requiring the department to provide a

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446 certain written response to the complainant by a
447 certain date; requiring the department to take certain
448 action if the department determines that a licensee
449 violated certain statutes; providing construction;
450 amending ss. 681.102 and 681.113, F.S.; conforming
451 cross-references; providing an effective date.

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LEGISLATIVE ACTION

Senate		House
Comm: FAV	.	
04/04/2023	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Avila) recommended the following:

Senate Amendment to Amendment (224252) (with title amendment)

1 Delete lines 19 - 194
2 and insert:
3 distributor, or a licensee, or an affiliate thereof; or
4 (b) Who has more than 30 percent of its equity interest
5 directly or indirectly controlled or owned, beneficially or of
6 record, through any form of ownership structure, by one or more
7 persons who also directly or indirectly control or own,

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11 beneficially or of record, more than 30 40 percent of the voting
12 equity interests of a manufacturer, an importer, a distributor,
13 or a licensee, or an affiliate thereof; or
14 (b) Who shares directors or officers or partners with a
15 manufacturer.
16 (c) Notwithstanding the foregoing, an entity that would
17 otherwise be considered a common entity of a distributor under
18 paragraph (a) or paragraph (b) because of its relation to a
19 distributor is not considered a common entity of that
20 distributor if:
21 1. The distributor that the entity is related to was a
22 licensed distributor on March 1, 2023;
23 2. The entity is not a common entity of a manufacturer or
24 importer; and
25 3. The distributor that the entity is related to is not,
26 and has never been, a common entity of a manufacturer or
27 importer.
28 (8) "Independent person" means a person who is not an
29 agent, parent, subsidiary, common entity, officer, director, or
30 an employed representative of a licensee, manufacturer,
31 importer, or distributor.
32 (14) "Motor vehicle dealer association" means a not-for-
33 profit entity organized under the laws of this state and
34 qualified as tax-exempt under s. 501(c) (6) of the Internal
35 Revenue Code which acts as a trade association that primarily
36 represents the interests of franchised motor vehicle dealers and
37 has a membership of at least 500 franchised motor vehicle
38 dealers as defined in s. 320.27(1) (c) 1.
39 (16) (15) "Sell," "selling," "sold," "exchange," "retail

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40 sales," and "leases" includes:
41 (a) Accepting a deposit or receiving a payment for the
42 retail purchase, lease, or other use of a motor vehicle, but
43 does not include facilitating a motor vehicle dealer's
44 acceptance of a deposit or receipt of a payment from a consumer,
45 and does not include receiving payment under a retail
46 installment sale contract;
47 (b) Accepting a reservation from a retail consumer for a
48 specific motor vehicle identified by a vehicle identification
49 number or other product identifier;
50 (c) Setting the retail price for the purchase, lease, or
51 other use of a motor vehicle, but does not include setting a
52 Manufacturer's Suggested Retail Price;
53 (d) Offering or negotiating with a retail consumer terms
54 for the purchase, lease, or other use of a motor vehicle;
55 (e) Offering or negotiating with a retail consumer a value
56 for a motor vehicle being traded in as part of the purchase,
57 lease, or other use of a motor vehicle, but does not include a
58 website or other means of electronic communication that
59 identifies to a consumer a conditional trade-in value and that
60 contains language informing the consumer that the trade-in value
61 is not binding on any motor vehicle dealer;
62 (f) Any transaction where the title of a motor vehicle or a
63 used motor vehicle is transferred to a retail consumer; or, and
64 also
65 (g) Any retail lease transaction where a retail consumer
66 customer leases a vehicle for a period of at least 12 months,
67 but does not include administering lease agreements, taking
68 assignments of leases, performing required actions pursuant to

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69 such leases, or receiving payments under a lease agreement that
70 was originated by a motor vehicle dealer, ~~establishing a price~~
71 ~~for sale pursuant to s. 320.64(24) does not constitute a sale or~~
72 ~~lease.~~
73 Section 2. Section 320.605, Florida Statutes, is amended to
74 read:
75 320.605 Legislative intent.—It is the intent of the
76 Legislature to protect the public health, safety, and welfare of
77 the citizens of the state by regulating the licensing of motor
78 vehicle dealers and manufacturers, maintaining competition,
79 providing consumer protection and fair trade and providing
80 minorities with opportunities for full participation as motor
81 vehicle dealers. Sections 320.61-320.70 are intended to apply
82 solely to the licensing of manufacturers, factory branches,
83 distributors, and importers and do not apply to non-motor-
84 vehicle-related businesses.
85 Section 3. Subsections (18), (23), and (24) of section
86 320.64, Florida Statutes, are amended to read:
87 320.64 Denial, suspension, or revocation of license;
88 grounds.—A license of a licensee under s. 320.61 may be denied,
89 suspended, or revoked within the entire state or at any specific
90 location or locations within the state at which the applicant or
91 licensee engages or proposes to engage in business, upon proof
92 that the section was violated with sufficient frequency to
93 establish a pattern of wrongdoing, and a licensee or applicant
94 shall be liable for claims and remedies provided in ss. 320.695
95 and 320.697 for any violation of any of the following
96 provisions. A licensee is prohibited from committing the
97 following acts:

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98 (18) The applicant or licensee has established a system of
99 motor vehicle allocation or distribution or has implemented a
100 system of allocation or distribution of motor vehicles to one or
101 more of its franchised motor vehicle dealers which;
102 (a) Reduces or alters allocations or supplies of new motor
103 vehicles to the dealer to achieve, directly or indirectly, a
104 purpose that is prohibited by ss. 320.60-320.70;
105 (b) Conditionally or unconditionally reserves a specific
106 motor vehicle identified by vehicle identification number or
107 other unique identifier for a specifically named person, except
108 for purposes of replacing a consumer's vehicle pursuant to
109 chapter 681;
110 (c) Requires or incentivizes motor vehicle dealers to sell
111 or lease, or to negotiate the sale or lease of, a specific motor
112 vehicle identified by vehicle identification number or other
113 unique identifier to a specifically named person;
114 (d) Requires or incentivizes motor vehicle dealers to sell
115 or lease a motor vehicle at a specified price or profit margin
116 or restricts the price at which a motor vehicle dealer may sell
117 or lease a motor vehicle; or
118 (e) ~~Is, or which otherwise is~~ unfair, inequitable,
119 unreasonably discriminatory, or not supportable by reason and
120 good cause after considering the equities of the affected motor
121 vehicles dealer or dealers. As used in this paragraph, the term
122 "unfair" includes, but is not limited to, refusing or failing to
123 offer to any dealer an equitable supply of new vehicles under
124 its franchise, by model, mix, or color, as the licensee offers
125 or allocates to its other same line-make dealers in this state
126 or using the number of motor vehicles preordered or reserved by

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127 consumers as a factor in determining the allocation of motor
128 vehicles to motor vehicle dealers.
129
130 An applicant or licensee shall maintain for 3 years records that
131 describe its methods or formula of allocation and distribution
132 of its motor vehicles and records of its actual allocation and
133 distribution of motor vehicles to its motor vehicle dealers in
134 this state. ~~As used in this subsection, "unfair" includes,~~
135 ~~without limitation, the refusal or failure to offer to any~~
136 ~~dealer an equitable supply of new vehicles under its franchise,~~
137 ~~by model, mix, or color as the licensee offers or allocates to~~
138 ~~its other same line-make dealers in the state.~~
139 (23) The applicant or licensee has engaged in any of the
140 activities of a motor vehicle dealer as defined in s.
141 320.60(13) (a) or any activities described in s. 320.60(16) or
142 has competed or is competing with respect to any activity
143 covered by the franchise agreement with a motor vehicle dealer
144 of the same line-make located in this state with whom the
145 applicant or licensee has entered into a franchise agreement,
146 except as permitted in s. 320.645 or in subsection (24) with
147 respect to the remote electronic transmission of a permanent or
148 temporary feature or improvement of a motor vehicle.
149 (24) The applicant or licensee, or common entity thereof,
150 has sold or leased a motor vehicle to any retail consumer in
151 this state, or has sold or activated for a fee to any retail
152 consumer in the state any permanent or temporary motor vehicle
153 feature or improvement that functions through hardware or
154 components installed on the motor vehicle, except through a
155 motor vehicle dealer properly licensed pursuant to s. 320.27 and

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156 holding a franchise agreement for the line-make that includes
157 the motor vehicle. ~~Notwithstanding this subsection, an applicant~~
158 ~~or a licensee, or common entity thereof, may sell or activate~~
159 ~~for a fee a permanent or temporary motor vehicle feature or~~
160 ~~improvement to a retail consumer in this state only if the~~
161 ~~feature or improvement is provided directly to the motor vehicle~~
162 ~~through remote electronic transmission, provided that if such~~
163 ~~motor vehicle was sold or leased as new by a motor vehicle~~
164 ~~dealer in this state within the 3-year period preceding such~~
165 ~~remote electronic transmission, the applicant or licensee must~~
166 ~~pay such motor vehicle dealer a minimum of 8 percent of the~~
167 ~~payment received by the applicant, licensee, or common entity~~
168 ~~from the sale of the feature or improvement. As used in this~~
169 ~~subsection, the term "feature or improvement" includes the~~
170 ~~activation or use of motor vehicle components or hardware, but~~
171 ~~does not include services that require the transmission of data~~
172 ~~or information to or from the motor vehicle while the service is~~
173 ~~being used. Payments required under this subsection shall be~~
174 ~~made within 30 days after the date of sale of the feature or~~
175 ~~improvement. This subsection section does not apply to sales by~~
176 ~~the~~
177
178 ===== T I T L E A M E N D M E N T =====
179 And the title is amended as follows:
180 Delete lines 428 - 444
181 and insert:
182 applicability; requiring certain payments to be made
183 within a certain timeframe; amending s. 320.642, F.S. ;
184 conforming cross-references; amending s. 320.645,

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185 F.S.; revising provisions prohibiting a manufacturer,
186 a distributor, or an importer from owning, operating,
187 or controlling a motor vehicle dealership in this
188 state; specifying when certain licenses may be and are
189 prohibited from being issued; revising exceptions to
190 certain prohibitions on licensees; providing
191 applicability; making technical changes; deleting the
192 definition of the term "independent person";
193 conforming cross-references; amending s. 320.67, F.S.;
194 requiring the Department of Highway Safety and Motor
195 Vehicles to conduct an inquiry relating to certain
196 written complaints; providing purposes of the
197 department's use of a subpoena; authorizing the
198 department to allow a written response to the
199 complaint; requiring the department to commence the
200 inquiry within a certain

By the Committee on Transportation; and Senators Avila and Garcia

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1 A bill to be entitled
 2 An act relating to motor vehicle sales; amending s.
 3 320.60, F.S.; revising and providing definitions;
 4 amending s. 320.605, F.S.; providing legislative
 5 intent; amending s. 320.64, F.S.; prohibiting an
 6 applicant or a licensee from certain actions in the
 7 allocation or distribution of motor vehicles to
 8 franchised motor vehicle dealers; revising the
 9 definition of the term "unfair"; prohibiting
 10 applicants and licensees from engaging in certain
 11 activities of motor vehicle dealers; authorizing an
 12 applicant, a licensee, or their common entity to sell
 13 or activate certain motor vehicle accessories or
 14 features through remote electronic transmission;
 15 providing for revenue-sharing regarding such sale or
 16 activation; providing for the calculation of the
 17 dealer margin structure; providing applicability;
 18 amending s. 320.642, F.S.; conforming cross-
 19 references; amending s. 320.645, F.S.; revising
 20 provisions prohibiting a manufacturer, a distributor,
 21 or an importer from owning, operating, or controlling
 22 a motor vehicle dealership in this state; specifying
 23 when certain licenses may be and are prohibited from
 24 being issued; revising exceptions to certain
 25 prohibitions on licensees; providing applicability;
 26 providing that a motor vehicle dealer association has
 27 standing to intervene under certain circumstances;
 28 making technical changes; deleting the definition of
 29 the term "independent person"; conforming cross-

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

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30 references; amending s. 320.67, F.S.; requiring the
 31 Department of Highway Safety and Motor Vehicles to
 32 conduct an inquiry relating to certain written
 33 complaints; providing purposes of the department's use
 34 of a subpoena; authorizing the department to allow a
 35 written response to the complaint; requiring the
 36 department to commence the inquiry by a certain
 37 timeframe; requiring the department to provide a
 38 certain written response to the complainant by a
 39 certain date; requiring the department to take certain
 40 action if the department determines that a licensee
 41 violated certain statutes; authorizing a motor vehicle
 42 dealer association to file an administrative action
 43 regarding such complaint in certain circumstances;
 44 providing construction; amending ss. 681.102 and
 45 681.113, F.S.; conforming cross-references; providing
 46 an effective date.

47
 48 Be It Enacted by the Legislature of the State of Florida:

49
 50 Section 1. Present subsections (8), (9), (10), (11), (12),
 51 (13), (14), (15), and (16) of section 320.60, Florida Statutes,
 52 are redesignated as subsections (9), (11), (12), (13), (15),
 53 (18), (10), (16), and (17), respectively, new subsections (8)
 54 and (13) are added to that section, and subsection (2) and
 55 present subsection (15) of that section are amended, to read:
 56 320.60 Definitions for ss. 320.61-320.70.—Whenever used in
 57 ss. 320.61-320.70, unless the context otherwise requires, the
 58 following words and terms have the following meanings:

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(2) "Common entity" means a person:

(a) Who is directly or indirectly either controlled by or has more than 30 percent of its equity interest directly or indirectly owned, beneficially or of record, through any form of ownership structure, by a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof.

(b) Who has more than 30 percent of its equity interest directly or indirectly controlled or owned, beneficially or of record, through any form of ownership structure, by one or more persons who also directly or indirectly control or own, beneficially or of record, more than 30 40 percent of the ~~voting~~ equity interests of a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof, ~~or~~

~~(b) Who shares directors or officers or partners with a manufacturer.~~

(c) Notwithstanding the foregoing, an entity that would otherwise be considered a common entity of a distributor under paragraph (a) or paragraph (b) because of its relation to a distributor is not considered a common entity of that distributor if:

1. The distributor that the entity is related to was a licensed distributor on March 1, 2023;

2. The entity is not a common entity of a manufacturer or importer; and

3. The distributor that the entity is related to is not, and has never been, a common entity of a manufacturer or importer.

(8) "Independent person" means a person who is not an agent, parent, subsidiary, common entity, officer, director, or

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employee of the licensee or an employed representative of a licensee, manufacturer, importer, or distributor.

(14) "Motor vehicle dealer association" means a not-for-profit entity organized under the laws of this state and qualified as tax-exempt under s. 501(c)(6) of the Internal Revenue Code which acts as a trade association that primarily represents the interests of franchised motor vehicle dealers and has a membership of at least 500 franchised motor vehicle dealers as defined in s. 320.27(1)(c)1.

(16)~~(15)~~ "Sell," "selling," "sold," "exchange," "retail sales," and "leases" includes:

(a) Accepting a deposit or receiving a payment for the purchase, lease, or other use of a motor vehicle, but does not include facilitating a motor vehicle dealer's acceptance or a deposit or receipt of a payment from a consumer;

(b) Accepting a reservation from a retail consumer for a specific motor vehicle identified by a vehicle identification number or other product identifier;

(c) Setting the retail price for the purchase, lease, or other use of a motor vehicle;

(d) Offering or negotiating with a retail consumer terms for the purchase, lease, financing, or other use of a motor vehicle;

(e) Offering or negotiating with a retail consumer a value for a motor vehicle being traded in as part of the purchase, lease, or other use of a motor vehicle, but does not include a website or other means of electronic communication that identifies to a consumer a conditional trade-in value and that contains language informing the consumer that the trade-in value

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117 ~~is not binding on any motor vehicle dealer;~~

118 (f) Offering or negotiating with a retail consumer any
 119 service contract, extended warranty, vehicle maintenance
 120 contract, guaranteed asset protection agreement, or any other
 121 vehicle-related products or services in connection with the
 122 purchase or lease of a motor vehicle;

123 (g) Any transaction where the title of a motor vehicle or a
 124 used motor vehicle is transferred to a retail consumer; or, and
 125 ~~also~~

126 (h) Any retail lease transaction where a retail consumer
 127 ~~customer~~ leases a vehicle for a period of at least 12 months,
 128 but does not include administering lease agreements, taking
 129 assignments of leases, performing required actions pursuant to
 130 such leases, or receiving payments under a lease agreement that
 131 was originated by a motor vehicle dealer. Establishing a price
 132 for sale pursuant to s. 320.64(24) does not constitute a sale or
 133 ~~lease.~~

134 Section 2. Section 320.605, Florida Statutes, is amended to
 135 read:

136 320.605 Legislative intent.—It is the intent of the
 137 Legislature to protect the public health, safety, and welfare of
 138 the citizens of the state by regulating the licensing of motor
 139 vehicle dealers and manufacturers, maintaining competition,
 140 providing consumer protection and fair trade and providing
 141 minorities with opportunities for full participation as motor
 142 vehicle dealers. Sections 320.61-320.70 are intended to apply
 143 solely to the licensing of motor vehicle dealers and
 144 manufacturers and do not apply to non-motor-vehicle-related
 145 businesses.

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146 Section 3. Subsections (18), (23), and (24) of section
 147 320.64, Florida Statutes, are amended to read:

148 320.64 Denial, suspension, or revocation of license;
 149 grounds.—A license of a licensee under s. 320.61 may be denied,
 150 suspended, or revoked within the entire state or at any specific
 151 location or locations within the state at which the applicant or
 152 licensee engages or proposes to engage in business, upon proof
 153 that the section was violated with sufficient frequency to
 154 establish a pattern of wrongdoing, and a licensee or applicant
 155 shall be liable for claims and remedies provided in ss. 320.695
 156 and 320.697 for any violation of any of the following
 157 provisions. A licensee is prohibited from committing the
 158 following acts:

159 (18) The applicant or licensee has established a system of
 160 motor vehicle allocation or distribution or has implemented a
 161 system of allocation or distribution of motor vehicles to one or
 162 more of its franchised motor vehicle dealers which:

163 (a) Reduces or alters allocations or supplies of new motor
 164 vehicles to the dealer to achieve, directly or indirectly, a
 165 purpose that is prohibited by ss. 320.60-320.70;

166 (b) Conditionally or unconditionally reserves a specific
 167 motor vehicle identified by vehicle identification number or
 168 other unique identifier for a specifically named person, except
 169 for purposes of replacing a consumer's vehicle pursuant to
 170 chapter 681;

171 (c) Requires or incentivizes motor vehicle dealers to sell
 172 or lease, or to negotiate the sale or lease of, a specific motor
 173 vehicle identified by vehicle identification number or other
 174 unique identifier to a specifically named person;

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(d) Requires or incentivizes motor vehicle dealers to sell or lease a motor vehicle at a specified price or profit margin or restricts the price at which a motor vehicle dealer may sell or lease a motor vehicle; or

~~(e) Is, or which otherwise is~~ unfair, inequitable, unreasonably discriminatory, or not supportable by reason and good cause after considering the equities of the affected motor vehicles dealer or dealers. As used in this paragraph, "unfair" includes, but is not limited to, refusing or failing to offer to any dealer an equitable supply of new vehicles under its franchise, by model, mix, or color, as the licensee offers or allocates to its other same line-make dealers in this state or using the number of motor vehicles preordered or reserved by consumers as a factor in determining the allocation of motor vehicles to motor vehicle dealers.

An applicant or licensee shall maintain for 3 years records that describe its methods or formula of allocation and distribution of its motor vehicles and records of its actual allocation and distribution of motor vehicles to its motor vehicle dealers in this state. ~~As used in this subsection, "unfair" includes, without limitation, the refusal or failure to offer to any dealer an equitable supply of new vehicles under its franchise, by model, mix, or color as the licensee offers or allocates to its other same line-make dealers in the state.~~

(23) The applicant or licensee has engaged in any of the activities of a motor vehicle dealer as defined in s. 320.60 or has competed or is competing with respect to any activity covered by the franchise agreement with a motor vehicle dealer

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of the same line-make located in this state with whom the applicant or licensee has entered into a franchise agreement, except as permitted in s. 320.645 or in subsection (24) with respect to the remote electronic transmission of a motor vehicle accessory, option, add-on, feature, improvement, or upgrade.

(24) The applicant or licensee, or common entity thereof, has sold or leased a motor vehicle of a line-make to any retail consumer in this state, or has sold or activated for a fee any permanent or temporary motor vehicle accessory, option, add-on, feature, improvement, or upgrade to any retail consumer in the state, except through a motor vehicle dealer properly licensed pursuant to s. 320.27 and holding a franchise agreement for the line-make that includes the motor vehicle. Notwithstanding this subsection, an applicant, a licensee, or their common entity may sell or activate for a fee a permanent or temporary motor vehicle accessory, option, add-on, feature, improvement, or upgrade for a motor vehicle of a line-make manufactured, imported, or distributed by the applicant or licensee and registered in this state only if the accessory, option, add-on, feature, improvement, or upgrade is provided directly to the motor vehicle through remote electronic transmission, provided that if such motor vehicle was sold or leased as new by a Florida-franchised motor vehicle dealer within the 3-year period preceding such remote electronic transmission, the applicant or licensee must pay the Florida-franchised motor vehicle dealer a percentage of the gross sale price for the accessory, option, add-on, feature, improvement, or upgrade which is at least commensurate with the dealer margin structure established by the applicant or licensee for the sale of the vehicle to which the

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accessory, option, add-on, feature, improvement, or upgrade was remotely transmitted. As used in this subsection, the dealer margin structure is calculated by the applicant or licensee subtracting the invoiced vehicle wholesale price from the manufacturer's suggested retail price, then adding to that figure all monetary per vehicle incentives offered by the applicant or licensee whether or not received by the motor vehicle dealer, and then dividing that sum by the invoiced vehicle wholesale price. This subsection ~~section~~ does not apply to sales by the applicant or licensee of motor vehicles to its current employees, employees of companies affiliated by common ownership, charitable not-for-profit organizations, and the Federal Government.

A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with, any of the preceding provisions by an applicant or licensee will or may adversely and pecuniarily affect the complaining dealer, shall be entitled to pursue all of the remedies, procedures, and rights of recovery available under ss. 320.695 and 320.697.

Section 4. Subsection (6) of section 320.642, Florida Statutes, is amended to read:

320.642 Dealer licenses in areas previously served; procedure.—

(6) When a proposed addition or relocation concerns a dealership that performs or is to perform only service, as defined in s. 320.60 ~~s. 320.60(16)~~, and will not or does not sell or lease new motor vehicles, as defined in s. 320.60 ~~s. 320.60(15)~~, the proposal shall be subject to notice and protest

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pursuant to the provisions of this section.

(a) Standing to protest the addition or relocation of a service-only dealership shall be limited to those instances in which the applicable mileage requirement established in subparagraphs (3)(a)2. and (3)(b)1. is met.

(b) The addition or relocation of a service-only dealership shall not be subject to protest if:

1. The applicant for the service-only dealership location is an existing motor vehicle dealer of the same line-make as the proposed additional or relocated service-only dealership;

2. There is no existing dealer of the same line-make closer than the applicant to the proposed location of the additional or relocated service-only dealership; and

3. The proposed location of the additional or relocated service-only dealership is at least 7 miles from all existing motor vehicle dealerships of the same line-make, other than motor vehicle dealerships owned by the applicant.

(c) In determining whether existing franchised motor vehicle dealers are providing adequate representations in the community or territory for the line-make in question in a protest of the proposed addition or relocation of a service-only dealership, the department may consider the elements set forth in paragraph (2)(b), provided:

1. With respect to subparagraph (2)(b)1., only the impact as it relates to service may be considered;

2. Subparagraph (2)(b)3. shall not be considered;

3. With respect to subparagraph (2)(b)9., only service facilities shall be considered; and

4. With respect to subparagraph (2)(b)11., only the volume

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of service business transacted shall be considered.

(d) If an application for a service-only dealership is granted, the department shall issue a license which permits only service, as defined in s. 320.60 ~~s. 320.60(16)~~, and does not permit the selling or leasing of new motor vehicles, as defined in s. 320.60 ~~s. 320.60(15)~~. If a service-only dealership subsequently seeks to sell new motor vehicles at its location, the notice and protest provisions of this section shall apply.

Section 5. Subsection (1), paragraph (a) of subsection (2), and subsection (4) of section 320.645, Florida Statutes, are amended to read:

320.645 Restriction upon ownership of dealership by licensee.—

(1) ~~A No~~ licensee, manufacturer, importer, or distributor, ~~manufacturer, or agent of the licensee, a manufacturer,~~ importer, or distributor, or any parent, subsidiary, common entity, or officer, or employed representative of the licensee, ~~manufacturer, importer, or distributor may not directly or indirectly shall own, or operate, or control, by contract, agreement, or otherwise either directly or indirectly, a motor vehicle dealership for any line-make in this state if the licensee, manufacturer, importer, or distributor has manufactured, imported, or distributed for the sale or service of motor vehicles of any line-make which have been or are offered for sale under a franchise agreement with a motor vehicle dealer in this state with an independent person. Any person who is not prohibited by this section from owning, operating, or controlling a motor vehicle dealership may be issued a license pursuant to s. 320.27. Any person prohibited by~~

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this section from owning, operating, or controlling a motor vehicle dealership. ~~A licensee~~ may not be issued a motor vehicle dealer license pursuant to s. 320.27. However, ~~a no such~~ licensee subject to the prohibition in this section is not ~~will~~ ~~be~~ deemed to be in violation of this section:

(a) When operating a motor vehicle dealership for a temporary period, not to exceed 1 year, during the transition from one owner of the motor vehicle dealership to another;

(b) When operating a motor vehicle dealership temporarily for a reasonable period for the exclusive purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group that has historically been underrepresented in its dealer body, or for other qualified persons who the licensee deems lack the resources to purchase or capitalize the dealership outright, in a bona fide relationship with an independent person, other than a licensee or its agent or affiliate, who has made a significant investment that is subject to loss in the dealership within the dealership's first year of operation and who can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions; or

(c) If the department determines, after a hearing on the matter, pursuant to chapter 120, at the request of any person, that there is no independent person available in the community or territory to own and operate the motor vehicle dealership in a manner consistent with the public interest. This paragraph shall apply only if the motor vehicle dealership at issue sells motor vehicles of a line-make that, at the time of the hearing, is offered for sale by at least one other existing motor vehicle

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dealership not owned, operated, or controlled by the licensee,
an officer or employed representative of the licensee, a parent,
subsidiary, or common entity of the licensee, or a manufacturer,
importer, or distributor. A motor vehicle dealer association has
standing to intervene in any hearing held pursuant to this
subsection.

In ~~the any such case of a~~, ~~the licensee must continue to make~~
~~the motor vehicle dealership owned or operated pursuant to~~
~~paragraph (a), paragraph (b), or paragraph (c), the dealership~~
~~must be continually made~~ available for sale to an independent
person at a fair and reasonable price. Approval of the sale of
such a motor vehicle dealership to a proposed motor vehicle
dealer shall not be unreasonably withheld.

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

~~(a) "Independent person" is a person who is not an officer,~~
~~director, or employee of the licensee.~~

(4) Nothing in this chapter shall prohibit a distributor as
defined in s. 320.60 ~~s. 320.60(5)~~ or ~~common entity~~ an affiliate
thereof that is not a manufacturer or importer, a division of a
manufacturer or importer, an entity that is controlled by a
manufacturer or importer, or a common entity of a manufacturer
or importer, and that is not owned, in whole or in part,
directly or indirectly, by a manufacturer or importer, as
defined in s. 320.60 ~~s. 320.60(9)~~, from receiving a license or
licenses as defined in s. 320.27 and owning and operating a
motor vehicle dealership or dealerships that sell or service
motor vehicles other than any line-make of motor vehicles
distributed by the distributor. Neither a distributor nor an

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affiliate thereof may receive a license pursuant to s. 320.27
for a motor vehicle dealership, or own or operate a motor
vehicle dealership, that sells or services motor vehicles of the
line-make of motor vehicles distributed by the distributor.

Section 6. Section 320.67, Florida Statutes, is amended to
read:

320.67 Inquiry and inspection of books or other documents
of licensee.—

(1) The department shall conduct an inquiry of a licensee
~~may inspect the pertinent books, records, letters, and contracts~~
~~of a licensee~~ relating to any written complaint alleging a
violation of any provision of ss. 320.60-320.70 ~~made to it~~
against such licensee made by a motor vehicle dealer with a
current franchise agreement issued by the licensee, or a motor
vehicle dealer association with at least one member with a
current franchise agreement issued by the licensee.

(2) In the exercise of its duties under this section, the
department is granted and authorized to exercise the power of
subpoena for the purposes of compelling production of and
inspecting pertinent books, records, letters, and contracts of a
licensee and compelling the attendance of witnesses at
deposition and the production of any documentary evidence
~~necessary to the disposition by it of any written complaint~~
~~under this section. The inquiry required by this section must be~~
commenced within 30 days after receipt of the written complaint.
The department may allow the licensee that is the subject of the
complaint no more than 60 days from commencement of the inquiry
to provide a written response. Within 30 days after the deadline
for a written response by the licensee, the department must

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provide a written response to the complainant stating whether the department intends to take action against the licensee under subsection (3) and, if so, what action the department intends to take. Any information obtained may not be used against the licensee as the basis for a criminal prosecution under the laws of this state.

(3) If, as the result of an inquiry conducted under this section, the department determines that a licensee has violated ss. 320.60-320.70, the department must take appropriate action against the licensee, which may include license suspension or revocation; denial of a license renewal application; assessment, imposition, levy, and collection of an appropriate civil fine; or instituting a civil action for issuance of an injunction pursuant to s. 320.695.

(4) If the complainant is a motor vehicle dealer association and the department's inquiry determines that a licensee has violated ss. 320.60-320.70, the motor vehicle dealer association may seek a declaration and adjudication that the alleged conduct of the licensee violated ss. 320.60-320.70 by filing with the department a request for a proceeding and an administrative hearing which conforms substantially with the requirements of ss. 120.569 and 120.57.

(5) This section does not alter or affect the rights of a motor vehicle dealer to bring a claim or action against a licensee pursuant to any other provision of ss. 320.60-320.70.

Section 7. Subsection (13) of section 681.102, Florida Statutes, is amended to read:

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

(13) "Manufacturer" means any person, whether a resident or

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nonresident of this state, who manufactures or assembles motor vehicles, or who manufactures or assembles chassis for recreational vehicles, or who manufactures or installs on previously assembled truck or recreational vehicle chassis special bodies or equipment which, when installed, forms an integral part of the motor vehicle, or a distributor or an importer as those terms are defined in s. 320.60 s. 320.60(5), ~~or an importer as defined in s. 320.60(7).~~ A dealer as defined in s. 320.60 s. 320.60(11)(a) shall not be deemed to be a manufacturer, distributor, or importer as provided in this section.

Section 8. Section 681.113, Florida Statutes, is amended to read:

681.113 Dealer liability.—Except as provided in ss. 681.103(3) and 681.114(2), nothing in this chapter imposes any liability on a dealer as defined in s. 320.60 s. 320.60(11)(a) or creates a cause of action by a consumer against a dealer, except for written express warranties made by the dealer apart from the manufacturer's warranties. A dealer may not be made a party defendant in any action involving or relating to this chapter, except as provided in this section. The manufacturer shall not charge back or require reimbursement by the dealer for any costs, including, but not limited to, any refunds or vehicle replacements, incurred by the manufacturer arising out of this chapter, in the absence of evidence that the related repairs had been carried out by the dealer in a manner substantially inconsistent with the manufacturer's published instructions.

Section 9. This act shall take effect July 1, 2023.



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/04/2023	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Avila) recommended the following:

Senate Amendment to Amendment (224252) (with title amendment)

Delete lines 19 - 194

and insert:

distributor, or a licensee, or an affiliate thereof; or

(b) Who has more than 30 percent of its equity interest directly or indirectly controlled or owned, beneficially or of record, through any form of ownership structure, by one or more persons who also directly or indirectly control or own,



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beneficially or of record, more than 30 40 percent of the voting equity interests of a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof; ~~or~~

~~(b) Who shares directors or officers or partners with a manufacturer.~~

(c) Notwithstanding the foregoing, an entity that would otherwise be considered a common entity of a distributor under paragraph (a) or paragraph (b) because of its relation to a distributor is not considered a common entity of that distributor if:

1. The distributor that the entity is related to was a licensed distributor on March 1, 2023;

2. The entity is not a common entity of a manufacturer or importer; and

3. The distributor that the entity is related to is not, and has never been, a common entity of a manufacturer or importer.

(8) "Independent person" means a person who is not an agent, parent, subsidiary, common entity, officer, director, or an employed representative of a licensee, manufacturer, importer, or distributor.

(14) "Motor vehicle dealer association" means a not-for-profit entity organized under the laws of this state and qualified as tax-exempt under s. 501(c)(6) of the Internal Revenue Code which acts as a trade association that primarily represents the interests of franchised motor vehicle dealers and has a membership of at least 500 franchised motor vehicle dealers as defined in s. 320.27(1)(c)1.

(16)~~(15)~~ "Sell," "selling," "sold," "exchange," "retail



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sales," and "leases" includes:

(a) Accepting a deposit or receiving a payment for the retail purchase, lease, or other use of a motor vehicle, but does not include facilitating a motor vehicle dealer's acceptance of a deposit or receipt of a payment from a consumer, and does not include receiving payment under a retail installment sale contract;

(b) Accepting a reservation from a retail consumer for a specific motor vehicle identified by a vehicle identification number or other product identifier;

(c) Setting the retail price for the purchase, lease, or other use of a motor vehicle, but does not include setting a Manufacturer's Suggested Retail Price;

(d) Offering or negotiating with a retail consumer terms for the purchase, lease, or other use of a motor vehicle;

(e) Offering or negotiating with a retail consumer a value for a motor vehicle being traded in as part of the purchase, lease, or other use of a motor vehicle, but does not include a website or other means of electronic communication that identifies to a consumer a conditional trade-in value and that contains language informing the consumer that the trade-in value is not binding on any motor vehicle dealer;

(f) Any transaction where the title of a motor vehicle or a used motor vehicle is transferred to a retail consumer; ~~or, and~~
~~also~~

(g) Any retail lease transaction where a retail consumer ~~customer~~ leases a vehicle for a period of at least 12 months, but does not include administering lease agreements, taking assignments of leases, performing required actions pursuant to



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such leases, or receiving payments under a lease agreement that was originated by a motor vehicle dealer. ~~Establishing a price for sale pursuant to s. 320.64(24) does not constitute a sale or lease.~~

Section 2. Section 320.605, Florida Statutes, is amended to read:

320.605 Legislative intent.—It is the intent of the Legislature to protect the public health, safety, and welfare of the citizens of the state by regulating the licensing of motor vehicle dealers and manufacturers, maintaining competition, providing consumer protection and fair trade and providing minorities with opportunities for full participation as motor vehicle dealers. Sections 320.61-320.70 are intended to apply solely to the licensing of manufacturers, factory branches, distributors, and importers and do not apply to non-motor-vehicle-related businesses.

