

SB 1656 by Albritton; (Similar to H 00715) Reclaimed Water

451010	D	S	RS	IT, Albritton	Delete everything after	02/04 10:05 AM
276212	SD	S	RCS	IT, Albritton	Delete everything after	02/04 10:05 AM

CS/SB 810 by HP, Simmons (CO-INTRODUCERS) Flores; (Compare to H 00151) Tobacco and Nicotine Products

570962	A	S	L	RCS	IT, Simmons	Delete L.56 - 405:	02/04 05:18 PM
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SB 1394 by Simmons; (Similar to H 01037) Taxes and Fees

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SB 912 by Diaz; (Similar to CS/CS/H 00689) Department of Business and Professional Regulation

SB 1084 by Diaz (CO-INTRODUCERS) Montford; (Similar to CS/CS/H 00209) Emotional Support Animals

SB 1698 by Diaz; (Similar to H 01237) Regulation of Pet Stores

706506	D	S			IT, Diaz	Delete everything after	01/31 01:13 PM
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CS/SB 708 by HP, Hutson; (Similar to CS/H 00059) Automated Pharmacy Systems

936048	A	S	L	WD	IT, Hutson	btw L.87 - 88:	01/31 05:07 PM
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SB 1174 by Hutson; (Identical to H 00701) Communications Services Tax

SB 630 by Mayfield; (Compare to H 00457) Regulation of Smoking

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

INNOVATION, INDUSTRY AND TECHNOLOGY

Senator Simpson, Chair

Senator Benacquisto, Vice Chair

MEETING DATE: Monday, February 3, 2020

TIME: 1:30—3:30 p.m.

PLACE: *Toni Jennings Committee Room, 110 Senate Building*

MEMBERS: Senator Simpson, Chair; Senator Benacquisto, Vice Chair; Senators Bracy, Bradley, Brandes, Braynon, Farmer, Gibson, Hutson, and Passidomo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1656 Albritton (Similar H 715)	Reclaimed Water; Providing that reclaimed water is a water source for public water supply systems; providing specified groundwater and surface water quality protections for potable reuse projects; providing that potable reuse is an alternative water supply and that projects relating to such reuse are eligible for alternative water supply funding; prohibiting domestic wastewater treatment facilities from disposing of effluent, reclaimed water, or reuse water by surface water discharge, etc. IT 02/03/2020 Fav/CS AEG AP	Fav/CS Yeas 8 Nays 1
2	CS/SB 810 Health Policy / Simmons (Compare H 151, S 694)	Tobacco and Nicotine Products; Revising the age limits for permits relating to cigarettes; revising age and time restrictions relating to the prohibition of smoking and vaping near school property; revising prohibitions on the sale of tobacco products from vending machines; requiring that the age of persons purchasing tobacco products be verified under certain circumstances, etc. HP 01/21/2020 Fav/CS IT 02/03/2020 Fav/CS AP	Fav/CS Yeas 8 Nays 1
3	SB 1394 Simmons (Similar H 1037)	Taxes and Fees; Revising the definition of the term "tobacco products" to include nicotine dispensing devices and nicotine products, etc. IT 02/03/2020 Fav/CS FT AP	Fav/CS Yeas 6 Nays 2

COMMITTEE MEETING EXPANDED AGENDA

Innovation, Industry and Technology

Monday, February 3, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 912 Diaz (Similar CS/CS/H 689, Compare CS/CS/H 623, CS/S 1154)	Department of Business and Professional Regulation; Requiring that certain reports relating to the transportation or possession of cigarettes be filed with the Division of Alcoholic Beverages and Tobacco through the division's electronic data submission system; renaming the Florida State Boxing Commission as the Florida Athletic Commission; revising requirements for issuing special licenses to certain food service establishments; providing the circumstances under which a person is delinquent in the payment of an assessment in the context of eligibility for membership on certain condominium boards, etc. IT 02/03/2020 Not Considered CA AP	Not Considered
5	SB 1084 Diaz (Similar CS/CS/H 209, Compare H 49)	Emotional Support Animals; Prohibiting discrimination in the rental of a dwelling to a person with a disability or a disability-related need who has an emotional support animal; prohibiting a landlord from requiring such person to pay extra compensation for such animal; prohibiting the falsification of written documentation or other misrepresentation regarding the use of an emotional support animal; specifying that a person with a disability or a disability-related need is liable for certain damage done by her or his emotional support animal, etc. AG 01/14/2020 Favorable IT 02/03/2020 Not Considered RC	Not Considered
6	SB 1698 Diaz (Similar H 1237, Linked S 1700)	Regulation of Pet Stores; Creating the "Florida Pet Protection Act"; requiring the licensure of pet stores; requiring the Department of Business and Professional Regulation to adopt procedures for such licensure; regulating the sale or transfer of household pets by pet stores; limiting the sources from which pet stores may acquire pets for sale; requiring the department to conduct periodic inspections of pet stores and audit sales records, etc. IT 02/03/2020 Not Considered AEG AP	Not Considered

COMMITTEE MEETING EXPANDED AGENDA

Innovation, Industry and Technology

Monday, February 3, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 708 Health Policy / Hutson (Similar CS/H 59)	Automated Pharmacy Systems; Authorizing a community pharmacy to use an automated pharmacy system under certain circumstances; providing that certain medicinal drugs stored in an automated pharmacy system for outpatient dispensing are part of the inventory of the pharmacy providing services through such system, etc. HP 01/14/2020 Fav/CS IT 02/03/2020 Favorable RC	Favorable Yeas 10 Nays 0
8	SB 1174 Hutson (Identical H 701)	Communications Services Tax; Revising legislative intent regarding local communications services tax rates; revising downward the tax rate on the retail sale of communications services; deleting a provision that specifies where proceeds of a communications services tax must be deposited and disbursed; requiring dealers to collect and remit local communications services taxes under certain conditions; authorizing the Legislature to appropriate moneys to offset specified direct reductions of the local communications services tax by certain counties and municipalities, etc. IT 02/03/2020 Favorable CA AP	Favorable Yeas 10 Nays 0
9	SB 630 Mayfield (Compare H 457, CS/S 670)	Regulation of Smoking; Authorizing municipalities and counties to further restrict smoking within the boundaries of certain public parks, etc. CA 01/13/2020 Favorable IT 02/03/2020 Favorable RC	Favorable Yeas 7 Nays 2

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 Innovation, Industry, and Technology

BILL: CS/SB 1656

INTRODUCER: Innovation, Industry, and Technology Committee and Senator Albritton

SUBJECT: Reclaimed Water

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	Fav/ CS
2.			AEG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1656 prohibits domestic wastewater treatment facilities from disposing of effluent, reclaimed water, or reuse water by surface water discharge beginning January 1, 2026, with stated exceptions.

The bill provides for potable water reuse, deeming reclaimed water to be a water source for public water supply systems, declaring potable reuse to be an alternative water supply, declaring potable reuse projects to be eligible for alternative water supply funding, and prohibiting exclusion of use of potable reuse water from regional water supply planning. It requires the Department of Environmental Protection (DEP) to review existing rules governing reclaimed water and potable reuse for necessary modifications and repeals and to adopt new rules. It requires DEP to initiate rulemaking by December 31, 2020, and submit the adopted rules to the President of the Senate and the Speaker of the House of Representatives by December 12, 2021, for approval and incorporation into ch. 403, F.S. The rules may not be published as administrative rules. The bill also sets out legislative intent on how DEP is to perform these functions.

The bill requires DEP and the water management districts to develop and execute a memorandum of agreement providing for the procedural requirements of a coordinated review of all permits associated with the construction and operation of an indirect potable reuse project.

It set out permitting, tax, and funding benefits to be provided to a potable reuse project developed as a qualifying project.

The bill requires that DEP coordinate with one or more technical working groups to adopt rules for the implementation of the potable reuse statute and sets out requirements for these rules.

It requires each county, municipality, and special district to provide specified benefits and incentives to developers for use of graywater technologies.

Finally, the bill states that the Legislature determines and declares that this act fulfills an important state interest.

II. Present Situation:

Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water

The DEP issued a report in December 2015 on the beneficial use of reclaimed water, stormwater, and excess surface water. The report found that Earth's water supply is finite and is continually recycled and reused through the hydrologic cycle. Florida's groundwater is also recycled water, and it is important to recognize that groundwater comes from the land's surface. This surface water percolating down into the ground brings with it all of the inputs found in surface waters – agricultural runoff, urban stormwater and domestic and industrial wastewater inputs. Most reclaimed water land application projects (rapid infiltration basins, sprayfields, etc.) ultimately return water to groundwater, which may be available to down-gradient users.¹ In Florida, groundwater accounts for about 90% of public and domestic water supply. Approximately 20% of Floridians safely consume groundwater without treatment or disinfection.²

While Florida's freshwater resources are finite, the state faces continuing population growth which is projected to result in an additional 4.8 million Floridians through 2030. Population growth will bring increased demands for water and increased volumes of wastewater, which must be managed to prevent pollution. At the same time, many areas of the state are approaching, or have exceeded, the sustainable limits of traditional groundwater supplies.³

Some areas of Florida are designated as “water resource caution areas,” areas having current or future critical water supply problems where traditional water sources may not be adequate to meet expected water needs. Within these areas, water conservation, reuse, and other alternative resources will play critical roles in ensuring adequate water supply.⁴ The map below shows the water resource caution areas.⁵

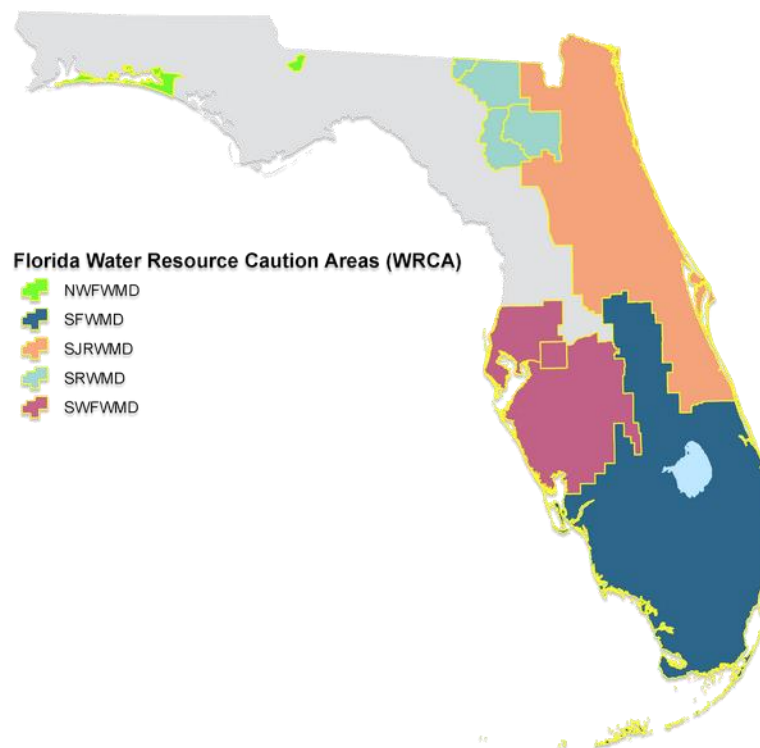
¹ A gradient is a slope or incline. Down-gradient is a position on that slope moving downward. In hydrology, down-gradient refers to water moving downward, or down-gradient, from one location to another. A down-gradient user is a user down the gradient, lower on the slope or incline, along which the water is moving.

² DEP, *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water*, 14 (December 1, 2015) available at <https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf>.

³ *Id.*

⁴ *Id.* at 14-15.

⁵ This map is DEP's In-house graphic map of water resource caution areas, available at <https://floridadep.gov/water/water/media/house-graphic-map-water-resource-caution-areas>.



In Florida, DEP and the WMDs both play a role in the management of water resources. DEP focuses on water quality, and the WMDs on water quantity.⁶ Over the last thirty years, both DEP and the WMDs have been involved in promoting use of reclaimed water.^{7, 8}

DEP's reuse statute is section 403.064, F.S. The statute requires all applicants for permits to construct or operate a domestic wastewater treatment facility that is located within, serves a population within, or discharges within a water resource caution area to prepare a reuse feasibility study as part of their application for the permit. Reuse feasibility studies must include, but are not limited to:

- Evaluation of monetary costs and benefits for several levels and types of reuse;
- Evaluation of water savings if reuse is implemented;
- Evaluation of rates and fees necessary to implement reuse;
- Evaluation of environmental and water resource benefits associated with reuse;
- Evaluation of economic, environmental, and technical constraints; and
- A schedule for implementation of reuse that considers phased implementation.

If the study shows that the reuse is feasible, the applicant must give significant consideration to its implementation.

⁶ DEP, *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water*, 16 (December 1, 2015) available at <https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf>.

⁷ *Id.* at 16.

⁸ "Reclaimed water" is water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility. *Id.* at 11.

A reuse feasibility study conducted under this statute satisfies a WMD requirement to conduct a reuse feasibility study imposed on a local government or utility that has responsibility for wastewater management. The data included in the study and the conclusions of the study must be given significant consideration by the applicant and the appropriate water management district in an analysis of the economic, environmental, and technical feasibility of providing reclaimed water for reuse and must be presumed relevant to the determination of feasibility. A WMD may not require a separate study when a reuse feasibility study has been completed under this statute.

Permits issued by DEP the department for domestic wastewater treatment facilities must be consistent with requirements for reuse included in applicable consumptive use permits issued by the WMD, if such requirements are consistent with department rules governing reuse of reclaimed water. This requirement applies only to domestic wastewater treatment facilities which are located within, or serve a population located within, or discharge within water resource caution areas and are owned, operated, or controlled by a local government or utility which has responsibility for water supply and wastewater management.

After conducting a feasibility study, domestic wastewater treatment facilities that dispose of effluent by surface water discharges or by land application methods must implement reuse to the degree that reuse is feasible, based upon the applicant's reuse feasibility study. This requirement does not apply to surface water discharges or land application systems which are currently categorized as reuse under department rules.

The reuse statute for WMDs is s. 373.250, F.S. In this statute, the Legislature recognizes that the interest of the state to sustain water resources for the future through the use of reclaimed water must be balanced with the need of reuse utilities to operate and manage reclaimed water systems in accordance with a variety and range of circumstances, including regulatory and financial considerations, which influence the development and operation of reclaimed water systems across the state.

The statute declares reclaimed water as an alternative water supply that is eligible for alternative water supply funding, and prohibits exclusion of the use of reclaimed water from regional water supply planning.

Reclaimed water may be presumed available to a consumptive use permit applicant when a utility exists which provides reclaimed water, which has determined that it has uncommitted reclaimed water capacity, and which has distribution facilities, which are initially provided by the utility at its cost, to the site of the affected applicant's proposed use. A water management district may require the use of reclaimed water in lieu of all or a portion of a proposed use of surface water or groundwater by an applicant when the use of reclaimed water is available; is environmentally, economically, and technically feasible; and is of such quality and reliability as is necessary to the user.

A water management district may not adopt any rule that gives preference to users within any class of use who do not use reclaimed water over users within the same class who use reclaimed water.

Reuse utilities and the applicable water management district or districts are encouraged to periodically coordinate and share information concerning the status of reclaimed water distribution system construction, the availability of reclaimed water supplies, and existing consumptive use permits in areas served by the reuse utility.

This statute applies to applications for new consumptive use permits and renewals and modifications of existing consumptive use permits.

Chapter 62-610, Florida Administrative Code (F.A.C.), identifies the most-common types of reuse systems.

- Slow-rate land application; restricted public access – the application of reclaimed water to a vegetated land surface, most often through spray irrigation, where public access is restricted. Treatment requirements for these systems include reclaimed water that has received at least secondary treatment and basic disinfection.
- Slow-rate land application; public access – the irrigation of areas accessible to the public, such as golf courses, parks and similar areas, along with irrigation of residential properties and edible crops. A wide range of other activities also are addressed, including toilet flushing, fire protection, street cleaning, decorative fountains, dust control and vehicle washing. These reuse systems feature reclaimed water that has received at least secondary treatment and high-level disinfection.
- Rapid-rate land application – the deliberate application of reclaimed water at high rates to rapid infiltration basins (RIBs), percolation ponds, or absorption fields to recharge the groundwater. Treatment requirements for these systems include reclaimed water that has received at least secondary treatment and basic disinfection and that meets the nitrate standard of 12 mg/L.
- Aquifer Storage and Recovery (ASR) – the injection of reclaimed water into a subsurface formation for storage and recovery of the stored reclaimed water for beneficial purposes at a later date. The stored reclaimed water is only considered to be “reused” when it is recovered from aquifer storage and used for beneficial purposes. Injected water must meet applicable groundwater requirements before injection. Recovered water must meet the performance standards for fecal coliforms as specified for high-level disinfection.
- Recharge of Class F-I, G-I and G-II groundwaters – these types of systems include:
 - Injection of reclaimed water directly into those groundwaters;
 - Rapid-rate land application systems located over those groundwaters;
 - Use of reclaimed water to create salinity barriers to protect those groundwaters; and
 - Discharges to surface waters which are directly connected to those groundwaters.

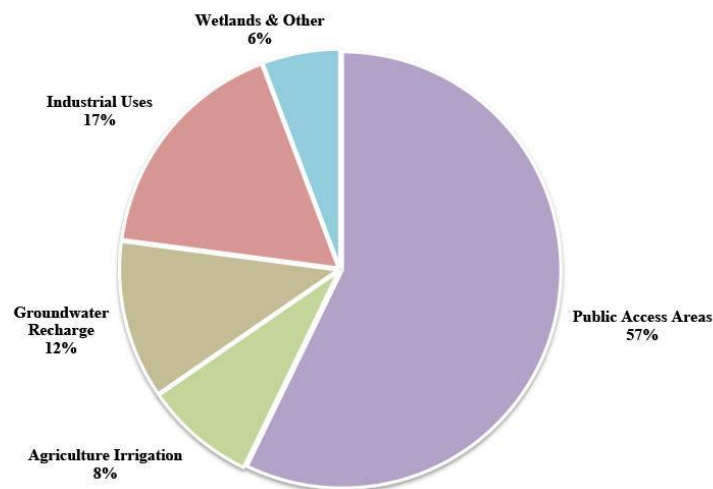
The treatment requirements depend on the type and class of groundwater into which the reclaimed water is injected. Groundwater recharge is also called Aquifer Recharge.

- Indirect Potable Reuse (IPR) – This type of reuse system involves the planned use of reclaimed water to augment surface water resources which are used or will be used for public water supplies. IPR systems include discharges to Class I surface waters and discharges to other surface waters which are directly or indirectly connected to Class I surface waters. The treatment requirements depend on the class of surface waters to which the reclaimed water is discharged. While the injection of reclaimed water into a drinking water aquifer is also sometimes referred to as IPR, DEP rules include this as groundwater recharge.

- Wetlands creation, restoration and enhancement – Reclaimed water can be used to create, restore, or enhance man-made wetlands as well as hydrologically altered wetlands. Wastewater wetlands that discharge to Class I waters or contiguous to Class I waters must meet the same requirements as other discharges to surface water.
- Industrial Uses – Industrial uses of reclaimed water involve the use of reclaimed water for cooling water, wash water, or process water at industrial facilities. Reclaimed water cannot be used in food or beverage processing facilities where the reclaimed water would come into contact with food or beverages being prepared for human consumption. For most applications, secondary treatment and basic disinfection are required. Some uses would involve additional site restrictions.⁹

According to the DEP report, over the past 30 years, Florida has made great strides in the expansion of reclaimed water systems and reuse is now an integral part of wastewater management, water resource management, and ecosystem management in Florida. In 2013, Florida reused approximately 719 million gallons per day (MGD) of reclaimed water, which represents approximately 45 percent of the total domestic wastewater flow in the state. Today Florida is recognized as a national leader in water reuse.¹⁰ The chart below shows the percentage of reclaimed water utilization by flow for each reuse type.¹¹

Figure 1: Reclaimed Water Utilization by Flow



Note: Agriculture irrigation includes edible crops (e.g., citrus) as well as feed and fodder crops (e.g., spray fields).

According to the report, despite this level of reuse, Florida disposed of over 960 MGD of wastewater effluent using deep injection wells, ocean outfalls, and surface water discharges. This

⁹ DEP, *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water*, 18-19 (December 1, 2015) available at <https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf>.

¹⁰ *Id.* at 19.

¹¹ This chart is available from DEP's *Florida's Reuse Activities*, <https://floridadep.gov/water/domestic-wastewater/content/floridas-reuse-activities>.

represents a waste of a valuable resource. Where technically, environmentally and economically feasible, reclaimed water should be reused for beneficial purposes.¹²

Framework for the Implementation of Potable Reuse in Florida

The Florida Potable Reuse Commission (PRC) is a stakeholder group whose mission was “to develop a framework for potable reuse implementation in Florida to augment future water supplies and to support water quality initiatives as well as to advise elected officials and regulatory agencies on statutory and regulatory challenges, and to present consensus-based solutions.” The members of the PRC include utility representatives from WaterReuse Florida, Florida Water Environment Association Utility Council, Florida Section American Water Works Association Water Utility Council, and stakeholders representing agricultural, environmental, public health, associated industries, and the Department of Health. The Florida Department of Environmental Protection and the five water management districts, Northwest Florida, Suwannee River, St. Johns River, Southwest Florida, and South Florida, also participated as ex officio members.¹³

The PRC’s report makes fifteen broad recommendations, set forth below.¹⁴

Regulatory Recommendations

1. Place potable reuse requirements in drinking water regulations

The PRC recommends moving Florida’s existing reclaimed water regulations in DEP rules that apply to potable reuse into the appropriate drinking water rules. The PRC also recommends that new regulations addressing potable reuse also be placed within Florida’s drinking water program regulations. The goal in doing so is to separate nonpotable reuse from potable reuse and place potable reuse requirements under the appropriate drinking water regulations and to have a clear, concise, and enforceable point of regulatory compliance.

2. Revise existing drinking water regulations to specify reclaimed water as a water supply source and employ appropriate treatment technologies to address pathogens and emerging constituents

Existing drinking water regulations address differences in various sources of water. For example, treating surface water versus groundwater requires more disinfection because it is more common to find waterborne pathogens in surface waters like rivers or lakes than in aquifers. Similarly, reclaimed water, which comes from treated wastewater, may have elevated concentrations of pathogens such as bacteria and viruses. It may also have higher concentrations of emerging constituents, such as pharmaceuticals and personal care products. In addition, other chemicals could potentially be present in reclaimed water coming from discharges by industrial and commercial users.

¹² DEP, *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water*, 15 (December 1, 2015) available at <https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf>.

¹³ Potable Reuse Commission, *Framework for the Implementation of Potable Reuse in Florida*, iii-iv (Jan. 2020), available at <http://prc.watereuseflorida.com/wp-content/uploads/Framework-for-Potable-Reuse-in-Florida-FINAL-January-2020-web10495.pdf>.

¹⁴ *Id.* at xxvii-xxxi. See also chapter 10 of the report, beginning at p. 104.

3. Require potable reuse to meet drinking water standards

To protect public health, the PRC recommends revising Florida's drinking water rules to consider reclaimed water as a source water. With this recommendation, drinking water produced from all potable reuse projects would be required to meet existing primary and secondary drinking water standards.

4. Provide pathogen treatment to meet drinking water standards

In addition, the PRC recommends that DEP adopt potable reuse treatment requirements for pathogens within the drinking water regulations. This would be done by having a water utility examine the potential for pathogens in the reclaimed water source, and then apply appropriate treatment technology to reduce, remove or inactivate those pathogens to acceptable water quality standards consistent with current drinking water rules. With this recommendation, pathogens in potable reuse projects would be treated to meet drinking water standards.

5. Require industrial pretreatment and source control

To further support this approach, the PRC also recommends that existing industrial pretreatment requirements in DEP rules apply to potable reuse projects. Industrial pretreatment requirements prevent unacceptable industrial discharges from entering domestic wastewater facilities. To complement this, the PRC recommends domestic wastewater facilities used for potable reuse also implement source control to prevent other unacceptable wastes from entering those facilities.