Section 3. Subsections (18), (23), and (24) of section 320.64, Florida Statutes, are amended to read:

320.64 Denial, suspension, or revocation of license; grounds.—A license of a licensee under s. 320.61 may be denied, suspended, or revoked within the entire state or at any specific location or locations within the state at which the applicant or licensee engages or proposes to engage in business, upon proof that the section was violated with sufficient frequency to establish a pattern of wrongdoing, and a licensee or applicant shall be liable for claims and remedies provided in ss. 320.695 and 320.697 for any violation of any of the following provisions. A licensee is prohibited from committing the following acts:



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(18) The applicant or licensee has established a system of motor vehicle allocation or distribution or has implemented a system of allocation or distribution of motor vehicles to one or more of its franchised motor vehicle dealers which:

(a) Reduces or alters allocations or supplies of new motor vehicles to the dealer to achieve, directly or indirectly, a purpose that is prohibited by ss. 320.60-320.70;

(b) Conditionally or unconditionally reserves a specific motor vehicle identified by vehicle identification number or other unique identifier for a specifically named person, except for purposes of replacing a consumer's vehicle pursuant to chapter 681;

(c) Requires or incentivizes motor vehicle dealers to sell or lease, or to negotiate the sale or lease of, a specific motor vehicle identified by vehicle identification number or other unique identifier to a specifically named person;

(d) Requires or incentivizes motor vehicle dealers to sell or lease a motor vehicle at a specified price or profit margin or restricts the price at which a motor vehicle dealer may sell or lease a motor vehicle; or

(e) Is, ~~or which~~ otherwise is unfair, inequitable, unreasonably discriminatory, or not supportable by reason and good cause after considering the equities of the affected motor vehicles dealer or dealers. As used in this paragraph, the term "unfair" includes, but is not limited to, refusing or failing to offer to any dealer an equitable supply of new vehicles under its franchise, by model, mix, or color, as the licensee offers or allocates to its other same line-make dealers in this state or using the number of motor vehicles preordered or reserved by



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consumers as a factor in determining the allocation of motor vehicles to motor vehicle dealers.

An applicant or licensee shall maintain for 3 years records that describe its methods or formula of allocation and distribution of its motor vehicles and records of its actual allocation and distribution of motor vehicles to its motor vehicle dealers in this state. ~~As used in this subsection, "unfair" includes, without limitation, the refusal or failure to offer to any dealer an equitable supply of new vehicles under its franchise, by model, mix, or colors as the licensee offers or allocates to its other same line-make dealers in the state.~~

(23) The applicant or licensee has engaged in any of the activities of a motor vehicle dealer as defined in s. 320.60(13)(a) or any activities described in s. 320.60(16) or has competed or is competing with respect to any activity covered by the franchise agreement with a motor vehicle dealer of the same line-make located in this state with whom the applicant or licensee has entered into a franchise agreement, except as permitted in s. 320.645 or in subsection (24) with respect to the remote electronic transmission of a permanent or temporary feature or improvement of a motor vehicle.

(24) The applicant or licensee, or common entity thereof, has sold or leased a motor vehicle to any retail consumer in this state, or has sold or activated for a fee to any retail consumer in the state any permanent or temporary motor vehicle feature or improvement that functions through hardware or components installed on the motor vehicle, except through a motor vehicle dealer properly licensed pursuant to s. 320.27 and



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holding a franchise agreement for the line-make that includes the motor vehicle. Notwithstanding this subsection, an applicant or a licensee, or common entity thereof, may sell or activate for a fee a permanent or temporary motor vehicle feature or improvement to a retail consumer in this state only if the feature or improvement is provided directly to the motor vehicle through remote electronic transmission, provided that if such motor vehicle was sold or leased as new by a motor vehicle dealer in this state within the 3-year period preceding such remote electronic transmission, the applicant or licensee must pay such motor vehicle dealer a minimum of 8 percent of the payment received by the applicant, licensee, or common entity from the sale of the feature or improvement. As used in this subsection, the term "feature or improvement" includes the activation or use of motor vehicle components or hardware, but does not include services that require the transmission of data or information to or from the motor vehicle while the service is being used. Payments required under this subsection shall be made within 30 days after the date of sale of the feature or improvement. This subsection ~~section~~ does not apply to sales by the

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

And the title is amended as follows:

Delete lines 428 - 444

and insert:

applicability; requiring certain payments to be made within a certain timeframe; amending s. 320.642, F.S.; conforming cross-references; amending s. 320.645,



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F.S.; revising provisions prohibiting a manufacturer,
a distributor, or an importer from owning, operating,
or controlling a motor vehicle dealership in this
state; specifying when certain licenses may be and are
prohibited from being issued; revising exceptions to
certain prohibitions on licensees; providing
applicability; making technical changes; deleting the
definition of the term "independent person";
conforming cross-references; amending s. 320.67, F.S.;
requiring the Department of Highway Safety and Motor
Vehicles to conduct an inquiry relating to certain
written complaints; providing purposes of the
department's use of a subpoena; authorizing the
department to allow a written response to the
complaint; requiring the department to commence the
inquiry within a certain

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.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/CS/SB 752

INTRODUCER: Commerce and Tourism Committee; Regulated Industries Committee; and Senator Calatayud

SUBJECT: Temporary Commercial Kitchens

DATE: April 4, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Baird</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 752 regulates temporary commercial kitchens in the same manner as mobile food delivery vehicles (MFDVs or food trucks). The bill defines the term “temporary commercial kitchen” to mean “any kitchen that is a public food service establishment, used for the preparation of takeout or delivery-only meals housed in portable structures that are movable from place to place by a tow or are self-propelled or otherwise axle-mounted, that include self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.” The term does not include a tent.

Temporary kitchens are typically used when fixed kitchens are unavailable, e.g., when damaged by a fire, or during remodeling, when extra kitchen space is needed, and for catering at events. Temporary kitchens may also be used after a natural disaster, such as a hurricane. Temporary kitchens are contained in a variety of modular structures, such as portable cabin structures, modular buildings, towed trailers, or standard freight containers.

The bill:

- Requires operators of public food service establishments who provide commissary services to temporary commercial kitchens to maintain a registry to verify that each temporary commercial kitchen that receives such services is properly licensed;

- Requires operators of temporary commercial kitchens to properly display their public food service establishment license number to assist the public food service establishment to verify the licensure of the temporary commercial kitchens;
- Preempts regulation of licenses, registrations, permits, and fees for temporary commercial kitchens to the state; and
- Authorizes MFDVs and temporary commercial kitchens that are operated on the same premises of a separately licensed public food service establishment to operate during the same hours of operation as the separately licensed public food service establishment.

The bill additionally allows a licensed permanent food service establishment to operate a temporary commercial kitchen:

- On site for the purpose of supplementing the kitchen operations for 60 consecutive days, with one potential 60 day extension;
- On site or nearby during a period of renovation, repair, or rebuilding, for 120 days, with possible extension.

The bill also allows a licensed permanent food service establishment to operate a temporary commercial kitchen on site or reasonably nearby if the establishment or land is rendered uninhabitable due to natural disaster, with notification to DBPR every 90 days.

Except for the above circumstances, temporary commercial kitchens may not operate in one location for longer than 30 consecutive days.

The bill takes effect July 1, 2023.

II. Present Situation:

Department of Business and Professional Regulation, Division of Hotels and Restaurants

The Division of Hotels and Restaurants (Division) within the Division of Business and Professional Regulation (DBPR) is charged with enforcing the laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare.¹

Public Food Service Establishments

A “public food service establishment” is defined as:²

...any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

There are several exclusions from the definition of public food service establishment, including:³

¹ Section 509.032, F.S.

² Section 509.013(5)(a), F.S.

³ Section 509.013(5)(b), F.S.

- Any place maintained and operated by a public or private school, college, or university for the use of students and faculty or temporarily to serve events such as fairs, carnivals, and athletic contests;
- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates or temporarily to serve events such as fairs, carnivals, or athletic contests;
- Any eating place located on an airplane, train, bus, or watercraft which is a common carrier;
- Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families;
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12, F.S.;
- Any vending machine that dispenses any food or beverage other than potentially hazardous food;
- Any place of business serving only ice, beverages, popcorn, and prepackaged items; and
- Any research and development test kitchen limited to use by employees and not open to the general public.

Health and Safety

The division must adopt and enforce sanitation rules to ensure the protection of the public from food-borne illness in those establishments it licenses. These rules must provide standards and requirements for obtaining, storing, preparing, processing, serving, or displaying food in public food service establishments; approving public food service establishment facility plans; conducting inspections for compliance with sanitation regulations; cooperating and coordinating with the Department of Health in epidemiological investigations; initiating enforcement actions; and other such responsibilities deemed necessary by the division.⁴

Effective November 1, 2019, the division has adopted the 2017 Food and Drug Administration (FDA) Food Code (food code), which establishes practical, science-based guidance and enforceable provisions for reducing risk factors known to cause or contribute to foodborne illness.⁵ The food code represents FDA's best advice for a uniform system to address the safety and protection of food offered at retail and in food service.⁶

The food code provides a plan review and inspectional guide for “mobile food establishments” based on the mobile unit's menu and operation. Mobile units range in type from push carts to food preparation catering vehicles. The guide provides a matrix of requirements that a mobile food establishment must follow based on the type of food that is available for sale to the

⁴ Section 509.032(2)(d), F.S.

⁵ Fla. Admin. Code R. 61C-1.001(12).

⁶ U.S. Public Health Service, FDA Food Code 2017, p. 327,

<http://www.myfloridalicense.com/dbpr/hr/statutes/documents/2017-FDA-Food-Code.pdf> (last visited March 24, 2023).

consumer. This includes requirements for “time/temperature control for the safety of food”⁷ that is prepared within a mobile food establishment.⁸

Mobile Food Dispensing Vehicles – Food Trucks

Food Trucks⁹ are regulated by the DBPR as a “mobile food dispensing vehicles,” (MFDV),¹⁰ which are defined as:¹¹

...any vehicle that is a public food service establishment and that is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

To obtain a license as an MFDV, an applicant must complete a kitchen plan review for sanitation and safety concerns (if required).¹² No plan review is required if an operator buys a vehicle already licensed by the division and no changes have been made to the vehicle. A plan review is required if an operator:

- Constructs or uses a vehicle that has never been licensed by the division;
- Uses a vehicle that has been closed for more than one year; or
- Uses a vehicle that has been remodeled.

A plan review requires:

- A plan of the vehicle with the equipment labeled;
- A sample menu; and
- A side photograph of the vehicle showing the wheels and open service window, and the water/sewer or commissary location.

By rule, the division provides different license fees for a public food service establishment based on the license classification for the establishment. The division’s general classifications are nonseating and seating, which are then divided into sub-classifications.¹³ MFDVs are classified under the nonseating classification. The license for an MFDV requires payment of a \$50 application fee and a \$347 license fee.¹⁴

⁷ The term “time/temperature control for safety food” is defined in chapter 1, subpart 1-201, of the food code as a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

⁸ U.S. Public Health Service, *FDA Food Code 2017, FDA Food Code Mobile Food Establishment Matrix*, p. 754, <http://www.myfloridalicense.com/dbpr/hr/statutes/documents/2017-FDA-Food-Code.pdf> (last visited April 3, 2023).

⁹ Generally, a food truck is a large wheeled vehicle from which food is sold that typically contains cooking facilities where the food is prepared. Merriam-Webster Dictionary, *Food Truck*, <https://www.merriam-webster.com/dictionary/food%20truck> (last visited April 3, 2023).

¹⁰ Section 509.102, F.S.

¹¹ Section 509.032, F.S., and Fla. Admin. Code R. 61C-1.002.

¹² Fla. Admin. Code R. 61C-1.002(5)(c); *See also* Florida Department of Business and Professional Regulation, *Division of Hotels and Restaurants – Guide to Mobile Food Dispensing Vehicles*, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/mfdv-guide/> (last visited April 3, 2023).

¹³ *See* Fla. Admin. Code R. 61C-1.008(4).

¹⁴ Fla. Admin. Code R. 61C-1.008(4)(a)1.

All new licensees are required to pass a sanitation and safety inspection prior to opening.¹⁵ Division personnel have the right to inspect licensed MFDVs as often as necessary to enforce the provisions of law and rule, and for the protection of the public's health, safety, and welfare.¹⁶

The division is required, upon proper finding, to immediately issue an order to close a licensed public food service establishment in the instance of a severe and immediate public health or safety or welfare threat.¹⁷

Commissary Services Registry

The DBPR defines the term "commissary" to mean "a licensed public food service establishment, which is utilized by an MFDV for the purpose of providing all required support services, including potable water and wastewater disposal that are not available on the mobile food dispensing vehicle."¹⁸

Operators of public food service establishments that provide commissary services are required to maintain a daily registry verifying that each MFDV that receives such services is properly licensed. Each MFDV operator must permanently affix in a prominent place on the side of the vehicle, in figures at least 2 inches high and in contrasting colors from the background, the operator's public food service establishment license number. Prior to providing commissary services, each public food service establishment must verify that the license number displayed on the vehicle matches the number on the vehicle operator's public food service establishment license.¹⁹

Mobility Requirements

"Permanent nonseating establishments" are described in current law as "fixed public food service establishments for which the sole service provided is intended as take-out or delivery, or which do not otherwise provide accommodations for consumption of food by guests on the premises, or premises under the control of the operator."²⁰

MFDVs are described in current law as "mounted public food service establishments which are self-propelled or otherwise movable from place to place..."²¹ The DBPR's Guide to Mobile Food Establishments (guide) provides that an MFDV license is a vehicle mounted food service license where the vehicle has adequate hand washing and dishwashing facilities, food protection, refrigeration, power and plumbing systems. The guide indicates that an MFDV operator performs food service activities inside the vehicle like food storage, cooking or preparation of food and dishwashing.²²

¹⁵ Fla. Admin. Code R. 61C-1.002(3).

¹⁶ Section 509.032(2)(b), F.S.

¹⁷ Section 509.035, F.S.

¹⁸ Fla. Admin. Code R. 61C-1.001(8).

¹⁹ Section 509.101(3), F.S.

²⁰ Fla. Admin. Code R. 61C-1.002(5)(a)1.

²¹ Fla. Admin. Code R. 61C-1.002(5)(a)2.

²² *Supra* note 12.

One of the requirements for obtaining an MFDV license is that the licensed location be a vehicle and for the vehicle to be mobile.²³ In order to be mobile, the DBPR requires “a side photograph of the vehicle showing its wheels and open service window must be submitted at time of application.”²⁴

Preemption

The regulation of public food service establishments is preempted to the state. This preemption does not affect the authority of a local government or local enforcement district to conduct inspections for compliance with the Florida Building Code and the Florida Fire Prevention Code.²⁵

The regulation of MFDVs is also preempted to the state. A municipality, county, or other local government entity may not:²⁶

- Require a separate license, registration, or permit beyond those established by the DBPR as a condition for the MFDV’s operation within the jurisdiction;
- Require a separate fee beyond those established by the DBPR as a condition for the MFDV’s operation within the jurisdiction; or
- Prohibit MFDVs from operating within the entirety of the entity’s jurisdiction.

The preemption for the regulation of MFDVs does not apply to any port authority, aviation authority, airport, or seaport.²⁷

Temporary Kitchens

Temporary kitchens are kitchen facilities that are typically used when fixed kitchens are unavailable, e.g., have been damaged by a fire, or when a fixed kitchen is being refurbished, when extra kitchen space is needed, and for catering at events.²⁸ Providers of temporary kitchens also market these kitchens for rent after a natural disaster, such as a hurricane.²⁹

Temporary kitchens are contained in a variety of modular structures, such as portable cabin structures, modular buildings, towed trailers, or standard freight containers.³⁰

A temporary kitchen is a “public food service establishment” as defined in s. 509.013(5)(a), F.S., and is therefore subject to regulation by the division.

²³ Fla. Admin. Code R. 61C-1.002(5)(a)2.

²⁴ *Id.*

²⁵ Section 509.032(7), F.S.

²⁶ Section 509.102, F.S.

²⁷ *Id.*

²⁸ The Caterer, *Temporary kitchens: Everything you need to know*, Nov. 24, 2004, <https://www.thecaterer.com/news/foodservice/temporary-kitchens-everything-you-need-to-know> (last visited April 3, 2023).

²⁹ Mobile Kitchens USA, *Affected by a Natural Disaster? Mobile Kitchens USA Can Help*, <https://mobilekitchens.com/2018/04/05/affected-by-a-natural-disaster-mobile-kitchens-usa-can-help/> (last visited April 3, 2023).

³⁰ *Id.* See also U.S. Mobile Kitchens, *Temporary Kitchens*, at: <https://www.usmobilekitchens.com/mobile-kitchens/temporary-kitchens> (last visited April 3, 2023).

Ghost Kitchens

Ghost kitchens, also known as virtual restaurants, are shared commercial kitchens that do not have a public-facing storefront and only offer food for delivery. Customers of ghost kitchens typically do not know the location where the food is prepared. Ghost kitchens became popular in 2020 during the COVID-19 pandemic, when restaurants were shut down due to restrictions, or business volume slowed significantly. Some traditional restaurants also use ghost kitchens for delivery-only sales.³¹

The food code may be used to regulate ghost kitchen establishments. However, while the food code specifically references mobile food establishments, it does not reference ghost kitchens or similar locations or structures.

III. Effect of Proposed Changes:

The bill amends s. 509.101(3), F.S., to require operators of public food service establishments who provide commissary services to temporary commercial kitchens to maintain a registry to verify that each temporary commercial kitchen that receives such services is properly licensed, and requires operators of temporary commercial kitchens to properly display their public food service establishment license number. The bill applies to temporary commercial kitchens the same the requirements that currently apply to commissary services for MFDVs under current law.

The bill amends s. 509.102, F.S., to apply the same requirements to temporary commercial kitchens that apply to MFDVs under current law.

The bill creates s. 509.102, F.S., to define the term “temporary commercial kitchen” to mean “any kitchen that is a public food service establishment, used for the preparation of takeout or delivery-only meals housed in portable structures that are movable from place to place by a tow or are self-propelled or otherwise axle-mounted, that include self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.” The term does not include a tent.³²

Under the bill, temporary commercial kitchens are subject to regulation under ch. 509, F.S.

The bill preempts the regulation for licenses, registrations, permits, and fees for temporary commercial kitchens to the state. Under the bill, local governments may not:

- Require a separate license, registration, or permit beyond those established by the DBPR as a condition for the temporary commercial kitchen’s operation within the jurisdiction;
- Require a separate fee beyond those established by the DBPR as a condition for the temporary commercial kitchen's operation within the jurisdiction; or

³¹ Eater, *Ghost Kitchens Are the Wave of the Future. But Is That a Good Thing?*, Nov. 9, 2020, <https://www.eater.com/21540765/ghost-kitchens-virtual-restaurants-covid-19-industry-impact> (last visited April 3, 2023).

³² In pertinent part, the term “tent” means “a collapsible shelter of fabric (such as nylon or canvas) stretched and sustained by poles and used for camping outdoors or as a temporary building.” See Merriam-Webster.com, *tent*, <https://www.merriam-webster.com/dictionary/tent> (last visited April 3, 2023).

- Prohibit temporary commercial kitchens from operating within the entirety of the entity's jurisdiction.

The bill provides that an MFDV “or temporary commercial kitchen that is operated on the same premises as and by a separately licensed public food service establishment may operate during the same hours of operation as the separately licensed public food service establishment that operates such mobile food dispensing vehicle or temporary commercial kitchen.” This provision may permit a licensed public food service establishment to operate a separately licensed MFDV or a temporary commercial kitchen at the same location and for the same hours as the public food service establishment.

The bill clarifies that local governments' authority regulate the operation of temporary commercial kitchens is not affected, except as described in the preemption.

The bill additionally allows a licensed permanent food service establishment to operate a temporary commercial kitchen:

- On site for the purpose of supplementing the kitchen operations for 60 consecutive days, with one potential 60 day extension;
- On site or nearby during a period of renovation, repair, or rebuilding, for 120 days, with possible extension.

The bill also allows a licensed permanent food service establishment to operate a temporary commercial kitchen on site or reasonably nearby if the establishment or land is rendered uninhabitable due to natural disaster, with notification to DBPR every 90 days.

Except for the above circumstances, temporary commercial kitchens may not operate in one location for longer than 30 consecutive days, and operators of a temporary commercial kitchen must notify the division within 48 hours of commencing operation in a location.

The bill takes effect July 1, 2023.

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:

None.

C. Government Sector Impact:

The DBPR anticipates an indeterminate fiscal impact for the bill.³³ The division considers temporary commercial kitchens to be in the same classification as mobile food delivery vehicles, but if temporary kitchens are classified by the division under another classification, the division anticipates an indeterminate increase in license fees.³⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

Distinguishing MFDVs and Temporary Commercial Kitchens

A mobile food delivery vehicle (food truck or MFDV) is defined as:³⁵

...any vehicle that is a public food service establishment and that is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

The bill defines temporary commercial kitchen as:

...any kitchen that is a public food service establishment, used for the preparation of takeout or delivery-only meals housed in portable structures that are movable from place to place by a tow or are self-propelled or otherwise axle mounted, that include self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

Under the bill, the primary distinction between an MFDV and a temporary commercial kitchen is that a temporary commercial kitchen prepares food for takeout or delivery-only and it may be a portable structure that can be towed. Otherwise, it is not clear that an MFDV may not also

³³ See Department of Business and Professional Regulation, *2023 Agency Legislative Bill Analysis for HB 415* (Jan. 24, 2023) (on file with the Senate Regulated Industries Committee).

³⁴ *Id.*

³⁵ Section 509.032, F.S., and Fla. Admin. Code R. 61C-1.002.

qualify as a temporary commercial kitchen because an MFDV must be self-propelled and is necessarily axle-mounted, i.e., it moves on wheels connected to an axle,³⁶ and must include the same self-contained utilities as a temporary commercial kitchen.

The term “temporary” in “temporary commercial kitchen” may relate to the length of time that a location is used as a commercial kitchen, to the kitchen’s mobility, or to the impermanence of the kitchen’s structure, but there is no time limit in the bill.

Local Pilot Programs

The City of Miami has created a pilot program to regulate “mobile operating units.” The term “mobile operation unit” is defined by the city as a “movable stand, cart, vehicle, truck, van, or trailer through which mobile operations are performed on a parking lot site or on vacant land.” The term “delivery food vehicle” is defined as “any vehicle used as or in conjunction with a mobile operation unit operating with app-based meal production for delivery only to be consumed off-premises.”³⁷ The regulations require the mobile operating units to refrain from providing on-site takeout or dine-in service.

Mobile operating units are required to obtain city business tax receipts and a “peddler’s permit.” The ordinance provides restrictions for food truck gatherings, such as prohibiting their operation in certain zones. It also requires a site plan survey indicating the general placement of a food truck. Violations are punishable by a fine of \$250 for a first offense and \$500 for each subsequent offense.³⁸ The pilot program was renewed on March 24, 2022, for a second year.³⁹

It is not clear whether the ordinance is applicable to temporary commercial kitchens.

The City of Orlando has adopted a similar pilot program.⁴⁰

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 509.101 and 509.102.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism Committee on April 4, 2023:

³⁶ See Merriam-Webster.com, *axle*, <https://www.merriam-webster.com/dictionary/axle> (last visited March 24, 2023).

³⁷ City of Miami Ordinance s. 31-51(h), https://library.municode.com/fl/miami/codes/code_of_ordinances?nodeId=PTIITHCO_CH31LOBUTAMIBURE_ARTIIOBUTABT_S31-51FOTROPRLA (last visited April 3, 2023).

³⁸ *Id.*

³⁹ City of Miami, City Commission Agenda March 24, 2022, <http://miamifl.igmp2.com/Citizens/FileOpen.aspx?Type=15&ID=2611&Inline=True> (last visited April 3, 2023).

⁴⁰ The Community Paper, *Ghost kitchens pilot program passed by the City*, <https://www.yourcommunitypaper.com/articles/ghost-kitchens-pilot-program-passed-by-city/> (last visited April 3, 2023).

The amendment allows a licensed permanent food service establishment to operate a temporary commercial kitchen:

- On site for the purpose of supplementing the kitchen operations for 60 consecutive days, with one potential 60 day extension;
- On site or nearby during a period of renovation, repair, or rebuilding, for 120 days, with possible extension.

The CS also allows a licensed permanent food service establishment to operate a temporary commercial kitchen on site or reasonably nearby if the establishment or land is rendered uninhabitable due to natural disaster, with notification to DBPR every 90 days.

Except for the above circumstances, temporary commercial kitchens may not operate in one location for longer than 30 consecutive days.

CS by Regulated Industries on March 7, 2023:

The CS includes temporary commercial kitchens in the requirements:

- For public food service establishments who provide commissary services to temporary commercial kitchens. Currently, these requirements only apply to commissary services provided to mobile food dispensing vehicles (food trucks);
- For food trucks, including the preemption of regulation to the state.

The CS also:

- Permits a food truck or temporary commercial kitchen to operate on the same premises as and by a separately licensed public food service establishment that may operate during the same hours of operation as the separately licensed public food service establishment that operates such mobile food dispensing vehicle or temporary commercial kitchen; and
- Removes the requirement that the Division of Hotels and Restaurants adopt rules regulating temporary commercial kitchens.

B. Amendments:

None.



892746

LEGISLATIVE ACTION

	Senate	House
Comm: WD	.	
04/03/2023	.	
	.	
	.	

The Committee on Commerce and Tourism (Calatayud) recommended the following:

Senate Amendment (with directory and title amendments)

Delete line 77

and insert:

(3)(a) A temporary commercial kitchen may be used in conjunction with a permanent food service establishment licensed under this chapter for the purpose of supplementing the kitchen operations of the licensed permanent food service establishment. A temporary commercial kitchen may operate in this capacity on the premises of the licensed permanent food service

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892746

11 establishment for 60 consecutive days. Upon request of the
12 operators of a temporary commercial kitchen, the division may
13 grant a one extension of up to 60 additional consecutive days.
14 If the temporary commercial kitchen is needed to supplement the
15 kitchen services of the licensed permanent food service
16 establishment during a period of renovation or repair, the
17 division may exercise discretion to grant an additional
18 extension of time upon a reasonable and reliable demonstration
19 by the licensed permanent food service establishment that
20 additional time is needed to complete the renovation or repair.
21 (b) If a licensed permanent food service establishment
22 licensed under this chapter, or the land upon which that
23 establishment is sited, is rendered uninhabitable due to a
24 natural disaster that is the subject of a declared state of
25 emergency, a temporary commercial kitchen may operate in a
26 location on or as near the location of the permanent licensed
27 food service establishment as reasonably practicable. A
28 temporary commercial kitchen may operate in this capacity only
29 during the period of repair and rebuilding of the permanent
30 establishment. The operators of a temporary commercial kitchen
31 operating in this capacity must notify the division of the
32 kitchens location and renew the notification every 90 days.
33 (c) Except as authorized under paragraphs (a) and (b), a
34 temporary commercial kitchen may not operate in one location for
35 longer than 30 consecutive days. The operators of a temporary
36 commercial kitchen must notify the division within 24 hours
37 after commencing operation in a location.
38 (4) ~~(3)~~ This section may not be construed to affect a
39

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892746

===== DIRECTORY CLAUSE AMENDMENT =====

And the directory clause is amended as follows:

Delete lines 38 - 39

and insert:

Section 2. Present subsections (3) and (4) of section 509.102, Florida Statutes, are redesignated as subsections (4) and (5), a new subsection (3) is added to that section, and subsection (1) and present subsection (3) of that section are amended, to read:

===== TITLE AMENDMENT =====

And the title is amended as follows:

Delete line 13

and insert:

to operate during certain hours; authorizing temporary commercial kitchens to be used in conjunction with licensed permanent food service establishments for specified purposes; authorizing such operation for specified timeframes; authorizing the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to grant extensions; requiring a temporary commercial kitchen to notify the division within a specified timeframe of commencing operation; providing

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577-03014-23



358156

LEGISLATIVE ACTION

	Senate	House
Comm: RCS	.	
04/04/2023	.	
	.	
	.	

The Committee on Commerce and Tourism (Calatayud) recommended the following:

Senate Amendment (with directory and title amendments)

Delete line 77

and insert:

(3)(a) A temporary commercial kitchen may be used in conjunction with a permanent food service establishment licensed under this chapter for the purpose of supplementing the kitchen operations of the licensed permanent food service establishment. A temporary commercial kitchen may operate in this capacity as follows:

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358156

11 1. On the premises of the licensed permanent food service
12 establishment for 60 consecutive days. Upon request of the
13 operator of a temporary commercial kitchen, the division may
14 grant one extension of up to 60 additional consecutive days.
15 2. During a period of renovation, repair, or rebuilding, on
16 the premises of the licensed permanent food service
17 establishment or off the premises within the line of sight of,
18 and not to exceed 1,320 feet from, the licensed permanent food
19 service establishment for 120 consecutive days. The division may
20 exercise discretion to grant an additional extension of time
21 upon a reasonable and reliable demonstration by the licensed
22 permanent food service establishment that additional time is
23 needed to complete the renovation, repair, or rebuilding.
24 (b) If a permanent food service establishment licensed
25 under this chapter, or the land upon which that establishment is
26 sited, is rendered uninhabitable due to a natural disaster that
27 is the subject of a declared state of emergency, a temporary
28 commercial kitchen may operate on the premises of, or as near as
29 reasonably practicable to, the location of the licensed
30 permanent food service establishment. A temporary commercial
31 kitchen may operate in this capacity only during the period of
32 repair and rebuilding of the permanent establishment with which
33 it is associated. The operators of a temporary commercial
34 kitchen operating in this capacity must notify the division of
35 the kitchen's location and renew the notification every 90 days
36 for the duration of its operation.
37 (c) Except as authorized under paragraphs (a) and (b), a
38 temporary commercial kitchen may not operate in one location for
39 longer than 30 consecutive days. The operators of a temporary



358156

40 commercial kitchen must notify the division within 48 hours
41 after commencing operation in a location.
42 (4) ~~(3)~~ This section may not be construed to affect a
43
44 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====
45 And the directory clause is amended as follows:
46 Delete lines 38 - 39
47 and insert:
48 Section 2. Present subsections (3) and (4) of section
49 509.102, Florida Statutes, are redesignated as subsections (4)
50 and (5), a new subsection (3) is added to that section, and
51 subsection (1) and present subsection (3) of that section are
52 amended, to read:
53
54 ===== T I T L E A M E N D M E N T =====
55 And the title is amended as follows:
56 Delete line 13
57 and insert:
58 to operate during certain hours; authorizing temporary
59 commercial kitchens to be used in conjunction with
60 licensed permanent food service establishments for
61 specified purposes; authorizing such operation for
62 specified timeframes; authorizing the Division of
63 Hotels and Restaurants of the Department of Business
64 and Professional Regulation to grant extensions;
65 requiring a temporary commercial kitchen to notify the
66 division within a specified timeframe of commencing
67 operation; providing

By the Committee on Regulated Industries; and Senator Calatayud

580-02343-23

2023752c1

A bill to be entitled

An act relating to temporary commercial kitchens; amending s. 509.101, F.S.; requiring operators of public food service establishments who provide commissary services to maintain a temporary commercial kitchen registry; requiring temporary commercial kitchen operators to display license numbers; amending s. 509.102, F.S.; defining the term "temporary commercial kitchen"; preempting regulation of temporary commercial kitchens to the state; authorizing mobile food dispensing vehicles and temporary commercial kitchens in specified locations to operate during certain hours; providing construction; providing an effective date.

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

Section 1. Subsection (3) of section 509.101, Florida Statutes, is amended to read:

509.101 Establishment rules; posting of notice; food service inspection report; maintenance of guest register; mobile food dispensing vehicle registry.—

(3) It is the duty of each operator of a public food service establishment that provides commissary services to maintain a daily registry verifying that each mobile food dispensing vehicle or temporary commercial kitchen that receives such services is properly licensed by the division. In order that such licensure may be readily verified, each mobile food dispensing vehicle operator or temporary commercial kitchen

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

580-02343-23

2023752c1

operator shall permanently affix in a prominent place on the side of the vehicle or kitchen, in figures at least 2 inches high and in contrasting colors from the background, the operator's public food service establishment license number. Prior to providing commissary services, each public food service establishment must verify that the license number displayed on the vehicle or kitchen matches the number on the vehicle or kitchen operator's public food service establishment license.

Section 2. Subsections (1), (2), and (3) of section 509.102, Florida Statutes, are amended to read:

509.102 Mobile food dispensing vehicles; temporary commercial kitchens; preemption.—

(1) (a) As used in this section, the term "mobile food dispensing vehicle" means any vehicle that is a public food service establishment and that is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

(b) As used in this section, the term "temporary commercial kitchen" means any kitchen that is a public food service establishment, used for the preparation of takeout or delivery-only meals housed in portable structures that are movable from place to place by a tow or are self-propelled or otherwise axle-mounted, that include self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal. Such kitchens are subject to all provisions of this chapter except as may be provided herein. The term does not include a tent.

(2) (a) Regulation of mobile food dispensing vehicles, and

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

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59 temporary commercial kitchens, involving licenses,
60 registrations, permits, and fees is preempted to the state. A
61 municipality, county, or other local governmental entity may not
62 require a separate license, registration, or permit other than
63 the license required under s. 509.241, or require the payment of
64 any license, registration, or permit fee other than the fee
65 required under s. 509.251, as a condition for the operation of a
66 mobile food dispensing vehicle or temporary commercial kitchen
67 within the entity's jurisdiction. A municipality, county, or
68 other local governmental entity may not prohibit mobile food
69 dispensing vehicles or temporary commercial kitchens from
70 operating within the entirety of the entity's jurisdiction.

71 (b) Any mobile food dispensing vehicle or temporary
72 commercial kitchen that is operated on the same premises as and
73 by a separately licensed public food service establishment may
74 operate during the same hours of operation as the separately
75 licensed public food service establishment that operates such
76 mobile food dispensing vehicle or temporary commercial kitchen.

77 (3) This section may not be construed to affect a
78 municipality, county, or other local governmental entity's
79 authority to regulate the operation of mobile food dispensing
80 vehicles or temporary commercial kitchens other than the
81 regulations described in subsection (2).

82 Section 3. This act shall take effect July 1, 2023.

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.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 940

INTRODUCER: Banking and Insurance Committee and Senators Calatayud and Rodriguez

SUBJECT: Multiple-employer Welfare Arrangements

DATE: April 3, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
2.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 940 revises statutory provisions relating to the regulation of association health plans (AHP), which are a type of multiple employer welfare arrangement (MEWA). A MEWA is a legal arrangement that allows business associations or employer groups to jointly offer health insurance and other specified benefits to their members or employees. In Florida, The Office of Insurance Regulation has regulatory oversight of self-insured MEWAs and AHPs.

In 2018, the U.S. Department of Labor (DOL) revised the Employee Retirement Income Security Act (ERISA) rules by providing another option for establishing and maintaining an association health plan in order to expand access to affordable health coverage for sole proprietors and small employers. This rule loosened the requirements for associations to qualify as ERISA-covered “bona-fide associations,” thereby allowing the AHPs they sponsor to qualify as single ERISA plans and be subject to large group market requirements instead of the individual and small group market requirements. Florida codified the 2018 federal regulation defining “bona-fide group.” In 2019, the U.S. District Court for the District of Columbia invalidated significant provisions of the federal regulations. The court concluded that the bona fide association and working provisions of the Final Rule are unreasonable and unlawful interpretations of ERISA, and these provisions were vacated by the court.

CS/SB 940 revises the definition of “bona-fide group” under Florida law to include many of the provisions of the 2018 federal rule and removes the cross reference to the 2018 federal

regulation. The bill provides that a bona-fide group is an employee welfare benefit plan consisting of a group or association of member employers that meets the following requirements:

- The primary purpose of the group or association is to offer and provide health coverage to its member employers and their employees, but the group or association must have at least one substantial business purpose that is unrelated to the offering and providing of health insurance. A substantial business purpose is considered to exist if the group or association would be a viable entity in the absence of sponsoring an employee benefit plan.
- Each member employer participating in the group health plan is a person acting directly as an employer of at least one employee who is a participant covered under the plan.
- The group or association has a formal organizational structure with a governing body.
- The functions and activities of the group or association are controlled by its member employers. The control must be present both in form and substance.
- The member employers have a principal place of business in the same region that does not exceed the boundaries of a single state or a metropolitan area, even if the metropolitan area includes more than one state.
- Eligibility for the association or group health coverage offerings is specified, such as an employee or former employee of a current employer member of the group or association; or a beneficiary of the current or former employee.
- The group or association is not a health insurance issuer as described in section 733(b)(2) of ERISA, or owned or controlled by a health insurance issuer or by a subsidiary or affiliate of a health insurance issuer, other than to the extent such entities participate in the group or association in their capacity as member employers of the group or association. This language is substantially similar to language found in 29 C.F.R. part 2510.3-5 (8), with the only difference being the removal of the federal citation for the definition of a health insurance issuer.
- The group or association health coverage must comply with the nondiscrimination provisions of s. 627.6699, F.S., as it applies to small group health plans.

The bill is not expected to have an impact on state or local governments.

The bill takes effect upon becoming law.

II. Present Situation:

Regulation of Multiple Employer Welfare Arrangements under ERISA

The U.S. Department of Labor (DOL) is responsible for the administration and enforcement of the provisions of Title I of the Employee Retirement Income Security Act (ERISA).¹ In general, ERISA prescribes minimum participation, vesting and funding standards for private-sector pension benefit plans and reporting and disclosure, claims procedure, bonding and other requirements which apply to both private-sector pension plans and private-sector welfare benefit plans. ERISA also prescribes standards of fiduciary conduct which apply to persons responsible for the administration and management of the assets of employee benefit plans subject to ERISA.

¹ 29 U.S.C. s. 100 et seq.

ERISA covers only those plans, funds, or arrangements that constitute an “employee welfare benefit plan,” as defined in ERISA Section 3(1), or an “employee pension benefit plan,” as defined in ERISA Section 3(2). By definition, multiple employer welfare arrangements (MEWAs) do not provide pension benefits; therefore, only those MEWAs that constitute “employee welfare benefit plans” are subject to ERISA’s provisions governing employee benefit plans.

Prior to 1983, if a MEWA was determined to be an ERISA-covered plan, state regulation of the arrangement would have been precluded by ERISA’s preemption provisions. On the other hand, if the MEWA was not an ERISA-covered plan, which was generally the case, ERISA’s preemption provisions did not apply and states were free to regulate the entity in accordance with applicable state law. In 1983, Congress amended ERISA to give states regulatory authority over self-insured multiple employer welfare arrangements and some regulatory authority over fully insured MEWAs to ensure solvency, require state licensure, and require financial reporting.²

Subsequently in 1996, ERISA was amended to give the DOL the authority to require full-insured and self-insured MEWAs to register with the DOL.³ MEWAs that are not group health plans (non-plan MEWAs) must register with the DOL prior to operating in a state.⁴ The purpose of this reporting was to allow the department to determine whether the requirements of part 7 of ERISA were being met.⁵ Part 7 of ERISA includes statutory amendments made by HIPAA and other statutes for which MEWAs must annually report compliance.

The Patient Protection and Affordable Care Act⁶ (PPACA) created reporting requirements for MEWAs, imposed criminal penalties on MEWA fraud, and authorized the department to take immediate actions against fraudulent MEWAs.

Access to Affordable Health Insurance Coverage through an Association

Prior to August 20, 2018, health insurance coverage offered or provided through an employer trade association, chamber of commerce, or similar organization, to individuals and small employers, was generally regulated under the same federal standards that apply to insurance coverage sold by health insurance issuers⁷ directly to these individuals and small employers, unless the coverage sponsored by the group or association constituted a single ERISA covered plan.⁸ Generally, unless the arrangement sponsored by the group or association constituted a single ERISA covered plan, the regulatory framework disregarded the group or association in determining whether the coverage obtained by any particular participating individual or

² Pub. L. 97-473.

³ Pub. L. 104-191.

⁴ Title 29 CFR s. 2520.101-2.

⁵ 65 Fed Reg. 7152 (Feb. 11, 2000) interim rule and 68 Fed. Reg. 17494 (Apr. 9, 2003) final rule.

⁶ The Patient Protection and Affordable Care Act (Pub. L. 111-148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), which amended and revised several provisions of the PPACA, was enacted on March 30, 2010. The laws are collectively referred to as PPACA.

⁷ A “health insurance issuer” or “issuer” is an insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a state and that is subject to state law that regulates insurance (within the meaning of section 514(b)(2) of ERISA). Such term does not include a group health plan. 29 CFR 2590.701-2. The terms “health insurance issuer” and “issuer” are used interchangeably.

⁸ Fed. Reg. Vol. 83, No 120 (June 21, 2018) at 28912 and 28913.

employer is individual, small group, or large group market coverage. Instead, the test for determining the type of coverage focuses on whether the coverage is offered to individuals or employers.⁹

As a result, associations that wanted to form association health plans (AHPs) and existing AHPs currently faced a complex and costly compliance environment, insofar as the various employer members of the association and the association's health insurance coverage arrangement may simultaneously be subject to large group, small group, and individual market regulation which undermines one of the core purposes and advantages of an association forming and its employer members joining an AHP.

On June 21, 2018, the DOL issued its final rule on the regulation of AHPs, effective August 20, 2018.¹⁰ The final rule maintains the existing regulatory framework but also creates a second option for both new and existing AHPs that may elect to follow the new regulations. The second option contains the following key provisions:

- Allows for AHPs to be based on a common geography area or a common industry for purposes of the commonality of interest test.
- Allows small employers, including sole proprietors with no employees, to join together to form an AHP and be treated as a large employer for the purpose of buying insurance. Previously an employer with no employees was not eligible for group coverage.
- Includes nondiscrimination protections that prohibit associations from conditioning membership based on a health factor (e.g., health status, medical condition including both physical and mental illnesses, claims experience, receipt of health care, medical history, genetic information, evidence of insurability, or disability of an employee, or family member). An AHP may not discriminate in eligibility (e.g., enrollment, effective coverage dates, or waiting periods) benefits or premiums against an individual within a group of similarly situated individuals based on health factors. The rule does not prohibit the use of non-health factors such as gender, age, geography, and industry. The rule prohibits groups or associations from treating the employees of different employer members as distinct groups of similarly situated individuals based on a health factor.
- Eliminates the existing requirement that a group or association acting as an employer must exist for purposes other than providing health benefits. The rule requires that a group or association of employers have at least one substantial business purpose unrelated to offering and providing health coverage or other employee benefits to its employer members and their employees, even if the primary purpose of the group or association is to offer such coverage to its members.

The rule provides that states will continue to have regulatory oversight of AHPs and share enforcement authority with the federal government. The new rule does not affect previously existing AHPs, which were authorized under prior guidance.¹¹ Such plans can continue to operate as before, or elect to follow the new requirements if they want to expand within a geographic area, regardless of industry, or to cover the self-employed. New plans can also form

⁹ *Id.* Known as the “look through” doctrine.

¹⁰ 29 CFR Part 2510, available at <https://www.govinfo.gov/content/pkg/FR-2018-06-21/pdf/2018-12992.pdf> (last viewed April 3, 2023).

¹¹ Fed. Reg. Vol. 83, No. 120 (June 21, 2018) Preamble.

and elect to follow either the old guidance or the new rules. New and existing plans may use experience rating by underwriting premiums for individual employer members based on health status. However, the AHPs that want to do so must continue to meet the prior federal regulations, which are more stringent standards in areas such as commonality of interest; and they could not enroll working owners in an AHP coverage.

In the preamble of the rule, the DOL states that the final rule does nothing to remove the traditional oversight and regulatory authority that states have over AHPs and MEWAs. The final rule does not modify or otherwise limit existing state authority under Section 514 of ERISA. For fully insured AHPs, states can impose solvency standards and other rules that apply to health insurers that sell policies to AHPs. The DOL adds that states clearly have the authority to impose licensing, registration, certification, financial reporting, examination, audit, and any other standards on fully insured AHPs that are necessary to ensure compliance with the state solvency standards. For self-insured AHPs, states can apply insurance laws to the AHP so long as the state law is “not inconsistent” with ERISA.¹²

The rule provides that the large group market’s regulatory flexibility is likely to encourage and enable more existing organizations to pursue more potential scale advantages for small business members. These might include some MEWAs that currently do not constitute single large group plans but instead encompass multiple plans, each sponsored separately by a participating employer (non-plan MEWAs).¹³ Further, the rule also encourages the establishment of new organizations to sponsor AHPs, and will enable both existing and new AHPs to extend membership to working owners. Fully-insured and self-insured AHPs established under this final rule generally will be subject to federal benefit mandates that apply to the large group insurance and self-insured ERISA-covered markets, respectively.

Federal Litigation Relating to the Regulations of AHPs

Eleven states and the District of Columbia sued the DOL alleging that its final rule interpreting the definition of “employer” in ERISA is unlawful under the Administrative Procedure Act.¹⁴ The court held that the bona fide association and working owner provisions of the final rule, codified at 29 C.F.R. ss. 2510.3-5(b), (c), and (e), are unreasonable interpretations of ERISA and were vacated by the court.¹⁵ The court concluded that the final rule was intended to end run the requirements of PPACA.¹⁶ The court notes that the final rule includes a severability provision, which provides that if a provision is found entirely invalid then “the provision shall be severable from (the final rule) and shall not affect the remainder thereof.” In light of this provision, the court remanded the final rule to the agency for consideration in the first instance of how the

¹² Section 514(b)(6)(A)(ii) of ERISA. See Health Affairs Blog, *Final Rule Rapidly Eases Restrictions on Non-ACA-Compliant Association Health Plans* (June 21, 2018), available at <https://www.healthaffairs.org/doi/10.1377/forefront.20180621.671483/full/> (last visited April 3, 2023).

¹³ Health Affairs Blog, *Final Rule Rapidly Eases Restrictions on Non-ACA-Compliant Association Health Plans* (June 21, 2018), available at <https://www.healthaffairs.org/doi/10.1377/forefront.20180621.671483/full/> (last visited April 3, 2023).

¹⁴ *State of New York, et al., v. United States Department of Labor*, 363 F.Supp.3d 109 (D.C. Cir 2019).

¹⁵ *Id.* at 141.

¹⁶ *Id.*

severability provision affects the remaining portions of the final rule. The Department of Justice appealed the court's decision to the court of Appeals for the District of Columbia.¹⁷

On April 29, 2019, the DOL provided guidance¹⁸ regarding their enforcement stance for AHPs created under the new rule. The court ruling was issued days before the rule went fully into effect for new self-insured AHPs.¹⁹ Because the rule had already been partially in effect, there were questions about what the court's decision meant for consumers who already enrolled in new AHP coverage.²⁰

Under this guidance, the DOL and HHS stated that they would not take enforcement action for violations that occurred before court decision so long as the entity made those decisions in good faith reliance on the validity of the AHP rule.²¹ DOL will not take action against existing AHPs for continuing to provide benefits to members who enrolled in good faith reliance on the AHP rule's validity before the district court's order, through the remainder of the applicable contract term. Further, at the end of the plan year, the issuer would only be able to renew the coverage for an employer member of an AHP formed pursuant to the DOL's final rule if the coverage complies with the relevant market requirements for that employer's size (such as, for insurance sold to small employers, the essential health benefits requirements and premium rating rules). The guidance provided that an insurer can satisfy the requirement to continue the coverage in force by continuing coverage for each employer-member of the association that chooses to continue coverage, either through the master policy with the association or through separate contracts with each employer-member on an outside-the-association basis.

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations (HMOs), and other risk-bearing entities.²² The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S., and before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency.²³

Regulation of Multiple Employer Welfare Arrangements—General Provisions

Section 627.651, F.S., provides that group health insurance contracts and plans of self-insurance must meet certain group requirements. Further, this section does not apply to any plan which is established or maintained by an individual employer in accordance with ERISA or to a MEWA, as defined in s. 624.437, F.S., except that a MEWA must comply with the following statutory provisions:

¹⁷ Health Affairs Blog, *DOL Issues Additional Guidance On AHPs* (May 15, 2019), available at <https://www.healthaffairs.org/doi/10.1377/forefront.20190515.142866/full/> (last visited April 3, 2023).

¹⁸ [U.S. Department of Labor Statement Relating to the U.S. District Court Ruling in *State of New York v. United States Department of Labor* | U.S. Department of Labor \(dol.gov\)](#) (Apr. 29, 2019) (last visited April 3, 2023).

¹⁹ [DOJ Appeals AHP Decision, CMS Posts Final 1332 Funding For 2019 | Health Affairs](#) (Apr. 30, 2019).

²⁰ *Supra* note 17.

²¹ *Supra* note 18.

²² Section 20.121(3)(a), F.S.

²³ Section 641.21(1), F.S.

- 627.419, F.S., relating to the construction of policies.
- 627.657, F.S., relating to guaranteed availability of individual health insurance coverage.
- 627.6575, F.S., relating to group coverage for newborn children.
- 627.6578, F.S., relating to group coverage for natural-born, adopted, and foster children; and children in insured's custodial care.
- 627.6579, F.S., relating to group coverage for child health supervision services.
- 627.6612, F.S., relating to group coverage for surgical procedures and devices incident to mastectomy.
- 627.66121, F.S., relating to coverage length of stay and outpatient postsurgical care for breast cancer.
- 627.66122, F.S., relating to group coverage for breast cancer and routine follow up care.
- 627.6615, F.S., relating to group coverage continuation of coverage for children with disabilities.
- 627.6616, F.S., relating to group coverage for ambulatory surgical center service.
- 627.662(7), F.S., relating to denial of claims.²⁴

Florida's Nonprofit Multiple Employer Welfare Arrangement Act

In Florida, MEWAs²⁵ are regulated pursuant to the Florida's Nonprofit Multiple Employer Welfare Arrangement Act (act).²⁶ An AHP consisting of multiple employers is referred to as a MEWA.²⁷ For purposes of this act, a MEWA is an employee welfare benefit plan or any other arrangement which is established or maintained for the purpose of offering or providing health insurance benefits or any other benefits described in s. 624.33, F.S., other than life insurance benefits, to the employees of two or more employers, or to their beneficiaries.²⁸ A person may not operate, maintain, or, after October 1, 1983, establish a MEWA unless such arrangement has a valid certificate of authority issued by the OIR.²⁹

The OIR uses the requirements of s. 624.438, F.S., to determine eligibility for MEWAs³⁰ and specifies the application requirements in Rule 69O-192.008, F.A.C. The OIR reviews MEWA

²⁴ Section 627.645(1), F.S. provides that a claim for payment under a health insurance policy or self-insured program of health benefits for treatment, care, or services in a licensed hospital that is accredited by an accrediting organization whose standards incorporate comparable regulations required by this state may not be denied because such hospital lacks major surgical facilities and is primarily of a rehabilitative nature, if such rehabilitation is specifically for treatment of physical disability.

²⁵ Section 624.437(3), F.S., provides this section does not apply to a MEWA that offers or provides fully insured benefits by an authorized insurer, to an arrangement which is exempt from state insurance regulation pursuant to ERISA, or to the state group insurance program.

²⁶ Section 624.436-624.448, F.S. which may be cited as the "Florida Nonprofit Multiple Welfare Arrangement Act."

²⁷ Section 624.438, F.S.

²⁸ Section 624.437(1), F.S. Subsection (3) of this section exempts a MEWA that offers or provides benefits which are fully insured by an authorized insurer, to an arrangement which is exempt from state insurance regulation in accordance with the Employee Retirement Income Security Act of 1974 (ERISA), and the state group health insurance program administered pursuant to s.110.123, F.S.

²⁹ Section 624.437(2), F.S.

³⁰ See Office of Insurance Regulation, 2023 Legislative Session, SB 940 Analysis (Feb. 22, 2023). On file with the Senate Banking and Insurance Committee.

applications for compliance with Florida law and does not review for compliance with federal standards.³¹

In 2019, s. 624.438, F.S., was amended to codify the cross reference to the definition of bona fide group, as adopted in the 2018 federal rule. This change also was made in s. 627.654, F.S., relating to labor unions, association of employers, and small employer alliance groups.³² Section 624.438, F.S., specifies the general eligibility criteria for a MEWA and requires the employers to be in the same trade, industry, or profession as defined by the appropriate licensing agencies, or a bona fide group as defined in 29 C.F.R. part 2510.3-5. It also requires the MEWA to have a constitution or bylaws specifically stating its purpose and which has been organized for purposes in addition to obtaining or providing insurance.

In Florida, three MEWAs are licensed by Office of Insurance Regulation. They are the Florida Bankers Health Consortium, Inc., Greater Health Trust, and Independent Colleges and Universities Benefit Association, Inc.³³

Labor Unions, Association, and Small Employer Health Alliance Groups

Section 627.654, F.S., provides that a bona fide group or association or association of employers, as defined in 29 C.F.R. part 2510.3-5, or a group of individuals insured under an association may include a labor union or small employer health alliance groups if certain conditions are met.

Regulation of Small Group Employers

Section 627.6699, F.S., the Employee Health Care Access Act, defines a small group as an employer with at least one and not more 50 employees. The act provides restrictions relating to premium rates. The act allows the use of modified community rating in which the premium for each small employer is determined solely on the basis of the eligible employee's and eligible dependent's gender, age, family composition, tobacco use, or geographic area. In addition, premium adjustments of an employer's rate for claims experience, health status, or duration of coverage may deviate plus or minus 15 percent from the carrier's approved rate.³⁴ Subsequently, a small employer carrier may make an adjustment to a small employer's renewal premium, up to 10 percent annually due to claims experience, health status, or duration of coverage of the employees or dependents of the small employer.

The rating and underwriting standards of PPACA³⁵ require that premiums for individuals and small groups may vary only by:

³¹ *Id.* The OIR states that the U.S. Department of Labor advisory opinion and the 2018 Federal District Court opinion do not impact OIR's review of MEWA licensing applications.

³² Ch. 2019-129, Laws of Fla. Section 627.654, F.S., provides eligibility requirements for associations, labor unions, and small employer health alliance groups that want to be insured under a policy issued to their respective entity.

³³ Office of Insurance Regulation, [Company Search \(myfloridacfo.gov\)](https://myfloridacfo.gov) (last visited April 3, 2023)

³⁴ Section 627.6699(6), F.S.

³⁵ PPACA requires individual and small group plans to provide certain essential benefits and creates rating standards. PPACA preempts any state law that prevents the application of a provision of the PPACA. The PPACA effectively allows states to adopt and enforce laws that provide greater consumer protections than the PPACA, but any state law that does not meet the federal minimum standards will be preempted. Pub. L. No. 111-148, s. 1321(d).

- Age, up to a maximum ratio of 3 to 1. This means rates for older adults may not be more than three times greater than the rates for younger adults.
- Tobacco, up to a maximum ratio of 1.5 to 1.
- Geographic rating area.
- Whether coverage is for an individual or a family.³⁶

III. Effect of Proposed Changes:

Section 1. Amends s. 624.438, F.S., by deleting the current definition of “bona fide group,” which is defined by a cross reference to the 2018 federal rule, 29 C.F.R. 2510-3-5. The definition of the term, “bona fide group” is created within the section and it is similar but not identical to the federal definition and requirements. The bill provides that a bona fide group that is an employee welfare benefit plan includes a group or association which meets the following requirements:

- The primary purpose of the group or association is to offer and provide health coverage to its member employers and their employees, but the group or association has at least one substantial business purpose that is unrelated to the offering and providing of health insurance. A substantial business purpose is considered to exist if the group or association would be a viable entity in the absence of sponsoring an employee benefit plan.
- Each member employer participating in the group health plan is a person acting directly as an employer of at least one employee who is a participant covered under the plan.
- The group or association must have a formal organizational structure with a governing body.
- The functions and activities of the group or association are controlled by its member employers. The control must be present both in form and substance.
- The member employers must have a principal place of business in the same region that does not exceed the boundaries of a single state or a metropolitan area, even if the metropolitan area includes more than one state.
- Eligibility for health coverage offered by the individuals and employers of the association or group is specified.
- The group or association health coverage must comply with the nondiscrimination provisions of section 627.6699, F.S., as it applies to small group health plans rather than the federal requirements.³⁷ Section 627.6699, F.S. allows for the use of modified community rating in which the premium for each small employer is determined solely on the basis of the eligible employee’s and eligible dependent’s gender, age, family composition, tobacco use, or geographic area. In addition, premium adjustments of plus or minus 15 percent of the approved rate are allowed for claims experience, health status, or duration of coverage may not be charged to individual employees or dependents. The federal rule does not provide rating bands. Section 627.654, F.S., provides that a small employer, as defined in s. 627.6699, F.S., may be insured under a policy issued to a small employer health alliance by a carrier, as defined in s. 627.6699, F.S.
- Specifies that the group or association is not a health insurance issuer as described in section 733(b)(2) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. section 1191b(b)(2), or owned or controlled by a health insurance issuer or by a subsidiary or

³⁶ 42 U.S.C. s.18022.

³⁷ *Supra* note 9.

affiliate of a health insurance issuer, other than to the extent such entities participate in the group or association in their capacity as member employers of the group or association.

Section 2. Provides that the bill takes effect upon becoming law.

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:

Implementation of the bill will clarify the regulations of self-funded MEWAs in Florida.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under federal law, self-employed employers or sole proprietors that have no employees are generally not eligible for group coverage. Instead, they may obtain coverage in the individual

market.³⁸ It is unclear whether such employers would qualify as an employee of a current group member under Florida law.³⁹

VIII. Statutes Affected:

This bill substantially amends section 624.438 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.)

CS by Banking and Insurance on March 29, 2023:
The amendment makes technical and conforming changes.

- B. **Amendments:**

None.

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

³⁸ 45 CFR s. 155.20.

³⁹ See Office of Insurance Regulation, *2023 Legislative Session, SB 940 Analysis* (Feb. 22, 2023). On file with Senate Committee on Banking and Insurance.

By the Committee on Banking and Insurance; and Senators
Calatayud and Rodriguez

597-03293-23

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A bill to be entitled

An act relating to multiple-employer welfare arrangements; amending s. 624.438, F.S.; revising eligibility requirements for a bona fide group to qualify as a multiple-employer welfare arrangement; amending s. 627.654, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 624.438, Florida Statutes, is amended to read:

624.438 General eligibility.—

(1) To meet the requirements for issuance of a certificate of authority and to maintain a multiple-employer welfare arrangement, an arrangement:

(b) Must be established by a trade association, industry association, professional association of employers or professionals, or a bona fide group that as defined in 29 C.F.R. part 2510.3-5 which has a constitution or bylaws specifically stating its purpose and which has been organized for purposes in addition to obtaining or providing insurance.

1. A trade association consists of member employers who are in the same trade as recognized by the appropriate licensing agency.

2. An industry association consists of member employers who are in the same major group code, as defined by the Standard Industrial Classification Manual issued by the federal Office of Management and Budget, unless restricted by subparagraph 1. or

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subparagraph 3.

3. A professional association consists of member employers who are of the same profession as recognized by the appropriate licensing agency.

4. A bona fide group is a group or an association of employers which meets all of the following requirements:

a. The primary purpose of the group or association may be to offer and provide health coverage to its employer members and their employees. However, the group or association must also have at least one substantial business purpose unrelated to such primary purpose. For purposes of this sub-subparagraph, a substantial business purpose is deemed to exist if the group or association would be a viable entity in the absence of sponsoring an employee benefit plan. A substantial business purpose includes promoting common business interests of its members or the common economic interests in a given trade or employer community and is not required to be a for-profit activity.

b. Each employer member of the group or association which participates in the group health plan is a person acting directly as an employer of at least one employee who is a participant covered under the plan.

c. The group or association has a formal organizational structure with a governing body and has bylaws or other similar indications of formality.

d. The functions and activities of the group or association are controlled by its employer members, and the group's or association's employer members that participate in the group health plan control the plan. Control must be present both in

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59 form and in substance.

60 e. The employer members have a principal place of business
 61 in the same region that does not exceed the boundaries of a
 62 single state or metropolitan area, even if the metropolitan area
 63 includes more than one state.

64 f. The group or association does not make health coverage
 65 through the group's or association's group health plan available
 66 to any person other than:

67 (I) An employee of a current employer member of the group
 68 or association;

69 (II) A former employee of a current employer member of the
 70 group or association who became eligible for coverage under the
 71 group health plan when the former employee was an employee of
 72 the employer; or

73 (III) A beneficiary, such as a spouse or dependent child,
 74 of an individual described in sub-sub-paragraph (I) or sub-
 75 sub-paragraph (II).

76 g. The group or association and the health coverage offered
 77 by the group or association comply with the nondiscrimination
 78 provisions of s. 627.6699.

79 h. The group or association is not a health insurance
 80 issuer as defined in s. 733(b)(2) of the Employee Retirement
 81 Income Security Act of 1974, 29 U.S.C. s. 1191b(b)(2), or owned
 82 or controlled by such a health insurance issuer or by a
 83 subsidiary or affiliate of such a health insurance issuer, other
 84 than to the extent such entities participate in the group or
 85 association in their capacity as employer members of the group
 86 or association.

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88 The requirements of this paragraph do not apply to an
 89 arrangement licensed before April 1, 1995, regardless of the
 90 nature of its business. However, an arrangement exempt from the
 91 requirements of this paragraph may not expand the nature of its
 92 business beyond that set forth in the articles of incorporation
 93 of its sponsoring association as of April 1, 1995, except as
 94 authorized in this paragraph.

95 Section 2. Paragraph (a) of subsection (1) of section
 96 627.654, Florida Statutes, is amended to read:

97 627.654 Labor union, association, and small employer health
 98 alliance groups.—

99 (1) (a) A bona fide group as defined in s. 624.438(1)(b)4.,
 100 an ~~ex~~ association of employers, as defined in 29 C.F.R. part
 101 2510.3-5, or a group of individuals may be insured under a
 102 policy issued to an association, including a labor union, which
 103 association has a constitution and bylaws and which has been
 104 organized for purposes in addition to that of obtaining
 105 insurance, or to the trustees of a fund established by such an
 106 association, which association or trustees shall be deemed the
 107 policyholder, insuring at least 15 individual members of the
 108 association for the benefit of persons other than the officers
 109 of the association, the association, or trustees.

110 Section 3. This act shall take effect upon becoming a law.

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.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 1242

INTRODUCER: Commerce and Tourism Committee and Senator Boyd

SUBJECT: Registrations and Transfers of Heating, Ventilation, and Air-conditioning System
Manufacturer Warranties

DATE: April 4, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Baird	McKay	CM	Fav/CS
2.			JU	
3.			RC	

I. Summary:

CS/SB 1242 provides that a manufacturer warranty for a Heating, Ventilation, and Air Conditioning (HVAC) system, of a residential property, be registered to the property instead of the person who registered for the warranty. The bill also provides for the following:

- When a subsequent owner purchases the property, the remaining manufacturer warranty coverage of the HVAC system is transferred to the subsequent owner.
- A manufacturer warranty for an HVAC system becomes effective once an HVAC is installed.
- The warrantor continues to be obligated under the terms of a manufacturer's warranty and cannot charge the new owner a transfer fee.
- A contractor who installs a new HVAC system must document the installation through an invoice or receipt to the customer.
- The transfer of the warranty to the new owner does not extend the existing warranty term.
- Warranties are deemed registered with the manufacturer if the contractor is licensed under part I of Chapter 489, F.S., installs the new HVAC system, and provides the manufacturer with the serial number of the HVAC system.

The bill provides an effective date of July 1, 2023.

II. Present Situation:

Warranty Background

A warranty is an assurance that a manufacturer or seller makes about the condition of its product.¹ A warranty means that a manufacturer or seller will replace or repair the product under certain instances. A warranty can be either express or implied.²

An express warranty is a verbal or written assurance for the product.³ On the other hand, an implied warranty is an unstated assurance that the product is made for its intended purpose.⁴ An implied warranty is in addition to an express warranty. However, an implied warranty may be negated or limited by an express warranty. There is no implied warranty if a seller states that the product is “as is”, “with all faults”, or similar language.⁵

Manufacturer Warranties

A manufacturer warranty attaches to the purchase of the product by the manufacturer. A manufacturer warranty is considered a limited warranty because the warranty is only valid for a certain time period after the purchase. These terms and conditions are created by the manufacturer. Once the period of coverage is over, someone can purchase an extended warranty under different coverage terms to extend the protection of the product beyond the terms and conditions laid out in the manufacturer warranty.⁶

Magnuson-Moss Warranty Act

The Magnuson-Moss Warranty Act (MMWA)⁷ is a federal law that governs consumer product warranties. Passed in 1975, the Act requires manufacturers and sellers of consumer products to provide consumers with detailed information about warranty coverage before and after the sale of the warranted product.⁸

The MMWA defines three kinds of consumers:

- A buyer of any consumer product.
- Any person to whom such product is transferred during the duration of an implied or express warranty applicable to the product.

¹ Will Kenton, *Warranty Definition, Types, Example, and How It Works*, Investopedia, Nov. 24, 2022, available at <https://www.investopedia.com/terms/w/warranty.asp> (last visited April 3, 2023).

² 45 Fla. Jur 2d Sales and Exchanges of Goods § 156.

³ “An express warranty is created by an affirmation of fact or promise made by the seller to the buyer that relates to the goods, by any description of the goods that is made part of the basis of the bargain, or by any sample or model that is made part of the basis of the bargain.” S. 672.313, F.S.

⁴ Section 672.314, F.S.

⁵ Section 672.316, F.S.

⁶ Tom Scott, *Extended Warranties vs. Manufacturer Warranties: What's the Difference?*, Fortegra, July 9, 2019, available at <https://blog.fortegra.com/extended-warranties-vs.-manufacturer-warranties-whats-the-difference> (last visited April 3, 2023).

⁷ 15 U.S.C. §§ 2301-2312 (1975).

⁸ MMWA does not apply if a seller or manufacturer does not provide a warranty on their product. Jason Gordon, *Magnuson Moss Warranty Act – Explained*, The Business Professor, Sept. 26, 2021, available at https://thebusinessprofessor.com/en_US/consumer-law/magnuson-moss-warranty-act (last visited April 3, 2023).

- Any other person who is entitled by the terms of such warranty or under applicable State law to enforce the obligations of the warranty.⁹

Manufacturer Warranties for HVAC Systems in Florida

Most manufacturers require that an HVAC contractor purchase and install the HVAC system before the consumer can register the HVAC system for the limited manufacturer warranty. Generally, manufacturers provide a warranty for the HVAC system for 5 to 10 years. The warranty covers parts that might fail such as the air compressor or furnace heat exchanger. The manufacturer will replace or repair any parts at no cost if the parts are covered under the warranty.¹⁰

If a building or house that contains an HVAC system with a manufacturer warranty is sold to another person, the warranty time may be cut short or may not transfer to the new owner. The assignment of the HVAC warranty to the new owner is contingent upon the terms and conditions for the warranty. In Florida, most manufacturer warranties are tied to a person instead of the property. Usually, the manufacturer warranty is tied to the original owner and does not transfer when the property is sold unless the previous owner transfers it to the new owner if that is an option in the warranty. Below are some typical transfer policies:¹¹

Manufacturer	Transfer Policy
Carrier	<ul style="list-style-type: none"> • Must register within 90 days of the property sale. • HVAC must stay in same location. • Subsequent owner will have access to limited warranty with 5-year parts and compressor coverage.¹²
Maytag	<ul style="list-style-type: none"> • Can transfer a warranty from the original owner to subsequent owner. • Subsequent owner can access an “unregistered warranty” for 5-year parts and compressor coverage and 20-year heat exchanger coverage. • Subsequent owners cannot access the entire coverage period that the original owner had for the registered warranty.¹³

⁹ *O'Connor v. BMW of N. Am., LLC*, 905 So. 2d 235, 236–37 (Fla. 2d DCA 2005); *see also*, § 2310(d) of MMMWA provides that, “a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this title, or under a written warranty, implied warranty, or service contract, may bring suit for damages...”

¹⁰ Bryan Carnahan, *HVAC Warranties and You: What Are They, and Why Should You Register Your Product?*, Fire & Ice Heating and Air Conditioning, Inc., July 1, 2022, available at <https://indoortemp.com/resources/hvac-warranties-and-product-registration> (last visited April 3, 2023).

¹¹ Bry'Ana Arvie, *Will HVAC Warranties Automatically Transfer over to New Homeowners?*, Angi, Aug. 10, 2021, available at <https://www.angi.com/articles/do-hvac-warranties-transfer-homeowners.htm> (last visited April 3, 2023).

¹² Homeowner Resources – Warranty, Carrier, available at <https://www.carrier.com/residential/en/us/homeowner-resources/warranty/> (last visited April 3, 2023).

¹³ Product Warranty, Maytag, available at <https://www.maytaghvac.com/warranty/> (last visited April 3, 2023).

Trane	<ul style="list-style-type: none"> • Warranty stays with the HVAC unit regardless of original or subsequent ownership. • Subsequent owner gets access to the remaining warranty coverage period of the original owner's limited warranty with the manufacturer, but the subsequent owner must register the unit with Trane and pay a transfer fee.¹⁴
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Other States

States differ in their approach on the transferability of warranties to a subsequent owner. In Louisiana and Texas, warranties automatically transfer the remaining coverage of the original owner, without any cost, to the subsequent owner of the property.¹⁵ In Alaska, if the lessor has a warranty on personal property and the terms of the warranty permit transfer, the lessor may transfer the warranty to the new person who acquired ownership.¹⁶ Generally, states allow the terms and conditions of the warranty to control whether the remaining coverage is transferable to a subsequent owner.

Licensed Contractors

The Construction Industry Licensing Board (CILB) within the DBPR is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.¹⁷ The CILB is divided into two divisions with separate jurisdictions:

- Division I comprises the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
- Division II comprises the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.¹⁸

¹⁴ Warranty and Registration, Trane, available at <https://www.trane.com/residential/en/resources/warranty-and-registration/#faq> (last visited April 3, 2023).

¹⁵ La. Stat. § 9:3148; TX BUS & COM § 608.002(a)-(b) which states the following:

(a) If residential real property that includes an air conditioning system as a fixture to the property is conveyed to a new owner, a manufacturer's warranty in effect on that system or a component of that system on the date of the conveyance: (1) is automatically transferred to the new owner; and

(2) continues in effect as if the new owner was the original purchaser of the system or component, as applicable.

(b) A warrantor continues to be obligated under the terms of a manufacturer's warranty agreement for a warranty transferred under this section and may not charge a fee for the transfer of the warranty.

¹⁶ Alaska Stat. Ann. § 45.35.020.

¹⁷ See s. 489.107, F.S.