6. Addressing emerging constituents

Finally, the PRC recommends addressing emerging constituents, such as pharmaceuticals and personal care products, in potable reuse. Currently, there are no established standards for emerging constituents. As such, the PRC recommends DEP adopt a treatment technique approach to address emerging constituents.

The treatment technique the PRC recommends is the use of Appropriate Treatment Technology (ATT). The ATT concept involves using technically and economically feasible treatment technologies to treat emerging constituents. These are proven means for treating water.

The recommended approaches for employing ATT to treat emerging constituents vary slightly between direct potable reuse (DPR) and indirect potable reuse (IPR). For DPR, the PRC recommends including reclaimed water in the source water characterization of the drinking water treatment facility and applying ATT as necessary with the existing drinking water treatment process to meet the required treatment objectives. For IPR, the evaluation must consider the impact of the environment (soil, groundwater or surface water) on the treatment, attenuation and dilution of emerging constituents. Depending on the project, ATT may need to be employed prior to discharge to the environment, after discharge to the environment but before final drinking water treatment, or some combination of both.

Monitoring should also be required when employing ATT. Monitoring would be done before and after use of the ATT to ensure ATT is working effectively. Because it is not practical to monitor emerging constituents directly, a surrogate would be monitored to demonstrate effective treatment. If that monitoring detects inadequate treatment (i.e., “off-spec water”), the water would be retreated or discharged elsewhere and not sent out for public consumption.

For IPR projects environmental monitoring is recommended. Monitoring is currently required for nonpotable reuse projects discharging reclaimed water to groundwater or surface waters. To address the potential risk associated with emerging constituents, the PRC recommends DEP amend these monitoring requirements to also require monitoring for a representative emerging constituent in IPR projects. The utility would select the representative emerging constituent with DEP review and approval. If that monitoring detects an issue, the utility would report the issue to DEP and work with DEP to determine the cause and address the issue. The specific treatment processes used with ATT will vary depending upon the project scenario, emerging constituent(s) concentrations, desired finished water quality, and the capability of the facility. Specific ATTs employed may also evolve over time as new treatment technologies develop, new emerging constituents are identified, and criteria for emerging constituents are further refined.

Other recommendations to improve potable reuse regulation while protecting the public health and environment

The report also delineated other recommendations to improve potable reuse regulation.¹⁵

1. Continue to exempt DPR from needing to obtain a consumptive use permit (CUP) or water use permit (WUP)

Existing Florida Statutes do not require a CUP or WUP for reclaimed water use because no water is withdrawn from the environment. This should continue to apply to DPR as the potable reuse framework is implemented.

2. Clarify that IPR projects must comply with existing spring discharge standards

Currently Florida Administrative Code Rule 62-610.850 provides “reuse and land application projects shall not cause or contribute to violations of water quality standards in surface waters.” Revisions to this rule may be necessary as the other potable reuse recommendations are implemented to clarify that existing surface water quality standards apply to groundwater discharges of reclaimed water migrating into spring flow as a result of an IPR project.

3. Expand existing definition of IPR to include groundwater recharge when used to augment the supply of water available for drinking water

The current rule definition of “indirect potable reuse” is limited only to the discharge of reclaimed water to surface waters. This should be expanded to include groundwater so that all types of IPR projects fit within the definition.

4. Specify point of compliance with drinking water standards

¹⁵ *Id* at xxix.

For potable reuse, confusion could occur as to where in the process drinking water standards must be met. To ensure clarity and protect public safety, the statutes and rules should specify that compliance is determined at the point where finished potable water is finally discharged from the drinking water treatment facility.

5. DEP and the water management districts should enter into a memorandum of agreement to coordinate permitting for IPR projects

A number of permits are required from DEP and the WMDs to authorize IPR projects. Coordination among these agencies on these permits avoids duplication and ensures consistency. Coordination also ensures protection of public health and the environment and reduces the burden upon the permit applicant. This coordination review would only occur at the applicant's request.

6. DEP should review the current groundwater recharge requirements in Chapter 62-610, F.A.C.

DEP should review current groundwater recharge rules in conjunction with the effort to move the IPR requirements in that chapter to the drinking water rules. The goal of this review would be to ensure continued environmental and public health protection.

Next steps

The report states that Florida must have additional sustainable alternative water supplies to meet the future needs of its residents, agriculture, and industry, and to secure a robust economic future. Potable reuse is one such alternative supply. Potable reuse has been implemented in other states and countries and has been proven to be safe and protective of the environment.

This proposed framework is recommended to protect public health and the environment. The proposed recommendations will also provide regulatory and financial surety to water and wastewater utilities, and consistency in permitting and implementation of potable reuse projects. Failure to implement this framework may jeopardize the ability to meet future water supply needs efficiently and cost-effectively, risks inconsistent implementation of potable reuse throughout the State, and increases the potential risk to public health and the environment.¹⁶

As a result, the PRC recommends the following actions to further the implementation of this proposed framework.¹⁷

1. Implement regulatory recommendations collectively and through Technical Advisory Committees

The PRC intends the regulatory recommendations in this framework to be undertaken collectively. Many of the recommendations in this report require action by the Florida Legislature and/or DEP. Where it is recommended that DEP adopt or modify rules, the PRC

¹⁶ *Id* at xxix.

¹⁷ *Id* at xxx.

recommends DEP convene and lead one or more technical advisory committees (TACs) of a broad and diverse group of stakeholders to assist in the development of these regulations. These TACs would include representatives from the wastewater utility industry, the water utility industry, the environmental community, the business community, the health community, the general public, and the agricultural community. By developing these regulations in this manner, DEP can address multiple perspectives and develop rules that will protect the public health and environment.

2. Incentivize and protect public investments in potable reuse

Potable reuse projects require significantly more planning and financial investment than other types of reuse projects. Utilities need certainty that the investment of their ratepayers' funds will be protected. The PRC recommends that it, in coordination with DEP and the water management districts, would facilitate the creation of a working group to examine CUP and WUP statutes and rules in the context of incentivizing and protecting investments in these long-term potable reuse projects. The working group should consist of diverse stakeholders, including but not limited to, PRC members, water management district and DEP representatives, water and wastewater utilities representatives, agricultural organizations representatives, environmental organizations representatives, and other interested parties. One of the goals of the working group will be to develop consensus-based recommendations regarding clarifying existing statutes and rules related to impact offsets derived from the use of reclaimed water and how IPR projects are to be treated as an alternative water supply in determining the duration of the CUP or WUP. The working group would also further explore additional consumptive use permitting incentives that may facilitate the development of potable reuse projects and examine how the water management districts' cost share funding programs can be leveraged to facilitate development of potable reuse projects. The development of a plan by the working group regarding the implementation of any recommendation is also proposed. If there is consensus on recommendations by the working group, then such changes will be recommended to the Florida Legislature or DEP and the water management districts as appropriate.

3. Continue public education and outreach

Public confidence, understanding, acceptance, and support are essential for the successful implementation of potable reuse projects. Achieving this public confidence, understanding and support requires extensive public education and outreach by the water industry, communities considering potable reuse, DEP, and the water management districts.

The PRC will develop and implement a statewide potable reuse education and outreach program contingent upon future funding. The PRC recommends that DEP and the water management districts engage in activities that positively impact public perception of potable reuse. To that end, DEP and the water management district should be prepared to communicate openly and candidly with the public and stakeholders not only about the challenges associated with implementing potable reuse, but also that potable reuse has been and can be done safely. There is no new water on the planet. We must efficiently and effectively optimize every source of water available to ensure our future.

Evaluation of the Impacts of Eliminating Surface Water Discharges from Domestic Wastewater Facilities in Florida

Carollo Engineers, Inc.,¹⁸ at the request of the Florida Water Environment Association Utility Council,¹⁹ evaluated the ramifications and developed planning level costs associated with eliminating the discharge of treated effluent to surface waters from domestic wastewater treatment facilities (DWWTFs).²⁰ The discussion of cost begins with a discussion of limitations on different alternative effluent management practices and methods.

- Public access reclaimed water systems provide a tremendous benefit in offsetting the use of potable water for non-potable uses, but experiences significant fluctuations in demand and requires an alternative effluent management or reuse mechanism during low-demand periods. Additionally, public access reclaimed water systems are most cost effective when used with new development, and extension into existing, densely urbanized areas provides little benefit at a very high cost. Many existing surface water discharges are located in developed areas far from new development.
- In the 1980s, other alternatives were developed in reaction to studies showing that the historical use of surface water discharge was degrading surface water quality. One of these alternatives is rapid infiltrations basins (RIBs). Surface water discharges have been all but eliminated in Central Florida by pairing urban and agricultural irrigation with RIBs. Use of RIBs, however, depends on the existence of hydrogeology which favors ground water recharge, and this is limited to Central Florida. Similarly, another method that was developed, deep well injection, can provide exceptional reliability but is dependent on suitable subsurface conditions and is becoming increasingly limited across the state.
- Active surface discharge permits are located where these methods cannot be used, and where there are large receiving water bodies which can accommodate the discharge without environmental degradation.²¹

Based on limitations on effluent management and reuse alternatives, the evaluation determined that potable reuse provided a strategy for elimination of existing surface water discharges. Potable reuse is relatively expensive related to existing reuse practices, but avoids many of the limitations of other reuse and effluent management practices, and is the most viable option.²²

The report recognized four significant challenges.

- Implementing potable reuse will require revisions to current regulations to allow direct potable reuse and to clarify the requirements for indirect potable reuse. DWWTFs will be unable to begin the facility design and permitting process until the new rules are adopted.

¹⁸ Carollo Engineers is an environmental engineering firm that specializes in the planning, design, and construction of water and wastewater facilities. See <https://www.carollo.com/who-we-are> (last visited January 31, 2020).

¹⁹ According to its website, the “Florida Water Environment Association Utility Council was formed in 1998 to promote sound public policy in the water quality and wastewater industry. The Utility Council consists of wastewater utilities throughout the state who are working together to address legislative and regulatory issues. The Utility Council monitors proposed legislation and regulations and keeps its members informed of the latest developments. The Utility Council also works to educate policy makers about the intricacies of water quality and wastewater management.” See <https://www.fwea.org/history.php> (last visited January 31, 2020).

²⁰ Carollo Engineers, Inc., *Evaluation of the Impacts of Eliminating Surface Water Discharges from Domestic Wastewater Facilities in Florida*, 1 (Jan. 2020).

²¹ *Id.* at 40-41.

²² *Id.* at 41.

- Public acceptance will require education and time.
- Technical challenges will arise in developing new treatments to turn reclaimed water into potable water.
- Costs may be significant.²³

A project schedule for transitioning from surface water discharge to potable reuse must include:

- Time for Florida to adopt new reuse regulations which will allow direct potable reuse and clarify existing regulations for indirect potable reuse. To assure compliance with these new regulations, it will be necessary to defer design and permitting potable reuse projects until the new regulations have been adopted.
- Securing project funding will require an additional twelve to eighteen months. This would include major rate adjustments and related public meetings. The magnitude of debt may affect bond ratings and will require financial analysis to ensure financial solvency.
- Typical project upgrades would include:
 - Preliminary and final design;
 - A twelve-month pilot project currently required for all potable reuse projects;
 - Permitting;
 - Advertising, bidding, and award of the project; and
 - Construction and startup.

The report concludes that the earliest a potable water reuse project could be completed is September 2026, and the latest June 2028.²⁴

Cost projections are based on use of a potable reuse treatment process that, while more expensive, is a proven technology capable of treating almost any waste stream to potable quality. The report also discusses design capacity for projects, planning level cost estimates, and treatment infrastructure components. The report projects that the total statewide cost will be \$28,010,000,000. As mentioned above, the magnitude of debt may affect bond ratings and will require financial analysis to ensure financial solvency. Also, the high cost of these improvements would put a significant burden on the ratepayers of the DWWTFs affected by the discharge elimination requirement.²⁵

Another issue with cost is that a number of DWWTFs have already made expensive improvements to their treatment processes to comply with 1994 changes to section 403.086(7), F.S., that allowed discharges to surface water if advanced wastewater treatment was implemented. These utilities have expended significant funds to comply and there is no acknowledgement of these efforts or credit for the expended funds.²⁶

²³ *Id.* at 41 and 45-48.

²⁴ *Id.* at 48.

²⁵ *Id.* at 46 and 42.

²⁶ *Id.* at 45 and 28.

III. Effect of Proposed Changes:

Prohibition against Surface Water Discharge

Section 1 prohibits domestic wastewater treatment facilities from disposing of effluent, reclaimed water, or reuse water by surface water discharge beginning January 1, 2026, except the prohibition does not apply to:

- Indirect potable reuse projects;
- Domestic wastewater treatment facility discharges during wet weather which occur in accordance with the applicable department permit;
- Discharges into a stormwater management system which are subsequently withdrawn by a user for irrigation purposes;
- Domestic wastewater treatment facilities located in fiscally constrained counties;
- Projects where reclaimed water is recovered from an aquifer recharge system and subsequently discharged into a surface water for potable reuse;
- Wetlands creation, restoration, and enhancement projects;
- Minimum flows and levels recovery or prevention strategy plan projects;
- Domestic wastewater treatment facilities with reuse systems that provide a minimum of 90 percent of a facility's annual average flow for authorized reuse purposes;
- Domestic wastewater treatment facilities located in municipalities that have less than \$10 million in total revenue; or
- Domestic wastewater treatment facilities located in municipalities that are entirely within a rural area of opportunity.

Potable Reuse

Section 2 creates section 403.8531, F.S., to provide for potable water reuse. It creates definitions for use in this context.

- "Advanced treated reclaimed water" means the water produced from an advanced water treatment process for potable reuse applications.
- "Advanced treatment technology" means the treatment technology selected by a utility to address emerging constituents and pathogens in reclaimed water as part of a potable reuse project.
- "Direct potable reuse" means the introduction of advanced treated reclaimed water into a raw water supply immediately upstream from a drinking water treatment facility or directly into a potable water supply distribution system.
- "Emerging constituents" means pharmaceuticals, personal care products, and other chemicals not regulated as part of drinking water quality standards.
- "Indirect potable reuse" means the planned delivery or discharge of reclaimed water to groundwater or surface waters for the development of, or to supplement, the potable water supply.
- "Off-spec reclaimed water" means reclaimed water that does not meet the standards for potable reuse.
- "Potable reuse" means the augmentation of a drinking water supply with advanced treated reclaimed water from a domestic wastewater treatment facility, and consists of direct potable reuse and indirect potable reuse.

- “Reclaimed water” means water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.

The bill deems reclaimed water to be a water source for public water supply systems, declares potable reuse to be an alternative water supply,²⁷ declares potable reuse projects to be eligible for alternative water supply funding, and prohibits exclusion of use of potable reuse water from regional water supply planning.

The bill sets out legislative intent that the Department of Environmental Protection (DEP) adopt rules for potable reuse which:

- Protect the public health and environment by ensuring that the potable reuse rules meet federal and state drinking water and water quality standards, including, but not limited to, the Clean Water Act, the Safe Drinking Water Act, and water quality standards pursuant to chapter 403, and, when possible, implement such rules through existing regulatory programs.
- Support reclaimed water being used for potable reuse purposes.
- Implement the recommendations set forth in the Potable Reuse Commission’s 2020 report “Advancing Potable Reuse in Florida: Framework for the Implementation of Potable Reuse in Florida.”
- Require that the point of compliance with drinking water standards for potable reuse projects is the final discharge point for finished water from the water treatment facility.
- Protect the aquifer and Florida’s springs and surface waters by ensuring that potable reuse projects do not cause or contribute to violations of water quality standards in surface waters, including groundwater discharges that flow by interflow and affect water quality in surface waters, and that potable reuse projects shall be designed and operated to ensure compliance with groundwater quality standards.

It requires DEP to:

- Adopt rules that authorize potable reuse projects that are consistent with the section’s provisions;
- Review existing rules governing reclaimed water and potable reuse to identify obsolete and inconsistent requirements and adopt rules that revise existing potable reuse rules to eliminate such inconsistencies, while maintaining existing public health and environmental protections;
- Review aquifer recharge rules, and, if revisions are necessary to ensure continued compliance with existing public health and environmental protection rules when reclaimed water is used for aquifer recharge, adopt such rules; and
- Initiate rulemaking by December 31, 2020, and submit the adopted rules to the President of the Senate and the Speaker of the House of Representatives by December 12, 2021, for approval and incorporation into ch. 403, F.S. Such rules may not be published as administrative rules.

²⁷ “Alternative water supplies” means salt water; brackish surface and groundwater; surface water captured predominately during wet-weather flows; sources made available through the addition of new storage capacity for surface or groundwater, water that has been reclaimed after one or more public supply, municipal, industrial, commercial, or agricultural uses; the downstream augmentation of water bodies with reclaimed water; stormwater; and any other water supply source that is designated as nontraditional for a water supply planning region in the applicable regional water supply plan. Section 373.019 (1), F.S.

DEP and the water management districts are required to develop and execute a memorandum of agreement providing for the procedural requirements of a coordinated review of all permits associated with the construction and operation of an indirect potable reuse project. The memorandum of agreement must provide that the coordinated review will occur only if requested by a permittee. The purpose of the coordinated review is to: share information, avoid the redundancy of information requested from the permittee, and ensure consistency in the permit for the protection of the public health and the environment. DEP and the water management districts must develop and execute the memorandum of agreement by December 31, 2022.

A potable reuse project developed as a qualifying project²⁸ is granted the following benefits.

- Beginning January 1, 2025, the project is eligible for expedited permitting using a permit application processing period of 90-days after receipt of a completed application.
- The project owner is granted an annual credit against the corporate income tax in an amount equal to five percent of the eligible capital costs²⁹ generated by a qualifying project for a period not to exceed 20 years after the date that project operations begin. The tax credit applies only to the corporate income tax liability or the premium tax liability generated by or arising out of the qualifying project, and the sum of all tax credits provided pursuant to this section may not exceed 100 percent of eligible capital costs. Any credit granted may not be carried forward or backward.
- The project is granted a three-year extension of applicable deadlines.
- The project is eligible for priority funding in the same manner as other alternative water supply projects from the Drinking Water State Revolving Fund, under the Water Protection and Sustainability Program, and for water management district cooperative funding.

Section 4 requires that, in implementing this new statute, DEP, in coordination with one or more technical working groups, adopt rules for the implementation of potable reuse projects. DEP must:

- Revise the appropriate chapters in the Florida Administrative Code, including chapter 62-610, Florida Administrative Code, to ensure that all rules implementing potable reuse are in the Florida Administrative Code chapter 62 governing drinking water regulation.
- Revise existing drinking water rules to include reclaimed water as a source water for the public water supply and require such treatment of the water as is necessary to meet existing drinking water rules, including rules for pathogens.
- The potable reuse rules must include the implementation of a log reduction credit system using advanced treatment technology to meet pathogen treatment requirements, and must require a public water supplier to provide an approach to meet the required pathogen treatment requirements in an engineering report as part of its public water supply permit application for authorization of potable reuse. To ensure protection of the public health, as part of the public water supply permit application to authorize potable reuse, a public water supplier shall provide a department-specified level of treatment or propose an approach to

²⁸ Section 255.065, F.S., provides for public-private partnerships involving public property and buildings, with the stated intent to encourage private entity investment in the development and operation of qualifying projects. “Qualifying project” is defined to include a variety of specific types of facilities or projects that serve a public purpose, including a water, wastewater, or surface water management facility, or other related infrastructure.

²⁹ Section s. 220.191(1)(c), F.S, defines “eligible capital costs” to mean all expenses incurred by a qualifying business in connection with the acquisition, construction, installation, and equipping of a qualifying project during the period from the beginning of construction of the project to the commencement of operations, including specified types of costs.

achieving the log reduction targets based on source water characterization that is sufficient for a pathogen risk of infection which meets the national drinking water criteria of less than 1×10^{-4} annually.

- Prescribe the means for using appropriate treatment technology to address emerging constituents in potable reuse projects. The advanced treatment technology must be technically and economically feasible and must provide for flexibility in the specific treatment processes employed to recognize different project scenarios, emerging constituent concentrations, desired finished water quality, and the treatment capability of the facility. The advanced treatment technology may also be used for pathogen removal or reduction.
 - The rules must require appropriate monitoring to evaluate advanced treatment technology treatment performance, including the monitoring of surrogate parameters and controls, which monitoring must occur either before or after the advanced treatment technologies treatment process, or both, as appropriate.
 - For direct potable reuse projects, the rules must require reclaimed water to be included in the source water characterization for a drinking water treatment facility and, if that source water characterization indicates the presence of emerging constituents at levels of public health interest, must specify how appropriate treatment technology will be used to address those emerging constituents.
 - For indirect potable reuse projects, the department shall amend the existing monitoring requirements contained within part V of chapter 62-610, Florida Administrative Code, to require monitoring for one or more representative emerging constituents. The utility responsible for the indirect potable reuse project shall develop an emerging constituent monitoring protocol consisting of the selection of one or more representative emerging constituents for monitoring and the identification of action levels associated with such emerging constituents. The monitoring protocol must provide that, if elevated levels of the representative emerging constituent are detected, the utility must report the elevated detection to the department and investigate the source and cause of such elevated emerging constituent. The utility shall submit the monitoring protocol to the department for review and approval and shall implement the monitoring protocol as approved by the department. If the monitoring protocol detects an elevated emerging constituent, and if the utility's investigation indicates that the use of the reclaimed water is the cause of such elevated emerging constituent, the utility must develop a plan to address or remedy that cause. The utility's monitoring results, investigation of any detected elevated emerging constituent levels, determination of cause, and any plan developed to address or remedy the cause must be submitted to the department for review and approval.
 - Specify industrial pretreatment requirements for potable reuse projects. These industrial pretreatment requirements must match the industrial pretreatment requirements contained in chapter 62-625, Florida Administrative Code, as of the effective date of this act. If necessary, the department also must require the utility operating a potable reuse project to implement a source control program, and the utility shall identify the sources that need to be addressed.
 - Provide off-spec reclaimed water requirements for potable reuse projects which include the immediate disposal, temporary storage, alternative nonpotable reuse, or retreatment or disposal of off-spec reclaimed water based on operating protocols established by the public water supplier and approved by the department.

- Revise existing rules to specify the point of compliance with drinking water standards for potable reuse projects as the point where the finished water is finally discharged from the drinking water treatment facility to the water distribution system.
- Ensure that, as rules for potable reuse projects are implemented, chapter 62-610.850, Florida Administrative Code, is applicable.
- Revise the definition of the term “indirect potable reuse” provided in chapter 62-610, Florida Administrative Code, to match the definition created in the bill.

The department must convene and lead one or more technical advisory committees to coordinate the required rulemaking and review of rules. The technical advisory committees, which must assist in the development of such rules, must be composed of knowledgeable representatives of a broad group of interested stakeholders, including, but not limited to, representatives from the water management districts, the wastewater utility industry, the water utility industry, the environmental community, the business community, the public health community, and the agricultural community, and consumers.

Graywater Incentives

Section 3 creates s. 403.892, F.S., to require each county, municipality, and special district to do all of the following:

- Authorize the use of residential graywater technologies in their respective jurisdictions which comply with the Florida Building Code; and
- Provide incentives to developers to fully offset the costs of their beneficial reuse of water contribution through graywater technology, which may include, but are not limited to:
 - Allowing the developer density or intensity bonus incentives or more floor space than allowed under the current or proposed future land use designation or zoning;
 - Reducing or waiving fees, such as impact fees or water and sewer charges; or
 - Granting other incentives.
 - If the local government has already applied one of these incentives to a development, the local government must provide the developer with an additional incentive.

The bill also defines the term “developer.”

Rules for Injection of Reclaimed Water into Groundwater

Section 5 provides that the rules that apply when reclaimed water is injected into a receiving groundwater having 1,000 to 3,000 mg/L total dissolved solids are applicable to reclaimed water aquifer storage and recovery wells injecting into a receiving groundwater of less than 1,000 mg/L total dissolved solids if the applicant demonstrates that there are no public supply wells within 3,500 feet of the aquifer storage and recovery wells and that it has implemented institutional controls to prevent the future construction of public supply wells within 3,500 feet of the aquifer storage and recovery wells.

Declaration of Important State Interest

Section 7 states that the Legislature determines and declares that this act fulfills an important state interest.