¹⁸ Section 489.105(3), F.S.

Under current law, a “certified contractor” has met competency requirements for a particular trade category and holds a geographically unlimited certificate of competency from the DBPR which allows the contractor to contract in any jurisdiction in the state without being required to fulfill the competency requirements of other jurisdictions.¹⁹

The term “registered contractor” means a contractor who has registered with the DBPR as part of meeting competency requirements for a trade category in a particular jurisdiction, which limits the contractor to contracting only in the jurisdiction for which the registration is issued.²⁰

Registered contractors must sit for and satisfactorily pass the state certified license examination to receive a state certified contractor’s license.

A “class A air-conditioning contractor” means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design central air-conditioning, refrigeration, heating, and ventilating systems.²¹

A “class B air-conditioning contractor” means a contractor whose services are limited to 25 tons of cooling and 500,000 BTU of heating in any one system in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system.²²

A “class C air-conditioning contractor” means a contractor whose business is limited to the servicing of air-conditioning, heating, or refrigeration systems, including any duct cleaning and equipment sanitizing which requires at least a partial disassembling of the system.²³

III. Effect of Proposed Changes:

The bill provides that:

- A manufacturer’s warranty for a HVAC system for a residential property is registered to the property, not the owner.
- Once a subsequent owner purchases the property, the remaining manufacturer warranty coverage of the HVAC system is transferred to the subsequent owner.
- The warrantor cannot continue to be obligated under the terms of a manufacturer’s warranty and cannot charge the new owner a transfer fee.
- An installation of an HVAC system automatically triggers a manufacturer warranty for the HVAC system.
- The contractor who installs a new HVAC system must document the installation through an invoice or receipt to the customer.
- The transfer of the warranty to the new owner does not extend the existing warranty term.

¹⁹ Sections 489.105(8) and 489.113(1), F.S.

²⁰ Sections 489.105(10) and 489.117(1)(b), F.S.

²¹ Section 489.105(3)(f), F.S.

²² Section 489.105(3)(g), F.S.

²³ Section 489.105(3)(h), F.S.

- Warranties are deemed registered with the manufacturer if the contractor is licensed under part I of Chapter 489, F.S., installs the new HVAC system, and provides the manufacturer with the serial number of the HVAC system.

The bill provides an effective date of July 1, 2023.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 559.956 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.)

CS by Commerce and Tourism on April 4, 2023:

The CS clarifies that a manufacturer's warranty for an HVAC system is attached to the property and not to the original purchaser. The amendment also:

- Clarifies that the bill only applies to residential real property.
- Provides that the warrantor continues to be obligated under the terms of a manufacturer's warranty and cannot charge the new owner a transfer fee.
- Provides that the transfer of the warranty to the new owner does not extend the existing warranty term.
- Provides that warranties are deemed registered with the manufacturer if the contractor is licensed under part I of Chapter 489, F.S., installs the new HVAC system, and provides the manufacturer with the serial number of the HVAC system.

B. Amendments:

None.



852154

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2023	.	
	.	
	.	

The Committee on Commerce and Tourism (Boyd) recommended the following:

Senate Amendment (with title amendment)

Delete lines 18 - 28

and insert:

559.956 Registrations and transfers of heating, ventilation, and air-conditioning system manufacturer warranties; required contractor documentation.-

(1) If a residential real property that includes a heating, ventilation, and air-conditioning (HVAC) system as a fixture to the property is conveyed to a new owner, a manufacturer's



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warranty in effect on that system or a component of that system:

(a) Is automatically transferred to the new owner; and

(b) Continues in effect as if the new owner was the

original purchaser of such system or component, as applicable.

(2) A warrantor continues to be obligated under the terms

of a manufacturer's warranty agreement for a warranty

transferred under this section and may not charge a fee for the

transfer of the warranty.

(3) The transfer of a manufacturer's warranty under this

section does not extend the remaining term of the warranty.

(4) A manufacturer's warranty for an HVAC system is deemed

registered with the manufacturer if a contractor licensed under

part I of chapter 489:

(a) Installs the new HVAC system; and

(b) Provides the manufacturer of the HVAC system with the

date of the issuance of the certificate of occupancy for

installations relating to new construction, or the serial number

of the HVAC system for installations relating to existing

construction, as applicable.

(5) A contractor licensed under part I of chapter 489 who

installs a new HVAC system must document the installation

through an invoice or a receipt and provide the

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

And the title is amended as follows:

Delete lines 5 - 10

and insert:

specifying that certain warranties for heating,

ventilation, and air-conditioning (HVAC) systems are



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automatically transferred and remain in effect under certain circumstances relating to the conveyance of property; specifying that a warrantor continues to be obligated under the terms of such transferred warranty; prohibiting warrantors from charging a fee for such transfers; specifying that such transfers do not extend the remaining term of a warranty; deeming manufacturers' warranties for HVAC systems registered with the manufacturer if certain requirements are met; requiring certain contractors installing HVAC

By Senator Boyd

20-01102-23

20231242__

A bill to be entitled

An act relating to registrations and transfers of heating, ventilation, and air-conditioning system manufacturer warranties; creating s. 559.956, F.S.; requiring manufacturer warranties for heating, ventilation, and air-conditioning (HVAC) systems to be registered to the home or building and not to the owner of the home or building; providing for the automatic effectiveness of such warranties at a specified time; requiring contractors installing HVAC systems to provide certain documentation; providing an effective date.

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

Section 1. Section 559.956, Florida Statutes, is created to read:

559.956 Heating, ventilation, and air-conditioning system manufacturer warranty registrations and transfer; required contractor documentation.—A manufacturer warranty for a heating, ventilation, and air-conditioning (HVAC) system must be registered to the home or building and not to the owner of the home or building. When a new owner takes ownership of the home or building, the current timeframe for the existing manufacturer warranty for the HVAC system stays in place. A manufacturer warranty for an HVAC system automatically becomes effective upon the installation of the HVAC system. A contractor who installs a new HVAC system must document the installation through an invoice or receipt to the customer.

Page 1 of 2

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

20-01102-23

20231242__

Section 2. This act shall take effect July 1, 2023.

Page 2 of 2

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

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.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1246

INTRODUCER: Senator Yarborough

SUBJECT: Truth in Legal Advertising

DATE: April 3, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	Favorable
2.	McMillan	McKay	CM	Favorable
3.			RC	

I. Summary:

SB 1246 creates s. 501.139, F.S., to regulate certain legal advertisements soliciting clients for personal injury lawsuits against drug manufacturers. These regulations prohibit advertisements for legal services from appearing to offer professional medical advice or advice from a government entity. Moreover, advertisements soliciting clients who may allege an injury from a prescription drug or medical device approved by the Food and Drug Administration must advise such persons to consult with their physicians before making decisions regarding their medications or medical treatment.

The bill takes effect on July 1, 2023.

II. Present Situation:

Potentially Deceptive Legal Advertising

In 2017, the U.S. Chamber Institute for Legal Reform commissioned an online survey of 1,335 adults, 500 of whom were currently taking, or had taken, one or more of 12 prescription drugs frequently targeted in lawsuits against drug manufacturers. Nearly half (46%) of the survey respondents said they would definitely or probably stop taking the drug immediately after seeing the advertisement. More than half (58%) said they would definitely or probably reduce the dosage to below the prescribed amount.¹

Because survey respondents were willing to discontinue or reduce their medication without consulting a doctor, the survey results show that certain types of legal advertising could have severe consequences for patients, which has generated concern at the federal level.

¹U.S. Chamber Institute for Legal Reform, *Bad for Your Health: Lawsuit Advertising Implications and Solutions*, at 20-22 (Oct. 2017), available at https://instituteforlegalreform.com/wp-content/uploads/2020/10/TLA_Advertising-Paper-WEB.pdf (last visited April 3, 2023).

In 2019, the Federal Trade Commission (FTC) contacted seven legal practitioners and lead generating companies to express concern that some of their television advertisements that solicit clients for personal injury lawsuits against drug manufacturers may be deceptive or unfair under the FTC Act. Specifically, the warning letters stated that some of the advertisements might:

- Misrepresent the risks associated with certain medications and could lead consumers to the false conclusion that their prescribed medication had been recalled.
- Make deceptive or unsubstantiated claims about the risks of taking blood thinners and drugs for diabetes, acid reflux, and high blood pressure, among other conditions; advertisers must have competent and reliable scientific evidence to substantiate their claims about these purported risks.²
- May mislead consumers into thinking that they are watching a government-sanctioned announcement, with some of the advertisements going so far as to include the U.S. Food and Drug Administration (FDA) logo or text reading “FDA Warning,” suggesting that the advertisements had been approved by the agency.³

The FTC also noted that the FDA’s Adverse Event Reporting System contained reports of consumers who had viewed advertisements about the prescription drugs they were taking, then discontinued those medications, and suffered harmful consequences.⁴ The FTC warned that advertisements that cause, or are likely to cause, viewers to discontinue their prescribed medications might create an unfair act or practice. As a remedial step, the FTC recommended those advertisements “include clear and prominent audio and visual disclosures” stating that a consumer should not stop taking prescribed medication without first consulting a doctor.⁵

In 2020, several Congressional representatives asked the Chairman of the FTC for a progress report on the effects of the seven warning letters issued in 2019.⁶ The Chairman replied that each recipient committed to heed the FTC warnings for future lawsuit advertising. When asked if various renditions of the lawsuit advertisements violated the FTC Act, the Chairman essentially said that it depended on the actual claim involved. The Chairman did note that FTC staff had reviewed state laws enacted in West Virginia, Texas, and Tennessee to address deceptive lawsuit advertisements but has not taken a position on federal legislation on the topic.⁷

² Federal Trade Commission, *FTC Flags Potentially Unlawful TV Ads for Prescription Drug Lawsuits* (Sept. 24, 2019), available at <https://www.ftc.gov/news-events/press-releases/2019/09/ftc-flags-potentially-unlawful-tv-ads-prescription-drug-lawsuits> (last visited April 3, 2023).

³ Correspondence from The Honorable Greg Walden et al., Committee on Energy and Commerce, U.S. House of Representatives, to Joseph J. Simons, Chairman of the Federal Trade Commission, at 1-2 (Nov. 2, 2020) [Walden Letter], available at <https://d1dth6e84htgma.cloudfront.net/legacy/uploads/2020/11/2020.11.02-Letter-to-the-FTC.pdf> (last visited April 3, 2023).

⁴ FTC, *supra* note 2.

⁵ *Id.*

⁶ See generally Walden Letter, *supra* note 3.

⁷ Correspondence from Joseph J. Simons, Chairman of the Federal Trade Commission, to The Honorable Greg Walden, Committee on Energy and Commerce, U.S. House of Representatives (Nov. 17, 2020), available at <https://d1dth6e84htgma.cloudfront.net/legacy/uploads/2020/11/2020.11.17-FTC-to-Rep.-Walden-Lawyer-Ads-.pdf> (last visited April 3, 2023).

The referenced laws in West Virginia,⁸ Texas,⁹ and Tennessee¹⁰ contain provisions that are similar to the ones in this bill. Notably, the West Virginia law was recently challenged in federal court and determined to be constitutional.¹¹

Regulation of Legal Advertising

Article V, Section 15 of the Florida Constitution vests exclusive jurisdiction in the Florida Supreme Court to regulate admissions to the bar and to discipline admitted attorneys.¹² The Florida Bar, as an official arm of the Florida Supreme Court, is charged with the duty of enforcing the rules governing lawyer advertising and solicitation, and with assisting members of The Florida Bar to advertise their services in a manner beneficial to both the public and the legal profession.¹³

Florida's legal advertising rules apply to all forms of communication soliciting legal services in any print or electronic forum.¹⁴ Any lawyer who advertises services must file with The Florida Bar a copy of each advertisement at least 20 days prior to the lawyer's first dissemination of the advertisement.¹⁵ The Florida Bar evaluates all advertisements filed with it to determine compliance with its advertising rules, and issues an opinion either approving or disapproving the advertisement.¹⁶ Lawyers who do not comply with the applicable rules are subject to professional discipline.¹⁷

All advertisements for legal employment must include name and office location information.¹⁸ If the case or matter will be referred to another lawyer or law firm, the advertisement must include a statement to this effect.¹⁹ If more than one language is used in an advertisement, then any words or statements required by the advertising rules must appear in each language used in the advertisement.²⁰ Moreover, any information required by the rules to appear in an advertisement must be reasonably prominent and clearly legible if written, or intelligible if spoken.²¹

Additionally, a lawyer may not engage in deceptive or inherently misleading advertisements. For example, an advertisement cannot use a voice or image that creates the erroneous impression that the person speaking or shown is the advertising lawyer or a lawyer or employee of the

⁸ See W. VA. CODE s. 47-28-3, available at <https://code.wvlegislature.gov/47-28-3/> (last visited April 3, 2023).

⁹ See TEX. GOV'T CODE ss. 81.151-156, available at https://texas.public.law/statutes/tex._gov't_code_section_81.151 (last visited April 3, 2023).

¹⁰ See TENN. CODE. ANN. ss. 47-18-5601-5606, available at <https://legiscan.com/TN/text/SB0352/id/1998216> (last visited April 3, 2023).

¹¹ See *Recht v. Morrissey*, 32 F.4th 398 (4th Cir. 2022) (evaluating various provisions of the West Virginia law that are similar to provisions in SB 1246 and concluding that they permissibly regulate commercial speech).

¹² The Florida Bar, *Frequently Asked Questions About the Florida Bar*, available at <https://www.floridabar.org/about/faq/> (last visited April 3, 2023).

¹³ R. Regulating Fla. Bar 15-1.1.

¹⁴ R. Regulating Fla. Bar 4-7.11(a).

¹⁵ R. Regulating Fla. Bar 4-7.19(a).

¹⁶ R. Regulating Fla. Bar 4-7.19(b).

¹⁷ R. Regulating Fla. Bar 4-7.19(f)-(g).

¹⁸ R. Regulating Fla. Bar 4-7.12(a)(1)-(2).

¹⁹ R. Regulating Fla. Bar 4-7.12(b).

²⁰ R. Regulating Fla. Bar 4-7.12(c).

²¹ R. Regulating Fla. Bar 4-7.12(d).

advertising firm, or use a dramatization of an actual or fictitious event, unless certain clarifying disclosures are made.²²

Florida Deceptive and Unfair Trade Practices Act

History and Purpose

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) became law in 1973.²³ The FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.²⁴ The FDUTPA is based on federal law, and s. 501.204(2), F.S., provides that it is the intent of the Legislature that due consideration and great weight must be given to the interpretations of the Federal Trade Commission and the federal courts relating to section 5 of the Federal Trade Commission Act.²⁵

The State Attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.²⁶ The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction.²⁷ The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.²⁸ Consumers may also file suit through private actions.²⁹

Remedies under the FDUTPA

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments.
- Injunctive relief.
- Actual damages on behalf of consumers and businesses.
- Cease and desist orders.
- Civil penalties of up to \$10,000 per willful violation.³⁰

Remedies for private parties are limited to the following:

- A declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation.

²² R. Regulating Fla. Bar 4-7.13(b)(5)-(g).

²³ Ch. 73-124, Laws of Fla.; codified at part II of ch. 501, F.S.

²⁴ See s. 501.202, F.S. Trade or commerce means the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. "Trade or commerce" shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity. See s. 501.203(8), F.S.

²⁵ See s. 501.204(2), F.S.

²⁶ See ss. 501.203(2), 501.206, and 501.207, F.S.

²⁷ Section 501.203(2), F.S.

²⁸ *Id.*

²⁹ Section 501.211, F.S.

³⁰ Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Section 501.2075, F.S. Enforcing authorities may also request attorney fees and costs of investigation or litigation. Section 501.2105, F.S.

- Actual damages, attorney fees, and court costs, where a person has suffered a loss due to a FDUTPA violation.³¹

Federal Unfair and Deceptive Trade Practices

The Federal Trade Commission's unfair and deceptive trade practices regulations prohibit unfair³² or deceptive³³ acts or practices in or affecting commerce.³⁴ The FTC's regulations include "Truth In Advertising" guidelines, which require advertisements to be truthful, not misleading, and when appropriate, backed by scientific evidence.³⁵ To enforce these regulations, the FTC takes law enforcement actions, provides consumer and business education, issues reports and policy guidance, leads workshops, and participates in other forums.³⁶

III. Effect of Proposed Changes:

SB 1246 creates s. 501.139, F.S., to regulate certain advertisements soliciting clients for personal injury lawsuits against drug manufacturers. The bill contains provisions that are similar to ones already enacted in West Virginia, Texas, and Tennessee to combat misleading advertisements for legal services.

Definitions

The bill defines "advertisement for legal services" to mean any representation disseminated in any manner through a media entity for the purpose of soliciting prospective clients for legal services. The term includes such solicitation by a person with the intent to transfer data obtained from the consumer to one or more attorneys for legal services.

The bill defines "media entity" to mean a radio broadcast station, a television broadcast station, a cable television company, a newspaper company, a periodical company, a billboard company, an advertising agency, a digital media platform, or a bona fide news or public interest website operator.

³¹ Section 501.211(1) and (2), F.S.

³² A practice is "unfair" if it "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition." See 15 U.S.C. s. 45(n).

³³ A practice is "deceptive" if there is a "representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment." FTC Policy Statement on Deception (Oct. 14, 1983), available at https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf; (last visited April 3, 2023) see also Federal Trade Commission, *A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority* (rev. May 2021), available at <https://www.ftc.gov/about-ftc/what-we-do/enforcement-authority> (citing the FTC's Policy Statement on Deception) (last visited April 3, 2023).

³⁴ 15 U.S.C. s. 45(a)(1).

³⁵ Federal Trade Commission, *Truth In Advertising*, available at <https://www.ftc.gov/news-events/media-resources/truth-advertising> (last visited April 3, 2023).

³⁶ Federal Trade Commission, *Protecting Consumers*, available at <https://www.ftc.gov/news-events/media-resources/truth-advertising/protecting-consumers> (last visited April 3, 2023).

The bill defines “protected health information”³⁷ as meaning individually identifiable health information transmitted by, or maintained in, electronic media, or transmitted or maintained in any other form or medium, except for information:

- In education records covered by the Family Educational Rights and Privacy Act, as amended.³⁸
- In records described in federal law.³⁹
- In employment records held by a covered entity in its role as employer.
- Regarding a person who has been deceased for more than 50 years.

The bill defines “solicit” to mean attempting to procure a client for legal services by initiating unsolicited personal, telephone, or real-time electronic contact or by advertising such services through print media, video or audio recorded advertisements, or electronic communications.

Prohibitions

The bill provides that a person or an entity that issues an advertisement for legal services may not do any of the following:

- Present the advertisement as a medical alert, health alert, drug alert, or public service announcement or use any substantially similar phrase that suggests to a reasonable consumer that the advertisement is offering professional or medical advice, or advice from a state or federal governmental entity or an entity approved by or affiliated with a state or federal governmental entity.
- Display the logo of a state or federal governmental entity in a manner that suggests to a reasonable consumer that the advertisement is presented by a state or federal governmental entity or by an entity approved by or affiliated with a state or federal governmental entity.
- Use the term “recall” when referring to a product that has not been recalled in accordance with applicable state or federal regulations.

Requirements

For Legal Advertisements Soliciting Clients Alleging Injury from Prescription Drugs or Medical Devices approved by the FDA

The bill provides that a person or an entity that issues an advertisement for legal services to solicit clients who may allege injury from a prescription drug or medical device approved by the FDA must include all of the following in the advertisement:

- The statement, “This is a paid advertisement for legal services,” which must appear at the beginning of the advertisement.
- The identity of the sponsor of the advertisement.
- Either the identity of the attorney or the law firm that will be primarily responsible for providing the solicited legal services to a consumer who engages the attorney or law firm in response to the advertisement or an explanation of how a responding consumer’s case will be referred to an attorney or a law firm if the sponsor of the advertisement is not licensed to practice law.

³⁷ The bill incorporates by reference the definition of “protected health information” found in 45 C.F.R. s. 160.103.

³⁸ 20 U.S.C. s. 1232g.

³⁹ 20 U.S.C. s. 1232g(a)(4)(B)(iv).

- A statement that a prescription drug or medical device approved by the FDA remains approved unless it has been recalled in accordance with the applicable state or federal regulations.
- The statement, “Consult your physician before making any decision regarding prescribed medication or medical treatment.”

For Written and Verbal Statements in Legal Advertisements

The bill provides that statements required to appear in an advertisement under the new statute must be made in both written and verbal formats, except that a print-only advertisement may include the statements in written format only, and an audio-only advertisement may include the statements in verbal format only.

Required written statements must appear in a clear and conspicuous font and manner and, for visual advertisements, must appear on screen for a sufficient length of time for a reasonable consumer to read the statement. A written statement is presumed to comply with the requirements of this subsection if it appears in the same font style and size and for the same duration as a printed reference to the telephone number or website that a consumer is to use to contact the entity for the advertised legal services, provided such duration is at least 10 seconds.

Required verbal statements must be audible, intelligible, and presented with equal prominence and speed as the other parts of the advertisement. A verbal statement is presumed to comply with the requirements of this subsection if it is made at approximately the same volume and uses approximately the same number of words per minute as used when presenting other information in the advertisement which is not required under this section.

Responsibility for Compliance

The bill provides that a person or entity that issues an advertisement for legal services is solely responsible for ensuring that such advertisement complies with the new statute, and a media entity may not be held liable or subjected to any penalty for producing, distributing, transmitting, displaying, publishing, or otherwise disseminating another person’s or entity’s advertisement for legal services which violates the new statute.

Consumer Protected Health Information

The bill provides that a person or an entity may not use, cause to be used, obtain, sell, transfer, or disclose a consumer’s protected health information to another person or entity for the purpose of soliciting the consumer for legal services without written authorization from that consumer. This provision does not apply to the use or disclosure of protected health information to an individual’s legal representative in the course of any judicial or administrative proceeding or as otherwise permitted or required by law.

Enforcement

The bill provides that a violation of the new statute is deemed a deceptive and unfair trade practice subject to enforcement under part II of chapter 501, F.S., known as the “Florida Deceptive and Unfair Trade Practices Act.”⁴⁰

Florida Bar Exemption and Authority

The bill provides that the new statute does not apply to an advertisement that has been reviewed and approved by an ethics or disciplinary committee of The Florida Bar in accordance with its rules of professional conduct.

Additionally, the bill provides that the new statute does not limit or otherwise affect the authority of The Florida Bar to regulate the practice of law, enforce its rules of professional conduct, or discipline any person admitted to practice law in this state.

Effective Date

The bill takes effect on July 1, 2023.

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:

Article II, s. 3 of the State Constitution divides the powers of state government into legislative, executive, and judicial branches, and provides that no person belonging to one branch may exercise any powers belonging to either of the other branches unless expressly provided otherwise in the constitution. Additionally, article V, s. 15 of the State Constitution vests exclusive jurisdiction to regulate admissions to the bar and to discipline admitted attorneys in the Florida Supreme Court.

⁴⁰ See s. 501.201, F.S. (providing this short title).

The Florida Bar, as an official arm of the Florida Supreme Court, is charged with the duty of enforcing the rules governing lawyer advertising and solicitation, and with assisting members of The Florida Bar to advertise their services in a manner beneficial to both the public and the legal profession.

The bill provides that the new statute does not apply to an advertisement that has been reviewed and approved by an ethics or disciplinary committee of The Florida Bar in accordance with its rules of professional conduct. It also provides that the new statute does not limit or otherwise affect the authority of The Florida Bar to regulate the practice of law, enforce its rules of professional conduct, or discipline any person admitted to practice law in this state.

Because the new statute will not prohibit dissemination of a legal advertisement that has been reviewed and approved by an ethics or disciplinary committee of The Florida Bar, and will not limit or otherwise affect the authority of The Florida Bar to regulate the practice of law, enforce its rules of professional conduct, or discipline any person admitted to practice law, the bill appears to be consistent with art. II, s. 3 of the State Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill prohibits the use, acquisition, sale, transfer, or disclosure of consumers' protected health information for the purpose of soliciting clients without their written authorization. To the extent persons or entities currently profit from such activities, the bill will eliminate such profits.

Advertisers may incur new or additional costs to ensure compliance with the bill's technical and formatting requirements for legal advertisements.

C. Government Sector Impact:

Violations of the new statute created by the bill will be subject to enforcement as deceptive and unfair trade practices under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). The bill may result in an increase of FDUTPA enforcement actions, and therefore incur additional costs to enforcement authorities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 501.139, 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.

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

By Senator Yarborough

4-00496A-23

20231246__

A bill to be entitled

An act relating to truth in legal advertising; creating s. 501.139, F.S.; defining terms; specifying prohibited practices relating to advertisements for legal services; requiring persons and entities that issue advertisements to solicit certain clients to include specified information and statements in such advertisements; providing for both written and verbal statements in advertisements for legal services; providing requirements for such written and verbal statements; providing that the person or entity that issues an advertisement is solely responsible for ensuring its compliance with specified provisions; providing media entities with immunity from liability for disseminating another person's or entity's advertisement that violates specified provisions; providing applicability; prohibiting the use, obtaining, sale, transfer, or disclosure of a consumer's protected health information for a specified purpose without written authorization; providing an exception; providing that certain violations are deemed deceptive and unfair trade practices; providing construction; providing an effective date.

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

Section 1. Section 501.139, Florida Statutes, is created to read:

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

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501.139 Advertisements for legal services.—

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

(a) "Advertisement for legal services" means any representation disseminated in any manner through a media entity for the purpose of soliciting prospective clients for legal services. The term includes such solicitation by a person with the intent to transfer data obtained from the consumer to one or more attorneys for legal services.

(b) "Media entity" means a radio broadcast station, a television broadcast station, a cable television company, a newspaper company, a periodical company, a billboard company, an advertising agency, a digital media platform, or a bona fide news or public interest website operator.

(c) "Protected health information" has the same meaning as provided in 45 C.F.R. s. 160.103.

(d) "Solicit" means attempting to procure a client for legal services by initiating unsolicited personal, telephone, or real-time electronic contact or by advertising such services through print media, video or audio recorded advertisements, or electronic communications.

(2) A person or an entity that issues an advertisement for legal services may not do any of the following:

(a) Present the advertisement as a medical alert, health alert, drug alert, or public service announcement or use any substantially similar phrase that suggests to a reasonable consumer that the advertisement is offering professional or medical advice or advice from a state or federal governmental entity or an entity approved by or affiliated with a state or federal governmental entity.

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

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(b) Display the logo of a state or federal governmental entity in a manner that suggests to a reasonable consumer that the advertisement is presented by a state or federal governmental entity or by an entity approved by or affiliated with a state or federal governmental entity.

(c) Use the term "recall" when referring to a product that has not been recalled in accordance with applicable state or federal regulations.

(3) A person or an entity that issues an advertisement for legal services to solicit clients who may allege injury from a prescription drug or medical device approved by the United States Food and Drug Administration shall include all of the following in the advertisement:

(a) The statement, "This is a paid advertisement for legal services," which must appear at the beginning of the advertisement.

(b) The identity of the sponsor of the advertisement.

(c) Either the identity of the attorney or the law firm that will be primarily responsible for providing the solicited legal services to a consumer who engages the attorney or law firm in response to the advertisement or an explanation of how a responding consumer's case will be referred to an attorney or a law firm if the sponsor of the advertisement is not licensed to practice law.

(d) A statement that a prescription drug or medical device approved by the United States Food and Drug Administration remains approved unless it has been recalled in accordance with the applicable state or federal regulations.

(e) The statement, "Consult your physician before making

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any decision regarding prescribed medication or medical treatment."

(4) The statements required to appear in an advertisement under this section must be made in both written and verbal formats, except that a print-only advertisement may include the statements in written format only and an audio-only advertisement may include the statements in verbal format only.

(a) Required written statements must appear in a clear and conspicuous font and manner and, for visual advertisements, must appear on screen for a sufficient length of time for a reasonable consumer to read the statement. A written statement is presumed to comply with the requirements of this subsection if it appears in the same font style and size and for the same duration as a printed reference to the telephone number or website that a consumer is to use to contact the entity for the advertised legal services, provided such duration is at least 10 seconds.

(b) Required verbal statements must be audible, intelligible, and presented with equal prominence and speed as the other parts of the advertisement. A verbal statement is presumed to comply with the requirements of this subsection if it is made at approximately the same volume and uses approximately the same number of words per minute as used when presenting other information in the advertisement which is not required under this section.

(5) The person or entity that issues an advertisement for legal services is solely responsible for ensuring that such advertisement complies with this section, and a media entity may not be held liable or subjected to any penalty for producing,

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117 distributing, transmitting, displaying, publishing, or otherwise
118 disseminating another person's or entity's advertisement for
119 legal services which violates this section.

120 (6) This section does not apply to an advertisement that
121 has been reviewed and approved by an ethics or disciplinary
122 committee of The Florida Bar in accordance with its rules of
123 professional conduct.

124 (7) A person or an entity may not use, cause to be used,
125 obtain, sell, transfer, or disclose a consumer's protected
126 health information to another person or entity for the purpose
127 of soliciting the consumer for legal services without written
128 authorization from that consumer. This subsection does not apply
129 to the use or disclosure of protected health information to an
130 individual's legal representative in the course of any judicial
131 or administrative proceeding or as otherwise permitted or
132 required by law.

133 (8) A violation of this section is deemed a deceptive and
134 unfair trade practice subject to enforcement under part II of
135 this chapter.

136 (9) This section does not limit or otherwise affect the
137 authority of The Florida Bar to regulate the practice of law,
138 enforce its rules of professional conduct, or discipline any
139 person admitted to practice law in this state.

140 Section 2. This act shall take effect July 1, 2023.

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.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 1308

INTRODUCER: Commerce and Tourism Committee and Senators Yarborough and Rodriguez

SUBJECT: Telephone Solicitation

DATE: April 4, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Renner	McKay	CM	Fav/CS
2.			RI	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1308 amends s. 501.059, F.S., relating to the Florida Telemarketing Act to:

- Clarify notice requirements prior to obtaining consent for telephone calls, text messages, or the transmission of prerecorded voicemails.
- Revise the definition of “prior express written consent” with respect to automated systems and replaces references to the term “signatory” with the term “called party.”
- Revise what qualifies as a “signature” for purposes of consenting to communications to include an act that demonstrates express consent, such as checking a box indicating consent or responding affirmatively to receiving text messages, to an advertising campaign, or to an e-mail solicitation.
- Provide that civil actions may not be brought for up to two communications made within 15 business days after the consumer withdraws a previously given valid consent or communications, orally or by text message, that he or she does not wish to receive communications.

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

The bill takes effect upon becoming law.

II. Present Situation:

Florida Telemarketing Act

Chapter 501, part IV, F.S., the Florida Telemarketing Act (FTA), requires non-exempt businesses engaged in telemarketing and their salespeople to be licensed by the Florida Department of Agriculture and Consumer Services (DACS) before operating in Florida. Certain exempt entities must have a valid affidavit of exemption on file prior to operating in Florida. There are approximately 28 exemptions, including: soliciting for religious, charitable, political or educational purposes; research companies; newspapers; book and video clubs; cable television; and persons or companies with whom the consumer has a prior business relationship.¹

The FTA generally requires businesses that solicit the sale of consumer goods or services to:

- Be licensed;²
- Post a form of security;³
- License all of their salespeople⁴ and
- Provide the DACS with a list of all telephone numbers used to make sales calls.⁵

An application for licensure as a telemarketer must include several pieces of information, including the applicant's identifying information, prior experience in the field, criminal and administrative history (especially relating to fraud, theft, or unfair and deceptive trade practices), phone numbers from which the telemarketer will make sales calls, and any parent or affiliate entities under which it will transact business, if applicable.⁶

Additionally, an applicant for licensure as a telemarketer must submit:

- A script that will be used by its salespersons during calls, or other related literature;
- The identity, address, date of birth, and alias of each of the applicant's principal officers, directors, trustees, shareholders, owners, partners, office managers, and salespersons who are employed by or affiliated with the applicant;⁷ and
- A \$1,500 licensing fee.⁸

In Florida, it is unlawful for telemarketers to:⁹

- Make calls before 8 a.m. or after 8 p.m. local time at the called person's time zone;
- Fail to provide the call recipient with their name and telephone number;
- Accept novelty payments;¹⁰

¹ Section 501.604, F.S.

² Section 501.605, F.S.

³ Section 501.611, F.S., requires a \$50,000 bond, irrevocable letter of credit issued for the applicant, or a certificate of deposit in favor of the DACS for payment on findings of fraud, misrepresentation, breach of contract, or other violation by the applicant.

⁴ Section. 501.607, F.S.

⁵ Section 501.605(2)(k), F.S.

⁶ Section 501.605(2), F.S.

⁷ Section 501.605(2)(k), F.S.

⁸ Section 501.605(5)(b), F.S.

⁹ Section 501.616, F.S.

¹⁰ Section 501.603(8), F.S., defines a "novelty payment" as a payment method that does not have systematic monitoring and includes remotely created checks, remotely created payment orders, cash-to-cash money transfers (such as Western Union)

- Employ or be affiliated with an unlicensed salesperson;
- Be employed by or affiliated with an unlicensed commercial telephone seller; and
- Operate without a license.

Florida Do Not Call Act

Do Not Call List

Section 501.059, F.S., governs telephone solicitations. The law includes the Florida Do Not Call Act, also known as the "Do Not Call" list (DNC list), which prohibits unsolicited telephonic sales calls and text messages from telemarketers.¹¹ Residents who do not wish to receive unsolicited telephonic sales calls may have their residential, mobile, or paging device telephone number included on the DNC list. The DACS maintains the DNC list. It is free to register and a registered number remains on the DNC list indefinitely.¹²

An "unsolicited telephonic sales call" does not include calls made:

- In response to an express request of the person called;
- Primarily in connection with an existing debt or contract, if payment or performance of such debt or contract has not been completed at the time of such call;
- To a person with whom the telephone solicitor has a prior or existing business relationship; or
- By a newspaper publisher or his or her agent or employee in connection with his or her business.¹³

Telephone solicitors¹⁴ are prohibited from making telephonic sales calls¹⁵ to consumers who register for the DNC list. A "telephonic sales call" means a telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.¹⁶

In addition to those consumers who are registered for the DNC list, a telephone solicitor may not call or text a consumer who previously communicated to the telephone solicitor that he or she does not wish to be contacted. Businesses and non-profit organizations are required to maintain a list of consumers who have made a do-not-call registration request. It is a violation of the Florida

and cash reload mechanisms (such as MoneyPak or ReloadIt). Novelty payment methods are not systematically monitored, have little to no consumer protection in the case of fraud or theft, and are used frequently in scams and other fraudulent activity.

¹¹ See s. 501.059, F.S.

¹² Dept. of Agriculture and Consumer Services, *Florida Do Not Call*, available at <https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call> (last visited April 3, 2023).

¹³ Section 501.059(1)(k), F.S.

¹⁴ Section 501.059(1)(i), F.S., defines "telephone solicitor" as "a natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices."

¹⁵ Section 501.059(1)(j), F.S., defines "telephonic sales call" as a telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

¹⁶ Section 501.059(1)(j), F.S.

Do Not Call Act to call a consumer who has requested placement on the company's do-not-call list.¹⁷

When a telephone number is made available through a caller ID service during a telephonic sales call, the solicitor must ensure that the number is capable of receiving phone calls, and that the dialing of the number will connect the call recipient with the telephone solicitor or the seller on behalf of which the phone call was placed.¹⁸

Anyone who receives an unsolicited sales call can report the call to the DACS using the online Do Not Call Complaint Form.¹⁹

Do Not Call - Consent

In 2021, the Florida Legislature updated s. 501.059, F.S., to further address unsolicited phone calls.²⁰ The law governing telephone solicitations also prohibits automated telephonic sales calls without the prior express written consent of the called party. Specifically, the law provides that:

A person may not make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection **or** dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.²¹

“Prior express written consent” is defined as a written agreement that:

- Bears the signature of the called party;
- Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection or dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail; and
- Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered.²²

Prior express written consent must include a clear and conspicuous disclosure informing the called party that:

- By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales call to deliver or cause to be delivered a telephonic sales call to the called party using an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called; and

¹⁷ Section 501.059(5), F.S.

¹⁸ Section 501.059(8)(b), F.S.

¹⁹ Dept. of Agriculture and Consumer Services, *Florida Do Not Call*, available at <https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call> (last visited April 3, 2023).

²⁰ Chapter 2021-185, s. 1, Laws of Fla.

²¹ Section 501.059(8)(a), F.S.

²² Section 501.059(1)(g), F.S.

- He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.²³

There is a rebuttable presumption that a telephonic sales call made to any Florida area code is a call made to a Florida resident or to a person in Florida at the time of the call.²⁴

One entity reports that this 2021 change to the FTA has resulted in at least 100 class action complaints against those who make telephone sales calls since July 2021.²⁵

Penalties

The DACS or the Office of the Attorney General may bring an action against a telephone solicitor who violates the provisions of s. 501.059, F.S. Each violation is subject to a civil penalty with a maximum fine of \$10,000 per violation, or an administrative fine with a maximum of \$1,000 per violation, in addition to attorney's fees and costs.²⁶

In addition, a private citizen may file a private civil action to either enjoin the violation or recover actual damages, or \$500, whichever is greater, in addition to attorney's fees and costs. This civil penalty may be tripled by the court if it finds that the defendant knowingly or willfully committed the violation.²⁷

Federal Telephone Consumer Protection Act (TCPA) History

In an effort to address a growing number of telephone marketing calls, Congress enacted the Telephone Consumer Protection Act (TCPA) in 1991. The TCPA restricts the making of telemarketing calls and the use of automatic telephone dialing systems and artificial or prerecorded voice messages. An automatic telephone dialing system is defined as "equipment which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator; **and** to dial such numbers."²⁸ The rules apply to common carriers as well as to other marketers. In 1992, the Federal Communications Commission (FCC) adopted rules to implement the TCPA, including the requirement that entities making telephone solicitations institute procedures for maintaining company-specific do-not-call lists.²⁹

²³ Section 501.059(1)(g)4., F.S.

²⁴ Section 501.059(8)(d), F.S.

²⁵ Eric Troutman, TCPAWorld, *The FTSA Claims are Still Pouring In: Florida Mini TCPA Continues to Generate Huge Volume of Litigation* (Dec. 13, 2021), available at <https://tcpaworld.com/2021/12/13/the-ftsa-claims-are-still-pouring-in-florida-mini-tcpa-continues-to-generate-huge-volume-of-litigation/> (last visited April 3, 2023).

²⁶ Section 501.059(9), F.S.

²⁷ Sections 501.059(10)-(11), F.S.

²⁸ 47 U.S.C., s. 227(a)(1)

²⁹ Federal Communications Commission, *FCC Actions on Robocalls, Telemarketing*, available at <https://www.fcc.gov/general/telemarketing-and-robocalls> (last visited April 3, 2023).

In July 2015, the FCC established rules indicating that telephone carriers can block unwanted calls at the request of consumers.³⁰ Currently there are a number of call-blocking applications that provide some relief from unwanted calls and spam calls.³¹

On November 16, 2017, the FCC adopted new rules to allow voice service providers to proactively block certain types of robocalls that are likely to be fraudulent because they come from certain types of phone numbers, including those that do not or cannot make outgoing calls.³² For example, perpetrators have used IRS phone numbers that do not dial out to impersonate the tax agency, informing the people who answer that they are calling to collect money owed to the U.S. government. Such calls appear legitimate to the person who receives them and may often result in fraud or identity theft. Service providers can now block such calls, as well as calls from invalid or illegitimate numbers.³³

The FCC requires telemarketers to transmit caller identification information, including the number and name of the caller. The telephone number provided must permit any individual to make a do-not-call request during regular business hours. Moreover, any person or entity that engages in telemarketing is prohibited from blocking the transmission of caller identification information. However, tax-exempt nonprofit organizations are exempt from compliance with these rules.³⁴

With regard to telephone carriers, the FCC allows carriers to offer their customers external call-blocking applications on their landlines and allows carriers to directly block certain illegal robocalls. In December 2019, Congress enacted the “TRACED Act” to aid enforcement efforts between law enforcement agencies and the private sector on traceback issues, and required the FCC to issue rules “for the registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.”³⁵ In July of 2020, the FCC designated the US Telecom-led Industry Traceback Group (ITG) as the Official Consortium for coordinating industry-led efforts to trace back the origin of suspected unlawful robocalls.³⁶

According to the ITG’s first annual report, over 100 companies participated in over 1,000 ITG traceback investigations in 2019, identifying more than 10 million illegal robocalls and resulting

³⁰ Declaratory Ruling and Order, In the Matter of Rules and Regulations Implementing the Telecommunications Consumer Protection Act of 1991, 30 FCC Rcd. 7961 (July 10, 2015). See Federal Communications Commission, *TCPA Omnibus Declaratory Ruling and Order*, available at <https://www.fcc.gov/document/tcpa-omnibus-declaratory-ruling-and-order> (last visited April 3, 2023).

³¹ CTIA, The Wireless Industry, *How to Stop Robocalls*, available at <https://www.ctia.org/consumer-resources/how-to-stop-robocalls/> (last visited April 3, 2023).

³² 32 FCC Rcd 9706 (11). See Federal Communications Commission, *FCC Adopts Rules to Help Block Illegal Robocalls*, available at <https://www.fcc.gov/document/fcc-adopts-rules-help-block-illegal-robocalls-0#:~:text=New%20Rules%20Authorize%20Call%20Blocking%20of%20Certain%20Types,FCC%20Record%20Citation%3A%2032%20FCC%20Rcd%209706%20%2811%29> (last visited April 3, 2023).

³³ Federal Communications Commission, *Stop Unwanted Calls and Texts*, available at <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited April 3, 2023).

³⁴ 47 C.F.R. s. 64.1601.

³⁵ Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019).

³⁶ USTelecom The Broadband Association, *FCC Names USTelecom’s Industry Traceback Group as Official Robocall Traceback Consortium*, available at <https://www.ustelecom.org/fcc-names-ustelecoms-industry-traceback-group-as-official-robocall-traceback-consortium/> (last visited April 3, 2023).

in more than 20 subpoenas and/or civil investigative demands from federal and state enforcement agencies.³⁷

The ITG reported in a letter to the FCC on November 13, 2020, that about 100 providers had failed to cooperate with the ITG, including approximately 30 based in the United States.³⁸ The ITG encouraged the FCC to bring aggressive enforcement against robocallers and voice service providers that routinely refuse to participate in the traceback process.³⁹

In its “Fourth Report and Order on Advanced Methods to Target and Eliminate Unlawful Robocalls” released on December 30, 2020, the FCC required “all voice service providers to respond to traceback requests from the FCC, civil and criminal law enforcement and the Consortium.”⁴⁰

The TRACED Act requires the FCC to issue an annual public notice seeking applicants to serve as the registered consortium.⁴¹ On August 22, 2022, the FCC selected the Industry Traceback Group (ITG) to continue to serve as the registered consortium.⁴²

On September 12, 2022, the FCC announced the signing of an updated Memorandum of Understanding (MOU) with the Body of European Regulators for Electronic Communications (BEREC) that expands their current partnership, with a new focus on combatting unwanted robocalls and the promotion of 5G, 6G and beyond. One of the major topics of mutual interest includes robocall and other automated calls’ mitigation and prevention.⁴³

National Do Not Call Registry

The Federal Trade Commission (FTC), in concert with the FCC, administers the National Do Not Call Registry.⁴⁴ Telephone solicitors may not contact a consumer who participates in the National Do Not Call Registry, unless the calls are:

- Made with a consumer’s prior, express permission;
- Informational in nature, such as those made to convey a utility outage, school closing, or flight information; or

³⁷ InsideArm, *The Latest Developments in the World of Call Delivery*, available at <https://www.insidearm.com/news/00047073-latest-developments-world-call-delivery/> (last visited April 3, 2022).

³⁸ USTelecom, Enforcement Bureau Requests Information on the Status of Private-Led Traceback Efforts of Suspected Unlawful Robocalls, EB Docket No. 20-195, Nov. 13, 2020, available at <https://docs.fcc.gov/public/attachments/DOC-368957A2.pdf> (last visited April 3, 2023).

³⁹ InsideArm, *The Latest Developments in the World of Call Delivery*, available at <https://www.insidearm.com/news/00047073-latest-developments-world-call-delivery/> (last visited April 3, 2022).

⁴⁰ Federal Communications Commission, *Report and Order* (Aug. 22, 2022), available at <https://tcpaworld.com/wp-content/uploads/2022/08/RENEWAL-OF-UST-TRACEBACK-GROUP.pdf> (last visited April 3, 2023).

⁴¹ Federal Communications Commission, Public Notice, *Enforcement Bureau Requests Letters of Intent to Become the Registered Industry Consortium for Tracebacks*, available at <https://www.fcc.gov/document/fcc-requests-letters-intent-robocall-tracebacks-consortium> (last visited April 3, 2023).

⁴² Federal Communications Commission, *Report and Order* DA 21-1047 (Aug. 25, 2021), available at <https://www.fcc.gov/document/fcc-retains-industry-traceback-group-robocall-consortium> (last visited April 3, 2022).

⁴³ Federal Communications Commission, Press Release, *FCC RENEWS AND EXPANDS PARTNERSHIP WITH EUROPEAN COUNTERPARTS*, Sep. 12, 2022).

⁴⁴ Federal Communications Commission, *Stop Unwanted Calls and Texts*, available at <https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts> (last visited April 3, 2023).

- Made by a tax-exempt organization.⁴⁵

Constitutionality of Do Not Call Registries

Do Not Call registries have been subject to numerous state and federal lawsuits challenging their constitutionality. The courts have found the Do Not Call Registry is a reasonable restriction on commercial speech and that the FTC is authorized to promulgate rules for the registry. The Tenth Circuit Court of Appeals stated that “the do-not-call registry prohibits only telemarketing calls aimed at consumers who have affirmatively indicated that they do not want to receive such calls and for whom such calls would constitute an invasion of privacy.” Thus, the government has a role in restricting the ability of a telemarketer to reach a household via telephone, and because the government has left the ultimate decision of whether or not to be placed on the registry up to the individual, the government has not restricted the First Amendment rights of the solicitor.⁴⁶

Claims of preemption have also been unsuccessful. The TCPA’s non-preemption clause,⁴⁷ often referred to as the savings clause, has been relied upon by courts to uphold states’ Do Not Call Registries. The clause states that “[n]othing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulation.” The clause indicates specific types of actions that a state may prohibit or place more restrictive regulations on, such as sending unsolicited advertisements via fax, using of automatic dialing systems and prerecorded messages, and making telephone solicitations.⁴⁸

The TCPA is silent on a state’s ability to place stricter regulations than the TCPA requires for interstate calls.⁴⁹ However, at least one federal court of appeals has held that state regulations and prohibitions of telemarketing that cross state boundaries are valid.⁵⁰

Caller ID and “Spoofing”

“Spoofing” is the practice of altering or manipulating the caller ID information that is received in conjunction with an incoming telephone call. In the past, caller ID services were not common and spoofing required special equipment or a relatively high degree of technical sophistication. However, advances in technology, such as the proliferation of cellular phones, cell phone applications, and the widespread availability of Voice over Internet Protocol (VoIP) allows anyone to inexpensively spoof his or her caller ID using the services of a third-party spoofing provider.⁵¹ For example, one such spoofing provider allows a consumer to download an app on

⁴⁵ 47 U.S.C. § 227(a)(4); *See also*, 47 C.F.R. § 64.1200 (2012).

⁴⁶ *Mainstream Marketing Services Inc v. Federal Trade Commission*, 358 F.3d 1228 (10th Cir. 2004).

⁴⁷ 47 U.S.C. s. 227(f)(1).

⁴⁸ National Association of Attorneys General, *Do Not Call: The History of Do Not Call and How Telemarketing Has Evolved*, NAGTRI Journal, Vol. 1 No. 4, available at <https://www.naag.org/attorney-general-journal/do-not-call-the-history-of-do-not-call-and-how-telemarketing-has-evolved/> (last visited April 3, 2023).

⁴⁹ 47 U.S.C. s. 227 (f)(1).

⁵⁰ *See Patriotic Veterans, Inc. v. Indiana*, 736 F.3d 1041 at 1044-45 (7th Cir. 2013) and *Patriotic Veterans, Inc. v. State of Indiana*, No. 16-2059 (7th Cir. 2017) (“Preventing automated messages to persons who don’t want their peace and quiet disturbed is a valid time, place, and manner restriction.”).

⁵¹ *See* FCC 11-100, *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, (June 22, 2011), at 9116, available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-100A1_Red.pdf (last visited April 3, 2023).

his or her smartphone, purchase credits towards call time, and simply input the number that he or she wants displayed on the receiving end in order to place an untraceable, spoofed call.⁵²

In response to the growing practice of spoofing, Congress amended the TCPA to add the Truth in Caller ID Act of 2009. Under the Act and FCC rules, a person or entity is prohibited from transmitting false or misleading caller ID information “with the intent to defraud, cause harm, or wrongly obtain anything of value,” with a penalty of up to \$10,000 for each violation.⁵³ However, spoofing is not illegal when no harm is intended or caused, or if the caller has legitimate reasons to hide his or her information. Examples may include law enforcement agencies working on a case, a victim of domestic abuse, or a doctor who wishes to discuss private medical matters with a patient.⁵⁴

In 2008, Florida passed its own anti-spoofing legislation, The Florida Caller ID Anti-Spoofing Act (2008).⁵⁵ The Act prohibits any person from:

- Making a call with knowledge that false information was entered into a telephone caller ID system with the intent to deceive, defraud, or mislead the call’s recipient; and
- Entering false information into a telephone caller ID system “with the intent to deceive, defraud, or mislead” the call’s recipient.

However, a U.S. District Court in Miami found that Florida’s Caller ID Anti-Spoofing Act (2008) violated the Commerce Clause of the United State Constitution because it had the effect of controlling spoofing practices that took place entirely outside the state.⁵⁶ Similarly, in 2011, a federal court in Mississippi struck down Mississippi’s anti-spoofing law, which was substantially similar to Florida’s.⁵⁷

Spam Robocalls

US consumers received over 50.3 billion robocalls in 2022, only slightly less than the 50.5 billion total robocalls received in 2021 despite widespread enforcement efforts by government regulators and state officials.⁵⁸

Scammers often use caller ID spoofing to mask their true location and make it appear the call is from a legitimate or local number to raise the odds of getting an answer. What follows is a robotic voice on the other end claiming to represent a utility, a name-brand company, or a government agency (such as the Social Security Administration or the Internal Revenue

⁵² Business Insider, *It’s Surprisingly Easy for a Hacker to Call Anyone From Your Personal Phone Number* (March 1, 2016), available at <http://www.businessinsider.com/phone-number-spoofing-2016-2> (last visited April 3, 2023).

⁵³ 47 U.S.C. s. 227(e).

⁵⁴ FCC, *Caller ID Spoofing*, <https://www.fcc.gov/consumers/guides/spoofing-and-caller-id> (last visited Mar. 21, 2023).

⁵⁵ Section 817.487, F.S. (2008).

⁵⁶ *TelTech Systems, Inc. v. McCollum*, No. 08-61664-CIV-MARTINEZ-BROWN (S.D. Fla. Filed Oct. 16, 2008).

⁵⁷ *TelTech Systems, Inc. v. Barbour*, 866 F. Supp. 2d 571 (S.D. Miss. 2011), *aff’d sub nom Teltech Systems, Inc. v. Bryant*, 702 F.2d 232 (5th Cir. 2012).

⁵⁸ PR Newswire, *Robocalls Top 50.3 Billion in 2022, Matching 2021 Call Volumes Despite Enforcement Efforts*, available at <https://www.prnewswire.com/news-releases/robocalls-top-50-3-billion-in-2022--matching-2021-call-volumes-despite-enforcement-efforts-301714297.html#:~:text=IRVINE%2C%20Calif.%2C%20Jan.,government%20regulators%20and%20state%20officials> (last visited April 3, 2023).

Service). It might offer a free cruise, inexpensive health insurance, or a low-interest loan. Answering or engaging with the call may lead to a live scammer, who realizes he or she has found a “live” number, and thus may call repeatedly.⁵⁹

Many robocalls are legal. The FCC allows such robocalls for informational or noncommercial purposes, such as polling, political campaigning and outreach by nonprofit groups.

Advances in technology have enabled unrelenting robocalls from untraceable origins. As a result, it is profitable to use spam calls to drive business regardless of whether the caller is perpetuating a scam or is a legitimate business using telemarketing to increase sales.⁶⁰

Consent and Revocation

The TCPA prohibits a telemarketer from using an automatic telephone dialing system (ATDS) to place a call or send a text message to a cell phone without the recipient’s “prior express consent.”⁶¹ The type of consent depends on the nature of the call or text. Consent generally can be revoked by any reasonable method. However, some courts recently have considered whether revocation may be restricted in circumstances where the consent is included on a bilateral agreement.⁶²

There are two types of prior consent provided for under the TCPA:

- Prior express consent is required to place autodialed, non-solicitation calls or texts to a cell phone.
- Prior express written consent is a heightened form of consent, must be evidenced by a written agreement signed by the call recipient, and is required to place autodialed telemarketing or advertising calls or texts to a cell phone. The written agreement must include a clear and conspicuous disclosure informing the consumer signing that:
 - By signing the agreement, the consumer is authorizing autodialed telemarketing or advertising calls or texts; and
 - The consumer is not required to sign the agreement as a condition of purchasing any property, goods, or services.⁶³

Prior express consent can be written or verbal. Voluntarily providing one’s cellular number also constitutes prior express consent where:

- The individual gives “prior express consent” to be called or texted at the number provided;
- The individual has provided his or her number to the party calling or texting; and

⁵⁹ AARP, *Robocalls*, available at https://www.aarp.org/money/scams-fraud/info-2019/robocalls.html?CMP=KNC-DSO-Adobe-Google-FRD-Ongoing-Robocalls-NonBrand-Exact-Robocalls&gclid=EAlalQobChMllvmq_4Sr7wIVFYvICh2RAwjQEAAAYAiAAEgJD4vD_BwE&gclsrc=aw.ds (last visited April 3, 2022).

⁶⁰ *Id.*

⁶¹ 47 U.S.C. s. 227(b)(1)(A)(iii).

⁶² The National Law Review, *Consent and Revocation Under the TCPA*, available at <https://www.natlawreview.com/print/article/consent-and-revocation-under-tcpa> (last visited April 3, 2023).

⁶³ *Id.*

- There is some relation between the communications and the reason for which an individual provided his or her number.⁶⁴

Prior express written consent is required for calls or texts to cell phones that introduce an advertisement,⁶⁵ or constitute “telemarketing”⁶⁶ and are sent using an ATDS. The TCPA’s advertising prong merely requires introducing, at the most basic level, the commercial availability of a service. In similar fashion, telemarketing occurs when the context of a text or call indicates that it was initiated and transmitted to a person for promoting property, goods, or services. Neither the TCPA nor its implementing regulations requires an explicit mention of a good, product, or service where the implication of an improper purpose is clear from the context.⁶⁷

Revocation of consent is controlled by the consenting party, and may be communicated orally or in writing by any reasonable means. However, where consent is contractually provided, as is the case in credit agreements, the parties can bargain to require mutuality or particular revocation methods. Recently, a number of courts have addressed whether a consumer may unilaterally revoke consent when it is a term in a bargained-for contract.⁶⁸

In 2017, the federal Second Circuit Court of Appeals held that a consumer may not unilaterally revoke consent in a bargained-for, bilateral contract.⁶⁹ The court based its decision on “black-letter” contract law, referring to a fundamental aspect of contractual relationships that one party may not alter or revoke a term of a bilateral agreement without the other party’s consent. The court found that a consumer, having consented to be contacted via an auto-dialer, could not unilaterally revoke consent without the caller’s permission. Notably, the court distinguished case law from the Third and Eleventh Circuit Courts of Appeals, where consumers retained their ability to revoke consent because it was given in credit applications, rather than as part of a bilateral contract.⁷⁰

In 2018, a United States District Court in Florida also held that consent provided by contract cannot be unilaterally revoked.⁷¹ The court noted that no provision in the TCPA indicates that contractually-granted consent can be unilaterally revoked where it would contradict black-letter contract law. The court held that a consumer who has consented to auto-dialed communication in a contract for services cannot later revoke such consent.⁷²

⁶⁴ Federal Communications Commission, Rules & Regulations Implementing the TCP Act of 1991 et al., 30 FCC Rcd at 7991–92.

⁶⁵ 47 C.F.R. s. 64.1200(f)(1), defines an “advertisement” as “any material advertising the commercial availability or quality of any property, goods, or services,” and “telemarketing” is defined as “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.”

⁶⁶ 47 C.F.R. s. 64.1200(f)(13).

⁶⁷ The National Law Review, *supra* note 62.

⁶⁸ *Id.*

⁶⁹ *Reyes v. Lincoln Auto. Fin. Servs.*, 861 F.3d 51, 53 (2d Cir. 2017).

⁷⁰ The National Law Review, *supra* note 62.

⁷¹ *Medley v. Dish Network, LLC*, Case No. 8:16-cv-2534-T-36TBM, 2018 WL 4092120, at *10 (M.D. Fla. Aug. 27, 2018).

⁷² The National Law Review, *supra* note 62.

However, other courts have disagreed, rejecting the argument that consent is irrevocable. In 2018, a United States District Court in Tennessee adopted the general rule that consumer consent may be revoked at any time by “any reasonable means.”⁷³ The court held that consumers retain the ability to revoke their prior consent despite having a bilateral agreement with the caller. Other courts have also allowed for revocation of consent by any means in the absence of a contractual restriction on the means by which a consumer may revoke consent.⁷⁴

In December 2020, the U.S. Supreme Court heard oral arguments in a landmark case regarding whether consumers can sue a company for using an ATDS to text or call the consumers at a phone number saved in the company’s system. At issue was the meaning of the TCPA’s prohibition on using an ATDS to transmit communications to cell phones. The question before the Supreme Court was “whether the definition of ATDS in the TCPA encompasses any device that can ‘store’ and ‘automatically dial’ telephone numbers, even if the device does not use a random or sequential number generator.”⁷⁵

On April 1, 2021, the Court ruled that to qualify as an ATDS under the TCPA, a device must have the capacity to either store a telephone number using a random or sequential number generator or produce a telephone number using a random or sequential number generator. The Court concluded that merely having the capacity to store numbers and dial them automatically is not enough to make a device qualify as an ATDS.⁷⁶

Specifically, related to consent, the TCPA rules require telemarketers to:

- Obtain prior express written consent from consumers before robocalling them;
- No longer be able to use an "established business relationship" to bypass the consent requirement; and
- Require an automated, interactive "opt-out" mechanism to be used during each robocall so consumers can immediately tell the telemarketer to stop calling.⁷⁷

The TCPA includes a private right of action.⁷⁸ A caller who places a call to a cell phone without consent using an ATDS is subject to \$500 in damages per call. The damages amount is \$1,500 per call if the court finds that the defendant willfully or knowingly committed the violation.⁷⁹

Specifically, related to consent, the Florida telephone solicitation law:⁸⁰

- Prohibits robocalls without the prior express written consent of the called party.
- When the called party has given such consent, only allows robocalls in certain circumstances through the use of an “automated system for the selection **or** dialing of telephone numbers or the playing of a recorded message” when a connection is completed to a number called.

⁷³ *Ammons v. Ally Fin., Inc.*, Case No. 3:17-cv-00505, 2018 WL 3134619, at *15 (M.D. Tenn. June 27, 2018).

⁷⁴ *Few v. Receivables Performance Mgmt.*, Case No. 1:17-CV-2038-KOB, 2018 WL 5923765 at *1 (N.D. Ala. Nov. 13, 2018).

⁷⁵ *Facebook, Inc., Petitioner vs. Noah Duguid, et al.*, 141 S. Ct. 1163, 1167 (2021).

⁷⁶ *Id.*

⁷⁷ FCC, *supra* note 29.

⁷⁸ 47 U.S.C. s. 227(b)(3).

⁷⁹ *Id.* at s. 227(b)(3)(B)-(C).

⁸⁰ Section 501.059(8), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 501.059, F.S., to clarify restrictions on unwanted telephone solicitation practices. The bill:

- Clarifies notice requirements prior to obtaining consent for telephone calls, text messages, or the transmission of prerecorded voicemails.
- Revises the definition of “prior express written consent” with respect to automated systems and replaces references to the term “signatory” with the term “called party.”
- Revises what qualifies as a “signature” for purposes of consenting to communications to include an act that demonstrates express consent, such as checking a box indicating consent or responding affirmatively to receiving text messages, to an advertising campaign, or to an e-mail solicitation.

The bill provide that civil actions may not be brought for up to two communications made within 15 business days after the consumer withdraws a previously given valid consent or communications, orally or by text message, that he or she does not wish to receive communications.

Section 2 provides an effective date of upon becoming law.

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 bill may protect consumers from unwanted and fraudulent telephone solicitations.

The bill may have an indeterminate negative fiscal impact on legitimate telemarketers to the extent they do not currently engage in business consistent with the requirements in the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 501.059 of the Florida Statutes.

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

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

CS by Commerce and Tourism on April 4, 2023:

The amendment:

- Removes a definition for “automatic telephone dialing system” and clarifies what constitutes an automated system for purposes of the bill;
- Removes the requirement that calls must be “unsolicited” under the prohibition on telephonic sales calls;
- Provide that civil actions may not be brought for up to two communications made within 15 business days after the consumer withdraws a previously given valid consent or communications, orally or by text message, that he or she does not wish to receive communications; and
- Changes the effective date of the bill to upon becoming law and removes a provision purporting to apply the bill’s provisions retroactively.

B. Amendments:

None.



805210

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2023	.	
	.	
	.	

The Committee on Commerce and Tourism (Yarborough) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraphs (g) and (h) of subsection (1) and paragraph (a) of subsection (8) of section 501.059, Florida Statutes, are amended, and paragraph (c) is added to subsection (10) of that section, to read:

501.059 Telephone solicitation.—

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



805210

(g) "Prior express written consent" means a written agreement that:

1. Bears the signature of the called party;

2. Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection and ~~or~~ dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail;

3. Includes the telephone number to which the called party ~~signatory~~ authorizes a telephonic sales call to be delivered; and

4. Includes a clear and conspicuous disclosure informing the called party that:

a. By executing the agreement, the called party authorizes the person making or allowing ~~the placement of~~ a telephonic sales call to be made by telephone call, text message, or voicemail transmission to deliver or cause to be delivered a telephonic sales call to the called party a telephonic sales call using an automated system for the selection and ~~or~~ dialing of telephone numbers, if applicable, ~~or~~ the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail; and

b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.



805210

(h) "Signature" includes:

1. An electronic or digital signature if, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law; and

2. An act that demonstrates express consent, including, but not limited to, checking a box indicating consent or responding affirmatively to receiving text messages, to an advertising campaign, or to an e-mail solicitation.

(8)(a) A person may not make or knowingly allow to be made an unsolicited ~~a~~ telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.

(10)

(c) Notwithstanding any other provision of this section, no action shall lie for a violation of subsection (8) for any communication made within 30 days of:

1. The called party or consumer communicating with a telephone solicitor or other person, orally or by text message, that such called party or consumer does not wish to receive any communications from that telephone solicitor or person or the seller or organization represented by that telephone solicitor or person.

2. The called party or consumer effectively withdrawing a previously given valid consent.

Section 2. This act shall take effect upon becoming a law.

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



805210

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to telephone solicitation; amending s. 501.059, F.S.; revising definitions; prohibiting certain telephonic sales calls; providing conditions under which civil actions may not be brought for specified violations; providing an effective date.



817718

LEGISLATIVE ACTION

	Senate	House
Comm: FAV	.	.
04/04/2023	.	.
	.	.
	.	.

The Committee on Commerce and Tourism (Gruters) recommended the following:

Senate Amendment to Amendment (805210)

Delete lines 48 - 57

and insert:

(8) (a) A person may not make or knowingly allow to be made a telephonic sales call ~~to be made~~ if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.



817718

(10)

(c) Notwithstanding any other provision of this section, no action shall lie for a violation of subsection (8) for up to two communications made within 15 business days after any of the following:

By Senator Yarborough

4-00182B-23

20231308__

A bill to be entitled

An act relating to telephone solicitation; amending s. 501.059, F.S.; providing and revising definitions; prohibiting certain telephonic sales calls; providing retroactive applicability; providing an effective date.

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

Section 1. Present paragraphs (a) through (l) of subsection (1) of section 501.059, Florida Statutes, are redesignated as paragraphs (b) through (m), respectively, a new paragraph (a) is added to that subsection, and present paragraphs (g) and (h) of that subsection and paragraph (a) of subsection (8) of that section are amended, to read:

501.059 Telephone solicitation.—

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

(a) "Automatic telephone dialing system" means equipment using a random or sequential number generator that:

1. Stores or produces telephone numbers; and

2. Dials the stored or produced telephone numbers.

~~(h)(g)~~ "Prior express written consent" means a written agreement that:

1. Bears the signature of the called party;

2. Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automatic telephone dialing automated system for the selection

4-00182B-23

20231308__

and ~~or~~ dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail;

3. Includes the telephone number to which the called party ~~signatory~~ authorizes a telephonic sales call to be delivered; and

4. Includes a clear and conspicuous disclosure informing the called party that:

a. By executing the agreement, the called party authorizes the person making or allowing ~~the placement of~~ a telephonic sales call to be made by telephone call, text message, or voicemail transmission to deliver or cause to be delivered ~~a telephonic sales call~~ to the called party a telephonic sales call using an automatic telephone dialing automated system for the selection and ~~or~~ dialing of telephone numbers, if applicable, ~~or~~ the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail; and

b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

~~(i)(h)~~ "Signature" includes:

1. An electronic or digital signature, if to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law; and

2. An act that demonstrates express consent, including, but not limited to, checking a box indicating consent or responding affirmatively to receiving text messages, to an advertising

4-00182B-23

20231308__

59 campaign, or to an e-mail solicitation.

60 (8) (a) A person may not make or knowingly allow to be made
61 an unsolicited a telephonic sales call using to be made if such
62 call involves an automatic telephone dialing automated system
63 for the selection and ~~or~~ dialing of telephone numbers or the
64 playing of a recorded message when a connection is completed to
65 a number called without the prior express written consent of the
66 called party.

67 Section 2. The amendments made by this act are remedial in
68 nature and apply retroactively to July 1, 2021, and to any
69 proceeding pending on or after July 1, 2021.

70 Section 3. This act shall take effect July 1, 2023.



817718

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/04/2023	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Gruters) recommended the following:

Senate Amendment to Amendment (805210)

Delete lines 48 - 57
and insert:

(8)(a) A person may not make or knowingly allow to be made
a telephonic sales call ~~to be made~~ if such call involves an
automated system for the selection or dialing of telephone
numbers or the playing of a recorded message when a connection
is completed to a number called without the prior express
written consent of the called party.



817718

(10)

(c) Notwithstanding any other provision of this section, no action shall lie for a violation of subsection (8) for up to two communications made within 15 business days after any of the following:

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.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/CS/SB 564

INTRODUCER: Commerce and Tourism Committee; Banking and Insurance Committee; and Senator Hutson

SUBJECT: Interchange Fees on Taxes

DATE: April 4, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 564 creates s. 501.0119, F.S., which prohibits an issuer, a payment card network, an acquirer bank, or a processor from charging an interchange fee on any tax that is separately itemized on a sales invoice, sales slip, or other evidence of sale in any electronic payment transaction if the merchant informs a specified entity of such tax amount as part of the authorization process for such transaction. The merchant must transmit the tax amount data as part of the authorization process to avoid being charged interchange fees on the tax amount.

A merchant that does not transmit the tax amount data for eligible electronic payment transactions as part of the authorization process may submit tax documentation to the specified entity no later than 180 days after the date of the electronic payment transaction, and within 30 days, the issuer must credit to the merchant the amount of interchange fees charged on the tax amount of the electronic payment transaction.

An issuer, a payment card network, an acquirer bank, a processor, or other designated entity that has received the tax amount data and that violates these provisions is subject to a civil penalty of \$1,000 per electronic payment transaction, and the issuer must refund the interchange fees charged on any tax amount relative to the electronic payment transaction.

The bill defines several terms, including acquirer bank, authorization, clearance, credit card, debit card, electronic payment transaction, interchange fee, issuer, merchant, payment card network, processor, settlement, tax, and tax document.

See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2023.

II. Present Situation:

Financial Institutions Code

The Florida Office of Financial Regulation (OFR) is responsible for all activities of the Financial Services Commission relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.¹

Florida law defines the term “financial institution” as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. s. 601 et seq., or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.²

Financial institutions may be either state or federally chartered. OFR’s Division of Financial Institutions provides general supervision over all state financial institutions, their subsidiaries, and service corporations,³ and is charged with the administration of the financial institutions codes, which apply to all state-authorized or state-chartered financial institutions and to the enforcement of all laws relating to state-authorized or state-chartered financial institutions. As of June 30, 2020, the Division of Financial Institutions regulates 197 financial institutions:⁴

- 69 banks
- 66 credit unions
- 21 international bank offices
- 15 trust companies
- 16 family trust companies
- 10 qualified limited service affiliates

Payment card networks or card associations, such as Visa and MasterCard, and processors do not meet the definition of financial institution and, therefore, are not currently regulated by the OFR.⁵

¹ Section 20.121(3)(a)2., F.S.

² Section 655.005(1)(i), F.S.

³ Section 655.012(1), F.S.

⁴ The OFR, *Fast Facts* (2021 ed.), available at: <https://flofr.gov/sitePages/documents/FastFacts.pdf> (last visited April 3, 2023).

⁵ The OFR, *Agency Analysis for SB 564* (2023), p. 2, Mar. 14, 2023 (on file with the Senate Committee on Banking and Insurance).