Effective Date / Direction to Division of Law Revision

The bill takes effect upon becoming a law, and the Division of Law Revision is directed to replace the phrase “the effective date of this act” wherever it occurs in the act with the date the act becomes a law.

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

Article VII, s. 18(a) of the State Constitution provides, in pertinent part, that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and the law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature.”

The bill prohibits domestic wastewater treatment facilities may not dispose of effluent, reclaimed water, or reuse water by surface water discharge, with certain exceptions. It is likely that some of the affected domestic wastewater treatment facilities will be owned and operated by municipal utilities, which will bear the costs of compliance with the prohibition.

Section 7 provides that the Legislature determines and declares that this act fulfills an important state interest. If the Legislature does not authorize adequate funding, a two-thirds vote of the membership of each house also may be required for the provisions in the bill to be binding upon local governments.

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 states in Section 1 “the Legislature intends for the department [DEP] to adopt rules for potable reuse which” . . . “implement the recommendations set forth in the Potable Reuse Commission’s 2020 report “Advancing Potable Reuse in Florida: Framework for the Implementation of Potable Reuse in Florida.” (Lines 86-87 and lines 95-98) The bill later requires that the department “adopt rules that authorize potable reuse projects that are consistent with this section.” (Lines 154-156)

This raises questions on the nondelegation doctrine and unlawful delegation of legislative authority. A bill should contain all the requirements and provisions the Legislature intends to comprise the statute, not incorporate by reference requirements or provisions developed by another entity as is done here. The bill's approach arguably is not a sufficient exercise of legislative authority, but a delegation of that authority.

The separation of powers doctrine prevents the Legislature from delegating its constitutional duties. *Florida State Bd. of Architecture v. Wasserman*, 377 So.2d 653 (Fla. 1979). Legislative power involves the exercise of policy-related discretion over the content of law. *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719 (Fla. 1937). The Florida Supreme Court, in *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978), provided a framework for measuring the constitutionality of legislative power delegations. The court adopted a formal interpretation of the delegation of powers doctrine. It acknowledged that "where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the doctrine." *Id.* at 921. However, the court noted, "[w]hen legislation is so lacking in guidelines that neither the agency nor the courts can determine whether the agency is carrying out the intent of the legislature in its conduct, then, in fact, the agency becomes the lawgiver rather than the administrator of the law." *Id.* at 918-19.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The cost projections in *Evaluation of the Impacts of Eliminating Surface Water Discharges from Domestic Wastewater Facilities in Florida* are that the total statewide cost of compliance with the elimination of surface water discharge will be \$28 billion. The report maintains that these costs will be passed on to the ratepayers of the DWWTFs affected by the discharge elimination requirement.

These cost figures have not been evaluated by other sources.

Neither the Department of Environmental Protection nor the Water Management Districts have supplied cost projections.

C. Government Sector Impact:

It is likely that some of the costs of implementation of the bill will be borne by municipal utilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The engineering report, *Evaluation of the Impacts of Eliminating Surface Water Discharges from Domestic Wastewater Facilities in Florida*, points out that it will take a significant amount of time to comply with the elimination of surface water discharge provisions in Section 2. The report concludes that the earliest time a potable water reuse project could be completed is September 2026, and the latest June 2028. Part of the issue is that surface water discharge elimination project activities cannot be begun until all rulemaking activities on potable reuse are completed.

VIII. Statutes Affected:

This bill substantially amends section 403.064 of the Florida Statutes.

This bill creates sections 403.8531 and 403.892 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 Innovation, Industry, and Technology on February 3, 2020:

The committee substitute:

- Creates additional exemptions from the prohibition against surface water discharge for wastewater treatment facilities with reuse systems that provide a minimum of 90 ninety percent of a facility's annual average flow and for treatment facilities located in municipalities that have less than \$10 million in total revenue;
- Changes the date by which DEP must submit the required rules to the Legislature from December 12, 2022 to December 12, 2021, and changes the Legislature's treatment of these rules from "ratification" to "approval and incorporation into chapter 403 by the Legislature;"
- Creates graywater incentives; and
- Makes a finding of an important state interest.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/04/2020	.	
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The Committee on Innovation, Industry, and Technology
(Albritton) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (17) is added to section 403.064,
Florida Statutes, to read:

403.064 Reuse of reclaimed water.—

(17) Notwithstanding any other provisions in this section
to the contrary, beginning January 1, 2026, domestic wastewater
treatment facilities may not dispose of effluent, reclaimed



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water, or reuse water by surface water discharge, except that
this prohibition does not apply to indirect potable reuse
projects; domestic wastewater treatment facility discharges
during wet weather which occur in accordance with the applicable
department permit; discharges into a stormwater management
system which are subsequently withdrawn by a user for irrigation
purposes; domestic wastewater treatment facilities located in
fiscally constrained counties as defined in s. 218.67(1);
projects where reclaimed water is recovered from an aquifer
recharge system and subsequently discharged into a surface water
for potable reuse; wetlands creation, restoration, and
enhancement projects; minimum flows and levels recovery or
prevention strategy plan projects; domestic wastewater treatment
facilities with reuse systems that provide a minimum of 90
percent of a facility's annual average flow, as determined by
the department using monitoring data for the prior 5 consecutive
years, for reuse purposes authorized by the department; domestic
wastewater treatment facilities located in municipalities that
have less than \$5 million in total revenue, as determined by the
most recent annual financial report submitted to the Department
of Financial Services in accordance with s. 218.32; or domestic
wastewater treatment facilities located in municipalities that
are entirely within a rural area of opportunity designated under
s. 288.0656.

Section 2. Section 403.8531, Florida Statutes, is created
to read:

403.8531 Potable reuse.—

(1) Recognizing that sufficient water supply is imperative
to the future of this state and that potable reuse is one source



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of water which may assist in meeting future demands, the Legislature intends for the department to adopt rules for potable reuse which:

(a) Protect the public health and environment by ensuring that the potable reuse rules meet federal and state drinking water and water quality standards, including, but not limited to, the Clean Water Act, the Safe Drinking Water Act, and water quality standards pursuant to chapter 403, and, when possible, implement such rules through existing regulatory programs.

(b) Support reclaimed water being used for potable reuse purposes.

(c) Implement the recommendations set forth in the Potable Reuse Commission's 2020 report "Advancing Potable Reuse in Florida: Framework for the Implementation of Potable Reuse in Florida."

(d) Require that the point of compliance with drinking water standards for potable reuse projects is the final discharge point for finished water from the water treatment facility.

(e) Protect the aquifer and Florida's springs and surface waters by ensuring that potable reuse projects do not cause or contribute to violations of water quality standards in surface waters, including groundwater discharges that flow by interflow and affect water quality in surface waters, and that potable reuse projects shall be designed and operated to ensure compliance with groundwater quality standards.

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

(a) "Advanced treated reclaimed water" means the water produced from an advanced water treatment process for potable



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reuse applications.

(b) "Advanced treatment technology" means the treatment technology selected by a utility to address emerging constituents and pathogens in reclaimed water as part of a potable reuse project.

(c) "Direct potable reuse" means the introduction of advanced treated reclaimed water into a raw water supply immediately upstream from a drinking water treatment facility or directly into a potable water supply distribution system.

(d) "Emerging constituents" means pharmaceuticals, personal care products, and other chemicals not regulated as part of drinking water quality standards.

(e) "Indirect potable reuse" means the planned delivery or discharge of reclaimed water to groundwater or surface waters for the development of, or to supplement, the potable water supply.

(f) "Off-spec reclaimed water" means reclaimed water that does not meet the standards for potable reuse.

(g) "Potable reuse" means the augmentation of a drinking water supply with advanced treated reclaimed water from a domestic wastewater treatment facility, and consists of direct potable reuse and indirect potable reuse.

(h) "Reclaimed water" means water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.

(3) Reclaimed water is deemed a water source for public water supply systems.

(4) Existing water quality protections that prohibit discharges from causing or contributing to violations of water



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quality standards in groundwater and surface waters apply to
potable reuse projects. In addition, when reclaimed water is
released or discharged into groundwater or surface water for
potable reuse purposes, consideration of emerging constituents
may be required due to existing regulatory requirements, such as
antidegradation and discharge standards, as well as impacts to
other users of such groundwater or surface water.

(5) Potable reuse is an alternative water supply as defined
in s. 373.019, and potable reuse projects are eligible for
alternative water supply funding. The use of potable reuse water
may not be excluded from regional water supply planning under s.
373.709.

(6) The department shall:

(a) Adopt rules that authorize potable reuse projects that
are consistent with this section.

(b) Review existing rules governing reclaimed water and
potable reuse to identify obsolete and inconsistent requirements
and adopt rules that revise existing potable reuse rules to
eliminate such inconsistencies, while maintaining existing
public health and environmental protections.

(c) Review aquifer recharge rules and, if revisions are
necessary to ensure continued compliance with existing public
health and environmental protection rules when reclaimed water
is used for aquifer recharge, adopt such rules.

(d) Initiate rulemaking by December 31, 2020, and submit
the adopted rules to the President of the Senate and the Speaker
of the House of Representatives by December 12, 2021, for
ratification. Such rules are effective only upon ratification by
the Legislature.



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(7) The department and the water management districts shall develop and execute a memorandum of agreement providing for the procedural requirements of a coordinated review of all permits associated with the construction and operation of an indirect potable reuse project. The memorandum of agreement must provide that the coordinated review will occur only if requested by a permittee. The purpose of the coordinated review is to share information, to avoid the redundancy of information requested from the permittee, and to ensure consistency in the permit for the protection of the public health and the environment. The department and the water management districts shall develop and execute the memorandum of agreement by December 31, 2022.

(8) To encourage investment in the development of potable reuse projects by private entities, a potable reuse project developed as a qualifying project pursuant to s. 255.065 is:

(a) Beginning January 1, 2025, eligible for expedited permitting under s. 403.973.

(b) Granted an annual credit against the tax imposed by chapter 220 in an amount equal to 5 percent of the eligible capital costs generated by a qualifying project for a period not to exceed 20 years after the date that project operations begin. The tax credit applies only to the corporate income tax liability or the premium tax liability generated by or arising out of the qualifying project, and the sum of all tax credits provided pursuant to this section may not exceed 100 percent of the eligible capital costs as defined in s. 220.191(1)(c). Any credit granted pursuant to this paragraph may not be carried forward or backward.

(c) Granted a 3-year extension of any deadlines imposed



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under s. 403.064(17).

(d) Consistent with s. 373.707, eligible for priority funding in the same manner as other alternative water supply projects from the Drinking Water State Revolving Fund, under the Water Protection and Sustainability Program, and for water management district cooperative funding.

(9) This section is not intended and may not be construed to supersede s. 373.250(3).

Section 3. Section 403.892, Florida Statutes, is created to read:

403.892 Incentives for the use of graywater technologies.-

(1) As used in this section, the term "graywater" has the same meaning as in s. 381.0065(2)(e).

(2) To promote the beneficial reuse of water in this state, a county, municipality, or special district shall do all of the following:

(a) Authorize the use of residential graywater technologies in their respective jurisdictions which comply with the Florida Building Code; and

(b) Provide incentives to developers to fully offset the costs of their beneficial reuse of water contribution through graywater technology. Such incentives may include, but are not limited to:

1. Allowing the developer density or intensity bonus incentives or more floor space than allowed under the current or proposed future land use designation or zoning;

2. Reducing or waiving fees, such as impact fees or water and sewer charges; or

3. Granting other incentives.



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(3) If the local government has already applied one of the incentives identified in paragraph (2)(b) to the development, the local government must provide the developer with an additional incentive identified in paragraph (2)(b) to meet the requirements of this section.

Section 4. (1) In implementing s. 403.8531, Florida Statutes, as created by this act, the Department of Environmental Protection, in coordination with one or more technical working groups pursuant to subsection (2), shall adopt rules for the implementation of potable reuse projects. The department shall:

(a) Revise the appropriate chapters in the Florida Administrative Code, including chapter 62-610, Florida Administrative Code, to ensure that all rules implementing potable reuse are in the Florida Administrative Code division 62 governing drinking water regulation.

(b) Revise existing drinking water rules to include reclaimed water as a source water for the public water supply and require such treatment of the water as is necessary to meet existing drinking water rules, including rules for pathogens. The potable reuse rules must include the implementation of a log reduction credit system using advanced treatment technology to meet pathogen treatment requirements, and must require a public water supplier to provide an approach to meet the required pathogen treatment requirements in an engineering report as part of its public water supply permit application for authorization of potable reuse. To ensure protection of the public health, as part of the public water supply permit application to authorize potable reuse, a public water supplier shall provide a



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department-specified level of treatment or propose an approach to achieving the log reduction targets based on source water characterization that is sufficient for a pathogen risk of infection which meets the national drinking water criteria of less than 1×10^{-4} annually.

(c) Prescribe the means for using appropriate treatment technology to address emerging constituents in potable reuse projects. The advanced treatment technology must be technically and economically feasible and must provide for flexibility in the specific treatment processes employed to recognize different project scenarios, emerging constituent concentrations, desired finished water quality, and the treatment capability of the facility. The advanced treatment technology may also be used for pathogen removal or reduction.

1. The rules must require appropriate monitoring to evaluate advanced treatment technology treatment performance, including the monitoring of surrogate parameters and controls, which monitoring must occur either before or after the advanced treatment technologies treatment process, or both, as appropriate.

2. For direct potable reuse projects, the rules must require reclaimed water to be included in the source water characterization for a drinking water treatment facility and, if that source water characterization indicates the presence of emerging constituents at levels of public health interest, must specify how appropriate treatment technology will be used to address those emerging constituents.

3. For indirect potable reuse projects, the department shall amend the existing monitoring requirements contained



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within part V of chapter 62-610, Florida Administrative Code, to require monitoring for one or more representative emerging constituents. The utility responsible for the indirect potable reuse project shall develop an emerging constituent monitoring protocol consisting of the selection of one or more representative emerging constituents for monitoring and the identification of action levels associated with such emerging constituents. The monitoring protocol must provide that, if elevated levels of the representative emerging constituent are detected, the utility must report the elevated detection to the department and investigate the source and cause of such elevated emerging constituent. The utility shall submit the monitoring protocol to the department for review and approval and shall implement the monitoring protocol as approved by the department. If the monitoring protocol detects an elevated emerging constituent, and if the utility's investigation indicates that the use of the reclaimed water is the cause of such elevated emerging constituent, the utility must develop a plan to address or remedy that cause. The utility's monitoring results, investigation of any detected elevated emerging constituent levels, determination of cause, and any plan developed to address or remedy the cause must be submitted to the department for review and approval.

(d) Specify industrial pretreatment requirements for potable reuse projects. These industrial pretreatment requirements must match the industrial pretreatment requirements contained in chapter 62-625, Florida Administrative Code, as of the effective date of this act. If necessary, the department also must require the utility operating a potable reuse project



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to implement a source control program, and the utility shall identify the sources that need to be addressed.

(e) Provide off-spec reclaimed water requirements for potable reuse projects which include the immediate disposal, temporary storage, alternative nonpotable reuse, or retreatment or disposal of off-spec reclaimed water based on operating protocols established by the public water supplier and approved by the department.

(f) Revise existing rules to specify the point of compliance with drinking water standards for potable reuse projects as the point where the finished water is finally discharged from the drinking water treatment facility to the water distribution system.

(g) Ensure that, as rules for potable reuse projects are implemented, chapter 62-610.850, Florida Administrative Code, is applicable.

(h) Revise the definition of the term "indirect potable reuse" provided in chapter 62-610, Florida Administrative Code, to match the definition provided in s. 403.8531, Florida Statutes.

(2) The department shall convene and lead one or more technical advisory committees to coordinate the rulemaking and review of rules required by s. 403.8531, Florida Statutes. The technical advisory committees, which shall assist in the development of such rules, must be composed of knowledgeable representatives of a broad group of interested stakeholders, including, but not limited to, representatives from the water management districts, the wastewater utility industry, the water utility industry, the environmental community, the business



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community, the public health community, and the agricultural
community, and consumers.

Section 5. To further promote the reuse of reclaimed water
for irrigation purposes, the rules that apply when reclaimed
water is injected into a receiving groundwater having 1,000 to
3,000 mg/L total dissolved solids are applicable to reclaimed
water aquifer storage and recovery wells injecting into a
receiving groundwater of less than 1,000 mg/L total dissolved
solids if the applicant demonstrates that there are no public
supply wells within 3,500 feet of the aquifer storage and
recovery wells and that it has implemented institutional
controls to prevent the future construction of public supply
wells within 3,500 feet of the aquifer storage and recovery
wells.

Section 6. The Division of Law Revision is directed to
replace the phrase "the effective date of this act" wherever it
occurs in this act with the date the act becomes a law.

Section 7. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to reclaimed water; amending s.
403.064, F.S.; prohibiting domestic wastewater
treatment facilities from disposing of effluent,
reclaimed water, or reuse water by surface water
discharge beginning on a specified date; providing



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exceptions; creating s. 403.8531, F.S.; providing legislative intent; defining terms; providing that reclaimed water is a water source for public water supply systems; providing specified groundwater and surface water quality protections for potable reuse projects; providing that potable reuse is an alternative water supply and that projects relating to such reuse are eligible for alternative water supply funding; requiring the Department of Environmental Protection to adopt specified rules; requiring the department to review reclaimed water and potable reuse rules and revise them as necessary; requiring the department to review aquifer recharge rules and revise them as necessary; requiring the department to initiate rulemaking and to submit such rules to the Legislature for ratification by specified dates; requiring legislative ratification of the rules; requiring the department and the water management districts to develop and execute, by a specified date, a memorandum of agreement for the coordinated review of specified permits; providing that potable reuse projects by private entities are eligible for certain expedited permitting and tax credits; providing construction; creating s. 403.892, F.S.; defining the term "graywater"; requiring counties, municipalities, and special districts to authorize graywater technologies under certain circumstances and to provide incentives for the implementation of such technologies; requiring the department to adopt rules



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for the implementation of potable reuse projects which meet certain requirements; requiring the department to convene at least one technical advisory committee for specified purposes; providing for the composition of the advisory committee; providing for the applicability of specified reclaimed water aquifer storage and recovery system requirements; providing a directive to the Division of Law Revision; providing an effective date.

WHEREAS, sustainable water supplies are important to this state's economy, environment, and quality of life, and

WHEREAS, in 2019, Floridians used nearly 6.5 billion gallons of water per day and are projected to need an additional 1.1 billion gallons of water per day by 2035, and

WHEREAS, more than 75 percent of this state's water supply comes from groundwater, and the availability of additional fresh groundwater has become limited in many areas of this state, and

WHEREAS, this state's continued growth and economic success depend on the implementation of safe and sustainable alternative water supplies, and

WHEREAS, the use of reclaimed water is an important component of both wastewater management and water resource management in this state, and

WHEREAS, in 2018, approximately 48 percent of the total domestic wastewater flow in this state, 797 million gallons per day, was reused for beneficial purposes, and

WHEREAS, the reuse of water is a critical component of meeting this state's existing and future water supply needs, and



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WHEREAS, potable reuse is the augmentation of a drinking water supply with reclaimed water from a municipal wastewater source and is an alternative water supply source that can be harnessed to help meet the additional water needs of this state while protecting both the public health and the environment, and

WHEREAS, the Legislature finds that through the use of advanced treatment technology, potable reuse is a safe and sustainable alternative water supply source that can be used to support a diverse, resilient, and sustainable water supply portfolio, and is considered to be in the public interest, and

WHEREAS, potable reuse projects, when implemented in a properly planned way using current environmental and engineered treatment processes, have reduced, and will continue to reduce, this state's dependence on increased withdrawals from groundwater and surface water sources, pollutant loadings to waters of the state, and the nonbeneficial use of reclaimed water, thus improving water quality and benefitting the environment and local economies that depend on this state's natural resources, NOW, THEREFORE,



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2020	.	
	.	
	.	
	.	

The Committee on Innovation, Industry, and Technology
(Albritton) recommended the following:

**Senate Substitute for Amendment (451010) (with title
amendment)**

Delete everything after the enacting clause
and insert:

Section 1. Subsection (17) is added to section 403.064,
Florida Statutes, to read:

403.064 Reuse of reclaimed water.—

(17) Notwithstanding any other provisions in this section
to the contrary, beginning January 1, 2026, domestic wastewater



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treatment facilities may not dispose of effluent, reclaimed water, or reuse water by surface water discharge, except that this prohibition does not apply to indirect potable reuse projects; domestic wastewater treatment facility discharges during wet weather which occur in accordance with the applicable department permit; discharges into a stormwater management system which are subsequently withdrawn by a user for irrigation purposes; domestic wastewater treatment facilities located in fiscally constrained counties as defined in s. 218.67(1); projects where reclaimed water is recovered from an aquifer recharge system and subsequently discharged into a surface water for potable reuse; wetlands creation, restoration, and enhancement projects; minimum flows and levels recovery or prevention strategy plan projects; domestic wastewater treatment facilities with reuse systems that provide a minimum of 90 percent of a facility's annual average flow, as determined by the department using monitoring data for the prior 5 consecutive years, for reuse purposes authorized by the department; domestic wastewater treatment facilities located in municipalities that have less than \$10 million in total revenue, as determined by the most recent annual financial report submitted to the Department of Financial Services in accordance with s. 218.32; or domestic wastewater treatment facilities located in municipalities that are entirely within a rural area of opportunity designated under s. 288.0656.

Section 2. Section 403.8531, Florida Statutes, is created to read:

403.8531 Potable reuse.—

(1) Recognizing that sufficient water supply is imperative



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to the future of this state and that potable reuse is one source of water which may assist in meeting future demands, the Legislature intends for the department to adopt rules for potable reuse which:

(a) Protect the public health and environment by ensuring that the potable reuse rules meet federal and state drinking water and water quality standards, including, but not limited to, the Clean Water Act, the Safe Drinking Water Act, and water quality standards pursuant to chapter 403, and, when possible, implement such rules through existing regulatory programs.

(b) Support reclaimed water being used for potable reuse purposes.

(c) Implement the recommendations set forth in the Potable Reuse Commission's 2020 report "Advancing Potable Reuse in Florida: Framework for the Implementation of Potable Reuse in Florida."

(d) Require that the point of compliance with drinking water standards for potable reuse projects is the final discharge point for finished water from the water treatment facility.

(e) Protect the aquifer and Florida's springs and surface waters by ensuring that potable reuse projects do not cause or contribute to violations of water quality standards in surface waters, including groundwater discharges that flow by interflow and affect water quality in surface waters, and that potable reuse projects shall be designed and operated to ensure compliance with groundwater quality standards.

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

(a) "Advanced treated reclaimed water" means the water



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69 produced from an advanced water treatment process for potable
70 reuse applications.

71 (b) "Advanced treatment technology" means the treatment
72 technology selected by a utility to address emerging
73 constituents and pathogens in reclaimed water as part of a
74 potable reuse project.

75 (c) "Direct potable reuse" means the introduction of
76 advanced treated reclaimed water into a raw water supply
77 immediately upstream from a drinking water treatment facility or
78 directly into a potable water supply distribution system.

79 (d) "Emerging constituents" means pharmaceuticals, personal
80 care products, and other chemicals not regulated as part of
81 drinking water quality standards.

82 (e) "Indirect potable reuse" means the planned delivery or
83 discharge of reclaimed water to groundwater or surface waters
84 for the development of, or to supplement, the potable water
85 supply.

86 (f) "Off-spec reclaimed water" means reclaimed water that
87 does not meet the standards for potable reuse.

88 (g) "Potable reuse" means the augmentation of a drinking
89 water supply with advanced treated reclaimed water from a
90 domestic wastewater treatment facility, and consists of direct
91 potable reuse and indirect potable reuse.

92 (h) "Reclaimed water" means water that has received at
93 least secondary treatment and basic disinfection and is reused
94 after flowing out of a domestic wastewater treatment facility.

95 (3) To comply with drinking water quality standards,
96 reclaimed water is deemed a water source for public water supply
97 systems.



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(4) Existing water quality protections that prohibit discharges from causing or contributing to violations of water quality standards in groundwater and surface waters apply to potable reuse projects. In addition, when reclaimed water is released or discharged into groundwater or surface water for potable reuse purposes, there shall be a consideration of emerging constituents and impacts to other users of such groundwater or surface water.