Electronic Payment Transactions

In 1958, Bank of America launched the first credit card⁶ payment program with revolving credit known as BankAmericard in the U.S.⁷ In 1966, the Bank of Delaware launched the first debit card⁸ pilot program.⁹ Over time credit card and debit cards have become a common way to pay for goods and services. Several key players are involved in processing credit card and debit card transactions, including acquiring banks or contracted processors,¹⁰ payment card networks or bank card associations,¹¹ and issuers or issuing banks.¹² Processing credit card or debit card transactions requires several steps, including gathering sales information from the merchant, obtaining authorization for the transaction, collecting funds from the issuing bank, and making payment to the merchant.¹³

Network Infrastructure, Technology, and Security

In 2006, certain major payment card networks established the PCI Security Standards Council (PCI SSC) which created standards that set out technical requirements for their respective compliance programs for payments made worldwide.¹⁴ Participating organizations include merchants, processors, developers, and point of sale vendors.¹⁵ There are 12 requirements for

⁶ 15 U.S.C. s. 1602(l) defines “credit card” as any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

⁷ Visa, Inc., *What We Do*, available at: [What we do | Unlocking opportunities for everyone | Visa](#) (last visited April 3, 2023).

⁸ 15 U.S.C. s. 1693o-2.(c)(2) defines “debit card” as (A) any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account (regardless of the purpose for which the account is established), whether authorization is based on signature, PIN, or other means; (B) includes a general-use prepaid card, as that term is defined in s. 15 U.S.C. s. 1693l-1(a)(2)(A); and (C) does not include paper checks.

⁹ Hyashi, F., Sullivan, R., & Weiner, S., *A Guide to the ATM and Debit Card Industry*, Federal Reserve Bank of Kansas City, 2003, pg. 13, available at: [A Guide to the ATM and Debit Card Industry \(kansascityfed.org\)](#) (last visited April 3, 2023).

¹⁰ An “acquiring bank,” also known as the merchant bank, is a member of a card association that contracts with merchants for the settlement of card transactions. An acquiring bank must sponsor a merchant that accepts as a form of payment card association brand payment cards, and may contract directly with merchants or indirectly through agent banks or other third-party organizations to process card transactions. Office of the Comptroller of the Currency, *Comptroller’s Handbook: Safety and Soundness: Merchant Processing*, Vol. 1, pg. 2, Aug. 2014, available at: [OCC Merchant Processing Handbook](#) (hereinafter cited as “OCC Merchant Processing Handbook”) (last visited April 3, 2023).

¹¹ “Payment card network” or “bank card associations” are entities that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct debit card or credit card transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card, credit card or other device that may be used to carry out debit or credit transactions. 15 U.S.C. s. 1693o-2.(c)(11). Examples of the major payment card networks include Visa, Inc. (Visa), MasterCard, Inc. (MasterCard), Discover Global Network (Discover), and American Express (AmEx). See Visa, *What We Do*, available at: [What we do | Unlocking opportunities for everyone | Visa](#) (last visited April 3, 2023); MasterCard, *Who We Are*, available at: [About Mastercard | Who We Are | Who We Serve](#) (last visited April 3, 2012); Discover, *Our Network*, available at: [Our Unique Payments Network | Discover Global Network](#) (last visited April 3, 2023); AmEx, *American Express Network: The Network That Backs You*, available at: [GNW-Home \(americanexpress.com\)](#) (last visited April 3, 2023).

¹² “Issuer” or “issuing bank” is any person or entity who issues a debit card, or credit card, or the agent of such person with respect to such card. 15 U.S.C. s. 1693o-2.(c)(9).

¹³ OCC Merchant Processing Handbook at pg. 1.

¹⁴ PCI SSC, *About Us*, available at: [Official PCI Security Standards Council Site - Verify PCI Compliance, Download Data Security and Credit Card Security Standards](#) (hereinafter cited as “PCI SSC Governance Website”) (last visited April 3, 2023).

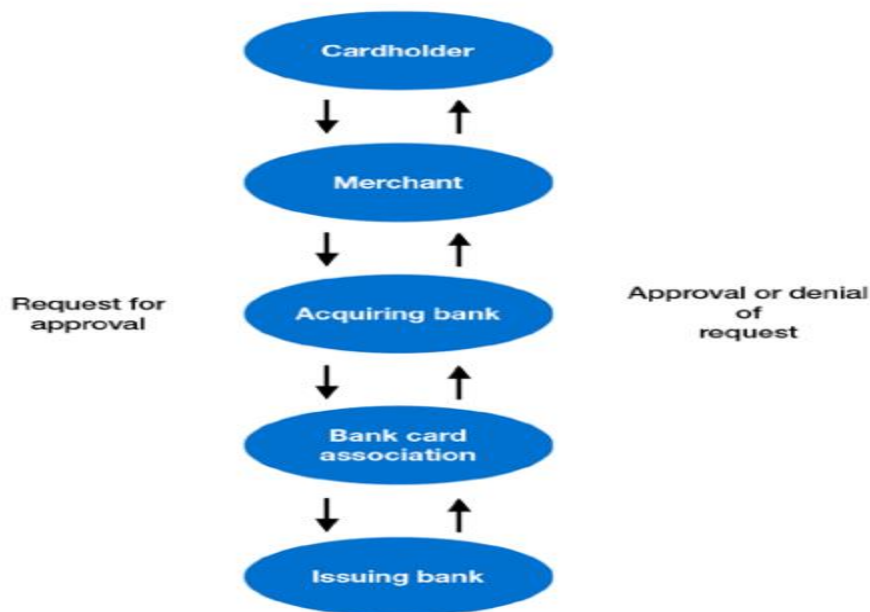
¹⁵ PCI SSC, *The Prioritized Approach to Pursue PCI DSS Compliance*, pg. 2, available at: [PCI DSS Prioritized Approach for PCI DSS 3.2 \(pcisecuritystandards.org\)](#) (last visited April 3, 2023).

securing cardholder data that is stored, processed or transmitted by participating members, such as encrypting transmission of cardholder data across open public networks, and developing and maintaining secure systems and applications.¹⁶ Payment card networks or processors are responsible for enforcement of such requirements.¹⁷

Authorization Process

These secured networks are used to process the authorization of credit card and debit card transactions. Authorization is the process of approving or declining a transaction prior to the transaction being finalized.¹⁸ A merchant may obtain an estimated/initial authorization to place a hold for a transaction amount for transactions in certain types of industries when the actual amount of a transaction is unknown.¹⁹ Typically, authorization for a transaction to be paid by credit card or debit card is requested electronically for the transaction amount from a merchant's point of sale system through the merchant's bank or processor (via the payment card network) to the issuer in a matter of seconds.²⁰ An illustration of the authorization process is shown below.²¹

Figure 1: Authorization Process



Source: OCC

Clearing and Settlement Process

Clearing is the process of transmitting final transaction data from merchants to issuers for posting to the cardholder's account, and the calculation of certain fees and charges that apply to

¹⁶ *Id.* at pgs. 1, 8-9.

¹⁷ PSI SSC Governance Website.

¹⁸ OCC Merchant Processing Handbook at pg. 7.

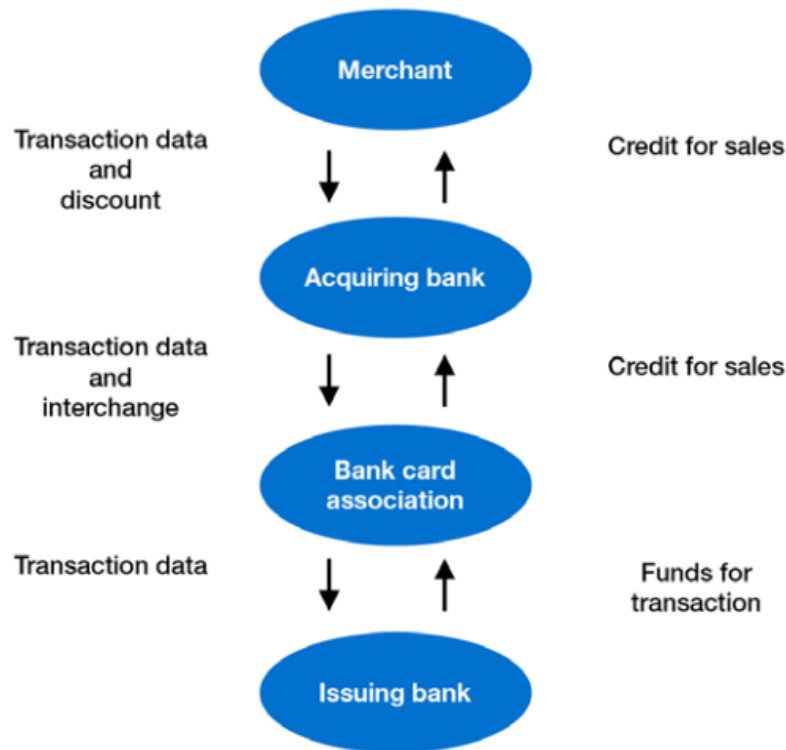
¹⁹ See, Visa, *Authorization and Reversal Processing Requirements for Merchants*, available at: [Authorization and Reversal Processing Requirements for Merchants \(visa.com\)](https://www.visa.com/merchants/authorization-and-reversal-processing-requirements) (last visited April 3, 2023).

²⁰ OCC Merchant Processing Handbook at pg. 8.

²¹ *Id.*

the issuer and acquirer.²² The settlement process includes transmitting sales information to the issuing bank for collection and reimbursement of funds to the merchant, and the process of calculating and reporting the net financial position of issuers and acquirers for all transactions that are cleared.²³ An illustration of the clearing and settlement process is shown below.²⁴

Figure 2: Clearing and Settlement Process



Source: OCC

Transaction Fees

Merchants are charged network fees,²⁵ processor fees,²⁶ and interchange fees for using network infrastructure and technology, and accepting credit card and debit cards as a form of payment for transactions. An “interchange transaction fee” is any fee established, charged or received by a payment card network for the purpose of compensating an issuer for its involvement in an

²² OCC Merchant Processing Handbook at pg. 9.

²³ *Id.*

²⁴ *Id.*

²⁵ 15 U.S.C. s. 1693o-2.(c)(10) defines “network fee” as a fee charged and received by a payment card network with respect to an electronic debit transaction, other than an interchange transaction fee. These fees may also be referred to as “assessment fees.” See Leonard, K., & Bottorff, C., *Credit Card Processing Fees (2023 Guide)*, Forbes Advisor, Aug. 19, 2022, available at: [Credit Card Processing Fees \(2023 Guide\) – Forbes Advisor](#) (hereinafter cited as “Forbes Article”) (last visited April 3, 2023). 15 U.S.C. s. 1693o-2.(c)(5) defines “electronic debit transaction” as a transaction in which a person uses a debit card.

²⁶ Forbes Article (noting that payment process fees may include monthly fees, per-transaction fees, equipment lease fees and statement fees).

electronic payment transaction.²⁷ Payment card networks base the fees on the type or tier of the merchant, and interchange fees includes a flat rate plus a percentage of the transaction value.²⁸

Credit Card Transactions

No federal or state regulations were identified that restrict the maximum amount of interchange fees that may be charged to a merchant for credit card transactions. The average interchange fees for credit card transactions with major payment card networks is as follows:

- Visa: 1.4% to 2.5%
- MasterCard: 1.5% to 2.6%
- Discover: 1.55% to 2.5%
- AmEx: 2.3% to 3.5%²⁹

Debit Card Transactions

The Electronic Fund Transfer Act (EFTA)³⁰ was established with a primary objective of individual consumer's rights regarding the electronic fund and remittance transfer systems.³¹ The EFTA provides that an amount of any interchange transaction fee that an issuer³² may receive or charge with respect to an electronic debit transaction must be "reasonable and proportional to the cost incurred by the issuer" with respect to the transaction.³³ The EFTA provides for certain exemptions from these provisions, such as exemptions for small issuers, including issuers³⁴ that have less than \$10 billion in assets,³⁵ and exemptions for government-administered payment programs and reloadable prepaid cards.³⁶

The Board of Governors of the Federal Reserve System (Board) may regulate any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction.³⁷ The Board must consider the following factors when issuing standards and prescribing regulations:

- The nature, type, and occurrence of fraud in electronic debit transactions;

²⁷ See 15 U.S.C. s. 1693o-2.(c)(8).

²⁸ See Visa, *The Visa System: Rates, Fees and Rules*, available at: [Visa USA Interchange Reimbursement Fees](#) (last visited April 3, 2023); MasterCard, *MasterCard Interchange Rates and Fees*, available at: [U.S. Region Interchange, 22 April 2022 \(mastercard.us\)](#) (last visited April 3, 2023); O'Keefe, C., *Discover Interchange Rates (2023)*, Merchant Cost Consulting, Jan. 8, 2023, available at: [Discover Interchange Rates \(2023\) | Merchant Cost Consulting](#) (last visited April 3, 2023); Rej, M., *Amex Interchange Rates and Processing Fees*, Merchant Cost Consulting, Sept. 16, 2022, available at: [Amex Interchange Rates and Processing Fees \(2023\) | Merchant Cost Consulting](#) (last visited April 3, 2023).

²⁹ Forbes Article.

³⁰ 15 U.S.C. s. 1693 et. seq.

³¹ 15 U.S.C. s. 1693(b); 12 C.F.R. s. 205.1(b).

³² 15 U.S.C. s. 1693o-2.(c)(9) defines "issuer" as any person who issues a debit card, or credit card, or the agent of such person with respect to such card.

³³ 15 U.S.C. s. 1693o-2.(a)(2); 12 C.F.R. s. 235.3(a).

³⁴ 15 U.S.C. s. 1693o-2.(a)(6)(B) limits the definition of "issuer," for purposes of this provision, to the person holding the asset account that is debited through an electronic debit transaction.

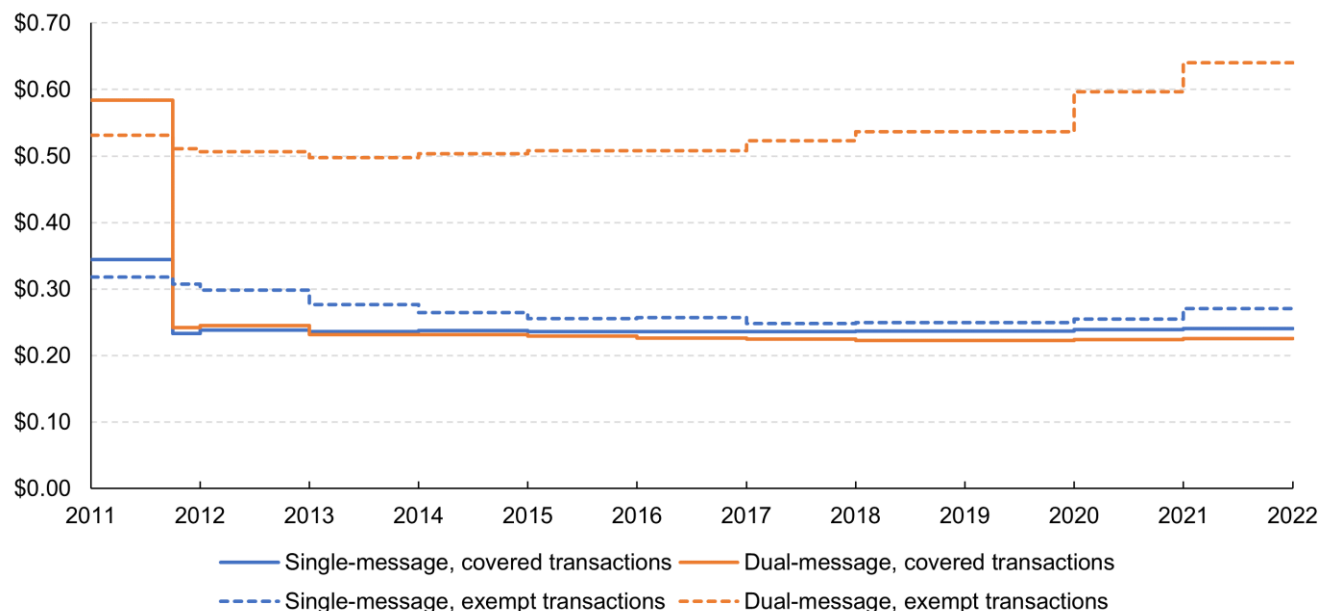
³⁵ 15 U.S.C. s. 1693o-2.(a)(6)(A).

³⁶ 12 C.F.R. s. 1693o-2.(a)(7) (providing that exemptions relating to certain transactions when debit and general-use prepaid card are used by a person pursuant to a Federal, State, or local government-administered payment program).

³⁷ 15 U.S.C. s. 1693o-2.(a)(1).

- The extent to which the occurrence of fraud depends on whether authorization in an electronic debit transaction is based on signature, PIN, or other means;
- The available and economical means by which fraud on electronic debit transactions may be reduced;
- The fraud prevention and data security costs expended by each party involved in electronic debit transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks);
- The costs of fraudulent transactions absorbed by each party involved in such transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks);
- The extent to which interchange transaction fees have in the past reduced or increased incentives for parties involved in electronic debit transactions to reduce fraud on such transactions; and
- Such other factors as the Board considers appropriate.³⁸

The Board issued regulations which limit the amount of interchange transaction fees that an issuer may receive or charge for any electronic debit transaction to no more than \$0.21 plus 0.05 percent multiplied by the value of the transaction,³⁹ plus a \$0.01 fraud prevention adjustment.⁴⁰ The Federal Reserve has published data on the average debit card interchange fee from 2011 to 2022, which is summarized in the table below.⁴¹



³⁸ 15 U.S.C. s. 1693o-2.(a)(5)(B)(ii).

³⁹ 12 C.F.R. s. 235.3(b).

⁴⁰ 12 C.F.R. s. 235.4(a).

⁴¹ The Board, *Regulation II (Debit Card Interchange Fees and Routing): Average Debit Card Interchange Fee by Payment Card Network*, available at: [Federal Reserve Board - Regulation II - Average Debit Card Interchange Fee by Payment Card Network](https://www.federalreserve.gov/paymentsystems/regulationii/average-debit-card-interchange-fee-by-payment-card-network) (last visited April 3, 2023).

The Board reports that Visa, MasterCard, and Discover (exempt and covered transactions)⁴² have an average debit card interchange fee per transaction of \$0.36, \$0.46, and \$0.44, respectively, with an interchange fee as a percentage of the average debit card transaction value of 0.76%, 0.94%, and 1.35%, respectively.⁴³

The EFTA does not annul, alter, or affect the laws of any state⁴⁴ relating to, amongst other things, electronic funds transfers⁴⁵ except to the extent that the laws are inconsistent with the provisions under the EFTA, and then only to the extent of the inconsistency.⁴⁶ The Bureau of Consumer Financial Protection may exempt from the provisions of the EFTA any class of electronic fund transfers in state law if the Bureau determines that such law is “substantially similar” to the EFTA and that there is adequate provision of enforcement.⁴⁷ No state laws regulating the amount of interchange fees that may be charged to the merchant for electronic debit transactions have been identified.

⁴² *Id.* (noting that covered transaction are transactions processed by issuers that are subject to the interchange fee standard that do not qualify for an exemption).

⁴³ *Id.*

⁴⁴ 15 U.S.C. s. 1693a.(11) defines “State” as any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

⁴⁵ 15 U.S.C. s. 1693a.(7) defines “electronic fund transfer” as any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include (A) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer’s account; (B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer; (C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission; (D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer’s demand deposit account; or (E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated; as determined under regulation of the Bureau. 15 U.S.C. s. 1693a.(9) defines “financial institution” as a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer.

⁴⁶ 15 U.S.C. s. 1693q; 12 C.F.R. s. 205.12(b)(1).

⁴⁷ 15 U.S.C. s. 1693r; 12 C.F.R. s. 205.12(c)(1).

Florida Taxes

Sales and Use Tax

Florida levies a 6 percent sales and use tax on the sale⁴⁸ or rental of most tangible personal property,⁴⁹ admissions,⁵⁰ transient rentals,⁵¹ and a limited number of services. Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser and paid to the dealer⁵² at the time of sale.⁵³ The tax amount must be separately stated on any charge ticket, sales slip, invoice, or other tangible evidence of sale.⁵⁴

In addition to the state tax, counties may levy a local discretionary surtax, comprised of separate surtaxes.⁵⁵ A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202."⁵⁶ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax rates currently levied vary by county in a range of 0.5 to 1.5 percent.⁵⁷

⁴⁸ Section 212.02(15), F.S., defines "sale" as (a) any transfer of title or possession, or both, exchange, barter, license, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration; (b) the rental of living quarters or sleeping or housekeeping accommodations in hotels, apartment houses or roominghouses, or tourist or trailer camps, as hereinafter defined in ch. 212, F.S.; (c) the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting; (d) the furnishing, preparing, or serving for a consideration of any tangible personal property for consumption on or off the premises of the person furnishing, preparing, or serving such tangible personal property which includes the sale of meals or prepared food by an employer to his or her employees; (e) a transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price.

⁴⁹ Section 212.05(1)(a)1.a., F.S. Section 212.02(19), F.S., defines "tangible personal property" as personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses, including electric power or energy, boats, motor vehicles and mobile homes as defined in s. 320.01(1) and (2), aircraft as defined in s. 330.27, and all other types of vehicles.

⁵⁰ Section 212.04(1)(b), F.S. Section 212.02(1), F.S., defines "admissions" as the net sum of money after deduction of any federal taxes for admitting a person or vehicle or persons to any place of amusement, sport, or recreation or for the privilege of entering or staying in any place of amusement, sport, or recreation, including, but not limited to, theaters, outdoor theaters, shows, exhibits, games, races, or any place where charge is made by way of sale or tickets, gate charges, seat charges, box charges, season pass charges, cover charges, greens fees, participation fees, entrance fees or other fees or receipts of anything of value measured on an admission or entrance or length of stay or seat box accommodations in any place where there is any exhibition, amusement, sport, or recreation, and all dues and fees paid to private clubs and membership clubs providing recreational or physical fitness facilities, including, but not limited to, golf, tennis, swimming, yachting, boating athletic, exercise, and fitness facilities, except physical fitness facilities owned or operated by any hospital licensed under ch. 395, F.S.

⁵¹ Section 212.03(1)(a), F.S.

⁵² Section 212.06(2), F.S., defines "dealer" to mean (a) every person who manufactures or produces tangible personal property for sale at retail; for use, consumption, or distribution; or for storage to be used or consumed in the state, (b) every person who imports, or causes to be imported, tangible personal property from any state or foreign country for sale at retail; for use, consumption, or distribution; or for storage to be used or consumed in this state, (c) every person who sells at retail or who offers for sale at retail, or who has in his or her possession for sale at retail; or for use, consumption, or distribution; or for storage to be used or consumed in this state, tangible personal property defined herein, including a retailer who transacts a substantial number of remote sales or a marketplace provider that has a physical presence in this state or that makes or

Generally, tangible personal property that is sold in an isolated or occasional sale is exempt from the state sales tax.⁵⁸ A seller makes an isolated or occasional sale if the sale or series of sales occurs no more than twice during any 12-month period.⁵⁹ A seller is required to register as a dealer if he or she completes more than three sales of the same type of item during a 12-month period. The sale of mobile homes, aircrafts, boats, and motor vehicles are expressly excluded from the isolated or occasional state sales and use tax exemption if certain circumstances are met.⁶⁰

According to estimates prepared by CMPSI, Revenue Estimating Conference reports suggest that Florida sales tax revenue for FY 2020-2021 and FY 2021-2022 were \$30.4 billion and \$38.6 billion, respectively.⁶¹ CMSPI estimated the interchange fees on these taxes during the same period to be \$208.5 million and \$288.2 million, respectively.⁶²

facilitates through its marketplace a substantial number of remote sales, (d) any person who has sold at retail; or used, or consumed, or distributed; or stored for use or consumption in this state, tangible personal property and who cannot prove that the tax levied by ch. 212, F.S., has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of such tangible personal property, (e) any person who leases or rents tangible personal property for a consideration permitting the use or possession of such property without transferring title thereto, except as expressly provided for to the contrary, (f) any person who maintains or has within this state, directly or by a subsidiary, an office, distributing house, salesroom, or house, warehouse, or other place of business, (g) every person who solicits business either by direct representatives, indirect representatives, or manufacturer's agents; by distribution of catalogs or other advertising matter; or by any other means whatsoever, and by reason thereof receives orders for tangible personal property from consumers for use, consumption, distribution, and storage for use or consumption in the state, (h) every person who, as a representative, agent, or solicitor of an out-of-state principal or principals, solicits, receives, and accepts orders from consumers in the state for future delivery and whose principal refuses to register as a dealer, (i) the state, county, municipality, and political subdivision, agency, bureau or department, or other state or local government instrumentality, (j) any person who leases, or grants a license to use, occupy, or enter upon, living quarters, sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, real property, space or spaces in parking lots or garages for motor vehicles, docking or storage space or spaces for boats in boat docks or marinas, or tie-down or storage space or spaces for aircraft at airports, (k) any person who sells, provides, or performs a service taxable under ch. 212, F.S., (l) any person who solicits, offers, provides, enters into, issues, or delivers any service warranty taxable under ch. 212, F.S., or who received, on behalf of such person, any consideration from a service warranty holder, and (m) a forwarding agent as defined in s. 212.(5)(b)1., F.S. who has applied for and received a Florida Certificate of Forwarding Agent Address. Section 212.02(19), F.S., defines "tangible personal property" as personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses, including electric power or energy, boats, motor vehicles and mobile homes as defined in s. 320.01(1) and (2), aircraft as defined in s. 330.27, F.S., and all other types of vehicles. Section 212.06(5)(b)1., F.S., defines "forwarding agent" as a person or business whose principal business activity is facilitating for compensation the export of property owned by other persons.

⁵³ Section 212.07(2) and (3), F.S.

⁵⁴ *Id.*

⁵⁵ Section 212.055, F.S.

⁵⁶ Section 212.054(2)(a), F.S.

⁵⁷ Office of Economic and Demographic Research, *Florida Tax Handbook*, 2022 Local Discretionary Sales Surtax Rates in Florida's Counties, 231-232 (2022), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2022.pdf> (last visited April 3, 2023).

⁵⁸ Fla. Admin. Code R. 12A01.037(1). See also, s. 212.02(2), defining "business" as activity engaged in by a person with the object of private or public gain, benefit, or advantage.

⁵⁹ Fla. Admin. Code R. 12A-1.037(3)(b).

⁶⁰ See, s. 212.05(1)(a)1.b., and Fla. Admin. Code R. 12A-1.037(2)(a)1.

⁶¹ Email from French Brown, Attorney at Dean Mead, to Jacqueline Moody, Florida Senate Committee on Banking and Insurance Senior Attorney, *HB 677/SB 564*, (Feb. 24, 2023) (on file with the Senate Committee on Banking and Insurance).

⁶² *Id.*

Tourist Development Tax⁶³

A tourist development tax is a county tax on consideration paid on residential rentals of six months or less.⁶⁴ The tax funds tourism-related uses specified in the authorizing statute. The Local Option Tourist Development Act⁶⁵ authorizes counties to levy five separate taxes on transient rental transactions. Depending on a county's eligibility to levy such taxes, the maximum tax rate varies from a minimum of 3 percent to a maximum of 6 percent:

- The original TDT may be levied at the rate of 1 or 2 percent.⁶⁶
- An additional 1 percent tax may be levied by counties who have previously levied the original TDT at the 1 or 2 percent rate for at least three years.⁶⁷
- A high tourism impact tax may be levied at an additional 1 percent.⁶⁸
- A professional sports franchise facility tax may be levied up to an additional 1 percent.⁶⁹
- An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.⁷⁰

Prior to the authorization of the original 1 or 2 percent tourist development tax, the levy must be approved by a countywide referendum,⁷¹ and additional tourist development tax levies must be authorized by a vote of the county's governing authority or by voter approval of a countywide referendum.⁷² The original tax may be repealed by a referendum initiated by a petition signed by 15 percent of voters⁷³ subject to the interest of the holders of any revenue bonds repayment of which is secured by the tax. Once the tax is in place, additional taxes may be levied by a vote of the county commissioners.⁷⁴

⁶³ Section 125.0104, F.S.

⁶⁴ Section 125.0104(3)(a)1., F.S.

⁶⁵ Section 125.0104, F.S.

⁶⁶ Section 125.0104(3)(c), F.S. All 67 of Florida's counties are eligible to levy this tax, but only 62 counties have done so, all at a rate of 2 percent. Office of Economic and Demographic Research (EDR), *County Tax Rates: CY 2007-2023*, available at <https://view.officeapps.live.com/op/view.aspx?src=http%3A%2F%2Fedr.state.fl.us%2FContent%2Flocal-government%2Fdata%2Fdata-a-to-z%2FLOTTrates.xls&wdOrigin=BROWSELINK> (last visited April 3, 2023). These counties are estimated to realize \$612 million in revenue from these taxes in the 2022-2023 fiscal year. EDR 2022 *Local Government Financial Information Handbook* (December 2022), p. 251, at <http://edr.state.fl.us/Content/local-government/reports/lghih22.pdf> (last visited April 3, 2023).

⁶⁷ Section 125.0104(3)(d), F.S. Fifty-six of the eligible 59 counties levy this tax, with an estimated 2022-2023 state fiscal year collection of \$250 million in revenue. 2022 *Local Government Financial Information Handbook* at 255.

⁶⁸ Section 125.0104(3)(m), F.S. All nine eligible counties levy this tax, with an estimated 2022-2023 state fiscal collection of \$162 million in revenue. 2022 *Local Government Financial Information Handbook* at 261.

⁶⁹ Section 125.0104(3)(l), F.S. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities or professional sports franchises, and convention centers and to promote and advertise tourism. Forty-five of the 67 counties levy this additional tax, with an estimated 2022-2023 state fiscal year collection of \$285 million in revenue. 2022 *Local Government Financial Information Handbook* at 259.

⁷⁰ Section 125.0104(3)(n), F.S. Thirty-four counties levy the additional professional sports franchise facility tax, with an estimated 2022-2023 state fiscal year collection of \$17 million in revenue. 2022 *Local Government Financial Information Handbook* at 265.

⁷¹ Section 125.0104(6), F.S.

⁷² Section 125.0104(3)(d), F.S.

⁷³ Section 125.0104(6)(d), F.S.

⁷⁴ Section 125.0104(3)(l), (m), and (n), F.S.

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 501.0119, F.S., which prohibits an issuer, a payment card network, an acquirer bank, or a processor from charging interchange fees on the tax amount of an electronic payment transaction if the merchant informs the acquirer bank or its designee of such tax amount as part of the authorization process for the transaction. Section 501.0119, F.S., does not apply to an electronic payment transaction in which the tax amount is not separately stated on the consumer's payment invoice, sales slip, or other evidence of sale as required under s. 212.07(2), F.S.

A merchant must transmit the tax amount data as part of the authorization process to avoid being charged interchange fees on the tax amount of an electronic payment transaction. A merchant that does not transmit tax amount data on an eligible transaction as part of the authorization process may transmit tax documentation for the transactions no later than 180 days after the date of the electronic payment transaction and, within 30 days, the issuer must credit to the merchant the amount of interchange fees charged on the tax amount of the electronic payment transaction. This provision may be relied upon by smaller businesses that may not have the technology to transmit the tax amount data electronically at the time of the authorization process.

An issuer, a payment card network, an acquirer bank, a processor, or other designated entity that has received the tax amount data and violates s. 501.0119, F.S., is subject to a civil penalty of \$1,000 per electronic payment transaction and the issuer must refund to the merchant the amount of interchange fees charged on the tax of an electronic payment transaction.

The following terms are defined for purposes of the section created under the bill:

- “Acquirer bank” means a member of a payment card network which contracts with a merchant for the settlement of electronic payment transactions. An acquirer bank may contract directly with merchants or indirectly through a processor to process electronic payment transactions.
- “Authorization” means the process through which a merchant requests approval for an electronic payment transaction from the issuer.
- “Clearance” means the process of transmitting final transaction data from a merchant to an issuer for posting to the cardholder's account and the calculation of fees and charges, including interchange fees, which apply to the issuer and merchant.
- “Credit card” means a card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.
- “Debit card” means:
 - A card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account, regardless of the purpose for which the account is established, whether authorization is based on signature, personal identification number, or other means;
 - Includes a general-use prepaid card⁷⁵; and

⁷⁵ 15 U.S.C. s. 16931-1 defines “general-use prepaid card” to mean a card or other payment code or device issued by any person that is (i) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines; (ii) issued in a requested amount, whether or not that amount may, at the option of the issuer, be increased in value or reloaded if requested by the holder; (iii) purchased or loaded on a prepaid basis; and (iv) honored, upon presentation, by merchants for goods or services, or at automated teller machines.

- Excludes paper checks.
- “Electronic payment transaction” means a transaction in which a person uses a debit card, credit card, or other payment code or device, issued or approved through a payment card network, to debit a deposit account or use a line of credit, whether authorization is based on a signature, personal identification number, or other means.
- “Interchange fee” means a fee established, charged, or received by a payment card network for the purpose of compensating the issuer for its involvement in an electronic payment transaction.
- “Issuer” means a person, or the person’s agent, issuing a debit card or credit card.
- “Merchant” has the same meaning as the term “dealer” in s. 212.06(2), F.S.
- “Payment card network” means an entity that:
 - Directly or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that routes information and data to conduct debit card or credit card transaction authorization, clearance, and settlement; and
 - A merchant or seller uses to accept as a form of payment a brand of debit card, credit card, or other device that may be used to carry out debit or credit transactions.
- “Processor” means an entity that facilitates, services, processes, or manages the debit or credit authorization, billing, transfer, payment procedures, or settlement with respect to any electronic payment transaction.
- “Settlement” means the process of transmitting sales information to the issuing bank for collection and reimbursement of funds to the merchant and calculating and reporting the net transaction amount to the issuer and merchant for an electronic payment transaction that is cleared.
- “Tax” means all taxes and fees levied under ch. 212, F.S., and s. 125.0104, F.S.
- “Tax documentation” means documentation sufficient for the payment card network to determine the total amount of the electronic payment transaction and the tax amount of such transaction. Tax documentation may be related to a single electronic payment transaction or multiple electronic payment transactions aggregated over a period of time. Examples of tax documentation include, but are not limited to, invoices, receipts, journals, ledgers, and tax returns filed with the Department of Revenue or local taxing authorities.

Section 2 of the bill provides for an effective date of October 1, 2023.

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:

To the extent that the key players in processing credit card and debit card transactions may be required to upgrade technology and security measures to be able to transmit tax amount data, there is an indeterminate negative fiscal impact on them. To the extent that merchants submit tax amount data to payment card networks, there is an indeterminate positive fiscal impact on merchants and an indeterminate negative fiscal impact on issuing banks because of the reduced interchange fees on tax amounts for credit card and debit card transactions.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 501.0119 of the Florida Statutes.

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

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

CS by Banking and Insurance Committee on March 15, 2023:

The committee substitute makes the following changes:

- Moves the new section prohibiting the charge of interchange fees on taxes from s. 655.969, F.S., to s. 501.0119, F.S.;

- Provides that the section does not apply to electronic payment transactions in which the tax amount is not separately stated on the consumer's evidence of sale;
- Specifies that, in addition to a payment card network, an issuer, an acquirer bank, or a processor may not receive or charge the merchant any interchange fees on the tax amount of an electronic payment transaction if certain circumstances are met;
- Requires the merchant to transmit the tax amount data as part of the clearance process to avoid being charged interchange fees on the tax amount of an electronic payment transaction;
- Authorizes a merchant that does not, rather than cannot, transmit the tax amount data as part of the clearance process to submit tax documentation for the electronic payment transaction to the acquirer bank, its designee, or any other entity as provided in the payment card network's terms and conditions of service, no later than 180 days after the date of the electronic payment transaction;
- Requires the issuer, within 30 days, to credit to the merchant the amount of interchange fees charged on the tax amount of the electronic payment transaction if the merchant provides the tax documentation as provided under the bill;
- Specifies that, in addition to a payment card network, an issuer, an acquirer bank, a processor, or other designated entity that has received the tax amount data and violates the section is subject to a civil penalty of \$1,000 per electronic payment transaction;
- Specifies that when a violation occurs the issuer is the entity which must refund to the merchant the interchange fee calculated on the tax amount relative to the electronic payment transaction;
- Amends the definition of "settlement;"
- Defines the terms "acquirer bank," "clearance," "merchant," "processor," and "tax document;" and
- Amends the effective date from July 1, 2023 to October 1, 2023.