(5) Potable reuse is an alternative water supply as defined in s. 373.019, and potable reuse projects are eligible for alternative water supply funding. The use of potable reuse water may not be excluded from regional water supply planning under s. 373.709.

(6) The department shall:

(a) Adopt rules that authorize potable reuse projects that are consistent with this section.

(b) Review existing rules governing reclaimed water and potable reuse to identify obsolete and inconsistent requirements and adopt rules that revise existing potable reuse rules to eliminate such inconsistencies, while maintaining existing public health and environmental protections.

(c) Review aquifer recharge rules and, if revisions are necessary to ensure continued compliance with existing public health and environmental protection rules when reclaimed water is used for aquifer recharge, adopt such rules.

(d) Initiate rulemaking by December 31, 2020, and submit the adopted rules to the President of the Senate and the Speaker of the House of Representatives by December 12, 2021, for approval and incorporation into chapter 403 by the Legislature.



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Such rules may not be published as administrative rules by the department.

(7) The department and the water management districts shall develop and execute a memorandum of agreement providing for the procedural requirements of a coordinated review of all permits associated with the construction and operation of an indirect potable reuse project. The memorandum of agreement must provide that the coordinated review will occur only if requested by a permittee. The purpose of the coordinated review is to share information, to avoid the redundancy of information requested from the permittee, and to ensure consistency in the permit for the protection of the public health and the environment. The department and the water management districts shall develop and execute the memorandum of agreement by December 31, 2022.

(8) To encourage investment in the development of potable reuse projects by private entities, a potable reuse project developed as a qualifying project pursuant to s. 255.065 is:

(a) Beginning January 1, 2025, eligible for expedited permitting under s. 403.973.

(b) Granted an annual credit against the tax imposed by chapter 220 in an amount equal to 5 percent of the eligible capital costs generated by a qualifying project for a period not to exceed 20 years after the date that project operations begin. The tax credit applies only to the corporate income tax liability or the premium tax liability generated by or arising out of the qualifying project, and the sum of all tax credits provided pursuant to this section may not exceed 100 percent of the eligible capital costs as defined in s. 220.191(1)(c). Any credit granted pursuant to this paragraph may not be carried



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forward or backward.

(c) Granted a 3-year extension of any deadlines imposed under s. 403.064(17).

(d) Consistent with s. 373.707, eligible for priority funding in the same manner as other alternative water supply projects from the Drinking Water State Revolving Fund, under the Water Protection and Sustainability Program, and for water management district cooperative funding.

(9) This section is not intended and may not be construed to supersede s. 373.250(3).

Section 3. Section 403.892, Florida Statutes, is created to read:

403.892 Incentives for the use of graywater technologies.—

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

(a) "Developer" has the same meaning as in s. 380.031.

(b) "Graywater" has the same meaning as in s. 381.0065(2) (e).

(2) To promote the beneficial reuse of water in this state, a county, municipality, or special district shall do all of the following:

(a) Authorize the use of residential graywater technologies in their respective jurisdictions which comply with the Florida Building Code; and

(b) Provide incentives to developers to fully offset the costs of their beneficial reuse of water contribution through graywater technology. Such incentives may include, but are not limited to:

1. Allowing the developer density or intensity bonus incentives or more floor space than allowed under the current or



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proposed future land use designation or zoning;

2. Reducing or waiving fees, such as impact fees or water and sewer charges; or

3. Granting other incentives.

(3) If the local government has already applied one of the incentives identified in paragraph (2)(b) to the development, the local government must provide the developer with an additional incentive identified in paragraph (2)(b) to meet the requirements of this section.

Section 4. (1) In implementing s. 403.8531, Florida Statutes, as created by this act, the Department of Environmental Protection, in coordination with one or more technical working groups pursuant to subsection (2), shall adopt rules for the implementation of potable reuse projects. The department shall:

(a) Revise the appropriate chapters in the Florida Administrative Code, including chapter 62-610, Florida Administrative Code, to ensure that all rules implementing potable reuse are in the Florida Administrative Code division 62 governing drinking water regulation.

(b) Revise existing drinking water rules to include reclaimed water as a source water for the public water supply and require such treatment of the water as is necessary to meet existing drinking water rules, including rules for pathogens. The potable reuse rules must include the implementation of a log reduction credit system using advanced treatment technology to meet pathogen treatment requirements, and must require a public water supplier to provide an approach to meet the required pathogen treatment requirements in an engineering report as part



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of its public water supply permit application for authorization of potable reuse. To ensure protection of the public health, as part of the public water supply permit application to authorize potable reuse, a public water supplier shall provide a department-specified level of treatment or propose an approach to achieving the log reduction targets based on source water characterization that is sufficient for a pathogen risk of infection which meets the national drinking water criteria of less than 1 x 10⁻⁴ annually.

(c) Prescribe the means for using appropriate treatment technology to address emerging constituents in potable reuse projects. The advanced treatment technology must be technically and economically feasible and must provide for flexibility in the specific treatment processes employed to recognize different project scenarios, emerging constituent concentrations, desired finished water quality, and the treatment capability of the facility. The advanced treatment technology may also be used for pathogen removal or reduction.

1. The rules must require appropriate monitoring to evaluate advanced treatment technology treatment performance, including the monitoring of surrogate parameters and controls, which monitoring must occur either before or after the advanced treatment technologies treatment process, or both, as appropriate.

2. For direct potable reuse projects, the rules must require reclaimed water to be included in the source water characterization for a drinking water treatment facility and, if that source water characterization indicates the presence of emerging constituents at levels of public health interest, must



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specify how appropriate treatment technology will be used to
address those emerging constituents.

3. For indirect potable reuse projects, the department
shall amend the existing monitoring requirements contained
within part V of chapter 62-610, Florida Administrative Code, to
require monitoring for one or more representative emerging
constituents. The utility responsible for the indirect potable
reuse project shall develop an emerging constituent monitoring
protocol consisting of the selection of one or more
representative emerging constituents for monitoring and the
identification of action levels associated with such emerging
constituents. The monitoring protocol must provide that, if
elevated levels of the representative emerging constituent are
detected, the utility must report the elevated detection to the
department and investigate the source and cause of such elevated
emerging constituent. The utility shall submit the monitoring
protocol to the department for review and approval and shall
implement the monitoring protocol as approved by the department.
If the monitoring protocol detects an elevated emerging
constituent, and if the utility's investigation indicates that
the use of the reclaimed water is the cause of such elevated
emerging constituent, the utility must develop a plan to address
or remedy that cause. The utility's monitoring results,
investigation of any detected elevated emerging constituent
levels, determination of cause, and any plan developed to
address or remedy the cause must be submitted to the department
for review and approval.

(d) Specify industrial pretreatment requirements for
potable reuse projects. These industrial pretreatment



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requirements must match the industrial pretreatment requirements contained in chapter 62-625, Florida Administrative Code, as of the effective date of this act. If necessary, the department also must require the utility operating a potable reuse project to implement a source control program, and the utility shall identify the sources that need to be addressed.

(e) Provide off-spec reclaimed water requirements for potable reuse projects which include the immediate disposal, temporary storage, alternative nonpotable reuse, or retreatment or disposal of off-spec reclaimed water based on operating protocols established by the public water supplier and approved by the department.

(f) Revise existing rules to specify the point of compliance with drinking water standards for potable reuse projects as the point where the finished water is finally discharged from the drinking water treatment facility to the water distribution system.

(g) Ensure that, as rules for potable reuse projects are implemented, chapter 62-610.850, Florida Administrative Code, is applicable.

(h) Revise the definition of the term "indirect potable reuse" provided in chapter 62-610, Florida Administrative Code, to match the definition provided in s. 403.8531, Florida Statutes.

(2) The department shall convene and lead one or more technical advisory committees to coordinate the rulemaking and review of rules required by s. 403.8531, Florida Statutes. The technical advisory committees, which shall assist in the development of such rules, must be composed of knowledgeable



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representatives of a broad group of interested stakeholders,
including, but not limited to, representatives from the water
management districts, the wastewater utility industry, the water
utility industry, the environmental community, the business
community, the public health community, and the agricultural
community, and consumers.

Section 5. To further promote the reuse of reclaimed water
for irrigation purposes, the rules that apply when reclaimed
water is injected into a receiving groundwater having 1,000 to
3,000 mg/L total dissolved solids are applicable to reclaimed
water aquifer storage and recovery wells injecting into a
receiving groundwater of less than 1,000 mg/L total dissolved
solids if the applicant demonstrates that there are no public
supply wells within 3,500 feet of the aquifer storage and
recovery wells and that it has implemented institutional
controls to prevent the future construction of public supply
wells within 3,500 feet of the aquifer storage and recovery
wells.

Section 6. The Division of Law Revision is directed to
replace the phrase "the effective date of this act" wherever it
occurs in this act with the date the act becomes a law.

Section 7. The Legislature determines and declares that
this act fulfills an important state interest.

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:



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A bill to be entitled
An act relating to reclaimed water; amending s.
403.064, F.S.; prohibiting domestic wastewater
treatment facilities from disposing of effluent,
reclaimed water, or reuse water by surface water
discharge beginning on a specified date; providing
exceptions; creating s. 403.8531, F.S.; providing
legislative intent; defining terms; providing that
reclaimed water is a water source for public water
supply systems; providing specified groundwater and
surface water quality protections for potable reuse
projects; providing that potable reuse is an
alternative water supply and that projects relating to
such reuse are eligible for alternative water supply
funding; requiring the Department of Environmental
Protection to adopt specified rules; requiring the
department to review reclaimed water and potable reuse
rules and revise them as necessary; requiring the
department to review aquifer recharge rules and revise
them as necessary; requiring the department to
initiate rulemaking and to submit such rules to the
Legislature for approval by specified dates; requiring
the department and the water management districts to
develop and execute, by a specified date, a memorandum
of agreement for the coordinated review of specified
permits; providing that potable reuse projects are
eligible for certain expedited permitting and tax
credits; providing construction; creating s. 403.892,
F.S.; defining terms; requiring counties,



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municipalities, and special districts to authorize graywater technologies under certain circumstances and to provide incentives for the implementation of such technologies; requiring the department to adopt rules for the implementation of potable reuse projects which meet certain requirements; requiring the department to convene at least one technical advisory committee for specified purposes; providing for the composition of the technical advisory committee; providing for the applicability of specified reclaimed water aquifer storage and recovery well requirements; providing a directive to the Division of Law Revision; providing a declaration of important state interest; providing an effective date.

WHEREAS, sustainable water supplies are important to this state's economy, environment, and quality of life, and

WHEREAS, in 2019, Floridians used nearly 6.5 billion gallons of water per day and are projected to need an additional 1.1 billion gallons of water per day by 2035, and

WHEREAS, more than 75 percent of this state's water supply comes from groundwater, and the availability of additional fresh groundwater has become limited in many areas of this state, and

WHEREAS, this state's continued growth and economic success depend on the implementation of safe and sustainable alternative water supplies, and

WHEREAS, the use of reclaimed water is an important component of both wastewater management and water resource management in this state, and



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WHEREAS, in 2018, approximately 48 percent of the total domestic wastewater flow in this state, 797 million gallons per day, was reused for beneficial purposes, and

WHEREAS, the reuse of water is a critical component of meeting this state's existing and future water supply needs, and

WHEREAS, potable reuse is the augmentation of a drinking water supply with reclaimed water from a municipal wastewater source and is an alternative water supply source that can be harnessed to help meet the additional water needs of this state while protecting both the public health and the environment, and

WHEREAS, the Legislature finds that through the use of advanced treatment technology, potable reuse is a safe and sustainable alternative water supply source that can be used to support a diverse, resilient, and sustainable water supply portfolio, and is considered to be in the public interest, and

WHEREAS, potable reuse projects, when implemented in a properly planned way using current environmental and engineered treatment processes, have reduced, and will continue to reduce, this state's dependence on increased withdrawals from groundwater and surface water sources, pollutant loadings to waters of the state, and the nonbeneficial use of reclaimed water, thus improving water quality and benefitting the environment and local economies that depend on this state's natural resources, NOW, THEREFORE,



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Innovation, Industry, and Technology

Subject: Committee Agenda Request

Date: January 22, 2020

I respectfully request that **Senate Bill #1656**, relating to Reclaimed Water, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in blue ink, appearing to read "Ben Albritton", is written over a horizontal line.

Senator Ben Albritton
Florida Senate, District 26

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020

Meeting Date

1656

Bill Number (if applicable)

Topic Reclaimed WATER

Amendment Barcode (if applicable)

Name Jim Spratt

Job Title _____

Address PO Box 10011

Street

TEL

City

FL

State

32302

Zip

Phone 850 228 1296

Email Jim@magallstrategiesllc.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020

Meeting Date

1656

Bill Number (if applicable)

Topic Reclaimed water

Amendment Barcode (if applicable)

Name Laura Donaldson

Job Title

Address 109 N. Brush St, Suite 300

Street

Tampa

City

FL

State

33602

Zip

Phone 813-995-0575

Email ldonaldson@mansonholmes.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Wateruse FL

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb. 3 2020

Meeting Date

1656

Bill Number (if applicable)

Topic Potable Reuse

Amendment Barcode (if applicable)

Name DAVID CHILDS

Job Title Legal Counsel

Address 119 S. Monroe St Suite 300

Street

Phone 850 222-7500

Tallahassee

FL

32301

City

State

Zip

Email DAVIDC@HGSLLAW.COM

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FWEA Utility Council

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
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20
Meeting Date

1656
Bill Number (if applicable)

Topic Reclaimed Water

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757
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Tallah FL 32302
City State Zip

Phone 222 9684

Email rohara@flcities.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Fla League of Cities

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20

Meeting Date

1656

Bill Number (if applicable)

Topic WATER ^{use} ~~Rest~~

Amendment Barcode (if applicable)

Name LOUIS Rotundo

Job Title

Address 302 Pinestraw Circle
Street

Phone 407-699-9361

City

State

Zip

Email LCR5002@nol.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing City of Altamonte Springs

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20
Meeting Date

1654
Bill Number (if applicable)

Topic Reclaimed Water B. II

Amendment Barcode (if applicable)

Name Garrett Wallace

Job Title Government Relations Manager

Address 870 Pent Ave

Phone 561-504-6877

Street Tallahassee FL 32301
City State Zip

Email garrett.wallace@tnc.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The Nature Conservancy

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB1656

Bill Number (if applicable)

Meeting Date

Topic RECLAIMED WATER IS A "NOXIOUS" SCAM, ^{STATUTE} 70.001

Amendment Barcode (if applicable)

Name DAVID BALLARD GEDDIS JR.

Job Title

Address 802 GEORGIA AVE

Street

Palm Harbor

City

FL

State

34683

Zip

Phone (727) 483-1330

Email MYABRIDGEPOINT@GMAIL.COM

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing SELF

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)

COMMITTEE:	Innovation, Industry, and Technology
ITEM:	SB 1656
FINAL ACTION:	Favorable with Committee Substitute
MEETING DATE:	Monday, February 3, 2020
TIME:	1:30—3:30 p.m.
PLACE:	110 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

By the Committee on Innovation, Industry, and Technology; and
Senator Albritton

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A bill to be entitled

An act relating to reclaimed water; amending s. 403.064, F.S.; prohibiting domestic wastewater treatment facilities from disposing of effluent, reclaimed water, or reuse water by surface water discharge beginning on a specified date; providing exceptions; creating s. 403.8531, F.S.; providing legislative intent; defining terms; providing that reclaimed water is a water source for public water supply systems; providing specified groundwater and surface water quality protections for potable reuse projects; providing that potable reuse is an alternative water supply and that projects relating to such reuse are eligible for alternative water supply funding; requiring the Department of Environmental Protection to adopt specified rules; requiring the department to review reclaimed water and potable reuse rules and revise them as necessary; requiring the department to review aquifer recharge rules and revise them as necessary; requiring the department to initiate rulemaking and to submit such rules to the Legislature for approval by specified dates; requiring the department and the water management districts to develop and execute, by a specified date, a memorandum of agreement for the coordinated review of specified permits; providing that potable reuse projects are eligible for certain expedited permitting and tax credits; providing construction; creating s. 403.892, F.S.; defining terms; requiring counties,

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30 municipalities, and special districts to authorize
31 graywater technologies under certain circumstances and
32 to provide incentives for the implementation of such
33 technologies; requiring the department to adopt rules
34 for the implementation of potable reuse projects which
35 meet certain requirements; requiring the department to
36 convene at least one technical advisory committee for
37 specified purposes; providing for the composition of
38 the technical advisory committee; providing for the
39 applicability of specified reclaimed water aquifer
40 storage and recovery well requirements; providing a
41 directive to the Division of Law Revision; providing a
42 declaration of important state interest; providing an
43 effective date.

44
45 WHEREAS, sustainable water supplies are important to this
46 state's economy, environment, and quality of life, and

47 WHEREAS, in 2019, Floridians used nearly 6.5 billion
48 gallons of water per day and are projected to need an additional
49 1.1 billion gallons of water per day by 2035, and

50 WHEREAS, more than 75 percent of this state's water supply
51 comes from groundwater, and the availability of additional fresh
52 groundwater has become limited in many areas of this state, and

53 WHEREAS, this state's continued growth and economic success
54 depend on the implementation of safe and sustainable alternative
55 water supplies, and

56 WHEREAS, the use of reclaimed water is an important
57 component of both wastewater management and water resource
58 management in this state, and

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WHEREAS, in 2018, approximately 48 percent of the total domestic wastewater flow in this state, 797 million gallons per day, was reused for beneficial purposes, and

WHEREAS, the reuse of water is a critical component of meeting this state's existing and future water supply needs, and

WHEREAS, potable reuse is the augmentation of a drinking water supply with reclaimed water from a municipal wastewater source and is an alternative water supply source that can be harnessed to help meet the additional water needs of this state while protecting both the public health and the environment, and

WHEREAS, the Legislature finds that through the use of advanced treatment technology, potable reuse is a safe and sustainable alternative water supply source that can be used to support a diverse, resilient, and sustainable water supply portfolio, and is considered to be in the public interest, and

WHEREAS, potable reuse projects, when implemented in a properly planned way using current environmental and engineered treatment processes, have reduced, and will continue to reduce, this state's dependence on increased withdrawals from groundwater and surface water sources, pollutant loadings to waters of the state, and the nonbeneficial use of reclaimed water, thus improving water quality and benefitting the environment and local economies that depend on this state's natural resources, NOW, THEREFORE,

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

Section 1. Subsection (17) is added to section 403.064, Florida Statutes, to read:

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403.064 Reuse of reclaimed water.—

(17) Notwithstanding any other provisions in this section to the contrary, beginning January 1, 2026, domestic wastewater treatment facilities may not dispose of effluent, reclaimed water, or reuse water by surface water discharge, except that this prohibition does not apply to indirect potable reuse projects; domestic wastewater treatment facility discharges during wet weather which occur in accordance with the applicable department permit; discharges into a stormwater management system which are subsequently withdrawn by a user for irrigation purposes; domestic wastewater treatment facilities located in fiscally constrained counties as defined in s. 218.67(1); projects where reclaimed water is recovered from an aquifer recharge system and subsequently discharged into a surface water for potable reuse; wetlands creation, restoration, and enhancement projects; minimum flows and levels recovery or prevention strategy plan projects; domestic wastewater treatment facilities with reuse systems that provide a minimum of 90 percent of a facility's annual average flow, as determined by the department using monitoring data for the prior 5 consecutive years, for reuse purposes authorized by the department; domestic wastewater treatment facilities located in municipalities that have less than \$10 million in total revenue, as determined by the most recent annual financial report submitted to the Department of Financial Services in accordance with s. 218.32; or domestic wastewater treatment facilities located in municipalities that are entirely within a rural area of opportunity designated under s. 288.0656.

Section 2. Section 403.8531, Florida Statutes, is created

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117 to read:

118 403.8531 Potable reuse.—

119 (1) Recognizing that sufficient water supply is imperative
120 to the future of this state and that potable reuse is one source
121 of water which may assist in meeting future demands, the
122 Legislature intends for the department to adopt rules for
123 potable reuse which:

124 (a) Protect the public health and environment by ensuring
125 that the potable reuse rules meet federal and state drinking
126 water and water quality standards, including, but not limited
127 to, the Clean Water Act, the Safe Drinking Water Act, and water
128 quality standards pursuant to chapter 403, and, when possible,
129 implement such rules through existing regulatory programs.

130 (b) Support reclaimed water being used for potable reuse
131 purposes.

132 (c) Implement the recommendations set forth in the Potable
133 Reuse Commission's 2020 report "Advancing Potable Reuse in
134 Florida: Framework for the Implementation of Potable Reuse in
135 Florida."

136 (d) Require that the point of compliance with drinking
137 water standards for potable reuse projects is the final
138 discharge point for finished water from the water treatment
139 facility.

140 (e) Protect the aquifer and Florida's springs and surface
141 waters by ensuring that potable reuse projects do not cause or
142 contribute to violations of water quality standards in surface
143 waters, including groundwater discharges that flow by interflow
144 and affect water quality in surface waters, and that potable
145 reuse projects shall be designed and operated to ensure

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146 compliance with groundwater quality standards.

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

148 (a) "Advanced treated reclaimed water" means the water
149 produced from an advanced water treatment process for potable
150 reuse applications.

151 (b) "Advanced treatment technology" means the treatment
152 technology selected by a utility to address emerging
153 constituents and pathogens in reclaimed water as part of a
154 potable reuse project.

155 (c) "Direct potable reuse" means the introduction of
156 advanced treated reclaimed water into a raw water supply
157 immediately upstream from a drinking water treatment facility or
158 directly into a potable water supply distribution system.

159 (d) "Emerging constituents" means pharmaceuticals, personal
160 care products, and other chemicals not regulated as part of
161 drinking water quality standards.

162 (e) "Indirect potable reuse" means the planned delivery or
163 discharge of reclaimed water to groundwater or surface waters
164 for the development of, or to supplement, the potable water
165 supply.

166 (f) "Off-spec reclaimed water" means reclaimed water that
167 does not meet the standards for potable reuse.

168 (g) "Potable reuse" means the augmentation of a drinking
169 water supply with advanced treated reclaimed water from a
170 domestic wastewater treatment facility, and consists of direct
171 potable reuse and indirect potable reuse.

172 (h) "Reclaimed water" means water that has received at
173 least secondary treatment and basic disinfection and is reused
174 after flowing out of a domestic wastewater treatment facility.

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175 (3) To comply with drinking water quality standards,
176 reclaimed water is deemed a water source for public water supply
177 systems.

178 (4) Existing water quality protections that prohibit
179 discharges from causing or contributing to violations of water
180 quality standards in groundwater and surface waters apply to
181 potable reuse projects. In addition, when reclaimed water is
182 released or discharged into groundwater or surface water for
183 potable reuse purposes, there shall be a consideration of
184 emerging constituents and impacts to other users of such
185 groundwater or surface water.

186 (5) Potable reuse is an alternative water supply as defined
187 in s. 373.019, and potable reuse projects are eligible for
188 alternative water supply funding. The use of potable reuse water
189 may not be excluded from regional water supply planning under s.
190 373.709.

191 (6) The department shall:

192 (a) Adopt rules that authorize potable reuse projects that
193 are consistent with this section.

194 (b) Review existing rules governing reclaimed water and
195 potable reuse to identify obsolete and inconsistent requirements
196 and adopt rules that revise existing potable reuse rules to
197 eliminate such inconsistencies, while maintaining existing
198 public health and environmental protections.

199 (c) Review aquifer recharge rules and, if revisions are
200 necessary to ensure continued compliance with existing public
201 health and environmental protection rules when reclaimed water
202 is used for aquifer recharge, adopt such rules.

203 (d) Initiate rulemaking by December 31, 2020, and submit

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the adopted rules to the President of the Senate and the Speaker
of the House of Representatives by December 12, 2021, for
approval and incorporation into chapter 403 by the Legislature.
Such rules may not be published as administrative rules by the
department.

(7) The department and the water management districts shall
develop and execute a memorandum of agreement providing for the
procedural requirements of a coordinated review of all permits
associated with the construction and operation of an indirect
potable reuse project. The memorandum of agreement must provide
that the coordinated review will occur only if requested by a
permittee. The purpose of the coordinated review is to share
information, to avoid the redundancy of information requested
from the permittee, and to ensure consistency in the permit for
the protection of the public health and the environment. The
department and the water management districts shall develop and
execute the memorandum of agreement by December 31, 2022.

(8) To encourage investment in the development of potable
reuse projects by private entities, a potable reuse project
developed as a qualifying project pursuant to s. 255.065 is:

(a) Beginning January 1, 2025, eligible for expedited
permitting under s. 403.973.

(b) Granted an annual credit against the tax imposed by
chapter 220 in an amount equal to 5 percent of the eligible
capital costs generated by a qualifying project for a period not
to exceed 20 years after the date that project operations begin.
The tax credit applies only to the corporate income tax
liability or the premium tax liability generated by or arising
out of the qualifying project, and the sum of all tax credits

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provided pursuant to this section may not exceed 100 percent of the eligible capital costs as defined in s. 220.191(1)(c). Any credit granted pursuant to this paragraph may not be carried forward or backward.

(c) Granted a 3-year extension of any deadlines imposed under s. 403.064(17).

(d) Consistent with s. 373.707, eligible for priority funding in the same manner as other alternative water supply projects from the Drinking Water State Revolving Fund, under the Water Protection and Sustainability Program, and for water management district cooperative funding.

(9) This section is not intended and may not be construed to supersede s. 373.250(3).

Section 3. Section 403.892, Florida Statutes, is created to read:

403.892 Incentives for the use of graywater technologies.—

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

(a) "Developer" has the same meaning as in s. 380.031.

(b) "Graywater" has the same meaning as in s. 381.0065(2)(e).

(2) To promote the beneficial reuse of water in this state, a county, municipality, or special district shall do all of the following:

(a) Authorize the use of residential graywater technologies in their respective jurisdictions which comply with the Florida Building Code; and

(b) Provide incentives to developers to fully offset the costs of their beneficial reuse of water contribution through graywater technology. Such incentives may include, but are not

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limited to:

1. Allowing the developer density or intensity bonus incentives or more floor space than allowed under the current or proposed future land use designation or zoning;

2. Reducing or waiving fees, such as impact fees or water and sewer charges; or

3. Granting other incentives.

(3) If the local government has already applied one of the incentives identified in paragraph (2)(b) to the development, the local government must provide the developer with an additional incentive identified in paragraph (2)(b) to meet the requirements of this section.

Section 4. (1) In implementing s. 403.8531, Florida Statutes, as created by this act, the Department of Environmental Protection, in coordination with one or more technical working groups pursuant to subsection (2), shall adopt rules for the implementation of potable reuse projects. The department shall:

(a) Revise the appropriate chapters in the Florida Administrative Code, including chapter 62-610, Florida Administrative Code, to ensure that all rules implementing potable reuse are in the Florida Administrative Code division 62 governing drinking water regulation.

(b) Revise existing drinking water rules to include reclaimed water as a source water for the public water supply and require such treatment of the water as is necessary to meet existing drinking water rules, including rules for pathogens. The potable reuse rules must include the implementation of a log reduction credit system using advanced treatment technology to

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291 meet pathogen treatment requirements, and must require a public
292 water supplier to provide an approach to meet the required
293 pathogen treatment requirements in an engineering report as part
294 of its public water supply permit application for authorization
295 of potable reuse. To ensure protection of the public health, as
296 part of the public water supply permit application to authorize
297 potable reuse, a public water supplier shall provide a
298 department-specified level of treatment or propose an approach
299 to achieving the log reduction targets based on source water
300 characterization that is sufficient for a pathogen risk of
301 infection which meets the national drinking water criteria of
302 less than 1 x 10⁻⁴ annually.

303 (c) Prescribe the means for using appropriate treatment
304 technology to address emerging constituents in potable reuse
305 projects. The advanced treatment technology must be technically
306 and economically feasible and must provide for flexibility in
307 the specific treatment processes employed to recognize different
308 project scenarios, emerging constituent concentrations, desired
309 finished water quality, and the treatment capability of the
310 facility. The advanced treatment technology may also be used for
311 pathogen removal or reduction.

312 1. The rules must require appropriate monitoring to
313 evaluate advanced treatment technology treatment performance,
314 including the monitoring of surrogate parameters and controls,
315 which monitoring must occur either before or after the advanced
316 treatment technologies treatment process, or both, as
317 appropriate.

318 2. For direct potable reuse projects, the rules must
319 require reclaimed water to be included in the source water

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320 characterization for a drinking water treatment facility and, if
321 that source water characterization indicates the presence of
322 emerging constituents at levels of public health interest, must
323 specify how appropriate treatment technology will be used to
324 address those emerging constituents.

325 3. For indirect potable reuse projects, the department
326 shall amend the existing monitoring requirements contained
327 within part V of chapter 62-610, Florida Administrative Code, to
328 require monitoring for one or more representative emerging
329 constituents. The utility responsible for the indirect potable
330 reuse project shall develop an emerging constituent monitoring
331 protocol consisting of the selection of one or more
332 representative emerging constituents for monitoring and the
333 identification of action levels associated with such emerging
334 constituents. The monitoring protocol must provide that, if
335 elevated levels of the representative emerging constituent are
336 detected, the utility must report the elevated detection to the
337 department and investigate the source and cause of such elevated
338 emerging constituent. The utility shall submit the monitoring
339 protocol to the department for review and approval and shall
340 implement the monitoring protocol as approved by the department.
341 If the monitoring protocol detects an elevated emerging
342 constituent, and if the utility's investigation indicates that
343 the use of the reclaimed water is the cause of such elevated
344 emerging constituent, the utility must develop a plan to address
345 or remedy that cause. The utility's monitoring results,
346 investigation of any detected elevated emerging constituent
347 levels, determination of cause, and any plan developed to
348 address or remedy the cause must be submitted to the department

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for review and approval.

(d) Specify industrial pretreatment requirements for potable reuse projects. These industrial pretreatment requirements must match the industrial pretreatment requirements contained in chapter 62-625, Florida Administrative Code, as of the effective date of this act. If necessary, the department also must require the utility operating a potable reuse project to implement a source control program, and the utility shall identify the sources that need to be addressed.

(e) Provide off-spec reclaimed water requirements for potable reuse projects which include the immediate disposal, temporary storage, alternative nonpotable reuse, or retreatment or disposal of off-spec reclaimed water based on operating protocols established by the public water supplier and approved by the department.

(f) Revise existing rules to specify the point of compliance with drinking water standards for potable reuse projects as the point where the finished water is finally discharged from the drinking water treatment facility to the water distribution system.

(g) Ensure that, as rules for potable reuse projects are implemented, chapter 62-610.850, Florida Administrative Code, is applicable.

(h) Revise the definition of the term "indirect potable reuse" provided in chapter 62-610, Florida Administrative Code, to match the definition provided in s. 403.8531, Florida Statutes.

(2) The department shall convene and lead one or more technical advisory committees to coordinate the rulemaking and

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378 review of rules required by s. 403.8531, Florida Statutes. The
379 technical advisory committees, which shall assist in the
380 development of such rules, must be composed of knowledgeable
381 representatives of a broad group of interested stakeholders,
382 including, but not limited to, representatives from the water
383 management districts, the wastewater utility industry, the water
384 utility industry, the environmental community, the business
385 community, the public health community, and the agricultural
386 community, and consumers.

387 Section 5. To further promote the reuse of reclaimed water
388 for irrigation purposes, the rules that apply when reclaimed
389 water is injected into a receiving groundwater having 1,000 to
390 3,000 mg/L total dissolved solids are applicable to reclaimed
391 water aquifer storage and recovery wells injecting into a
392 receiving groundwater of less than 1,000 mg/L total dissolved
393 solids if the applicant demonstrates that there are no public
394 supply wells within 3,500 feet of the aquifer storage and
395 recovery wells and that it has implemented institutional
396 controls to prevent the future construction of public supply
397 wells within 3,500 feet of the aquifer storage and recovery
398 wells.

399 Section 6. The Division of Law Revision is directed to
400 replace the phrase "the effective date of this act" wherever it
401 occurs in this act with the date the act becomes a law.

402 Section 7. The Legislature determines and declares that
403 this act fulfills an important state interest.

404 Section 8. 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 Innovation, Industry, and Technology

BILL: CS/CS/SB 810

INTRODUCER: Innovation, Industry, and Technology Committee; Health Policy Committee and Senator Simmons

SUBJECT: Tobacco and Nicotine Products

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Williams	Brown	HP	Fav/CS
2.	Oxamendi	Imhof	IT	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 810:

- Increases the minimum age to lawfully purchase and possess tobacco products from 18 years of age to 21 years of age.
- Repeals exceptions allowing persons in the military and emancipated minors to possess or purchase tobacco products under current law.
- Prohibits smoking and vaping by any person under 21 years of age on or near school property, regardless of hours of the day.
- Limits the sale of tobacco products through a vending machine to a location that prohibits persons under 21 years of age on the premises.
- Requires age verification before a sale or delivery to a person under 30 years of age. (This complies with recently enacted federal law.)
- Incorporates conforming provisions.

The bill will have an indeterminate fiscal impact related to the regulatory responsibilities of the Department of Business and Professional Regulation.

The effective date of the bill is October 1, 2020, contingent upon the passage of the linked fee bill CS/SB 1394 or similar legislation adopted in the same legislative session or an extension there of.

II. Present Situation:

Regulation of Tobacco Products

The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and enforcement of tobacco products under ch. 569, F.S.

Section 569.002, F.S., provides definitions of terms in the context of the regulation of tobacco products under ch. 569, F.S. Subsection (6) defines the term “tobacco products” to include loose tobacco leaves and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

Subsection (7) specifies that the term “any person under the age of 18” does not include any person under age 18 who:

- Has had his or her disability of nonage removed under ch. 743, F.S.;
- Is in the military reserve or on active duty in the Armed Forces of the United States;
- Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or
- Is acting in his or her scope of lawful employment with an entity licensed under the provisions of ch. 210, F.S., relating to taxation of cigarettes and other tobacco products, or ch. 569, F.S., relating to tobacco products.

Section 569.003, F.S., relates to retail tobacco products dealer permits, the permit application, qualifications, fees, renewals, and duplicates. Subsection (2) stipulates that permits may only be issued to persons who are 18 years of age or older or to corporations the officers of which are 18 years of age or older. The division is authorized to refuse to issue a permit to any person, firm, association, or corporation the permit of which has been revoked, to any corporation an officer of which has had his or her permit revoked, or to any person who is or has been an officer of a corporation the permit of which has been revoked.

The fee for an annual permit is established in rule by the division at an amount to cover the regulatory costs of the program, not to exceed \$50. The proceeds of the fee are deposited into the DBPR Alcoholic Beverage and Tobacco Trust Fund.

Mail Order, Internet, Other Remote Sales of Tobacco Products, and Tobacco Products Permits

Section 210.095(5), F.S., provides requirements for the delivery of mail order, Internet, and other remote sales of tobacco products, including age verification requirements, all of which is generally referred to as “delivery sales.” It also defines 10 relevant terms.

Specific notice and shipping requirements are provided for all delivery sales, whether in-state or out-of-state. Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale is required to:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: “Tobacco Products: Florida law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes.”
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
 - Require the signature of an adult who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 27 years of age.
 - Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.
- Provide to the delivery service, if such service is used, evidence of full compliance with requirements for the collection and remittance of all taxes imposed on tobacco products by this state with respect to the delivery sale.¹

If a person accepts a purchase order for a delivery sale and delivers the tobacco products without using a delivery service, the person must comply with all of the requirements that apply to a delivery service.² Before making sales or shipping orders, entities must provide specific notice to the division as to shipper and receiver, with monthly reporting.³ There are requirements specific to purchase orders.⁴

Section 210.095(8), F.S., provides that the penalty for the following violations of the delivery sale requirements is a misdemeanor of the third degree:⁵

- A delivery sale delivers tobacco products, on behalf of a delivery service, to an individual who is under 18 years of age.
- A violation of any provision in s. 210.095, F.S., by an individual who is under 18 years of age.

Florida law does not provide a criminal penalty classification for a misdemeanor of the third degree. However, the prohibitions and penalties in s. 569.101, F.S., (prohibiting the sale, delivery, bartering, furnishing, or giving, directly or indirectly, to any person who is under 18 years of age, any tobacco product, and s. 569.11, F.S., prohibiting persons under 18 years of age from possessing, directly or indirectly, any tobacco product) apply to s. 210.095, F.S., relating to the delivery of tobacco products to persons under the age of 18.⁶

Section 210.15, F.S., relates to permits for the sale of specific tobacco products. Among the requirements for the issuance of such a permit is the provision found in paragraph (b) of subsection (2) to require that permits may be issued only to persons of good moral character,

¹ Section 210.095(5), F.S.

² *Id.*

³ Section 210.095(6), F.S.

⁴ Section 210.095(7), F.S.

⁵ Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

⁶ *See supra*, notes 10, 11, and 14 and accompanying text.

who are not less than 18 years of age. In addition, permits to corporations may be issued only to corporations whose officers are of good moral character and not less than 18 years of age.

Tobacco Products and Minors

To prevent persons under 18 years of age from purchasing or receiving tobacco products, the sale or delivery of tobacco products is prohibited, except when those products are under the direct control or line of sight of the dealer or the dealer's agent or employee. If a tobacco product is sold from a vending machine, the vending machine must have:

- An operational lock-out device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lock-out device to allow the dispensing of one tobacco product;
- A mechanism on the lock-out device to prevent the machine from functioning if the power source for the lock-out device fails or if the lock-out device is disabled; and
- A mechanism to ensure that only one tobacco product is dispensed at a time.⁷

These requirements for the sale of tobacco products do not apply to an establishment that prohibits persons under 18 years of age on premises and do not apply to the sale or delivery of cigars and pipe tobacco.⁸

Section 569.0075, F.S., prohibits the giving of sample tobacco products to persons under the age of 18.

Section 569.008, F.S., provides a process for a retail tobacco product dealer to mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person under 18 years of age.⁹ The process encourages retail tobacco product dealers to comply with responsible practices. The division may mitigate penalties if:

- The dealer is qualified as a responsible dealer having established and implemented specified practices designed to ensure that the dealer's employees comply with ch. 569, F.S., such as employee training.
- The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.
- The sale was made through a vending machine equipped with an operational lock-out device.¹⁰

Section 569.101, F.S., prohibits the sale, delivery, bartering, furnishing or giving of tobacco products to persons under the age of 18. A violation of this prohibition is a second degree

⁷ Section 569.007(1), F.S.

⁸ Section 569.007(2) and (3), F.S.

⁹ The Florida Responsible Vendor Act in ss. 561.701 - 561.706, F.S., provides a comparable process for mitigation of penalties against vendors of alcoholic beverages.

¹⁰ Section 569.008(3), F.S.

misdemeanor.¹¹ A second or subsequent violation within one year of the first violation is a first degree misdemeanor.¹²

It is a complete defense to a person charged with a violation of s. 569.101, F.S., if the buyer or recipient falsely evidenced that he or she was 18 years of age or older, a prudent person would believe the buyer or recipient to be 18 years of age or older, and the buyer or recipient presented false identification¹³ upon which the person relied in good faith.¹⁴

Section 569.11, F.S., prohibits persons under the age of 18 years from possessing, directly or indirectly, any tobacco products:

- A first violation of this prohibition is a non-criminal violation with a penalty of 16 hours of community service or a \$25 fine, and attendance at a school-approved anti-tobacco program, if locally available.
- A second or subsequent violation within 12 weeks of the first violation is punishable with a \$25 fine.

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.¹⁵

Eighty percent of all civil penalties received by a county court under s. 569.11, F.S., must be remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court must remain with the clerk of the county court to cover administrative costs.¹⁶

Section 569.12, F.S., provides enforcement authority to full-time, part-time, and auxiliary law enforcement officers for the provisions of ch. 569, F.S. The section also authorizes a county or municipality to designate certain of its employees or agents as tobacco product enforcement officers within specified guidelines. Such enforcement officers are authorized to issue a citation to a person under 18 years of age based on a reasonable cause to believe that a civil infraction has been committed. Similar authority is provided for correctional probation officers. Details are provided as to the required elements of the citation.

Retail tobacco product dealers (retailers) must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The division is required to make the signs available to retailers. Retailers must also

¹¹ *Supra* note 5.

¹² Section 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

¹³ Identification includes carefully checking “a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older.” *See* s. 569.101(3)(c), F.S.

¹⁴ Section 569.101(3), F.S.

¹⁵ Section 569.11(1), F.S.

¹⁶ Section 569.11(6), F.S.

have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.¹⁷

Section 569.19, F.S., requires the division to annually provide to the Legislature and the Governor by December 31, a progress report on its enforcement actions specific to: number and results of compliance visits, number of violations for failure of a retailer to hold a valid license, number of violations of selling tobacco products to persons under age 18, and the results of administrative hearings on these issues, and the number of persons under age 18 cited for violations of underage purchases and sanctions imposed as a result of a citation.

Section 386.212, F.S., in the Florida Clean Indoor Air Act, prohibits any person under the age of 18 from smoking tobacco within 1,000 feet of a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight.¹⁸ A violation of this prohibition is punishable by a maximum noncriminal civil penalty not to exceed \$25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco “alternative to suspension” program.¹⁹

Administrative Penalties

A retail tobacco dealer permit-holder can be disciplined under the division’s penalty guidelines. For a violation of the prohibition in s. 569.06, F.S., against the sale of tobacco products to persons under 18 years of age, the guidelines provide:

- 1st occurrence -- \$500 fine.
- 2nd occurrence -- \$1,000 fine.
- 3rd occurrence -- \$2,000 fine and a 20-day suspension of the dealer permit.
- 4th occurrence -- revocation of the dealer permit.

These penalties are based on a single violation in which the permit-holder committed or knew about the violation; or a pattern of at least three violations on different dates within a 12-week period by employees, independent contractors, agents, or patrons on the licensed premises or in the scope of employment in which the permit-holder did not participate; or violations which were occurring in an open and notorious manner on the licensed premises.²⁰

National Minimum Age of Sale of Tobacco Products

As part of the federal budget revisions adopted in December 2019, and signed into law on December 20, 2019, the minimum age for the sale of tobacco products is now 21 years of age.²¹ The specific tobacco provisions in the budget document amended section 906(d) of the Federal Food, Drug, and Cosmetic Act to increase the federal minimum age to purchase tobacco products

¹⁷ Section 569.14, F.S.

¹⁸ Section 386.212(1), F.S.

¹⁹ Section 386.212(3), F.S.

²⁰ Fla. Admin. Code R. 61A-2.022(1) (2019).

²¹ See the “Further Consolidated Appropriations Act, 2020,” Rules Committee print 116-44, Text of the House Amendment to the Senate Amendment to H.R. 1865, December 16, 2019, beginning at page 1492 of 1773, *available at* <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR1865SA-RCPI116-44.PDF> (last visited Jan. 25, 2020).

from 18 to 21, and to add a provision that it is unlawful for any retailer to sell a tobacco product to any person younger than age 21. The provisions also require the FDA to update its applicable tobacco regulations within specified timelines.

As part of this rule update process, the FDA is to update the relevant age verification requirements to require age verification for individuals under age 30 (as opposed to the current age verification threshold for individuals under age 27).

III. Effect of Proposed Changes:

Smoking and Vaping Prohibited Near School Property; Penalties

Section 2 amends s. 386.212, F.S., relating to smoking and vaping on or near school property and related penalties, to prohibit smoking and vaping by persons under the age of 21 during any hours of day, on public or private school property or within 1,000 feet of such property. Under current law, that prohibition applies only to persons under 18 years of age between the hours of 6 a.m. and midnight. Current law and the bill provide an exception to this prohibition for any person occupying a moving vehicle or within a private residence.

Definitions of Primary Terms

Section 3 amends s. 569.002, F.S., which provides definitions specific to the regulation of tobacco products, to:

- Redefine the term “tobacco products” in subsection (6) as including:
 - Any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
 - Any component, part, or accessory of a product described above whether or not any of these contain tobacco or nicotine, including but not limited to, filters, rolling papers, blunt or hemp wraps, and pipes.

The term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

- Delete the definition of the term “any person under the age of 18,” which exempts persons in the military and emancipated minors from the definition, to permit such persons to possess or purchase tobacco products under current law.

Sales Restrictions

Section 1 amends s. 210.15 (1)(b), F.S., relating to permits for the sale of tobacco products, to increase the minimum age for the issuance of such permits from 18 years of age to 21 years of age.

Section 5 amends s. 569.007(1) and (2), F.S., to modify the general restrictions on the sale or delivery of tobacco products. The bill reflects the increase in the age for the purchase of tobacco

products to at least 21 years of age from 18 years of age. Under the bill, sales of tobacco products from a vending machine are only permissible from a machine that is located in an establishment that prohibits persons under age 21 on the licensed premises at all times.

Section 6 amends s. 569.101, F.S., relating to the prohibition and penalties against the sale, delivery, barter, furnishing, or giving of tobacco products to an under-age person, to increase in the age for lawful purchase of tobacco products to 21 years of age from 18 years of age.

Section 7 repeals s. 877.112, F.S., to eliminate the general restrictions on the sale or delivery of tobacco products, nicotine dispensing devices, and nicotine products to persons under the age of 18. Many of these provisions are incorporated into the provisions of ch. 569, F.S., by the linked bill CS/SB 1394, which amends the definition for the term “tobacco products” to include vapor-generating electronic devices.

Section 8 amends s. 210.095(5)(a) and (b), F.S., relating to mail order, Internet, and remote sales of tobacco products, and age verification related for such sales. The bill revises the labeling requirement for shipped tobacco products to indicate that Florida law prohibits shipping tobacco products to individuals under 21 years of age, rather than 18 years of age. Proof of legal minimum purchase age of the individual accepting delivery is required if the individual appears to be under 30 years of age, rather than the current 27 years of age. (This latter provision is modified to ensure conformity with recent federal law provisions.²²)

The bill also amends ss. 210.095(8)(e) and (g), F.S., to provide that the penalty for a violation of the delivery sale requirements in this section, including a delivery sale to a person under the legal age to possess tobacco products, is a misdemeanor of the second degree and deletes the incorrect reference to a misdemeanor of the third degree.

Section 11 amends s. 569.11, F.S., relating to the prohibition on the possession of tobacco products by minors, to reflect the increase in the minimum age from 18 years of age to 21 years of age. The section is also amended to delete reference to military service in the context of age of purchase, since the bill separately removes an exception to age limits for tobacco purchase or possession by members of the active duty or reserve military.

Conforming Provisions

Sections 4, 9, 10, 12, 13, and 14 amend ss. 569.003(2)(a), 569.0075, 569.008, 569.12(2)(b) and (3), 569.14 and 569.19(3) and (4), F.S., respectively, to incorporate conforming provisions to reflect the increase in the minimum age for the purchase or sale of tobacco and nicotine products from 18 years of age to 21 years of age.

Effective Date

Section 15 provides an effective date of October 1, 2020, contingent upon the passage of CS/SB 1394 being adopted in the same legislative session or an extension thereof and becoming law.

²² *Supra* note 34.

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:

Retail dealers of vapor-generating electronic devices, such as electronic cigarettes, will be required to obtain a retail tobacco product dealer permit.

C. Government Sector Impact:

The Department of Business and Professional Regulation (DBPR) may incur indeterminate expenses related to personnel costs or modification of operational priorities needed to accommodate the additional licensure of dealers of vapor-generating electronic devices, which may be offset by a regulatory fee, to be applied via a linked bill.

The DBPR indicates that the bill will require modifications to the department's regulatory data system and related devices used by inspection staff. The department indicates that these modifications can be implemented using existing resources.²³

VI. Technical Deficiencies:

None.

²³ Department of Business and Professional Regulation, *Senate Bill 810 Analysis* (December 9, 2019) (on file with the Senate Committee on Innovation, Industry, and Technology).