CS by Commerce and Tourism Committee on April 4, 2023:

The amendment defines the term "authorization" to mean the process through which a merchant requests approval for an electronic payment transaction from the issuer.

The amendment prohibits certain entities from charging an interchange fee if the merchant informs the specified entity of the tax amount as part of the authorization process, rather than the clearance process.

B. Amendments:

None.



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LEGISLATIVE ACTION

	Senate	House
Comm: RCS	.	.
04/04/2023	.	.
	.	.
	.	.

The Committee on Commerce and Tourism (Hutson) recommended the following:

Senate Amendment

Delete lines 26 - 105

and insert:

(b) "Authorization" means the process through which a merchant requests approval for an electronic payment transaction from the issuer.

(c) "Clearance" means the process of transmitting final transaction data from a merchant to an issuer for posting to the cardholder's account and the calculation of fees and charges.

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including interchange fees, which apply to the issuer and merchant.

(d) "Credit card" means a card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(e) "Debit card":

1. Means a card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account, regardless of the purpose for which the account is established, whether authorization is based on a signature, a personal identification number, or other means;

2. Includes a general-use prepaid card, as defined in 15 U.S.C. s. 16931-1; and

3. Excludes paper checks.

(f) "Electronic payment transaction" means a transaction in which a person uses a debit card, credit card, or other payment code or device issued or approved through a payment card network to debit a deposit account or use a line of credit, whether authorization is based on a signature, a personal identification number, or other means.

(g) "Interchange fee" means a fee established, charged, or received by a payment card network for the purpose of compensating the issuer for its involvement in an electronic payment transaction.

(h) "Issuer" means a person issuing a debit card or credit card or the issuer's agent.

(i) "Merchant" has the same meaning as the term "dealer" in s. 212.06(2).

(j) "Payment card network" means an entity:

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1. That directly or through licensed members, processors, or agents provides the proprietary services, infrastructure, and software that route information and data to conduct electronic payment transaction authorization, clearance, and settlement; and

2. That a merchant uses to accept as a form of payment a brand of debit card, credit card, or other device that may be used to carry out electronic payment transactions.

(k) "Processor" means an entity that facilitates, services, processes, or manages the debit or credit authorization, billing, transfer, payment procedures, or settlement with respect to any electronic payment transaction.

(l) "Settlement" means the process of transmitting sales information to the issuing bank for collection and reimbursement of funds to the merchant and calculating and reporting the net transaction amount to the issuer and merchant for an electronic payment transaction that is cleared.

(m) "Tax" means all taxes and fees levied under chapter 212 and s. 125.0104.

(n) "Tax documentation" means documentation sufficient for the payment card network to determine the total amount of the electronic payment transaction and the tax amount of such transaction. Tax documentation may be related to a single electronic payment transaction or multiple electronic payment transactions aggregated over a period of time. Examples of tax documentation include, but are not limited to, invoices, receipts, journals, ledgers, and tax returns filed with the Department of Revenue or local taxing authorities.

(2) This section does not apply to an electronic payment

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transaction in which the tax amount is not separately stated on the consumer's payment invoice, sales slip, or other evidence of sale as required under s. 212.07(2).

(3) Except as provided in subsection (2), an issuer, a payment card network, an acquirer bank, or a processor may not receive or charge the merchant any interchange fees on the tax amount of an electronic payment transaction if the merchant informs the acquirer bank or its designee of such tax amount as part of the authorization process for the electronic payment transaction. A merchant must transmit the tax amount data as part of the authorization process to avoid being charged interchange fees on the tax amount of an electronic payment transaction.

(4) A merchant that does not transmit the tax amount data in accordance with subsection (3) may submit tax documentation for the electronic payment transaction to the acquirer bank or its designee no later than 180 days

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By the Committee on Banking and Insurance; and Senator Hutson

597-02621-23

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A bill to be entitled

An act relating to interchange fees on taxes; creating s. 501.0119, F.S.; defining terms; providing applicability; prohibiting issuers, payment card networks, acquirer banks, and processors from receiving or charging merchants interchange fees on the tax amounts of electronic payment transactions if the merchant provides certain information in a specified manner; requiring an issuer to credit a merchant the amount of interchange fees on taxes within a certain timeframe if the merchant meets certain conditions; providing a civil penalty; providing an effective date.

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

Section 1. Section 501.0119, Florida Statutes, is created to read:

501.0119 Interchange fees on taxes prohibited.—

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

(a) "Acquirer bank" means a member of a payment card network which contracts with a merchant for the settlement of electronic payment transactions. An acquirer bank may contract directly with merchants or indirectly through a processor to process electronic payment transactions.

(b) "Clearance" means the process of transmitting final transaction data from a merchant to an issuer for posting to the cardholder's account and the calculation of fees and charges, including interchange fees, which apply to the issuer and

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merchant.

(c) "Credit card" means a card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(d) "Debit card":

1. Means a card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account, regardless of the purpose for which the account is established, whether authorization is based on a signature, a personal identification number, or other means;

2. Includes a general-use prepaid card, as defined in 15 U.S.C. s. 16931-1; and

3. Excludes paper checks.

(e) "Electronic payment transaction" means a transaction in which a person uses a debit card, credit card, or other payment code or device issued or approved through a payment card network to debit a deposit account or use a line of credit, whether authorization is based on a signature, a personal identification number, or other means.

(f) "Interchange fee" means a fee established, charged, or received by a payment card network for the purpose of compensating the issuer for its involvement in an electronic payment transaction.

(g) "Issuer" means a person issuing a debit card or credit card or the issuer's agent.

(h) "Merchant" has the same meaning as the term "dealer" in s. 212.06(2).

(i) "Payment card network" means an entity:

1. That directly or through licensed members, processors,

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or agents provides the proprietary services, infrastructure, and software that routes information and data to conduct electronic payment transaction authorization, clearance, and settlement; and

2. That a merchant uses to accept as a form of payment a brand of debit card, credit card, or other device that may be used to carry out electronic payment transactions.

(j) "Processor" means an entity that facilitates, services, processes, or manages the debit or credit authorization, billing, transfer, payment procedures, or settlement with respect to any electronic payment transaction.

(k) "Settlement" means the process of transmitting sales information to the issuing bank for collection and reimbursement of funds to the merchant and calculating and reporting the net transaction amount to the issuer and merchant for an electronic payment transaction that is cleared.

(l) "Tax" means all taxes and fees levied under chapter 212 and s. 125.0104.

(m) "Tax documentation" means documentation sufficient for the payment card network to determine the total amount of the electronic payment transaction and the tax amount of such transaction. Tax documentation may be related to a single electronic payment transaction or multiple electronic payment transactions aggregated over a period of time. Examples of tax documentation include, but are not limited to, invoices, receipts, journals, ledgers, and tax returns filed with the Department of Revenue or local taxing authorities.

(2) This section does not apply to an electronic payment transaction in which the tax amount is not separately stated on

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the consumer's payment invoice, sales slip, or other evidence of sale as required under s. 212.07(2).

(3) Except as provided in subsection (2), an issuer, a payment card network, an acquirer bank, or a processor may not receive or charge the merchant any interchange fees on the tax amount of an electronic payment transaction if the merchant informs the acquirer bank, its designee, or any other entity as provided in the payment card network's terms and conditions of service of such tax amount as part of the clearance process for the electronic payment transaction. A merchant must transmit the tax amount data as part of the clearance process to avoid being charged interchange fees on the tax amount of an electronic payment transaction.

(4) A merchant that does not transmit the tax amount data in accordance with subsection (3) may submit tax documentation for the electronic payment transaction to the acquirer bank, its designee, or any other entity as provided in the payment card network's terms and conditions of service no later than 180 days after the date of the electronic payment transaction, and within 30 days, the issuer must credit to the merchant the amount of interchange fees charged on the tax amount of the electronic payment transaction.

(5) An issuer, a payment card network, an acquirer bank, a processor, or other designated entity that has received the tax amount data and violates this section is subject to a civil penalty of \$1,000 per electronic payment transaction, and the issuer must refund the merchant the interchange fee calculated on the tax amount relative to the electronic payment transaction.

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Section 2. This act shall take effect October 1, 2023.

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.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 1636

INTRODUCER: Transportation Committee and Senator Wright

SUBJECT: Rescission or Cancellation of a Motor Vehicle Sale

DATE: April 3, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	Fav/CS
2.	Baird	McKay	CM	Favorable
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1636 establishes a process, within specified timeframes and using certain documentation, which authorizes a motor vehicle dealer, a motor vehicle purchaser, and any lienholder to agree to rescind or cancel the sale of a vehicle, if all fees, taxes, and other moneys associated with the rescinded or canceled sale, less specified titling fees, are returned to the relevant parties. In such event, the bill requires the Department of Highway Safety and Motor Vehicles (DHSMV) to rescind, cancel, or revoke an application for a certificate of title or a title that has already been issued.

An agreement among the parties subject to the rescinded or canceled sale invalidates any subsequent requirements imposed on the dealer to submit an application for a certificate of title or to remit any fees or taxes if all fees, taxes, and other moneys associated with the rescinded or canceled sale are returned. A dealer is authorized to obtain a duplicate certificate of origin or a duplicate certificate of title or obtain a new certificate of title, documents that would be required for a re-sale. A dealer is prohibited from offering a vehicle subject to the authorized rescission or cancellation until the dealer has received a certificate of title from the DHSMV. A rescission, cancellation, or revocation does not negate the fact that the vehicle has been the subject of a previous retail sale.

The fiscal impact is indeterminate. See the "Fiscal Impact Statement" heading below.

The bill takes effect July 1, 2023.

II. Present Situation:

Rescission or cancellation of a motor vehicle sale currently occurs when the contract for sale authorizes such or when the motor vehicle dealer otherwise agrees to cancel the contract and accept return of the vehicle. Current law makes no provision for refund of titling and registration fees in the event of a rescission or cancellation agreement voluntarily entered into by the dealer, the purchaser, and any lienholders.

Motor Vehicle Dealers and Motor Vehicle Sales and Use Taxes

Currently, a motor vehicle dealer¹ may sell motor vehicles² in this state if the dealer first registers with the Florida Department of Revenue (FDOR) to collect and report specified taxes and obtains a dealer's license from the DHSMV.³ Florida sales and use tax,⁴ plus any applicable discretionary sales surtax,⁵ is due on all new or used motor vehicles sold, leased, delivered into, imported into, or used in Florida, unless a specific exemption applies.⁶

The sales and use tax is due on the sale price of the motor vehicle,⁷ including any separately itemized charge or fee for items such as any accessory sold with the vehicle; preparation,

¹ Defined in s. 320.27(1)(c), F.S., to mean any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1). Any person who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be prima facie presumed to be engaged in such business. The terms "selling" and "sale" include lease-purchase transactions. According to the FDOR, a motor vehicle dealer is any dealer registered with the FDOT to sell motor vehicles. See *floridarevenue.com, Sales and Use Tax on Motor Vehicles*, available at [gt800030.pdf \(floridarevenue.com\)](https://www.floridarevenue.com/gt800030.pdf) (last visited April 3, 2023).

² Defined in s. 320.27(1)(b), F.S., to mean any motor vehicle of the type and kind required to be registered and titled under chapter 319 and this chapter, except a recreational vehicle, moped, motorcycle powered by a motor with a displacement of 50 cubic centimeters or less, or mobile home. According to the FDOR, a motor vehicle is an automobile, motorcycle, truck, trailer, semi-trailer, truck tractor and semi-trailer combination, or any other vehicle operated on the roads of Florida used to transport persons or property, and propelled by power other than muscle power. This includes recreational vehicles, such as a travel trailer, camping trailer, truck camper, motor home, private motor coach, van conversion, park trailer, and fifth-wheel trailer; and any other vehicle that is of a class or type that is required to be titled, licensed, or registered in Florida.

³ See generally s. 320.27, F.S., and *floridarevenue.com, Sales and Use Tax on Motor Vehicles*, available at [gt800030.pdf \(floridarevenue.com\)](https://www.floridarevenue.com/gt800030.pdf) (last visited April 3, 2023).

⁴ The Florida Revenue Act of 1949, codified in Chapter 212, F.S., establishes and regulates taxes on sales, use, and other transactions in Florida, including motor vehicle sales. The general state sales tax under the Act is currently set at 6 percent of the sales price. Section 212.05(1)(a)1.a., F.S.

⁵ According to the FDOR, most counties impose a local option discretionary sales surtax, which is due when the purchaser's residing address on the registration or title to the motor vehicle is a location within a county imposing a surtax, applicable to the first \$5,000 of the purchase price. *Id.*, *floridarevenue.com*.

⁶ *Id.* The FDOR document provides examples of motor vehicle sales that are exempt, or partially exempt, from the sales and use tax. Section 212.08, F.S., sets out various exemptions for general groceries; medical products and supplies or medicine; certain farm equipment; items bearing other excise taxes; items exempt on account of use; sales made to the United States government, a state, or any county, municipality, or political subdivision of a state; and other miscellaneous exemptions. That section also sets out a number of partial exemptions from the sales and use tax.

⁷ No title certificate may be issued on any motor vehicle, or, if no title is required by law, no license or registration may be issued for any vehicle, unless there is filed with such application for title certificate or license or registration certificate a receipt, issued by an authorized dealer or a designated agent of the FDOR, evidencing the payment of the tax imposed by Chapter 212, F.S., where the same is payable. A presumption of sales and use tax applicability is created if the motor vehicle is registered in this state. For the purpose of enforcing this provision, all county tax collectors and all persons or firms authorized to sell or issue boat, mobile home, and motor vehicle licenses are hereby designated agents of the department and

settlement, or closing fees, and any other expense or cost of the dealer that the dealer required the purchaser to pay.⁸ The taxes are generally due, along with a tax return,⁹ on the first day of the month following each reporting period (whether monthly, quarterly, twice a year, or yearly), and are late after the 20th day of the month following each reporting period.¹⁰ Any separately itemized fee or charge required by a state law for titling, licensing, or registering the motor vehicle, or for recording a lien on the motor vehicle, is not subject to the sales and use tax.¹¹

Currently, under Chapter 212, F.S., if a motor vehicle purchase is returned to a dealer by the purchaser after the sales tax has been collected from or charged to the account of the purchaser, the dealer is entitled to reimbursement of the amount of tax collected or charged by the dealer, in the manner prescribed by the FDOR.¹²

If the dealer has not remitted the sales tax to the FDOR, the dealer may deduct the same in submitting his or her return upon receipt of a signed statement by the dealer as to the gross amount of such refunds during the period covered by the signed statement, which may not exceed 90 days.¹³ The FDOR must then issue to the dealer an official credit memorandum equal to the net amount remitted by the dealer for such tax collected or paid. If a dealer has retired from business and filed a final return, a refund of the tax may be made if it can be established to the FDOR's satisfaction that the tax was not due.¹⁴

Statements of Origin and Certificates of Title

A manufacturer's statement of origin (MSO), also referred to as a manufacturer's certificate of origin (MCO), is the original ownership document for a vehicle. The document, provided by the new vehicle dealer, provides specific vehicle information, such as the year, make, and vehicle identification number. When the vehicle is sold at retail, the document is surrendered to the appropriate jurisdiction, and a title is issued.¹⁵

Florida law currently prohibits a manufacturer, distributor, licensed dealer, or other person from selling or otherwise disposing of a new motor vehicle to a distributor, licensed dealer, or other person without delivering to such distributor, licensed dealer, or other person an MSO duly executed and with such assignments thereon as may be necessary to show title in the purchaser thereof, on forms approved by the DHSMV. An MSO must also contain a certification of the identification and description of the motor vehicle delivered and the name and address of the

are required to perform such duty in the same manner and under the same conditions prescribed for their other duties by the constitution or any statute of this state. Section 212.06(10), F.S.

⁸ *Id.*

⁹ *See* s. 212.11, F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² Section 212.17(1)(a), F.S. The suggestion is made, however, that a refund of the sales tax paid by the dealer on the sale of a motor vehicle cannot occur after a dealer *re-purchases* a vehicle from a customer who wishes to return that vehicle, as opposed to a rescission or cancellation of the sale.

¹³ Section 212.17(1)(b), F.S.

¹⁴ Section 212.17(1)(c), F.S.

¹⁵ *See* aamva.org, [Manufacturer's Certification of Origin - American Association of Motor Vehicle Administrators - AAMVA](http://aamva.org/Manufacturer's%20Certification%20of%20Origin%20-%20American%20Association%20of%20Motor%20Vehicle%20Administrators%20-%20AAMVA) (last visited April 3, 2023).

distributor, licensed dealer, or other person to whom the motor vehicle was originally sold, over the signature of an authorized official of the manufacturer who made the original delivery.¹⁶

A certificate of title (COT) is the record that is evidence of ownership of a vehicle, whether in paper or electronic form.¹⁷ Generally, application for a COT must be made upon a form prescribed by the DHSMV, must be filed with that agency, and be accompanied by the statutorily prescribed fee. If a COT has previously been issued for a motor vehicle in this state, the application must be accompanied by the COT duly assigned. If the motor vehicle for which COT application is made is a new vehicle for which an MSO is required, the application must be accompanied by such MSO.¹⁸

In the case of the sale of a motor vehicle by a licensed dealer to a general purchaser, the COT must be obtained in the name of the purchaser by the dealer upon application signed by the purchaser. If such sale is to a general purchaser who resides in another state or country, the dealer is not required to apply for a certificate of title for the motor vehicle; however, the dealer must transfer ownership and reassign the COT or MSO to the purchaser, and the purchaser must sign an affidavit, as approved by the DHSMV, that the purchaser will title and register the motor vehicle in another state or country.¹⁹

Certificate of Title Fees and Service Charges

Section 319.32, F.S., requires the DHSMV to charge specified fees and service charges relating to issuing, duplicating, or otherwise processing COTs, including, but not limited to:

- For each original COT, \$70;²⁰
- For each duplicate copy of a COT, \$70;²¹
- For each assignment by a lienholder, \$3;
- For noting a lien on a COT, \$2.
- For issuance of an original or duplicate COT to cover the cost of materials used for security purposes;
- For shipping and handling for each paper title mailed by the DHSMV, a service fee of \$2.50; and
- For each application handled in connection with the issuance, duplication, or transfer of any COT, a service charge of \$4.25.²²

¹⁶ Section 319.21(1), F.S.

¹⁷ Section 319.001(1), F.S.

¹⁸ Section 319.23(1), F.S.

¹⁹ Section 319.23(6)(a), F.S. A licensed dealer is required to apply for a registration and title within 30 days of delivery of the vehicle. See flhsmv.gov, [Buying from a Licensed Dealer - Florida Department of Highway Safety and Motor Vehicles \(flhsmv.gov\)](http://flhsmv.gov/Buying-from-a-Licensed-Dealer-Florida-Department-of-Highway-Safety-and-Motor-Vehicles) for additional tax, tag, and title information (last visited April 3, 2023).

²⁰ Except for a COT for a motor vehicle for hire for which the title fee is \$49.

²¹ *Id.*

²² This service charge must be collected by the DHSMV on any application handled directly from its office. Otherwise, these service charges must be collected and retained by the tax collector who handles the application. Section 319.32(b), F.S. If the tax collector contracts with a license plate agent, the tax collector is authorized to determine additional service charges to be collected by the privately owned license plate agents approved by the tax collector. Section 319.32(c), F.S. The DHSMV must also charge an additional fee of \$10 for each original COT issued for a vehicle previously registered outside this state. Section 319.32(3), F.S.

Motor Vehicle Registration and Related Fees

Florida's definition of the term "motor vehicle" for registration purposes is quite broad,²³ and all vehicles meeting the definition, with some exceptions, are required to be registered in this state.²⁴ Current law imposes an initial registration fee (a license tax) of \$225 on automobiles and tri-vehicles for private use, certain trucks, and motor homes and truck campers.²⁵ Thereafter, registration is generally based on the class and weight of the vehicle.²⁶

Additional fees and service charges also apply.²⁷ For example:

- License plates are issued for a ten-year period and must be replaced upon registration renewal. The license plate fee is \$28, which is paid at the rate of \$2.80 per each year before the plate is replaced and credited toward the next \$28 replacement fee.²⁸
- A service charge of \$2.50 is imposed on each application handled in connection with original issuance, duplicate issuance, or transfer of a license plate, or with transfer or issuance of a registration certificate.²⁹

Current DHSMV Refund Practices

The DHSMV advises:

If a dealer is requesting that a Florida Certificate of Title be cancelled for a new vehicle/vessel because the customer (that the motor vehicle/vessel was titled to) did not take delivery or possession of the motor vehicle/vessel, the dealer and the customer must fill out and submit a "Dealer Non-Delivery" affidavit to cancel the title. After canceling the title for a new car, the dealer must contact the manufacturer and request a duplicate MCO to re-title the vehicle. The dealer must also contact the owner/lienholder to whom the incorrect MCO was assigned to request the title be submitted to them. However, if the title is electronic, the dealership should advise the lienholder to systematically satisfy its lien.

Currently, if the customer wants to cancel the sale or return a new vehicle/vessel for any reason other than non-delivery, the return is handled as a civil matter and the fees paid to the dealer are not refunded, including title and registration fees. The only exception is the initial registration fee for the license plate.³⁰

²³ Section 320.01(1), F.S.

²⁴ Section 320.02, F.S.

²⁵ Section 320.072, F.S.

²⁶ Section 320.08, F.S.

²⁷ See the DHSMV document provided to committee staff March 22, 2023, for a list of fees and service charges imposed on all license plates, including additional fees imposed for specialty or personalized plates (on file in the Senate Transportation Committee).

²⁸ Section 320.06(1)(b)1., F.S.

²⁹ Section 320.04(1)(a), F.S.

³⁰ See the DHSMV's 2023 Draft Agency Legislative Bill Analysis, SB 1636, received March 22, 2023 (on file in the Senate Transportation Committee).

III. Effect of Proposed Changes:

The bill creates s. 319.255, F.S., authorizing a motor vehicle dealer, purchaser, and any lienholders to rescind or cancel the sale before an application for a COT is submitted. An agreement among the parties subject to the rescinded or canceled sale invalidates any subsequent requirements imposed upon the dealer to submit an application or remit any fees or taxes if all fees, taxes, and other moneys associated with the rescinded or canceled sale are returned to the rightful parties.

The DHSMV must rescind, cancel, or revoke an application for a COT or a title that has already been issued if, within 60 days after the sale of a motor vehicle, a notarized affidavit signed by the dealer, the purchaser, and any lienholder is executed on a form prescribed by the DHSMV, stating that the dealer, purchase, and any lienholder have rescinded or canceled the sale and that all moneys associated with the transfer of the vehicle have been or will be returned to the relevant parties. In such a case:

- Fees paid to the DHSMV, less the above-described titling fees paid in accordance with s. 319.32, F.S., must be returned to the dealer.
- If no such fees have been paid to the DHSMV, the dealer must pay the titling fees.
- Sales taxes refunded or credited to the dealer must be refunded or credited to the dealer in the manner prescribed by the FDOR.

If a COT has been issued, the dealer must obtain and surrender the COT to the DHSMV or certify that the COT has been lost or destroyed or will be obtained and destroyed upon receipt. A dealer may not offer a vehicle subject to the bill's provisions for retail sale until the dealer has received the title from the DHSMV.

Within seven days after the receipt of the form, the bill requires the DHSMV to process the affidavit and issue a COT to the dealer reflecting the dealer's name and the odometer reading reflected on the most recent assignment before the rescinded, canceled, or revoked sale.

The affidavit stating that the sale has been rescinded or canceled must be filed no later than 30 days after the date of the affidavit's execution by the dealer, the purchaser, and any lienholder, whichever date is the latest. Any rescission, cancellation, or revocation under the new section of law does not negate the fact that the vehicle has been the subject of a previous retail sale.

The bill also amends s. 212.17, F.S., relating to tax credits or refunds. The bill requires that a motor vehicle dealer who rescinds, cancels, or revokes a sale or an application for a COT pursuant to the provisions in new s. 319.255, F.S., discussed below, be reimbursed, in the manner prescribed by the FDOR, for the amount of tax collected or charged by the dealer for such sale or application. This provision appears to be consistent with current provisions for dealer reimbursement of sales taxes, as described above.

Refund of the sales tax on any agreed-upon rescinded or cancelled motor vehicle sale as provided in the bill will continue to occur as described above. The DHSMV would be required to refund the initial registration fee (a license tax) of \$225 under s. 320.072, F.S.; the "base" registration fees generally dependent on the class and weight of the vehicle under s. 320.08, F.S.;

and any of the applicable miscellaneous fees and service charges discussed above.³¹ The DHSMV would not be required to refund any fees paid in accordance with s. 319.32, F.S., relating to application for and issuance of a COT.

The bill takes effect July 1, 2023.

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:

Motor vehicle purchasers who rescind or cancel a sale with the concurrence of all specified parties will be reimbursed for taxes, registration fees, and other ancillary fees and service charges relating to vehicles the purchasers do not wish to own, less the applicable fees or service charges described above in s. 319.32, F.S., relating to titling.

C. Government Sector Impact:

The DHSMV advises that registration fees and taxes that are not currently refunded will be returned to the dealers after remittance and distribution. Such refunds would not include the applicable fees or service charges in s. 319.32, F.S. However, because the class and weight of a vehicle subject to the specified rescission or cancellation agreement

³¹ *Supra* note 27. See also the DHSMV's Draft 2023 Legislative Bill Analysis, SB 1636, dated and received March 23, 2023 (on file in the Senate Transportation Committee).

is unknown, and because the exact amount applicable for registration fees and service charges is unknown, and further because the number of specified rescission or cancellation agreements that will occur is unknown, the fiscal impact to state revenues is indeterminate.

The DHSMV also advises that the bill will require approximately 81 hours of programming in support of its technology systems (the Florida Real-Time Vehicle Information System, Electronic Filing System, estimated to cost \$2,835 in full-time-equivalent and contracted resources.³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

As noted by the DHSMV:³³ “A service charge of \$2.50 [is imposed] on each registration pursuant s. 320.04, F.S., which is retained by the tax collector or the private license plate agent that performs the transaction. The tax collector may also impose an additional service fee of \$0.50 if the transaction occurs in a branch office. In addition, pursuant to s. 320.04(3), F.S., the tax collector may authorize a private license plate agent to charge additional services fees per their authority to contract.”³⁴ The bill does not expressly authorize a dealer to request a refund of any fees and taxes retained by a county tax collector.

The DHSMV also recommends the following revisions:

- Revise the effective date of the bill from July 1, 2023, to April 1, 2024, to allow the DHSMV sufficient time to implement necessary programming and operational changes.
- Allow additional time to process refund requests and issue titles in the dealer’s name by providing the DHSMV 15 days, instead of 7, to rescind, cancel, or revoke any application for a COT or an already-issued title.
- Revise line 74 of the bill to acknowledge certain fees that are currently nonrefundable by inserting after the reference to s. 319.32:

and nonrefundable fees paid in accordance with ss. 320.08 and 320.03, must be returned to the motor vehicle

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 212.17.

This bill creates the following section of the Florida Statutes: 319.255.

³² *Infra* note 34.

³³ And *supra* note 22.

³⁴ See the DHSMV’s Draft 2023 Legislative Bill Analysis, SB 1636, dated and received March 23, 2023 (on file in the Senate Transportation Committee).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on March 27, 2023:

The committee substitute removes some ambiguity relating to the fees and taxes to be refunded and conforms to the House companion.

- B. **Amendments:**

None.

By the Committee on Transportation; and Senator Wright

596-03094-23

20231636c1

1 A bill to be entitled
 2 An act relating to rescission or cancellation of a
 3 motor vehicle sale; amending s. 212.17, F.S.;
 4 requiring a motor vehicle dealer who rescinds,
 5 cancels, or revokes a sale or an application for a
 6 certificate of title to be reimbursed by the
 7 Department of Revenue for the amount of tax collected
 8 or charged for such sale or application; creating s.
 9 319.255, F.S.; authorizing a motor vehicle dealer, a
 10 motor vehicle purchaser, and any person claiming a
 11 lien on a motor vehicle to rescind or cancel a motor
 12 vehicle sale before an application for a certificate
 13 of title is submitted; providing for invalidation of
 14 certain subsequent requirements imposed on a motor
 15 vehicle dealer under certain circumstances;
 16 authorizing the motor vehicle dealer to obtain a
 17 duplicate certificate of origin, duplicate certificate
 18 of title, or new certificate of title; requiring the
 19 Department of Highway Safety and Motor Vehicles to
 20 rescind, cancel, or revoke an application for a
 21 certificate of title or an issued certificate of title
 22 after execution of a certain affidavit; providing
 23 requirements for the return or payment of certain fees
 24 and sales taxes; providing for the surrender or
 25 destruction of a certificate of title; providing
 26 requirements for filing and processing the affidavit;
 27 prohibiting a motor vehicle dealer from offering for
 28 retail sale a motor vehicle the sale of which has been
 29 rescinded or canceled until receipt of a certificate

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

596-03094-23

20231636c1

30 of title from the department; providing construction;
 31 providing an effective date.
 32
 33 Be It Enacted by the Legislature of the State of Florida:
 34
 35 Section 1. Paragraph (d) is added to subsection (1) of
 36 section 212.17, Florida Statutes, to read:
 37 212.17 Tax credits or refunds.—
 38 (1)
 39 (d) A motor vehicle dealer who rescinds, cancels, or
 40 revokes a sale or an application for a certificate of title
 41 pursuant to s. 319.255 shall be reimbursed, in the manner
 42 prescribed by the department, for the amount of tax collected or
 43 charged by the motor vehicle dealer for such sale or
 44 application.
 45 Section 2. Section 319.255, Florida Statutes, is created to
 46 read:
 47 319.255 Rescission or cancellation of motor vehicle sale.—
 48 (1) A motor vehicle dealer, a motor vehicle purchaser, and
 49 any person claiming a lien on a motor vehicle may rescind or
 50 cancel a motor vehicle sale before an application for a
 51 certificate of title is submitted. An agreement among the
 52 parties subject to the rescinded or canceled sale invalidates
 53 any subsequent requirements imposed upon the motor vehicle
 54 dealer to submit an application or remit any fees or taxes if
 55 all fees, taxes, and other moneys associated with the rescinded
 56 or canceled sale are returned to the rightful parties. The
 57 parties are not required to report the rescinded or canceled
 58 sale to the department. A motor vehicle dealer may obtain a

Page 2 of 4

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596-03094-23

20231636c1

duplicate certificate of origin or a duplicate certificate of title or obtain a new certificate of title in accordance with subsection (2).

(2) The department must rescind, cancel, or revoke an application for a certificate of title or a title that has been issued if, within 60 days after the sale of a motor vehicle, a notarized affidavit signed by the motor vehicle dealer, the motor vehicle purchaser, and any person claiming a lien on the motor vehicle is executed on a form prescribed by the department stating that the motor vehicle dealer, the motor vehicle purchaser, and any person claiming a lien on the motor vehicle have rescinded or canceled the sale of the motor vehicle and that all moneys associated with the transfer of the motor vehicle have been or will be returned to the relevant parties.

(a) Fees paid to the department, less fees paid in accordance with s. 319.32, must be returned to the motor vehicle dealer. If no fees have been paid to the department, the motor vehicle dealer must pay the fee required by s. 319.32.

(b) Sales taxes refunded or credited to the motor vehicle purchaser must be refunded or credited to the motor vehicle dealer in the manner prescribed by the Department of Revenue.

(c) If a certificate of title has been issued, the motor vehicle dealer must obtain and surrender the certificate of title to the department or certify that the certificate of title has been lost or destroyed or will be obtained and destroyed upon receipt.

(d) The affidavit stating that the motor vehicle sale has been rescinded or canceled must be filed no later than 30 days after the date of the affidavit's execution by the motor vehicle

596-03094-23

20231636c1

dealer, the motor vehicle purchaser, and any person claiming a lien on the motor vehicle, whichever date is latest.

(e) The department shall process the affidavit within 7 days after receipt and issue a certificate of title to the motor vehicle dealer reflecting the name of the motor vehicle dealer and the odometer reading reflected on the most recent assignment before the rescinded, canceled, or revoked sale.

(f) A motor vehicle dealer may not offer a motor vehicle subject to this subsection for retail sale until the motor vehicle dealer has received a certificate of title from the department.

(3) A rescission, cancellation, or revocation of sale under this section does not negate the fact that the motor vehicle has been the subject of a previous retail sale.

Section 3. This act shall take effect July 1, 2023.