VII. Related Issues:

CS/SB 1394 by Senator Simmons (Fees)

CS/SB 1394 by Senator Simmons amends the definition of the term “tobacco products” in s. 569.002(6), F.S., to include vapor-generating electronic devices and products (vaping products). By defining vaping products as tobacco products, CS/SB 1394 imposes a permit fee on retail dealers of vaping products because such persons are required to pay a \$50 fee for a retail tobacco dealer permit.²⁴

Age of Tobacco Purchase in Other States

As of September 18, 2019, 18 states have raised the tobacco purchase age to 21 years of age, along with Washington, DC, and over 500 localities.²⁵ Some of the localities are in states that subsequently enacted statewide laws. Collectively, these laws now cover over half of the U.S. population. The strength of state and local laws, such as their enforcement and penalties, varies substantially.

Those states and the effective date of their adoption of the restrictive provisions are as follow:

State and Effective Date	State and Effective Date
Hawaii (effective 1/1/16)	Arkansas (effective 9/1/19)
California (effective 6/9/16)	Texas (effective 9/1/19)
New Jersey (effective 11/1/17)	Vermont (effective 9/1/19)
Oregon (effective 1/1/18)	Connecticut (effective 10/1/19)
Maine (effective 7/1/18)	Maryland (effective 10/1/19)
Massachusetts (effective 12/31/18)	Ohio (effective 10/17/19)
Illinois (effective 7/1/19)	New York (effective 11/13/19)
Virginia (effective 7/1/19)	Washington (effective 1/1/20)
Delaware (effective 7/16/19)	Utah (effective 7/1/21)

The following are among other jurisdictions that have raised their age for possession of tobacco products to 21 years of age: New York City, Chicago, San Francisco, San Antonio, Boston, Cincinnati, Cleveland, Columbus, and Kansas City (in Kansas and Missouri), and Washington, D.C. In Florida, Alachua County and the City of Fort Lauderdale have raised their minimum age for purchase of tobacco products to 21 years of age.

Age Restrictions on Youth Access to Electronic Cigarettes in Other States

As of September 15, 2019, all states and the District of Columbia (with the exception of Pennsylvania) have laws that restrict youth access to electronic cigarettes, or e-cigarettes. In this

²⁴ See s. 569.003(1)(c), F.S.

²⁵ See Campaign for Tobacco-Free Kids, States and Localities that have Raised the Minimum Legal Sale Age for Tobacco Products to 21, *available at* https://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf (last visited Jan. 25, 2020).

context, *e-cigarette* broadly refers to any product, and its component parts and accessories, that contains nicotine and/or other substances intended for use in the form of an aerosol, often referred to as vapor. In 18 states, the restriction is set at age 21. In four states, the restriction is set at age 19. In 28 states, the restriction is set at age 18. At least one state (Utah) is on a path to increase the age restriction one year at a time to age 21 over a few years. There are certain exceptions and exemptions that are applicable within any given state.²⁶

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 569.19, 210.095, 386.212, 569.002, 569.003, 569.007, 569.0075, 569.008, 569.101, 569.11, 569.12, 569.14, and 210.15.

This bill repeals section 877.112 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/CS by Innovation, Industry, and Technology on February 3, 2020:

The CS/CS:

- Removes from the bill the provision amending s. 569.002(6), F.S., revising the term “tobacco products” to include vapor-generating electronic devices (vaping products).
- Corrects a scrivener’s error in ss. 210.095(8)(e) and (g), F.S., to provide that the penalty for a violation of the delivery sale requirements in this section, including a delivery sale to a person under the legal age to possess tobacco products, is a misdemeanor of the second degree, and delete the incorrect reference to a misdemeanor of the third degree.
- Links the bill to SB 1394 or similar legislation to make the effective date of CS/CS/SB 810 contingent upon the passage of CS/SB 1394 being adopted in the same legislative session or an extension thereof.

CS by Health Policy on January 21, 2020:

The CS revises the bill to:

- Use the term and definition for “vapor-generating electronic device” from the Florida Constitution’s prohibition against indoor vaping to provide a consistency of terms and to adapt the term to include the cartridges or containers of nicotine or other substances used with a vaping device.
- Apply the prohibition against smoking and vaping within 1,000 feet of school property to persons under 21 years of age during all hours of day (instead of to persons under 18 years of age between the hours of 6 a.m. and midnight.)

²⁶ See “Youth Access to E-Cigarettes, States with Laws Restricting Youth Access to E-Cigarettes, Enacted as of September 15, 2019,” Public Health Law Center at Mitchell Hamline School of Law, *available at* <https://www.publichealthlawcenter.org/sites/default/files/States-with-Laws-Restricting-Youth-Access-to-ECigarettes-September152019.pdf> (last visited Jan. 25, 2020).

- Require age verification before a sale or delivery to a person under 30 years of age. This complies with new federal law.

The CS removes from the bill provisions that:

- Exempt retailers who only sell vaping devices and products from the fee (\$50) required for a retail tobacco dealer permit.
- Decriminalize, and revise the applicable penalties, for the prohibition against the sale, delivery, barter, or furnishing of tobacco products to a person under the age of 21.
- Repeal the current prohibitions against the possession of tobacco and vaping products by persons under the minimum age of lawful possession.
- Require the DBPR to conduct enhanced compliance checks of retail establishments.
- Prohibit deliveries of tobacco products to consumers.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2020	.	
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	.	
	.	

The Committee on Innovation, Industry, and Technology (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 56 - 405
and insert:
cigar, pipe tobacco, chewing tobacco, snuff, or snus; or
(b) Any component, part, or accessory of a product
described in paragraph (a), whether or not any of these contain
tobacco or nicotine, including, but not limited to, filters,
rolling papers, blunt or hemp wraps, and pipes.



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The term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act ~~loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.~~

~~(7) "Any person under the age of 18" does not include any person under the age of 18 who:~~

~~(a) Has had his or her disability of nonage removed under chapter 743;~~

~~(b) Is in the military reserve or on active duty in the Armed Forces of the United States;~~

~~(c) Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or~~

~~(d) Is acting in his or her scope of lawful employment with an entity licensed under the provisions of chapter 210 or this chapter.~~

Section 4. Paragraph (a) of subsection (2) of section 569.003, Florida Statutes, is amended to read:

569.003 Retail tobacco products dealer permits; application; qualifications; fees; renewal; duplicates.—

(2) (a) Permits may be issued only to persons who are 21 ~~18~~ years of age or older or to corporations the officers of which are 21 ~~18~~ years of age or older.

Section 5. Subsections (1) and (2) of section 569.007, Florida Statutes, are amended to read:

569.007 Sale or delivery of tobacco products; restrictions.—



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(1) In order to prevent persons under 21 ~~18~~ years of age from purchasing or receiving tobacco products, the sale or delivery of tobacco products is prohibited, except:

(a) When under the direct control or line of sight of the dealer or the dealer's agent or employee; or

(b) Sales from a vending machine are prohibited under ~~the provisions of paragraph (1)~~ (a) and are only permissible from a machine that is located in an establishment that prohibits persons under 21 years of age on the licensed premises at all times ~~equipped with an operational lockout device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one tobacco product. The lockout device must include a mechanism to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled, and a mechanism to ensure that only one tobacco product is dispensed at a time.~~

~~(2) The provisions of subsection (1) shall not apply to an establishment that prohibits persons under 18 years of age on the licensed premises.~~

Section 6. Section 569.101, Florida Statutes, is amended to read:

569.101 Selling, delivering, bartering, furnishing, or giving tobacco products to persons under 21 ~~18~~ years of age; criminal penalties; defense.—

(1) It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 21 ~~18~~ years of age, any tobacco product.



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(2) Any person who violates subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, any person who violates subsection (1) for a second or subsequent time within 1 year of the first violation, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person charged with a violation of subsection (1) has a complete defense if, at the time the tobacco product was sold, delivered, bartered, furnished, or given:

(a) The buyer or recipient falsely evidenced that she or he was 21 ~~18~~ years of age or older;

(b) The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 21 ~~18~~ years of age or older; and

(c) Such person carefully checked a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 ~~18~~ years of age or older.

(4) A person must verify by means of identification specified in paragraph (3)(c) that a person purchasing a tobacco product is not under 21 years of age. Such verification is not required for any person over the age of 29.

Section 7. Section 877.112, Florida Statutes, is repealed.

Section 8. Paragraphs (a) and (b) of subsection (5) and paragraphs (e) and (g) of subsection (8) of section 210.095, Florida Statutes, are amended to read:



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210.095 Mail order, Internet, and remote sales of tobacco products; age verification.—

(5) Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale must:

(a) Include as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Tobacco Products: Florida law prohibits shipping to individuals under 21 ~~18~~ years of age and requires the payment of all applicable taxes."

(b) Use a method of mailing, shipping, or delivery which obligates the delivery service to require:

1. The individual submitting the order for the delivery sale or another adult who resides at the individual's address to sign his or her name to accept delivery of the shipping container. Proof of the legal minimum purchase age of the individual accepting delivery is required only if the individual appears to be under 30 ~~27~~ years of age.

2. Proof that the individual is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

If the person accepting a purchase order for a delivery sale delivers the tobacco products without using a delivery service, the person must comply with all of the requirements of this section which apply to a delivery service. Any failure to comply with a requirement of this section constitutes a violation



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thereof.

(8)

(e) A person who, in connection with a delivery sale, delivers tobacco products on behalf of a delivery service to an individual who is not an adult commits a misdemeanor of the second ~~third~~ degree, punishable as provided in s. 775.082 or s. 775.083.

(g) An individual who is not an adult and who knowingly violates any provision of this section commits a misdemeanor of the second ~~third~~ degree, punishable as provided in s. 775.082 or s. 775.083.

Section 9. Section 569.0075, Florida Statutes, is amended to read:

569.0075 Gift of sample tobacco products prohibited.—The gift of sample tobacco products to any person under the age of 21 ~~18~~ by an entity licensed or permitted under the provisions of chapter 210 or this chapter, or by an employee of such entity, is prohibited and is punishable as provided in s. 569.101.

Section 10. Subsection (1), paragraphs (b) and (c) of subsection (2), and subsection (3) of section 569.008, Florida Statutes, are amended to read:

569.008 Responsible retail tobacco products dealers; qualifications; mitigation of disciplinary penalties; diligent management and supervision; presumption.—

(1) The Legislature intends to prevent the sale of tobacco products to persons under 21 ~~18~~ years of age and to encourage retail tobacco products dealers to comply with responsible practices in accordance with this section.

(2) To qualify as a responsible retail tobacco products



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dealer, the dealer must establish and implement procedures designed to ensure that the dealer's employees comply with the provisions of this chapter. The dealer must provide a training program for the dealer's employees which addresses the use and sale of tobacco products and which includes at least the following topics:

(b) Methods of recognizing and handling customers under 21 ~~18~~ years of age.

(c) Procedures for proper examination of identification cards in order to verify that customers are not under 21 ~~18~~ years of age.

(3) In determining penalties under s. 569.006, the division may mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person under 21 ~~18~~ years of age if the following conditions are met:

(a) The dealer is qualified as a responsible dealer under this section.

(b) The dealer provided the training program required under subsection (2) to that employee before the illegal sale occurred.

(c) The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.

(d) If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

Section 11. Section 569.11, Florida Statutes, is amended to read:

569.11 Possession, misrepresenting age ~~or military service~~ to purchase, and purchase of tobacco products by persons under



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21 ~~18~~ years of age prohibited; penalties; jurisdiction;
disposition of fines.—

(1) It is unlawful for any person under 21 ~~18~~ years of age to knowingly possess any tobacco product. Any person under 21 ~~18~~ years of age who violates this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a \$25 fine. In addition, the person must attend a school-approved anti-tobacco program, if locally available; or

(b) For a second or subsequent violation within 12 weeks after the first violation, a \$25 fine.

Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

(2) It is unlawful for any person under 21 ~~18~~ years of age to misrepresent his or her age ~~or military service~~ for the purpose of inducing a dealer or an agent or employee of the dealer to sell, give, barter, furnish, or deliver any tobacco product, or to purchase, or attempt to purchase, any tobacco product from a person or a vending machine. Any person under 21 ~~18~~ years of age who violates this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a \$25 fine and, in addition, the person must attend a school-approved anti-tobacco program, if available; or



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(b) For a second or subsequent violation within 12 weeks after the first violation, a \$25 fine.

Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

(3) Any person under 21 ~~18~~ years of age cited for committing a noncriminal violation under this section must sign and accept a civil citation indicating a promise to appear before the county court or comply with the requirement for paying the fine and must attend a school-approved anti-tobacco program, if locally available. If a fine is assessed for a violation of this section, the fine must be paid within 30 days after the date of the citation or, if a court appearance is mandatory, within 30 days after the date of the hearing.

(4) A person charged with a noncriminal violation under this section must appear before the county court or comply with the requirement for paying the fine. The court, after a hearing, shall make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified in subsection (1) or subsection (2). A person who participates in community service shall be considered an employee of the state for the purpose of chapter 440, for the duration of such service.

(5) (a) If a person under 21 ~~18~~ years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to complete community service, pay the fine as required by paragraph (1) (a) or



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paragraph (2)(a), or attend a school-approved anti-tobacco program, if locally available, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.

(b) If a person under 21 ~~18~~ years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by paragraph (1)(b) or paragraph (2)(b), the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 45 consecutive days.

(6) Eighty percent of all civil penalties received by a county court pursuant to this section shall be remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products by children. The remaining 20 percent of civil penalties received by a county court pursuant to this section shall remain with the clerk of the county court to cover administrative costs.

Section 12. Paragraph (b) of subsection (2) and subsection (3) of section 569.12, Florida Statutes, are amended to read:

569.12 Jurisdiction; tobacco product enforcement officers or agents; enforcement.—

(2)

(b) A tobacco product enforcement officer is authorized to issue a citation to a person under the age of 21 ~~18~~ when, based upon personal investigation, the officer has reasonable cause to



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believe that the person has committed a civil infraction in violation of s. 386.212 or s. 569.11.

(3) A correctional probation officer as defined in s. 943.10(3) is authorized to issue a citation to a person under the age of 21 ~~18~~ when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 569.11.

Section 13. Section 569.14, Florida Statutes, is amended to read:

569.14 Posting of a sign stating that the sale of tobacco products to persons under 21 ~~18~~ years of age is unlawful; enforcement; penalty.—

(1) A dealer that sells tobacco products shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following:

THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

~~(2) A dealer that sells tobacco products and nicotine products or nicotine dispensing devices, as defined in s. 877.112, may use a sign that substantially states the following:~~

~~THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.~~



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~~A dealer that uses a sign as described in this subsection meets the signage requirements of subsection (1) and s. 877.112.~~

~~(3)~~ The division shall make available to dealers of tobacco products signs that meet the requirements of subsection (1) ~~or subsection (2).~~

(3)~~(4)~~ Any dealer that sells tobacco products shall provide at the checkout counter in a location clearly visible to the dealer or the dealer's agent or employee instructional material in a calendar format or similar format to assist in determining whether a person is of legal age to purchase tobacco products. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BUY TOBACCO PRODUCTS.

Upon approval by the division, in lieu of a calendar a dealer may use card readers, scanners, or other electronic or automated systems that can verify whether a person is of legal age to purchase tobacco products. Failure to comply with the provisions contained in this subsection shall result in imposition of administrative penalties as provided in s. 569.006.

(4)~~(5)~~ The division, through its agents and inspectors, shall enforce this section.

(5)~~(6)~~ Any person who fails to comply with subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 14. Subsections (3) and (4) of section 569.19,



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Florida Statutes, are amended to read:

569.19 Annual report.—The division shall report annually with written findings to the Legislature and the Governor by December 31, on the progress of implementing the enforcement provisions of this chapter. This must include, but is not limited to:

(3) The number of violations for selling tobacco products to persons under age 21 ~~18~~, and the results of administrative hearings on the above and related issues.

(4) The number of persons under age 21 ~~18~~ cited for violations of s. 569.11 and sanctions imposed as a result of citation.

Section 15. This act shall take effect October 1, 2020, if SB 1394 or similar legislation is adopted in the same legislative

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

And the title is amended as follows:

Delete lines 8 - 20

and insert:

definition of the term "tobacco products"; deleting the term "any person under the age of 18"; amending s. 569.003, F.S.; revising the age limits for retail tobacco products dealer permits; amending s. 569.007, F.S.; revising prohibitions on the sale of tobacco products from vending machines; conforming provisions to federal law; amending s. 569.101, F.S.; requiring that the age of persons purchasing tobacco products be verified under certain circumstances; repealing s.



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359 877.112, F.S., relating to nicotine products and
360 nicotine dispensing devices; amending s. 210.095,
361 F.S.; conforming provisions to federal law; making
362 technical changes; amending ss. 569.0075, 569.008,
363 569.11, 569.12, 569.14,



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Innovation, Industry, and Technology

Subject: Committee Agenda Request

Date: January 22, 2020

I respectfully request that **Senate Bill 810**, relating to Tobacco and Nicotine Products, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons", written over a horizontal line.

Senator David Simmons
Florida Senate, District 9



ANALYSIS

2020 AGENCY LEGISLATIVE BILL

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION

BILL NUMBER:	<u>SB 810</u>
BILL TITLE:	<u>Tobacco and Nicotine Products</u>
BILL SPONSOR:	<u>Sen. Simmons</u>
EFFECTIVE DATE:	<u>10/01/2020</u>

COMMITTEES OF REFERENCE

1) Health Policy
2) Innovation, Industry, and Technology
3) Rules
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE

N/A

SIMILAR BILLS

BILL NUMBER:	HB 151 (compare) and SB 694 (compare)
SPONSOR:	Reps. Toledo and Duran and Sen. Mayfield

PREVIOUS LEGISLATION

BILL NUMBER:	N/A
SPONSOR:	N/A
YEAR:	N/A
LAST ACTION:	N/A

IDENTICAL BILLS

BILL NUMBER:	N/A
SPONSOR:	N/A

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	December 9, 2019
LEAD AGENCY ANALYST:	Sterling Whisenhunt, Director Alcoholic Beverages and Tobacco
ADDITIONAL ANALYST(S):	Debi Winters, Alcoholic Beverages and Tobacco Tom Coker, Technology Tracy Dixon, Service Operations

	Thomas Izzo, OGC Rules Megan Kachur, OGC AB&T
LEGAL ANALYST:	Ross Marshman, OGC
FISCAL ANALYST:	Raleigh Close, Planning and Budget

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Cited as the "Tobacco 21 Act", the bill raises the minimum age from 18 to 21 to lawfully purchase tobacco products. It revises s. 210.095, F.S., relating to mail order, internet, and remote sales of tobacco products and prohibits delivery sales of these products directly to unlicensed individuals.

The bill includes cigarettes, pipe tobacco, hookahs, waterpipe tobacco, e-liquid, dissolvable tobacco, nicotine gel, smokeless tobacco, roll-your-own tobacco, chewing tobacco, snuff, or snus nicotine, electronic smoking devices, filters, rolling papers, blunt or hemp wraps, and pipes in the definition of tobacco products in ch. 569, F.S. It requires the Division of Alcoholic Beverages and Tobacco (division) to license, audit, and enforce statutory provisions relating to retail dealers who sell nicotine products and nicotine dispensing devices, commonly referred to as vape shops.

In addition, the bill requires the Division of Alcoholic Beverages and Tobacco to perform two compliance checks per year on all tobacco dealers, plus follow-up visits on all checks found to be non-compliant within three months.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Section 210.095, F.S., relating to mail order, internet, and remote sales of tobacco products and age verification provides the following definitions:

- "Adult" means an individual who is at least of the legal minimum purchase age for tobacco products.
- "Consumer" means a person in this state who comes into possession of any tobacco product subject to the tax imposed by this chapter and who, at the time of possession, is not a distributor intending to sell or distribute the tobacco product, a retailer, or a wholesaler.
- "Delivery sale" means any sale of tobacco products to a consumer in this state for which:
 1. The consumer submits the order for the sale by telephonic or other voice transmission, mail, delivery service, or the Internet or other online service; or
 2. The tobacco products are delivered by use of mail or a delivery service.
- "Delivery service" means any person engaged in the commercial delivery of letters, packages, or other containers.
- "Legal minimum purchase age" means the minimum age at which an individual may legally purchase tobacco products in this state.
- "Mail" or "mailing" means the shipment of tobacco products through the United States Postal Service.
- "Retailer" means any person who is not a licensed distributor but who is in possession of tobacco products subject to tax under this chapter for the purposes of selling the tobacco products to consumers.
- "Shipping container" means a container in which tobacco products are shipped in connection with a delivery sale.
- "Shipping document" means a bill of lading, airbill, United States Postal Service form, or any other document used to verify the undertaking by a delivery service to deliver letters, packages, or other containers.
- "Tobacco products" means all cigarettes, smoking tobacco, snuff, fine-cut chewing tobacco, cut and granulated tobacco, cavendish, and plug or twist tobacco.

A sale of tobacco products constituting a delivery sale as defined above is a delivery sale regardless of whether the person accepting the order for the delivery sale is located inside or outside this state. A retailer must obtain a license from the division pursuant to the requirements of this chapter before accepting an order for a delivery sale and is prohibited from making a delivery sale of tobacco products to any individual who is not an adult.

Each person accepting an order for a delivery sale must comply with each of the following:

- **Age Verification** - A person may not mail, ship, or otherwise deliver tobacco products in connection with an order for a delivery sale unless, before the first delivery to the consumer, the person accepting the order for the delivery sale:
 - Obtains from the individual submitting the order a certification that includes:
 - Reliable confirmation that the individual is an adult; and
 - A statement signed by the individual in writing and under penalty of perjury which:
 - Certifies the address and date of birth of the individual; and
 - Confirms that the individual wants to receive delivery sales from a tobacco company and understands that, under the laws of this state, the following actions are illegal:(I) Signing another individual's name to the certification;(II) Selling tobacco products to individuals under the legal minimum purchase age; and(III) Purchasing tobacco products, if the person making the purchase is under the legal minimum purchase age.
 - Makes a good faith effort to verify the information contained in the certification provided by the individual pursuant to paragraph (a) against a commercially available database that may be reasonably relied upon for accurate age information or obtains a photocopy or other image of a valid government-issued identification card stating the date of birth or age of the individual.
 - Provides to the individual, via electronic mail or other means, a notice meeting the disclosure requirements.
 - If an order for tobacco products is made pursuant to an advertisement on the internet, receives payment for the delivery sale from the consumer by a credit or debit card issued in the name of the consumer, or by personal or company check of the consumer.
 - Imposes a two-carton minimum on each order of cigarettes, and requires payment for the purchase of any tobacco product to be made by personal or company check of the purchaser or the purchaser's credit card or debit card. Payment by money order or cash may not be received or permitted. The person accepting the order for delivery sale shall submit, to each credit card acquiring company with which the person has credit card sales, identification information in an appropriate form and format so that the words "tobacco product" may be printed in the purchaser's credit card statement when a purchase of a tobacco product is made by credit card payment.
 - Makes a telephone call after 5 p.m. to the purchaser confirming the order before shipping the tobacco products. The telephone call may be a person-to-person call or a recorded message. The person accepting the order for delivery sale is not required to speak directly with a person and may leave a message on an answering machine or through voice mail. In addition, a person accepting an order for a delivery sale may request that a consumer provide an electronic mail address.
- **Disclosure Requirements** - The notice described in paragraph (3)(c) must include prominent and clearly legible statements that sales of tobacco products are:(a) Illegal if made to individuals who are not adults.(b) Restricted to those individuals who provide verifiable proof of age in accordance with subsection (3).(c) Taxable under this chapter. The notice must include an explanation of how each tax has been, or is to be, paid with respect to the delivery sale.
- **Shipping Requirements** - Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale must:
 - Include as part of the shipping documents the following statement: "Tobacco Products: Florida law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes."
 - Use a method of mailing, shipping, or delivery which obligates the delivery service to require:
 - The individual submitting the order for the delivery sale or another adult who resides at the individual's address to sign his or her name to accept delivery of the shipping container. Proof of the legal minimum purchase age of the individual accepting delivery is required only if the individual appears to be under 27 years of age.
 - Proof that the individual is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.
 - Provide to the delivery service, if such service is used, evidence of full compliance with all laws of this state applicable to sales of tobacco products occurring entirely in this state which impose excise taxes and assessments.
- **Registration and Reporting Requirements** - Before making sales or shipping tobacco products in connection with sales, a person must file with the division a statement providing the person's name, trade name, and the address of the person's principal place of business, as well as any other place of business. No later than the 10th day of each month, each person who has made a sale or mailed, shipped, or otherwise delivered tobacco products in connection with any sale during the previous calendar month shall file with the division a memorandum or a copy of the invoice, providing for each sale:
 - The name and address of the individual who submitted the order for the sale.

- The name and address of the individual who accepted delivery of the tobacco products.
- The name and address of the person who accepted the order for the sale of the tobacco products.
- The name and address of the delivery service and the name of the individual making the delivery
- The brand or brands of the tobacco products sold in the sale.
- The quantity of each brand of tobacco products sold in the sale.

Note: This section does not apply to sales of tobacco products by a licensed distributor or to sales of tobacco products by a retailer purchased from a licensed distributor.

- **Tax Collection Requirements** - Each person accepting a purchase order for a delivery sale must collect and remit to the division all taxes imposed on tobacco products by this state with respect to the delivery sale. With respect to cigarettes, the collection and remission are not required if the person has obtained proof in the form of the presence of applicable tax stamps or tax-exempt stamps, or other proof that the taxes have already been paid to this state.
- **The Licensing and Tax Stamp Requirements** which apply to sales of tobacco products occurring entirely in this state.
- **All Laws of this State Generally** applicable to sales of tobacco products occurring entirely in this state which impose excise taxes and assessments.

Section 210.095, F.S., creates the following penalties for violation of the above provisions:

- A violation of these provisions by a person other than an individual who is not an adult is a misdemeanor of the first degree and:
 - For a first violation, the person must be fined \$1,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.
 - For a second or subsequent violation of this section, the person must be fined \$5,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.
- A person who is an adult and knowingly submits a false certification commits a misdemeanor of the first degree. For each offense, the person must be fined \$10,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.
- A person who fails to pay any tax required in connection with a delivery sale shall pay, in addition to any other penalty, a penalty of five times the retail value of the tobacco products involved.
- Any tobacco products sold or attempted to be sold in a delivery sale not meeting the requirements of this section shall be forfeited to the state.
- A person who, in connection with a delivery sale, delivers tobacco products on behalf of a delivery service to an individual who is not an adult commits a misdemeanor of the third degree.
- Any fixture, equipment, or other material or personal property on the premises of any person who, with the intent to defraud this state, mails or ships tobacco products into this state and fails to satisfy any of the requirements of this section is a contraband article.
- An individual who is not an adult and who knowingly violates any provision of this section commits a misdemeanor of the third degree.

In addition, this section of law authorizes the Attorney General, the Attorney General's designee, a state attorney, or any person who holds a permit under 26 U.S.C. s. 5713 to bring an action in the appropriate court in this state to prevent or restrain violations of this section by any person.

Section 386.212(1), F.S., prohibits any person under 18 years of age from smoking tobacco or vaping in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. This section does not apply to any person occupying a moving vehicle or within a private residence.

Section 569.002, F.S., defines several terms relating to tobacco products, including, but not limited to: dealer; division; permit; retail tobacco products dealer; and retail tobacco products dealer permit. It currently defines tobacco products to include loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing. In addition, this section specifies that the term "Any person under the age of 18" does not include any person under the age of 18 who:

- Has had his or her disability of nonage removed;
- Is in the military reserve or on active duty in the Armed Forces of the United States;
- Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or
- Is acting in his or her scope of lawful employment with an entity licensed under the provisions of ch. 210, F.S. or ch. 569, F.S., relating to tobacco products.

Section 569.003, F.S., restricts the issuance of tobacco permits to persons who are 18 years of age or older or to corporations the officers of which are 18 years of age or older. It authorizes the division to refuse to issue a permit to any person, firm, association, or corporation the permit of which has been revoked, to any corporation an officer of which has had his or her permit revoked, or to any person who is or has been an officer of a corporation the permit of which has been revoked. It requires any permit issued to a firm, association, or corporation prohibited from obtaining a permit under this section shall be revoked by the division.

Section 569.005, F.S., establishes a noncriminal violation, punishable by a fine not to exceed \$500 for operating without a retail tobacco permit.

Section 569.006, F.S., authorizes the division to suspend or revoke the permit of any tobacco dealer who violates the provisions of ch. 569, F.S. In addition the division is authorized to impose an administrative fine of up to \$1,000 per violation. The division is required to deposit all revenues collected via the administrative fines into the General Revenue Fund.

Section 569.007, F.S., in order to prevent persons under 18 years of age from purchasing or receiving tobacco products, prohibits the sale or delivery of tobacco products except:

- When under the direct control or line of sight of the dealer or the dealer's agent or employee; or
- Sales from a vending machine are only permissible from a machine that is equipped with an operational lockout device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one tobacco product. The lockout device must include a mechanism to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled, and a mechanism to ensure that only one tobacco product is dispensed at a time.
- In establishment that prohibits persons under 18 years of age on the licensed premises.

Section 569.008, F.S., relating to responsible retail tobacco products dealers outlines: the qualifications, mitigation of disciplinary penalties by the division, management, training, and supervision requirements; and due diligence requirements for responsible vendors. Currently, in determining penalties the division may mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person under 18 years of age if the following conditions are met:

- The dealer is qualified as a responsible dealer.
- The dealer provided the training program required to that employee before the illegal sale occurred.
- The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.
- If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

Proof that employees, agents, or servants of the dealer, while in the scope of their employment, committed at least three violations of selling, delivering, bartering, furnishing, or giving tobacco products to persons under 18 years of age during a 180-day period is prima facie evidence of a lack of due diligence by the dealer in the management and supervision of his or her premises and in the supervision and training of employees, agents, officers, or servants.

Section 569.101, F.S., prohibits anyone from selling, delivering, bartering, furnishing, or giving tobacco products to persons under 18 years of age and establishes the following criminal penalties for violations of this provision:

- Any person who violates this provision commits a misdemeanor of the second degree;
- Any person who violates this provision for a second or subsequent time within 1 year of the first violation, commits a misdemeanor of the first degree.

Section 569.11, F.S., prohibits the possession, misrepresenting age or military service to purchase, and purchase of tobacco products by persons under 18 years. It establishes the following penalties, jurisdiction, and disposition of fines for violation of this provision:

- Penalties:
 - Any person under 18 years of age who knowingly possesses any tobacco product or misrepresents his or her age or military service for the purpose of inducing a dealer or an agent or employee of the dealer to sell, give, barter, furnish, or deliver any tobacco product, or to purchase, or attempt to purchase, any tobacco product from a person or a vending machine commits a noncriminal violation punishable by:
 - For a first violation, 16 hours of community service or, instead of community service, a \$25 fine. In addition, the person must attend a school-approved anti-tobacco program, if locally available; or

- For a second or subsequent violation within 12 weeks after the first violation, a \$25 fine. Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.
- Jurisdiction – Any person under the age of 18:
 - Cited for committing a noncriminal violation must sign and accept a civil citation indicating a promise to appear before the county court or comply with the requirement for paying the fine and must attend a school-approved anti-tobacco program, if locally available. If a fine is assessed for a violation of this section, the fine must be paid within 30 days after the date of the citation or, if a court appearance is mandatory, within 30 days after the date of the hearing.
 - Charged with a noncriminal violation under this section must appear before the county court or comply with the requirement for paying the fine. The court, after a hearing, must make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it must impose an appropriate penalty. A person who participates in community service is considered an employee of the state for the duration of the service.
 - Found by the court to have committed a noncriminal violation and that person has failed to complete community service, pay the fine, or attend a school-approved anti-tobacco program, if locally available, then the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.
 - Found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine, then the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 45 consecutive days.
- Deposition of Funds - Eighty percent of all civil penalties received by a county court are remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products by children. The remaining 20 percent of civil penalties received by a county court remain with the clerk of the county court to cover administrative costs.

Section 569.12, F.S., authorizes all certified law enforcement officers to enforce Florida's tobacco laws. It requires the division to prescribe the forms used by law enforcement officers for violations by any person under the age of 18 relating to the possession, misrepresentation of age or military service in order to purchase, or purchase of tobacco products.

Section 569.14, F.S., regarding the posting of a sign stating that the sale of tobacco products to persons under 18 years of age is unlawful, and enforcement of such and related penalties, provides the following:

- A dealer that sells tobacco products shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following:
 - THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.
- A dealer that sells tobacco products and nicotine products or nicotine dispensing devices, as defined in s. 877.112, F.S., may use a sign that substantially states the following:
 - THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

A dealer that uses such signs meets the signage requirements of s. 877.112(1), F.S.

Section 877.112, F.S., establishes the definitions, prohibitions for possession or use by minors, criminal penalties for violations of the section's provisions by adults, noncriminal penalties/civil fines for violations by minors, and signage requirements relating to nicotine products and nicotine dispensing devices.

- It defines:
 - "Nicotine dispensing device" to mean any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.
 - "Nicotine product" to mean any product that contains nicotine, including liquid nicotine, that is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means, but does not include a:
 - Tobacco product;

- Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act; or
 - Product that contains incidental nicotine.
- “Self-service merchandising” to mean the open display of nicotine products or nicotine dispensing devices, whether packaged or otherwise, for direct retail customer access and handling before purchase without the intervention or assistance of the retailer or the retailer’s owner, employee, or agent. An open display of such products and devices includes the use of an open display unit.
- It prohibits:
 - Selling, delivering, bartering, furnishing, or giving, directly or indirectly, to any person who is under 18 years of age, any nicotine product or a nicotine dispensing device.
 - The gifting of samples of nicotine products or nicotine dispensing device to any person under the age of 18 by a retailer of nicotine products or nicotine dispensing devices, or by an employee of such retailer.
- It establishes penalties for persons who violate its prohibitions on sales to minors and prohibitions on gifting samples to minors:
 - Any person who commits said violation commits a second degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.
 - Any person who commits said violation for a second or subsequent time within one year of the first violation commits a first degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.
- It establishes affirmative defenses for persons who violate its prohibitions on sales to minors and prohibitions on gifting samples to minors:
 - A person has a complete defense if, at the time the nicotine product or nicotine dispensing device was sold, delivered, bartered, furnished, or given:
 - The buyer or recipient falsely evidenced that she or he was 18 years of age or older;
 - The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 18 years of age or older; and
 - Such person carefully checked a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States Armed Services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older.
- It prohibits any person under 18 years of age to knowingly possess any nicotine product or a nicotine dispensing device. It establishes penalties for said violations:
 - Any person under 18 years of age who violates these provisions commits a noncriminal violation as defined in s. 775.08(3), F.S., punishable by:
 - First violation = 16 hours of community service or, instead of community service, a \$25 fine. In addition, the person must attend a school-approved anti-tobacco and nicotine program, if locally available
 - Second violation within 12 weeks of first violation = \$25 fine
 - Third or subsequent violation within 12 weeks of first violation = the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person’s driver license or driving privilege, as provided in s. 322.056, F.S.
 - Second or subsequent violation not within 12 week time period after first violation = punishable as provided for a first violation
- It prohibits any person under 18 years of age to misrepresent his or her age or military service for the purpose of inducing a retailer of nicotine products or nicotine dispensing devices or an agent or employee of such retailer to sell, give, barter, furnish, or deliver any nicotine product or nicotine dispensing device, or to purchase, or attempt to purchase any such product from a person or a vending machine. It establishes penalties for said violations, which are the same as the penalties for persons under 18 years of age who knowingly possess any nicotine product or a nicotine dispensing device.
- It details the procedures for penalties for minors and the procedures when there is a failure to comply with the penalties by the minor.
- It details the distribution of civil fines paid by persons who violate its prohibitions on possession of nicotine products or nicotine dispensing devices by minors and misrepresenting age:
 - 80% of all civil penalties received by a county court shall be remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children. The remaining 20% of civil penalties received by a county court shall remain with the clerk of the county court to cover administrative costs.

- It details the signage requirements for retailers of nicotine products and nicotine dispensing devices. These requirements are almost identical to the signage requirements in current ss. 569.14(2) and (4), F.S.
- It prohibits self-service merchandising of nicotine products or nicotine dispensing products with one exception:
 - A retailer of nicotine products or nicotine dispensing products may not sell, permit to be sold, offer for sale, or display for sale such products or devices by means of self-service merchandising.
 - A retailer of nicotine products or nicotine dispensing products may not place such products or devices in an open display unit unless the unit is located in an area that is inaccessible to customers.
 - These prohibitions do not apply to an establishment that prohibits persons under 18 years of age on the premises.
- It places restrictions on the sale or delivery of nicotine products or nicotine dispensing devices. These restrictions are almost identical to the language of current s. 569.007, F.S.

2. EFFECT OF THE BILL:

The bill is cited as the "Tobacco 21 Act."

In s. 210.095, F.S., the bill deletes the definitions for "adult", "consumer", "legal minimum purchase age", "mail or mailing", "shipping container", and "shipping document". In addition, it amends the following definitions:

- "Delivery sale" means any sale of tobacco products to a retailer, wholesale dealer, distributing agent, distributor, importer, or exporter, which replaces "consumer", in this state for which:
 - The retailer, wholesale dealer, distributing agent, distributor, importer, or exporter, again replacing the term "consumer", submits the order for the sale by telephonic or other voice transmission, mail, delivery service, or the Internet or other online service; or
 - The tobacco products are delivered by use of mail or a delivery service.
- "Distributor" has the same meaning as in s. 210.25, F.S.
- "Electronic smoking device" has the same meaning as in s. 569.002, F.S.
- "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.
- "Tobacco products" has the same meaning as in s. 569.002, F.S.

The bill authorizes licensed retailers, licensed wholesale dealers, licensed distributing agents, licensed distributors, licensed importers, and licensed exporters to accept delivery sales of tobacco products in this state, while prohibiting delivery sales directly to unlicensed persons. The bill prohibits any person, with knowledge or reason to know of the violation, from aiding or assisting another person in a violation of these provisions.

Although the bill deletes all current language in s. 210.095, F.S., relating to age verification, disclosure requirements, shipping requirements, registration and reporting requirements, tax collection requirements, licensing and tax stamps requirements no impact is anticipated. Since the bill requires all recipients of delivery sales to be licensed retailers, wholesale dealers, distributing agents, distributors, importers, or exporters similar requirements are already in ch. 210, and/or 569, F.S.

The bill deletes the criminal penalties associated with violation of the various provision of s. 210.095, F.S., and simplifies the associated fines, regardless of which portion of s. 210.095, F.S., is violated, to include:

- For a first violation, the person must be fined \$1,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.
- For a second or subsequent violation of this section, the person must be fined \$5,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

In addition, the bill retains the current forfeiture of :

- Any tobacco products sold or attempted to be sold in a delivery sale not meeting the requirements of this section; and
- Any fixture, equipment, or other material or personal property on the premises of any person who, with the intent to defraud this state, mails or ships tobacco products into this state and fails to satisfy any of the requirements of this section is a contraband article.

The bill broadens the prohibition on smoking or vaping within 1,000 feet of a school from applying only to people under the age of 18 between the hours of 6 a.m. and midnight to include all people regardless of age and regardless of time of day or night.

The bill redefines tobacco products in s. 569.002, F.S., to include:

- Any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
- Any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
- Any component, part, or accessory of a product described above, whether or not any of these contain tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, and pipes.

In addition, the bill defines “Electronic smoking device” to mean any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. The term includes any component, part, or accessory of the device and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine.

The bill clarifies that neither term, tobacco products or electronic smoking device, include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

The bill increases the minimum age for possession or use of tobacco products from 18 years of age up to 21 years of age and deletes the following three current exemptions to the age restriction:

- Has had his or her disability of nonage removed;
- Is in the military reserve or on active duty in the Armed Forces of the United States; and
- Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility.

The bill retains the exemption for anyone under the lawful age who is acting in his or her scope of lawful employment with an entity licensed under the provisions of ch. 210 or 569, F.S., relating to tobacco products, and provides a new exemption for anyone who is participating in a compliance check.

The bill amends s. 569.003, F.S., to

- Increase the minimum age needed to get a tobacco permit from age 18 up to age 21; and
- Broadens the division's authority to refuse a tobacco permit to any person, firm, association, or corporation the permit of which has been *suspended* as well as the current standard, revocation, to any corporation an officer of which has had his or her permit revoked *or suspended*, or to any person who is or has been an officer of a corporation the permit of which has been revoked *or suspended*.

The bill exempts any entity that deals only in tobacco products that are electronic smoking devices; components, parts, or accessories of such devices; or substances that may be aerosolized or vaporized by such devices and that holds or is applying for a retail tobacco product dealer permit from the fees relating to the permit.

The bill amends s. 569.005, F.S., which establishes a noncriminal violation for operating without a retail tobacco permit, punishable by a fine of not less than \$500.

The bill amends s. 569.006, F.S., requiring the revenues generated from the administrative fines on retail tobacco products dealers be used to offset the costs of licensing administration, education and training, retail inspections, and unannounced compliance checks. It requires the division to deposit all fines collected into the Alcoholic Beverage and Tobacco Trust Fund.

The bill amends s. 569.007, F.S., to allow the sale of tobacco products from vending machines only in establishments that prohibit persons under 21 years of age on the licensed premises at all times.

The bill deletes the division's authority to mitigate disciplinary penalties in s. 569.008, F.S. In addition, the bill lengthens the time from 180 days up to 36 months in which the commitment of three violations is considered prima facie evidence of a lack of due diligence by the dealer in the management and supervision of his or her premises and in the supervision and training of employees, agents, officers, or servants.

The bill decriminalizes the act of selling, delivering, bartering, furnishing, or giving tobacco products to persons under 21 years of age. In lieu of the criminal penalties, the bill establishes the following fines for violation of this provision:

- For a first time must pay a minimum fine of \$500;
- For a second time within a 36-month period shall pay a minimum fine of \$750 and may not distribute tobacco products for a minimum of 7 days;
- For a third time within a 36-month period shall pay a minimum fine of \$1,000 and may not distribute tobacco products for a minimum of 30 days;

- For a fourth and any subsequent violations within a 36-month period shall pay a minimum fine of \$1,000 and may not distribute tobacco products for a period of 3 years;
- Any person found to have violated this provision while acting as a non-management agent or employee of a dealer is subject to noncriminal and nonmonetary penalties, including, but not limited to, education classes, diversion programs, and community service; and
- Any person 21 years of age or older who is not a dealer or a dealer's agent or employee and who violates this provision must pay an administrative fine of \$50.

The bill amends s. 569.11, F.S., deleting the prohibitions for any person under the age of 18 from possessing or misrepresenting military service in order to purchase tobacco products and the associated penalties. The bill retains the prohibition for any person under the age of 18 who misrepresents age or purchases tobacco products and the following penalties:

- For a first violation, 16 hours of community service or, instead of community service, a \$25 fine. In addition, the person must attend a school-approved anti-tobacco program, if locally available; or
- For a second or subsequent violation within 12 weeks after the first violation, a \$25 fine. Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

In addition, the bill retains the current disposition of funds, 80 percent of all civil penalties received by a county court are remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products by children. The remaining 20 percent of civil penalties received by a county court remain with the clerk of the county court to cover administrative costs.

The bill amends s. 596.12, F.S., requiring that each tobacco dealer be subject to two unannounced compliance checks per year and that all noncompliant checks receive an unannounced follow-up within the 3 months.

The bill conforms s. 569.14, F.S., relating to the signage requirements for tobacco dealers, relating to the age increase from 18 up to 21 years of age and deleting the requirement for a separate, but similar sign for dealers that sell both tobacco products and nicotine products.

The bill repeals s. 877.112, F.S., relating to nicotine products and nicotine dispensing devices.

In addition, the bill conforms multiple references in ch. 569, F.S., from "18 years of age" to "21 years of age."

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☐ N ☒

If yes, explain:	N/A
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	To date, the division has not been contacted by proponents of the legislation with any stated positions.
Opponents and summary of position:	To date, the division has not been contacted by opponents of the legislation with any stated positions.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y ☐ N ☒

If yes, provide a description:	N/A
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Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y ☐ N ☒

Revenues:	None anticipated.
Expenditures:	None anticipated.
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y ☒ N ☐

Revenues:	The bill creates new penalties for selling, delivering, bartering, furnishing, or giving tobacco products to a person under the age of 21. It establishes penalties for 1 st time offenses, and 2 nd , 3 rd , and subsequent offenses within a 36-month period. Impact - The division has had 599 1 st time offenses and no 2 nd , 3 rd , or subsequent offenses over the last 36-months. Estimated potential annual revenue increase is \$99,833 (\$500 * 599 offenses/3yrs). In addition, there are multiple changes in the bill that could potentially increase or decrease state revenues by small indeterminate amounts. See fiscal in the Comments section below for complete listing.
Expenditures:	Inspections: 19 FTE and \$2,336,739. \$1,666,381 recurring. Or

	Surveys: 21 FTE and \$3,511,231. \$3,029,429 recurring.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?Y ☒ N ☐

Revenues:	None anticipated.
Expenditures:	Anyone who sells, delivers, barter, furnishes, or gives tobacco products to a person under the age of 21 would have to pay a \$500 fine for a 1 st offense. The division has had 599 1 st time offenses and no 2 nd , 3 rd , or subsequent offenses over the last 36-months.
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y ☒ N ☐

If yes, explain impact.	<p>New Fees – the bill creates new penalties for selling, delivering, bartering, furnishing, or giving tobacco products to a person under the age of 21. It establishes penalties for 1st time offenses, and 2nd, 3rd, and subsequent offenses within a 36-month period.</p> <p>In addition, there are multiple fee changes, additions, and deletions in the bill with anticipated minimal impact. See fiscal in the Comments section below for complete listing.</p>
Bill Section Number:	Section 11, Lines 551 – 561

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y ☒ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	<p>This bill will require modifications to the allegation/violation tables in Versa: Regulation and the iPad inspection application. Additionally, the bill may require an additional modifier to the retail tobacco dealer license to identify vape stores.</p> <p>Changes to Versa: Regulation – 12 hours Changes to iPad inspection application – 4 hours These modifications can be made with existing resources.</p>
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FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☐

If yes, describe the anticipated impact including any fiscal impact.	Unknown
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ADDITIONAL COMMENTS

Division of Alcoholic Beverages and Tobacco: The new language will increase the workload of the Bureau of Law Enforcement, as it will expand the scope of businesses required to be licensed and also increase the number and types of products regulated by the division. The specific amount of new licenses is unknown at this time, as are the specific number of licensed business that currently engage in the sale of the impacted products, so the division is unable to determine the precise amount of workload increase generated by this proposed bill as a result of this change.

Additionally, the language appears to raise the legal age of use, which may increase the amount of non-compliant activity, which would also increase workload. Similar changes are made to the requirements for licensure and the use of vending machines, which will result in verifying current license holders meet the requirements of the bill, should it become law, and require the bureau to verify that vending machine usage in locations is also compliant with the proposed changes.

Importantly, the bill's language mandates semi-annual compliance checks, which will impact the bureau's workload by mandating the timeframe and minimum number of tobacco surveys each year. In FY18-19, the division administered 27,589 RTPD permits. Should each of those locations be required to be surveyed twice, the division would be obligated to perform over 55,000 tobacco compliance surveys per year, creating a situation where the mandated number of tobacco surveys exceeds the division's total number of alcohol and tobacco surveys in FY18-19.

The bill also removes the criminal penalties of certain violations, which will impact how the bureau handles with those types of violations.

The Bureau of Law Enforcement would be required to train its enforcement team on the changes and impacts of the bill, should it become law.

The bill amends s. 596.12, F.S., requiring that each tobacco dealer be subject to two unannounced compliance checks per year and that all noncompliant checks receive an unannounced follow-up within the 3 months. It is unclear if the bill's intent is to have two inspections per year or two undercover/underage tobacco purchases attempted each year. Either way, this provision will create a substantial workload and expenditure increase for the Bureau of Enforcement. Clarification is requested.

Lines 394-395: The division uses *inspectors* to conduct compliance checks. If the bill intended to provide an exemption for the *underage operatives* who attempt to purchase tobacco products from licensed establishments in order to ensure compliance with age restrictions then the correct term would be "*tobacco surveys*", not "*compliance checks*."