CourtSmart Tag Report

Room: SB 110 **Case No.:**
Caption: Senate Commerce and Tourism Committee

Type:
Judge:

Started: 4/4/2023 8:31:07 AM
Ends: 4/4/2023 10:18:51 AM **Length:** 01:47:45

8:31:10 AM Chair Trumbull calls meeting to order
8:31:15 AM Senator Torres is excused
8:31:19 AM Roll call
8:31:44 AM Quorum present
8:31:49 AM Chair makes opening remarks
8:32:11 AM Tab 7 SB 1242 by Senator Boyd
8:32:20 AM Senator Boyd explains bill and amendment 852154
8:33:31 AM No questions on strike all amendment
8:33:41 AM Senator Boyd waives close on amendment
8:33:47 AM Amendment adopted
8:33:50 AM No questions
8:33:54 AM Public testimony:
8:34:00 AM Jeremy Parker, Parker Services Heating and Air Conditioning speaking for
8:35:18 AM Natalie King, FL Refrigeration and Air Conditioning Contractors Assoc. waiving in support
8:35:24 AM No debate
8:35:36 AM Senator Boyd closes on bill as amended
8:35:39 AM Roll call on CS/SB 1242
8:36:02 AM CS/SB 1242 reported favorably
8:36:09 AM Tab 3 CS/SB 628 by Senator Grall
8:36:15 AM Senator Grall explains the bill
8:37:22 AM Chair turned over to Vice Chair Wright
8:37:33 AM No questions
8:37:35 AM No appearance forms
8:37:38 AM No debate
8:37:40 AM Senator Grall waives close on bill
8:37:44 AM Roll call CS/SB 628
8:38:17 AM CS/SB 628 reported favorably
8:38:54 AM Tab 2 SB 262 by Senator Bradley
8:39:06 AM Senator explains the bill
8:41:02 AM Questions:
8:41:07 AM Senator Stewart
8:41:29 AM Senator Bradley
8:42:20 AM Senator Stewart
8:42:28 AM Senator Bradley
8:42:47 AM Senator DiCeglie
8:42:59 AM Take up amendment 164120
8:43:45 AM Amendment explained by Senator Bradley
8:44:01 AM No questions
8:44:07 AM No debate
8:44:11 AM Senator Bradley waives close on amendment
8:44:15 AM Amendment adopted
8:44:25 AM Appearance forms:
8:44:26 AM Austin Stowers, CFC Jimmy Patronis waiving in support
8:44:31 AM Sal Nuzzo, James Madison Institute speaking against
8:46:14 AM Adam Basford, Associated Industries of FL speaking against
8:48:39 AM Zachary Lilly, NetChoice speaking against
8:51:34 AM Sarah Suskey, TechNet waiving against
8:51:46 AM Khara Buender, Computer and Communications Industry Assoc. speaking against
8:54:29 AM Debate:
8:54:35 AM Senator Hooper
8:55:30 AM Senator Bradley closes on bill as amended
8:57:39 AM Roll call CS/SB 262

8:58:12 AM CS/SB 262 reported favorably
8:58:19 AM Tab 2 SB 1648 by Senator Bradley
8:58:26 AM Senator Bradley explains the bill
8:58:51 AM No questions
8:58:55 AM Amendment 963930 explained by Senator Bradley
8:59:08 AM No questions
8:59:11 AM No appearance forms
8:59:16 AM Senator waives close on amendment
8:59:20 AM Amendment adopted
8:59:39 AM Senator Bradley waives close on bill as amended
8:59:44 AM Roll call CS/SB 1648
9:00:09 AM CS/SB 1648 reported favorably
9:00:19 AM Tab 10 CS/SB 564 by Senator Hutson
9:00:44 AM Senator explains the bill
9:01:20 AM No questions
9:01:24 AM Amendment 648060 by Senator Hutson
9:01:38 AM Senator Hutson explains the amendment
9:01:49 AM No questions on amendment
9:01:59 AM No debate
9:02:02 AM Senator waives close on amendment
9:02:07 AM Amendment adopted
9:02:13 AM Back on bill as amended
9:02:18 AM Appearance forms:
9:02:22 AM French Brown, FL Retail Federation and FL Restaurant and Lodging Assn. speaking for
9:03:53 AM Keri Rayborn Silver, Mastercard waiving in opposition
9:04:07 AM Justin Hof, speaking against
9:06:46 AM Senator Hutson with question
9:07:23 AM Mr. Hof replies
9:07:26 AM Senator Hutson question
9:07:34 AM Mr. Hof answers
9:07:39 AM Senator Hutson question
9:07:50 AM Mr. Hof reply
9:07:54 AM Senator Hutson question
9:08:07 AM Mr. Hof replies
9:08:23 AM Senator Hutson question
9:08:29 AM Mr. Hof replies
9:08:34 AM Michael Behm, The Payments Coalition speaking against
9:12:22 AM Senator Hutson question
9:12:30 AM Mr. Behm answers
9:12:35 AM Senator Hutson question
9:12:42 AM Mr. Behm replies
9:13:02 AM Senator Hutson question
9:13:10 AM Mr. Behm replies
9:13:12 AM Back and forth in questions
9:15:23 AM Randall Lashua speaking against
9:17:29 AM Anthony DiMarco, FL Bankers Assoc. speaking against
9:19:13 AM Steven Raushenberger, Electronic Payment Coalition speaking against
9:23:09 AM Ned Bowman, FL Petroleum Marketers Assoc. waiving in support
9:23:17 AM David Roberts, FL Independent Sprits Assoc. waiving in support
9:23:25 AM Lori Killinger, RaceTrac waives in support
9:23:32 AM Samantha Padgett, FL Restaurant and Lodging Assoc. speaking in support
9:24:43 AM Senator Jones with question
9:25:03 AM Ms. Padgett answers
9:25:45 AM Senator Jones question
9:25:57 AM Ms. Padgett answers
9:26:45 AM Chair Wright continues to read cards waiving
9:26:47 AM John Rothell, FL Credit Union Assoc. waiving against
9:26:50 AM Joseph Mulano waiving against
9:27:11 AM Jim Daughton waiving against
9:27:22 AM Will McKinley, Discover Financial Services, waiving against
9:27:29 AM Grace Lovett, FL Retail Federation waiving in support
9:27:39 AM No debate

9:27:42 AM Senator Hutson closes on the bill as amended
9:28:54 AM Roll call CS/CS/SB 564
9:29:18 AM CS/CS/SB 564 reported favorably
9:29:35 AM Tab 5 CS/SB 752 by Senator Calatayud
9:29:51 AM Senator Calatayud explains the bill
9:30:12 AM Amendment 358156 by Senator Calatayud
9:30:30 AM Senator Calatayud explains the amendment
9:31:10 AM No questions
9:31:14 AM Appearance form:
9:31:19 AM Samantha Padgett, FL Restaurant and Lodging Assoc. waives speaking in support
9:31:33 AM No debate
9:31:36 AM Senator Calatayud waives close on amendment
9:31:44 AM Amendment adopted
9:31:51 AM Back on bill as amended
9:31:55 AM No questions
9:31:59 AM Appearance forms:
9:32:02 AM Samantha Padgett waiving in support
9:32:09 AM Chris Stranburg, Americans for Prosperity waiving in support
9:32:22 AM Debate:
9:32:24 AM Senator Hooper
9:33:01 AM Senator Calatayud closes on bill as amended
9:33:13 AM Roll call CS/CS/SB 752
9:33:37 AM CS/CS/SB 752 reported favorably
9:33:48 AM Tab 6 SB 940 by Senator Calatayud
9:33:59 AM Senator Calatayud explains the bill
9:35:03 AM No questions
9:35:07 AM Appearance form:
9:35:10 AM Joseph Salzbarg, AvMed waiving in support
9:35:19 AM No debate
9:35:24 AM Senator waives close
9:35:27 AM Roll call SB 940
9:35:46 AM SB 940 reported favorably
9:35:57 AM Chair turned to Senator Gruters
9:36:22 AM Tab 11 CS/SB 1636 by Senator Wright
9:36:31 AM Senator Wright explains the bill
9:37:31 AM No questions
9:37:36 AM Appearance form:
9:37:40 AM Angela Bond, Carvana waiving in support
9:37:44 AM No debate
9:37:46 AM Senator Wright waives close on bill
9:37:49 AM Roll call CS/SB 1636
9:38:23 AM CS/SB 1636 reported favorably
9:38:38 AM Chair turned back to Vice Chair Wright
9:38:45 AM Tab 8 SB 1246 by Senator Yarborough
9:38:51 AM Senator Yarborough explains the bill
9:40:38 AM No questions
9:40:41 AM Appearance forms:
9:40:51 AM Jared Willis, Alliance for Patient Access waives in support
9:40:59 AM Jarrod Fowler, FL Medical Assoc. waiving in support
9:41:06 AM Sarah Massey, FL Chamber of Commerce waiving in support
9:41:13 AM Chris Lyon, FL Osteopathic Medical Assoc. waiving in support
9:41:22 AM Ashely Kalfer, FL Justice Institute waiving in support
9:41:36 AM George Feijoo, US Chamber Institute for Legal Reform waiving in support
9:41:49 AM Debate:
9:41:52 AM Senator Stewart
9:42:24 AM Senator Yarborough waives close
9:42:33 AM Becca Timmons, FL Justice Assoc. speaking against
9:44:36 AM No debate
9:44:39 AM Senator Yarborough closes on bill
9:45:27 AM Roll call SB 1246
9:45:42 AM SB 1246 reported favorably
9:45:51 AM Tab 9 SB 1308 by Senator Yarborough

9:46:02 AM Take up amendment 805210 by Senator Yarborough
9:46:16 AM Senator Yarborough explains the amendment
9:47:26 AM Take up amendment 817718 by Senator Gruters
9:47:46 AM Senator Gruters explains the amendment
9:48:57 AM Questions:
9:49:03 AM Senator Hooper
9:49:07 AM Senator Gruters
9:49:14 AM Appearance forms:
9:49:28 AM Grace Lovett, FL Retail Federation waiving against amendment 817718
9:50:57 AM Alexis Buese, FL Justice Reform Institute speaking against amendment 817718
9:53:03 AM Senator Hutson comments
9:53:09 AM Senator Yarborough comments on amendment
9:53:35 AM Senator Jones
9:53:41 AM Senator Gruters closes on amendment
9:54:05 AM Amendment adopted
9:54:15 AM Back on amendment 805201 as amended
9:54:24 AM Appearance forms on amendment 805210:
9:54:27 AM Billy Howard, CEO The Consumer Protection Firm speaking against amendment
9:56:35 AM No debate
9:56:38 AM Senator waives close
9:56:41 AM Amendment adopted
9:57:00 AM No questions
9:57:02 AM Appearance forms:
9:57:07 AM John Forehart, FL Automobile Dealers Assoc. waives in support
9:57:14 AM Ted Serbousek waives in support
9:57:18 AM Greg Douglas waives in support
9:57:22 AM Cara Vaughan waives in support
9:57:28 AM Greg Soulliere waives in support
9:57:33 AM Alexis Buese, FL Justice Reform Institute speaking for
9:58:55 AM Adam Basford, Assoc. Industries of FL speaking for
9:59:26 AM Julie Fess waiving in support
9:59:30 AM Grace Lovett, FL Retail Federation waiving in support
9:59:35 AM Andy Gonzalez, FL Realtors waiving in support
9:59:46 AM Samantha Padgett, FL Restaurant and Lodging Assoc. waiving in support
9:59:49 AM Adam Basford, Associated industries of FL waiving against
9:59:57 AM George Feijoo, Rocket Mortgage waiving in support
10:00:02 AM Gary Guzzo, US Chamber Institute for Legal Reform waiving in support
10:00:08 AM Casey Reed, AT&T waiving in support
10:00:21 AM Back on the bill as amended
10:00:27 AM No question
10:00:31 AM No debate
10:00:34 AM Senator Yarborough closes on bill as amended
10:00:46 AM Roll call CS/SB 1308
10:01:17 AM CS/SB 1308 reported favorably
10:01:30 AM Chair turned back to Chair Trumbull
10:01:40 AM Tab 4 CS/SB 712 by Senator Avila
10:01:51 AM Senator Avila explains the bill
10:02:08 AM Senator explains amendment 224252 by Senator Avila
10:06:33 AM Amendment to amendment 335364 explained by Senator Avila
10:06:54 AM Amendment to amendment 335364 explained by Senator Avila
10:06:54 AM No questions
10:06:57 AM No appearance forms
10:07:02 AM Senator Avila waives close
10:07:06 AM Amendment adopted
10:07:14 AM Back on amendment
10:07:25 AM Senator Avila waives close on amendment
10:07:30 AM Amendment adopted
10:07:35 AM Back on bill as amended
10:07:40 AM Appearance forms:
10:07:44 AM Winn Peebles speaking against
10:08:39 AM Senator Trumbull
10:08:45 AM Mr. Peebles

10:09:36 AM Ron Book, Auto Nation waiving in support
10:09:46 AM Cara Vaughan waives in support
10:09:50 AM Greg Douglas, waives in support
10:09:55 AM Ted Serbousek, waives in support
10:10:00 AM Adam Basford, Associated Industries of FL speaking against
10:10:59 AM Nicole Barranco speaking against
10:12:48 AM Jon Johnson, Alliance of Automotive Innovation speaking against
10:14:04 AM Fred Baggett, Ford Motor Co. waives against
10:14:11 AM Marlene William, General Motors waives in opposition
10:14:18 AM Brian Shack waives in support
10:14:23 AM No debate
10:14:26 AM Senator Avila closes on bill
10:17:16 AM Roll call on CS/CS/SB 712
10:17:37 AM CS/CS/SB 712 reported favorably
10:17:48 AM Senator Jones vote after motion
10:18:01 AM Senator DiCeglie vote after motion
10:18:09 AM Senator Rodriguez vote after motion
10:18:20 AM Senator Gruters vote after motion
10:18:28 AM Chair Trumbull vote after motion
10:18:41 AM Meeting adjourned



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Criminal and Civil Justice
 Children, Families, and Elder Affairs
 Commerce and Tourism
 Governmental Oversight and Accountability
 Military and Veterans Affairs, Space, and Domestic Security

JOINT COMMITTEES:

Joint Select Committee on Collective Bargaining

SENATOR VICTOR M. TORRES, JR.
 25th District

March 30th, 2023

Jay Trumbull, Chair
 Commerce and Tourism
 404 S Monroe Street
 Tallahassee, FL 32399

RE: Request for excusal from April 4th committee meeting

Dear Chair Trumbull:

Due to a previously scheduled medical appointment, I am unable to attend the April 4th meeting of the Commerce and Tourism Committee. Please accept this letter as a formal request for excusal of this absence. Please let me know if you have any questions or need any additional information.

Respectfully submitted,

Victor M. Torres, Jr.
 Florida State Senator
 District 25

C: Todd McKay, Staff Director
 Renita Hayes, Committee Administrative Assistant

REPLY TO:

Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (850) 410-4817

404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

Kathleen Passidomo
 President of the Senate

Dennis Baxley
 President Pro Tempore

☐ 101 Church Street,
☐ 226 Senate Building,

Hayes, Renita

From: Oleksak, Joseph
Sent: Monday, April 3, 2023 11:44 AM
To: Hayes, Renita
Cc: McKay, Todd; Davis, Miles
Subject: Senator Jones - Bill Presentation Tomorrow

Hi Renita,

I just wanted to let you know that Senator Jones will be late to Commerce and Tourism as he has a bill presentation in Criminal Justice at the same time.

Thank you!
Joe

Joseph Oleksak, MPP
Senior Legislative Aide

State Senator Shevrin D. Jones (SD-34)
606 NW 183rd Street
Miami Gardens, FL 33169

Cell: 814-397-7400 | District: 305-493-6002



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The Florida Senate
APPEARANCE RECORD
Meeting Date: 4/4/2023
Senate professional staff conducting the meeting
Bill Number or Topic: SB 262
Amendment Barcode (if applicable): _____

Name: Khara Boender Phone: 203-918-6491
Address: 85 Massachusetts Ave 300c Email: khara@cscinet.org
Washington DC 20001
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship. ☒ I am a registered lobbyist, representing: Computer + Communication Industry Association ☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by: _____

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1, [2020-2022 Joint Rules.pdf](#) ([flisenate.gov](#))

This form is part of the public record for this meeting. S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4.4.23
Meeting Date
Commerce & Tourism
Committee

262
Bill Number or Topic

Name Sarah Suskey Phone 850.222.8900
Address 204 S. Monroe St. Email Sarah@topfla.com
Street City State Zip
TLH FL 32312

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:
TechNet

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23
Meeting Date
Commerce
Committee

SB 262
Bill Number or Topic

Name Zachary Lilly Phone 425 420 8167
Address 1401 K St NW Email zlilly@netchoice-org
Street City State Zip
Washington DC 20006

Speaking: ☒ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:
NetChoice

☒ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:
NetChoice

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23

Meeting Date

Commerce & Tourism

Committee

262

Bill Number or Topic

Amendment Barcode (if applicable)

Name Austin Stowers

Phone 850 413 5939

Address PL 11 The Capitol

Email austin.stowers@myfloridacfo.com

Street

Tallahassee

FL

32399

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

CFO Jimmy Patronis

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23

Meeting Date

Commerce and Tourism

Committee

262

Bill Number or Topic

Amendment Barcode (if applicable)

Name Adam Basford

Phone 850.224.7173

Address 516 N Adams

Email abasford@aif.com

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Associated Industries of Florida

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

262

Bill Number or Topic

Amendment Barcode (if applicable)

4/4/23
Meeting Date
COMMERCE
Committee

Name SA Nuzzo

Phone 850-322-9941

Address 100 N Duval
Street

Email SNUZZO@JAMESMADISON.ORG

TALL
City

FL
State

32301
Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

628

Bill Number or Topic

Amendment Barcode (if applicable)

4/4/23
Meeting Date
Commerce & Tourism
Committee

Name Kelly Mallette

Phone (850) 224-3427

Address 104 West Jefferson Street
Street

Email Kelly@Rlbookpa.com

Tallahassee, FL 32301
City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Financial Counseling Association of America

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/4/23
Meeting Date
commerce
Committee

712
Bill Number or Topic
Amendment Barcode (if applicable)

Name Brian Shack Phone 850 681 2114
Address 2060 Biscayne Blvd Email Bshack@bramanmanagements.com
miami FL 33137
City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/24/23
Meeting Date
commerce + Tourism
Committee

712
Bill Number or Topic
Amendment Barcode (if applicable)

Name Martene Williams Phone 850-491-7638
Address 907 N Ride Email martene.williams@gmail.com
Tallahassee FL 32303
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

General Motors

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

Amendment Barcode (if applicable)

Meeting Date 4/4/23
Committee Commerce
Name Fred Baggett Phone 950 591 0915
Address 101 E. College Ave. Email BaggettF@GTLaw.com
Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Ford Motor Co.

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

712

Bill Number or Topic

Amendment Barcode (if applicable)

Meeting Date 4/4/23
Committee Commerce & Tourism
Name Jon Johnson Phone 850 224-1900
Address 537 E. Park Avenue Email jon@teamjb.com
Tallahassee FL 32301
City State Zip

Reset Form

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4-4-23

Meeting Date

Commerce

Committee

SB 712

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Nicole Barranco

Phone

863-632-6320

Address

601 Pennsylvania Ave NW #720

Email

Nicole.Barranco@vw.com

Street

Washington DC 20004

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23

Meeting Date

Commerce and Tourism

Committee

DUPLICATE

712

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Adam Basford

Phone

850.224.7173

Address

516 N Adams

Email

abasford@aif.com

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Associated Industries of Florida

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4-4-23

Meeting Date

Commerce

Committee

712

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Ted Serbou sek

Phone

386 527 5340

Address

932 N NOVA

Email

T.Serbousek@gmail.com

Street

Daytona Beach FL

City

State

32117

Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23

Meeting Date

commerce

Committee

712

Bill Number or Topic

Amendment Barcode (if applicable)

Name

GREGG DOUGLAS

Phone

941-484-8800

Address

6906 DOMINION LN

Email

gregd@douglasjeep.com

Street

LAKEWOOD RANCH FL 34402

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

4.4.23
Meeting Date

Commerce
Committee

The Florida Senate
APPEARANCE RECORD
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Senate professional staff conducting the meeting

712
Bill Number or Topic

Name Cara Vaughan Phone 727 418 7520

Address 774 Tomoka Dr Email Carav@mauer
Palm Harbor FL 34683 Chevrolet.com
City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

- ☒ I am appearing without compensation or sponsorship.
- ☐ I am a registered lobbyist, representing:
- ☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

4/4/23
Meeting Date

Commerce
Committee

The Florida Senate
APPEARANCE RECORD
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Senate professional staff conducting the meeting

712
Bill Number or Topic

Name Ron Book Phone 850-224-3421

Address 104 W. Jefferson St Email ron@RLBookPA.Cha
TLH FL 32301
City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

- ☐ I am appearing without compensation or sponsorship.
- ☒ I am a registered lobbyist, representing:
AutoNation and Palmetto St
- ☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4
Meeting Date
Commerce
Committee

SB 712
Bill Number or Topic

Name Winn Peoples Phone 850 524-2038
Address 201 S. Monroe St Email Winnpeoples@aol.com
City Tall State FL Zip 32301

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23
Meeting Date
Commerce and Tourism
Committee

SB 752
Bill Number or Topic
358156
Amendment Barcode (if applicable)

Name Samantha Padgett Phone 850-224-2250
Address 230 S Adams St. Email Spadgett@fria.org
City Tallahassee State FL Zip 32301

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:
Florida Restaurant &
Lodging Association

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

4 April 2023

The Florida Senate

APPEARANCE RECORD

752

Meeting Date

Bill Number or Topic

Commerce and Tourism

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name Chris Stranburg

Phone 813-767-9667

Address 107 E College Ave

Email cstranburg@afphg.org

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:

Americans for Prosperity

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

4/4/23

The Florida Senate

APPEARANCE RECORD

SB 752

Meeting Date

Bill Number or Topic

Commerce and Tourism

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name Samantha Padgett

Phone 850-224-2250

Address 230 S Adams St.

Email Spadgett@fla.org

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:

Florida Restaurant & Lodging Association

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

04/04/23
Meeting Date
(S) C&T
Committee

SB 940
Bill Number or Topic
Amendment Barcode (if applicable)

Deliver both copies of this form to
Senate professional staff conducting the meeting

Name Joseph Salzverg ("Saul's-Verg") Phone _____
Address 301 S Bronough Street, Suite 600 Email _____
Street
City TLH State FL Zip 32301

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

- ☐ I am appearing without compensation or sponsorship.
- ☒ I am a registered lobbyist, representing:
AvMed
- ☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

4/4/23
Meeting Date
Commerce and Tourism
Committee

1242
Bill Number or Topic
Amendment Barcode (if applicable)

Deliver both copies of this form to
Senate professional staff conducting the meeting

Name Jeremy Parker Phone 8505452498
Address 1600 Mill St. Email jparker@pstallahassee.com
Street
City Tallahassee State FL Zip 32310

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

- ☒ I am appearing without compensation or sponsorship.
- ☐ I am a registered lobbyist, representing:
- ☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

4/4/23

Meeting Date

Commerce and Tourism

Committee

The Florida Senate APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1242

Bill Number or Topic

Amendment Barcode (if applicable)

Name Natalie King

Phone _____

Address 113 E. College Ave.Email natalie@teamrsa.com

Street

TallahasseeFL32301

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Refrigeration and Air Conditioning
Contractors Association

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23

Meeting Date

Commerce

Committee

SB 1246

Bill Number or Topic

Amendment Barcode (if applicable)

Name Rebecca TimmonsPhone 850-435-7000Address 316 S Baylen StEmail btimmons@lehighvalley.com

Street

PensacolaFL32503

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☒ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/2023

Meeting Date

SB 1246

Bill Number (if applicable)

Topic Advertising for Legal Services

Amendment Barcode (if applicable)

Name Becca Timmons

Job Title Attorney

Address 316 S. Baylen St

Street

Pensacola

City

FL

State

32502

Zip

Phone 850 435 7000

Email btimmons@kvinlaw.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Justice Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

4/4/23

Meeting Date

Commerce

Committee

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1246

Bill Number or Topic

Amendment Barcode (if applicable)

Name George Feijoo

Phone 3057207099

Address 108 S Monroe St

Street

Tallahassee

City

FL

State

32312

Zip

Email grfeijoo@flapartners.com

Reset Form

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

US Chamber Institute for Legal Reform

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4.4.23
Meeting Date
Commerce
Committee

1246
Bill Number or Topic

Name Ashley Kalish Phone 800 222 9075
Address 124 W. Jefferson St. Email ashleya@cccflo.com
Tallahassee FL 32303
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Justice
Reform Institute

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

April 4, 2023
Meeting Date
Commerce and Tourism
Committee

1246
Bill Number or Topic

Name Chris Lyon Phone 222-5702
Address 106 E. College Ave., Suite 1500 Email clyon@llw-law.com
Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Osteopathic Medical
Association

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

4/4/2023 Meeting Date
Commerce and Tourism Committee
SB 1246 Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Sarah Katherine Massey Phone 850 545 0543

Address 136 S. Bronough St. Email smassey@flchamber.com

Tallahassee FL 32301

City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Florida Chamber of Commerce

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

4-4-23 Meeting Date
Commerce & Tourism Committee
1246 Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Jarrod Fowler Phone 850-224-6496

Address 1430 Piedmont Dr. E Email jfowler@flmedical.org

Tallahassee FL 32308

City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Florida Medical Association

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 1246 - Legal Ads

Meeting Date

Bill Number or Topic

Senate Commerce

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Jared Willis

Phone 850-284-1996

Address 118 Monroe #303

Email

Street

Tallahassee FL 32301

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.☒ I am a registered lobbyist,
representing:Alliance for
Patient Access☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/2023

Meeting Date

SB 1308

Bill Number (if applicable)

805210

Amendment Barcode (if applicable)

Topic Telephone Solicitation

Name Billy Howard

Job Title CEO

Address 401 Jackson St

Phone 813-774-1416

Street

Tampa FL 33629

City

State

Zip

Email Billy@TheConsumerProtectionFirm.com

Speaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The Consumer Protection Firm

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

4.4.23
Meeting Date
Commerce
Committee

The Florida Senate
APPEARANCE RECORD
Deliver both copies of this form to
Senate professional staff conducting the meeting

1308
Bill Number or Topic
817718
Amendment Barcode (if applicable)

Name Alexis Buce
Phone 813 139 6985
Address 401 E Jackson St #1500
Email abuce@junator.com
Tampa FL 33602
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

- ☐ I am appearing without compensation or sponsorship.
- ☒ I am a registered lobbyist, representing:
Fl. Retail Federation
- ☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

4-4-23
Meeting Date
C + T
Committee

The Florida Senate
APPEARANCE RECORD
Deliver both copies of this form to
Senate professional staff conducting the meeting

1308
Bill Number or Topic
817718 AA
Amendment Barcode (if applicable)

Name Grace Lovett
Phone 850 222 4082
Address 227 S Adams St.
Email grace@frf.org
Tall FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

- ☐ I am appearing without compensation or sponsorship.
- ☒ I am a registered lobbyist, representing:
FL Retail Federation
- ☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

4/4

Meeting Date

1308

Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

John Forehand

Phone

850. 443. 0085

Address

1089 W. Morse Blvd

Email

jforehand@ICFB-LAW.com

Street

Winter Park FL

32789

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Automobile Dealers Association

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

4-4-23

Meeting Date

1308

Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Commerce

Committee

Amendment Barcode (if applicable)

Name

Ted Serbousek

Phone

386 521 5340

Address

932 N Nova

Email

Tserbousek@gmail.com

Street

Daytona Beach FL

32117

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23

Meeting Date

Commons

Committee

SB 1308

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Gregory Douglas

Phone

541-484-8300

Address

6402 Dominion Ln

Email

gregdouglass@icp.com

Street

Lakewood Ranch FL 34202

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4.4.23

Meeting Date

Commerce

Committee

1308

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Cara Vaughan

Phone

727-418-7520

Address

774 Tomoka Dr

Email

Carav@macnec
curv@net.com

Street

Palm Harbor FL 34683

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4.4.23

Meeting Date

1308/712

Bill Number or Topic

Commerce
Committee

Amendment Barcode (if applicable)

Name Greg Soulliere Phone 727.418.1475
Address 1727 Angiers Ct Email Soulliere @ maher
Safety Harbor FL 34695 Chevrolet.com
City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

04.04.23

Meeting Date

1308

Bill Number or Topic

Commerce

Committee

Amendment Barcode (if applicable)

Name Alexis Buese Phone 813-739-6985
Address 401 E. Jackson Street, Suite 1500 Email abuese@gunster.com
Tampa FL 33602
City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Justice Reform Institute

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

4/4/23

Meeting Date

Commerce and Tourism

Committee

The Florida Senate
APPEARANCE RECORDDeliver both copies of this form to
Senate professional staff conducting the meeting

1308

Bill Number or Topic

Amendment Barcode (if applicable)

Name Adam Basford

Phone 850.224.7173

Address 516 N Adams

Email abasford@aif.com

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.☒ I am a registered lobbyist,
representing:

Associated Industries of Florida

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

4/4/23
Meeting Date
Commerce Tourism
CommitteeThe Florida Senate
APPEARANCE RECORDDeliver both copies of this form to
Senate professional staff conducting the meeting1308
Bill Number or Topic

Amendment Barcode (if applicable)

Name Julie Fess

Phone 407-402-3774

Address Tallahassee 2

Email jfess@gunster.com

Street

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.☒ I am a registered lobbyist,
representing:☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

4/4/23
Meeting Date
Commerce & Tourism
Committee
Name Grace Lovett
Phone 850-222-4082
Address 227 S. Adams St.
Street
Tallahassee FL 32301
City State Zip

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1308
Bill Number or Topic

Amendment Barcode (if applicable)

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

FL Retail Federation

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

4/4/23
Meeting Date
Commerce & Tourism
Committee
Name ANDY GONZALEZ
Phone 305 807 0860
Address 200 S. Monroe St.
Street
Tallahassee FL 32301
City State Zip

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 1308
Bill Number or Topic

Amendment Barcode (if applicable)

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Realtors

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

APPEARANCE RECORD

SB 1308

4/4/23

Meeting Date

Deliver both copies of this form to

Senate professional staff conducting the meeting

Bill Number or Topic

Commerce and Tourism
Committee

Amendment Barcode (if applicable)

Name Samantha Padgett

Phone 850-224-2250

Address 230 S Adams St.
Street

Email spadgett@fsla.org

Tallahassee
CityFL
State32301
ZipSpeaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.☒ I am a registered lobbyist, representing:
Florida Restaurant & Lodging Association☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

APPEARANCE RECORD

1308

Bill Number or Topic

4/4/23

Meeting Date

Commerce & Tourism
CommitteeDeliver both copies of this form to
Senate professional staff conducting the meeting

805210

Amendment Barcode (if applicable)

Name Adam Basford

Phone 850.224.7173

Address 516 N Adams St.
Street

Email abasford@aif.com

Tallahassee
CityFL
State32301
ZipSpeaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.☒ I am a registered lobbyist, representing:

Associated Industries of Florida

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

4/4/23

Meeting Date

Commerce

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1308

Bill Number or Topic

Amendment Barcode (if applicable)

Name **George Feijoo**

Phone **3057207099**

Address **108 S Monroe St**

Email **grfeijoo@flapartners.com**

Street

Tallahassee

City

FL

State

32312

Zip

Reset Form

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Rocket Mortgage

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

4/4/23

Meeting Date

Commerce

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1308

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Gary Guzzo**

Phone **3057207099**

Address **108 S Monroe St**

Email **gguzzo@flapartners.com**

Street

Tallahassee

City

FL

State

32312

Zip

Reset Form

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

US Chamber Institute for Legal Reform

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

4-4-23

Meeting Date

Commerce & Tourism
Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

1308

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Casey Reed

Phone

(850) 591-6002

Address

150 S. Monroe St Suite 400

Email

CR8243@ATT.com

Street

Tallahassee

FL

32302

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing: ATAT

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

4/4/23

Meeting Date

Commerce & Tourism
Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 564

Bill Number or Topic

Amendment Barcode (if applicable)

Name

FRENCH BROWN

Phone

850-459-0992

Address

106 E. College Ave Suite 1200

Email

fbrown@deanreed.com

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Florida Retail Federation & Florida Restaurant and Lodging Assn.

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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4/4/23

Meeting Date

Commerce & Tourism

Committee

564 Interchange

Bill Number or Topic

Amendment Barcode (if applicable)

Name Keri Rayborn Silver

Phone 850-524-2394

Address PO Box 1565

Street

Email Keri@raybornconsultants.com

Tallahassee, FL

City

State

32302

Zip

Reset Form

Speaking: ☐ For ☒ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

MasterCard

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/2023

Meeting Date

Commerce + Tourism

Committee

SB 564

Bill Number or Topic

Amendment Barcode (if applicable)

Name JUSTIN HOF

Phone 256-436-5639

Address 6986 Heartland Circle

Street

Email jhof@firstcommercecu.org

Tallahassee

City

FL

State

32312

Zip

Speaking: ☐ For ☒ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

4/04/2023

Meeting Date

Commerce and Tourism

Committee

SB 564

Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Michael Behm

Phone

703-629-2138

Address

1101 Wilson Blvd

Email

mjb@stateside.com

Street

Arlington

VA

22209

City

State

Zip

Speaking: ☐ For

☒ Against

☐ Information

OR

Waive Speaking: ☐ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

The Payments Coalition

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

4-4-23

Meeting Date

Commerce & Tourism

Committee

S 564

Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

RANDALL H. LASTUA

Phone

850-402-7055

Address

1860 CAPITAL CIRCLE

Email

RLASTUA@CCBG.COM

Street

TALLAHASSEE, FL

32312

City

State

Zip

Speaking: ☐ For

☒ Against

☐ Information

OR

Waive Speaking: ☐ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23 Meeting Date
Commerce Committee
Name Anthony Dimarco Phone 850-224-2265
Address 1001 Thomasville Rd Email adimarco@floridabankers.com
Tallahassee FL 32302
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Florida Bankers Association

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

04/04/2023 Meeting Date
Commerce + TOURISM Committee
Name STEVEN RAUSCHENBERGER Phone 847-922-9480
Address 422 N. WORTH AV. Email SENATOR@SRAUSCHENBERGER.COM
Evan Illinois 60123
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☒ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Electric Payment

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23

Meeting Date

564

Bill Number or Topic

Commerce

Committee

Amendment Barcode (if applicable)

Name Ned Bowman

Phone 850-877-5178

Address PO Box 13543

Email ned@fpma.org

Street

Tallahassee

FL

32317

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Petroleum
Marketers Association

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23

Meeting Date

Commerce

Committee

564

Bill Number or Topic

Amendment Barcode (if applicable)

Name DAVID ROBERTS

Phone

Address 210 S. MONROE ST.

Email david@norrob.com

Street

Tallahassee

FL

32302

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

FLORIDA INDEPENDENT
SPIRITS ASSOCIATION

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

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4/4/2023

Meeting Date

564

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Lori Killinger

Phone

850 222 5702

Address

Street

Email

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

RaceTrac

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23

Meeting Date

SB 564

Bill Number or Topic

Commerce and Tourism

Committee

Amendment Barcode (if applicable)

Name

Samantha Padgett

Phone

850 - 224 - 2250

Address

Street

Email

spadgett@fria.org

Tallahassee

City

FL

State

32301

Zip

Speaking: ☒ For ☒ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Restaurant &
Lodging Association

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

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4-4-23
Meeting Date
Commerce & Tourism
Committee

SB 564
Bill Number or Topic

Name John Rothell Phone 850-322-1635

Address 3692 Coolidge Court Email john.rothell@LSCU.coop
Street
Tallahassee FL 32311
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Credit
Union Association

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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4/4/23
Meeting Date
Commerce & Tourism
Committee

SB 564
Bill Number or Topic

Name Joseph Millado Phone 202 809 7400

Address 347 Riverside Ave. Email Joe.millado@fisgbbal.com
Street
Jacksonville FL 32204
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

564

Bill Number or Topic

Amendment Barcode (if applicable)

4/4/23
Meeting Date
Commerce
Committee

Name Jim Daughton Phone 850 305-9000
Address 119 S. Monroe Street Email jim.daughton@mhdfirm.com
Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 564

Bill Number or Topic

Amendment Barcode (if applicable)

04/04/23
Meeting Date
Commerce and Tourism
Committee

Name Will McKinley Phone 850-681-1980
Address 106 E. College Avenue Suite 1100 Email will@poolemmckinley.com
Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Discover Financial Services

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

4/4/23
Meeting Date
Commerce & Tourism
Committee

The Florida Senate
APPEARANCE RECORD
Deliver both copies of this form to
Senate professional staff conducting the meeting

564
Bill Number or Topic

Amendment Barcode (if applicable)

Name Grace Lovett Phone 850-222-4082

Address 227 S. Adams St.
Street
Tallahassee FL 32301
City State Zip

Email grace@frf.org

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

FL Retail Federation

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

4/4/2023
Meeting Date
Commerce and Tourism
Committee

The Florida Senate
APPEARANCE RECORD
Deliver both copies of this form to
Senate professional staff conducting the meeting

1636
Bill Number or Topic

Amendment Barcode (if applicable)

Name Angela Bonds Phone 850-999-4100

Address 106 E College Suite 1200
Street
Tallahassee FL 32301
City State Zip

Email abonds@deanmead.com

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Carvana

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)