ABT – Revenues:

- State Government Revenues/Fee deletions, indeterminate potential decrease in revenues - Section 2, lines 300-309, deletes the following two penalties relating to mail order, remote, and internet tobacco sales: a person who is an adult and knowingly submits a false certification commits a misdemeanor of the first degree. For each offense, the person must be fined \$10,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater; and a person who fails to pay any tax required in connection with a delivery sale shall pay, in addition to any other penalty, a penalty of five times the retail value of the tobacco products involved. Impact – The division does not currently track tobacco penalties specific to s. 210.095, F.S., relating to mail order, remote, and internet tobacco sales.
- State Government Revenues/Fee changes, indeterminate potential increase in revenues – Section 6, lines 422 – 433, changes the penalty for operating without a retail tobacco permit from "not more than \$500" to "at least \$500". Impact is anticipated to be minimal. This violation has not been charged over the last 12 months.
- State Government Revenues, indeterminate decrease for General Revenue and offsetting increase for the Alcoholic Beverage and Tobacco Trust Fund – Section 7, lines 442 – 446, changes the deposition of administrative fines charges against retail tobacco dealers from deposit into the General Revenue Fund to deposit into the Alcoholic Beverage and Tobacco Trust Fund. There have been no administrative fines against retail tobacco dealers in the last 12 months, very minimal impact.
- State Government Revenue Increases/New Fees – Section 11, Lines 551 – 561, creates new penalties for selling, delivering, bartering, furnishing, or giving tobacco products to a person under the age of 21. It establishes penalties for 1st time offenses, and 2nd, 3rd, and subsequent offenses within a 36-month period. The division has had 599 1st time offenses 12 months and no 2nd, 3rd, or subsequent offenses over the last 36-months. Estimated potential annual revenue increase is \$99,833 (\$500 * 599 offenses/3yrs).
- State Government Revenue Increases/New Fee – Section 11, Lines 567 – 569, creates a new administrative fine, \$50, for any person over 21 who is not a dealer and sells, delivers, barter, furnishes, or gives tobacco products to a person under the age of 21. – Impact, indeterminate minimal increase, the division does not currently track non-licensed offenders, but the fee would only be \$50 per offense.
- State Government Revenues/Fee deletions, indeterminate revenue decrease – Section 12, lines 597 – 606, deletes the \$25 fee charged by the courts for underage possession of tobacco products.. Although the historical amount of the fees is unknown, 80% of this civil penalty goes to the Department of Revenue and 20% goes to the courts.

ABT – Workload:

If the bill's intent is to have two inspections per year, the workload impact is anticipated to require 19 FTEs. The anticipated expenditures for Inspections and 19 FTE: \$2,336,739 of which \$1,666,381 is recurring.

Inspections Workload

Current Tobacco Permits:	27,589
Two inspections per permitholder per year:	2
Total Compliance Inspections (27,589 X 2 = 55,178):	55,178
Hours per inspection:	1
Total inspection hours:	55,178
Less current inspection level:	19,266
Total additional inspection hours (Projected total inspection hours minus current inspection level):	35,912
Work hours per FTE:	1,854
Additional FTEs Required (35,912 divided by 1,854 = 19.37):	19.37
Additional Staff Required (Rounded):	19.00

If the bill's intent is to have two undercover/underage tobacco purchases attempted each year (surveys), the workload impact is anticipated require 21 FTEs. The anticipated expenditures for Surveys and 21 FTE: \$3,511,231 of which \$3,029,429 is recurring.

Surveys Workload	
Current Tobacco Permits:	27,589
Two surveys per permitholder per year:	2
Total Surveys per year (27,589 X 2 = 55,178):	55,178
Hours per survey (4 surveys per 3 hours):	0.75
Total survey hours:	41,384
Less current survey level:	2,394
Total additional inspection hours (Projected total surveys per year minus current survey level divided by 4 surveys every 3 hours):	39,588
Work hours per FTE:	1,854
Additional Staff Required (39,588 divided by 1,854 = 21.35):	21.35
Additional Staff Required (Rounded):	21.00

Division of Service Operations: The impact to the division is indeterminate at this time.

OGC Rules: Rulemaking may be required to reflect and implement the changes to law relating to penalties and penalty guidelines.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	While this bill defines the terms like "electronic smoking device" and amends the definition of the term "tobacco products" under ch. 569, F.S., this bill does not define or amend terms used in ch. 210, F.S.
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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02-03-2020
Meeting Date

SB 810
Bill Number (if applicable)

Topic Classifying Electronic Cigarettes as Tobacco

Amendment Barcode (if applicable)

Name Terebtha Lowery

Job Title Regional Mgr

Address 380 Ayesbury Circle Apt. C
Street

Phone (386) 747-3535

Delz FL 32720
City State Zip

Email T.Lowery13@mail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing E-Cig Source

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
APPEARANCE RECORD

2-3-2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 810

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Italo M Richetti

Job Title Owner/Shop

Address 5501 ~~High~~ Ridgeway Dr

Street

Orlando

City

FL

State

32818

Zip

Phone 407-557-6950

Email italorichetti@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Vape Shop - Jimmy's Vape escape

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/03/2020

Meeting Date

SB-810

Bill Number (if applicable)

Topic Classifying Electronic Cigarettes as Tobacco

Amendment Barcode (if applicable)

Name Robert Lewellen

Job Title Chemist

Address 318 W Howry Ave Apt. 2

Street

Phone 386-315-3807

DeLand

City

FL

State

32720

Zip

Email RobertBlakeLewellen@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Consumer

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb 3

Meeting Date

SB 810

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Michael Boling

Job Title

Address 8119 Villa Grande Ct
Street
Sarasota FL 34234
City State Zip

Phone 941-535-7878

Email michael.boling@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing

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
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2 Feb 20

Meeting Date

SB 810

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Gus Pros

Job Title Retired (Vet)

Address 522 Grace Ave

Street

Deland

City

FL

State

32724

Zip

Phone 386-748-0635

Email gus121305@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against

(The Chair will read this information into the record.)

Representing Consumer

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-3-20

Meeting Date

810
SB ~~1087~~

Bill Number (if applicable)

Topic Tobacco

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr.

Phone _____

Street

Largo

City

Fl.

State

33773

Zip

Email _____

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-3-2020

Meeting Date

53810

Bill Number (if applicable)

Topic Classifying Electronic Cigs as Tobacco

Amendment Barcode (if applicable)

Name Aprax Pro's

Job Title Manager

Address 522 Grace Ave

Street

Orlando FL 32724

City

State

Zip

Phone (386) 748-0534

Email Aprax13@hotmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing E-Cig Source

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020

Meeting Date

SB 810

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Angela Weatherholt

Job Title

Address 32046 Chipola Trl

Street

Sorrento

City

FL

State

32776

Zip

Phone 407 346 7042

Email amw1147@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing

Self

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
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020

Meeting Date

810

Bill Number (if applicable)

Topic VAPING

Amendment Barcode (if applicable)

Name MICHAEL T. CHERUP

Job Title _____

Address 1420 CORNER OAKS DR

Street

Branford

City

FL

State

33510

Zip

Phone 813-482-4258

Email MICHAELC@GMAIL.COM

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing MYSELF

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020

Meeting Date

SB 810

Bill Number (if applicable)

Topic Tobacco and nicotine

Amendment Barcode (if applicable)

Name Melissa Villar

Job Title Executive Director

Address Po Box 11254

Street

TLH

City

FL

State

Zip

Phone (850) 354-8424

Email NORM Tallchessie@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing NORM Tallchessie

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 810
Bill Number (if applicable)

Meeting Date

Topic _____

Amendment Barcode (if applicable)

Name Katee VanDerZee

Job Title _____

Address 8238 Swann Hollow Dr
Street
Tampa FL 33641
City State Zip

Phone _____

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Self

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20

Meeting Date

SB 810

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jacqueline Carco

Job Title _____

Address 2345 Majestic Drive

Street

Phone (850) 324-4722

Pensacola

City

FL

State

32534

Zip

Email jcarco@cox.net

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Self

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2-3-2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 810

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Joseph A. Carco

Job Title Owner

Address 314-B S. NAVY Blvd

Street

Pensacola

City

FL

State

32

Zip

Phone 850-898-3808

Email vapeescape314@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Jim's Vape Escape Inc

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/3/2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

810

Bill Number (if applicable)

Topic ~~Tobacco~~ Tobacco 21

Amendment Barcode (if applicable)

Name Jennifer Cunningham

Job Title Senior Manager, State Govt. Affairs

Address 500 20th St.

Phone 404 290 4231

Street

San Francisco

CA

94107

City

State

Zip

Email Jennifer. ~~to~~ Cunningham
@juul.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing JUUL Labs

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

53810

Meeting Date _____

Bill Number (if applicable) _____

Topic _____

Amendment Barcode (if applicable) _____

Name NICHOLAS ORLANDO

Job Title _____

Address 2812 EDENWOOD ST.

Phone 813-784-3578

Street

CLEARWATER FL. 338159

Email NORLANDO@BRIAN

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing FLORIDA SMOKE FREE 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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-3-20

Meeting Date

810

SB ~~1503~~

Bill Number (if applicable)

Topic 1394

Amendment Barcode (if applicable)

Name Linda McCormick

Job Title Reg. Sales Manager

Address 1965 Old Beech Rd

Phone 321-799-1911
~~321-799-1911~~

Street

Moultrie

City

GA

State

31788

Zip

Email lmcormick007@msn.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/3/20

Meeting Date

SB-810

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Norman Barkby

Job Title All Technical support for Servers

Address 380 Ayresbury Circle

Street

Deland

City

FL

State

32720

Zip

Phone 386-868-6380

Email Norman.Barkby@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Consumers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 810

Meeting Date

Bill Number (if applicable)

Topic \$

Amendment Barcode (if applicable)

Name Thomas Mueller

Job Title

Address 8238 SWANSON Hollow Dr

Phone 314 477 4121

Street

Tampa

City

FL

State

33647

Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing self

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/3/20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

38810

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

Patricia Stokes

Job Title

RN

Address

1202 C Hernandez St

Street

Pensacola FL 32503

City

State

Zip

Phone

850-341-0185

Email

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Representing

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20

Meeting Date

810

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Jonathan Risteen

Job Title Owner

Address 2980 S. Ridgewood Ave
Street
Edgewater FL 32141
City State Zip

Phone 321 972 2207

Email info@gentlemanandrew.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

February 3, 2020

Meeting Date

SB 810

Bill Number (if applicable)

Topic Tobacco and Nicotine Products

Amendment Barcode (if applicable)

Name Doug Bell

Job Title Attorney

Address 119 South Monroe Street, Suite 200

Phone 850-205-9000

Street

Tallahassee

FL

32301

Email doug.bell@mhdfirm.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing American Lung Association ; American Academy of Pediatrics

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

APPEARANCE RECORD

2/3/20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

810

Bill Number (if applicable)

Topic

Tobacco & Nicotine Products

Amendment Barcode (if applicable)

Name

Alexandra Abboud

Job Title

Governmental Affairs Liaison

Address

118 E Jefferson Street

Phone

850-224-1089

Street

Tallahassee

FL

32301

Email

City

State

Zip

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

(The Chair will read this information into the record.)

Representing

Florida Dental 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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-3-2020
Meeting Date

SB 810
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name J.D. McCormick

Job Title Business Owner

Address 1435 E. Lafayette St. #105

Phone 407-508-0340

Street

Tallahassee
City

FL

State

32301

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/3/20

Meeting Date

810

Bill Number (if applicable)

Topic Smoking

Amendment Barcode (if applicable)

Name Toni Large

Job Title _____

Address 215 S Monroe St
Street

Phone (850) 556-1461

Tallahassee, FL 32301
City State Zip

Email toni@largestrategies.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Society of Respiratory ~~Therapists~~ Care

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20

Meeting Date

SR 810

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Zack Goodson

Job Title General Manager

Address 2417 Bass Bay Dr.

Street

Tallahassee

City

FL

State

32312

Zip

Phone 850 544 9654

Email Zackm0rt@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020

Meeting Date

1384/618

Bill Number (if applicable)

Topic Vaping

Amendment Barcode (if applicable)

Name Amy Hampton

Job Title Business Owner

Address 3204 Salinger Way

Street

TALL

City

FL

State

32311

Zip

Phone (800) 591-8396

Email AjSmithward@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☒ Against
(The Chair will read this information into the record.)

Representing _____

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/3/2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

810/1394

680.

Bill Number (if applicable)

Topic Vaping

Amendment Barcode (if applicable)

Name Megan Phillips-O'Bryan

Job Title Customer Service

Address 14822 N.W. Barton Lane

Street

Phone 850 447-0589

Altha FL 32921

City

State

Zip

Email mphilips8276@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

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

APPEARANCE RECORD

02/03/20

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

810 1394

Bill Number (if applicable)

Topic

Taxes & Fees on Tobacco products

Amendment Barcode (if applicable)

Name

Amanda Reyes for Puff4less

Job Title

CEO

Address

2504 W Tennessee St

Phone

813-843-3838

Street

Tallahassee

Fl

32304

City

State

Zip

Email

Puff4less@gmail.com

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Puff 4 Less Inc

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020

Meeting Date

810/1394

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Robert Granger

Job Title Store Manager

Address 423 2403 Hwy 71

Phone 850-325-0045

Street

Marianna

City

FL

State

32448

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Puff 4 Less Inc.

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020
Meeting Date

810
Bill Number (if applicable)

Topic Tobacco + Nicotine Products

Amendment Barcode (if applicable)

Name Heather Yaumans

Job Title Senior Director, Gov Relations

Address 2619 Centennial Blvd
Street
Tallahassee FL 32309
City State Zip

Phone 850-251-2111
Email heather.yaumans@carca.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing American Cancer Society Cancer Action Network

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020
Meeting Date

1394/810
Bill Number (if applicable)

Topic Vaping

Name Jim Hampton

Title Business owner

Address 3254 Selinger way
Street

TBN R 32311
City State Zip

Phone (850) 524-6150

Email hampton2008@live.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Speaking at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

As 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.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20

Meeting Date

810

Bill Number (if applicable)

Topic Tobacco

Amendment Barcode (if applicable)

Name Mark Landreth

Job Title Gov Rel Dir

Address 2851 Remington Green Circle #A
Street
Tallahassee 32308
City State Zip

Phone 850 544 3376
Email Mark.Landreth@heart.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing American Heart Ass'n

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020
Meeting Date

SB 810

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Dan Martin

Job Title

Address 326 Ferris St

Phone 904-572-9001

Street

Green Cove Springs

FL

32043

City

State

Zip

Email betabay@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing

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
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-3-20

Meeting Date

SB810

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Lorelei Harper

Job Title _____

Address 326 Ferris St

Phone 904-627-5289

Street

Green Cove Spgs

FL

32043

City

State

Zip

Email Lorelei.harper817@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing _____

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020

Meeting Date

SB 810

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Dr. Brad Rodu

Job Title Professor of Medicine, Univ. of Louisville

Address

Phone

Street

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

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)

COMMITTEE: Innovation, Industry, and Technology
ITEM: CS/SB 810
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Monday, February 3, 2020
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

By the Committees on Innovation, Industry, and Technology; and Health Policy; and Senators Simmons and Flores

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A bill to be entitled

An act relating to tobacco and nicotine products; amending s. 210.15, F.S.; revising the age limits for permits relating to cigarettes; amending s. 386.212, F.S.; revising age and time restrictions relating to the prohibition of smoking and vaping near school property; amending s. 569.002, F.S.; revising the definition of the term "tobacco products"; deleting the term "any person under the age of 18"; amending s. 569.003, F.S.; revising the age limits for retail tobacco products dealer permits; amending s. 569.007, F.S.; revising prohibitions on the sale of tobacco products from vending machines; conforming provisions to federal law; amending s. 569.101, F.S.; requiring that the age of persons purchasing tobacco products be verified under certain circumstances; repealing s. 877.112, F.S., relating to nicotine products and nicotine dispensing devices; amending s. 210.095, F.S.; conforming provisions to federal law; making technical changes; amending ss. 569.0075, 569.008, 569.11, 569.12, 569.14, and 569.19, F.S.; conforming provisions to federal law; conforming provisions to changes made by the act; providing a contingent effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 210.15, Florida Statutes, is amended to read:

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210.15 Permits.—

(1)

(b) Permits shall be issued only to persons of good moral character, who are not less than 21 ~~18~~ years of age. Permits to corporations shall be issued only to corporations whose officers are of good moral character and not less than 21 ~~18~~ years of age. There shall be no exemptions from the permit fees herein provided to any persons, association of persons, or corporation, any law to the contrary notwithstanding.

Section 2. Subsection (1) of section 386.212, Florida Statutes, is amended to read:

386.212 Smoking and vaping prohibited near school property; penalty.—

(1) It is unlawful for any person under 21 ~~18~~ years of age to smoke tobacco or vape in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school ~~between the hours of 6 a.m. and midnight.~~ This section does not apply to any person occupying a moving vehicle or within a private residence.

Section 3. Subsections (6) and (7) of section 569.002, Florida Statutes, are amended to read:

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

(6) "Tobacco products" includes:

(a) Any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; or

(b) Any component, part, or accessory of a product

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described in paragraph (a), whether or not any of these contain tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, and pipes.

The term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act ~~loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.~~

~~(7) "Any person under the age of 18" does not include any person under the age of 18 who:~~

~~(a) Has had his or her disability of nonage removed under chapter 743;~~

~~(b) Is in the military reserve or on active duty in the Armed Forces of the United States;~~

~~(c) Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or~~

~~(d) Is acting in his or her scope of lawful employment with an entity licensed under the provisions of chapter 210 or this chapter.~~

Section 4. Paragraph (a) of subsection (2) of section 569.003, Florida Statutes, is amended to read:

569.003 Retail tobacco products dealer permits; application; qualifications; fees; renewal; duplicates.—

(2) (a) Permits may be issued only to persons who are 21 ~~18~~ years of age or older or to corporations the officers of which are 21 ~~18~~ years of age or older.

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Section 5. Subsections (1) and (2) of section 569.007, Florida Statutes, are amended to read:

569.007 Sale or delivery of tobacco products; restrictions.—

(1) In order to prevent persons under 21 ~~18~~ years of age from purchasing or receiving tobacco products, the sale or delivery of tobacco products is prohibited, except:

(a) When under the direct control or line of sight of the dealer or the dealer's agent or employee; or

(b) Sales from a vending machine are prohibited under ~~the provisions of paragraph (1)(a) and are only permissible from a machine that is~~ located in an establishment that prohibits persons under 21 years of age on the licensed premises at all times ~~equipped with an operational lockout device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one tobacco product. The lockout device must include a mechanism to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled, and a mechanism to ensure that only one tobacco product is dispensed at a time.~~

~~(2) The provisions of subsection (1) shall not apply to an establishment that prohibits persons under 18 years of age on the licensed premises.~~

Section 6. Section 569.101, Florida Statutes, is amended to read:

569.101 Selling, delivering, bartering, furnishing, or giving tobacco products to persons under 21 ~~18~~ years of age;

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117 criminal penalties; defense.—

118 (1) It is unlawful to sell, deliver, barter, furnish, or
119 give, directly or indirectly, to any person who is under 21 ~~18~~
120 years of age, any tobacco product.

121 (2) Any person who violates subsection (1) commits a
122 misdemeanor of the second degree, punishable as provided in s.
123 775.082 or s. 775.083. However, any person who violates
124 subsection (1) for a second or subsequent time within 1 year of
125 the first violation, commits a misdemeanor of the first degree,
126 punishable as provided in s. 775.082 or s. 775.083.

127 (3) A person charged with a violation of subsection (1) has
128 a complete defense if, at the time the tobacco product was sold,
129 delivered, bartered, furnished, or given:

130 (a) The buyer or recipient falsely evidenced that she or he
131 was 21 ~~18~~ years of age or older;

132 (b) The appearance of the buyer or recipient was such that
133 a prudent person would believe the buyer or recipient to be 21
134 ~~18~~ years of age or older; and

135 (c) Such person carefully checked a driver license or an
136 identification card issued by this state or another state of the
137 United States, a passport, or a United States armed services
138 identification card presented by the buyer or recipient and
139 acted in good faith and in reliance upon the representation and
140 appearance of the buyer or recipient in the belief that the
141 buyer or recipient was 21 ~~18~~ years of age or older.

142 (4) A person must verify by means of identification
143 specified in paragraph (3)(c) that a person purchasing a tobacco
144 product is not under 21 years of age. Such verification is not
145 required for any person over the age of 29.

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Section 7. Section 877.112, Florida Statutes, is repealed.

Section 8. Paragraphs (a) and (b) of subsection (5) and paragraphs (e) and (g) of subsection (8) of section 210.095, Florida Statutes, are amended to read:

210.095 Mail order, Internet, and remote sales of tobacco products; age verification.—

(5) Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale must:

(a) Include as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Tobacco Products: Florida law prohibits shipping to individuals under 21 ~~18~~ years of age and requires the payment of all applicable taxes."

(b) Use a method of mailing, shipping, or delivery which obligates the delivery service to require:

1. The individual submitting the order for the delivery sale or another adult who resides at the individual's address to sign his or her name to accept delivery of the shipping container. Proof of the legal minimum purchase age of the individual accepting delivery is required only if the individual appears to be under 30 ~~27~~ years of age.

2. Proof that the individual is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

If the person accepting a purchase order for a delivery sale

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175 delivers the tobacco products without using a delivery service,
176 the person must comply with all of the requirements of this
177 section which apply to a delivery service. Any failure to comply
178 with a requirement of this section constitutes a violation
179 thereof.

180 (8)

181 (e) A person who, in connection with a delivery sale,
182 delivers tobacco products on behalf of a delivery service to an
183 individual who is not an adult commits a misdemeanor of the
184 second ~~third~~ degree, punishable as provided in s. 775.082 or s.
185 775.083.

186 (g) An individual who is not an adult and who knowingly
187 violates any provision of this section commits a misdemeanor of
188 the second ~~third~~ degree, punishable as provided in s. 775.082 or
189 s. 775.083.

190 Section 9. Section 569.0075, Florida Statutes, is amended
191 to read:

192 569.0075 Gift of sample tobacco products prohibited.—The
193 gift of sample tobacco products to any person under the age of
194 21 ~~18~~ by an entity licensed or permitted under the provisions of
195 chapter 210 or this chapter, or by an employee of such entity,
196 is prohibited and is punishable as provided in s. 569.101.

197 Section 10. Subsection (1), paragraphs (b) and (c) of
198 subsection (2), and subsection (3) of section 569.008, Florida
199 Statutes, are amended to read:

200 569.008 Responsible retail tobacco products dealers;
201 qualifications; mitigation of disciplinary penalties; diligent
202 management and supervision; presumption.—

203 (1) The Legislature intends to prevent the sale of tobacco

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products to persons under 21 ~~18~~ years of age and to encourage retail tobacco products dealers to comply with responsible practices in accordance with this section.

(2) To qualify as a responsible retail tobacco products dealer, the dealer must establish and implement procedures designed to ensure that the dealer's employees comply with the provisions of this chapter. The dealer must provide a training program for the dealer's employees which addresses the use and sale of tobacco products and which includes at least the following topics:

(b) Methods of recognizing and handling customers under 21 ~~18~~ years of age.

(c) Procedures for proper examination of identification cards in order to verify that customers are not under 21 ~~18~~ years of age.

(3) In determining penalties under s. 569.006, the division may mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person under 21 ~~18~~ years of age if the following conditions are met:

(a) The dealer is qualified as a responsible dealer under this section.

(b) The dealer provided the training program required under subsection (2) to that employee before the illegal sale occurred.

(c) The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.

(d) If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

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233 Section 11. Section 569.11, Florida Statutes, is amended to
234 read:

235 569.11 Possession, misrepresenting age ~~or military service~~
236 to purchase, and purchase of tobacco products by persons under
237 21 ~~18~~ years of age prohibited; penalties; jurisdiction;
238 disposition of fines.—

239 (1) It is unlawful for any person under 21 ~~18~~ years of age
240 to knowingly possess any tobacco product. Any person under 21 ~~18~~
241 years of age who violates this subsection commits a noncriminal
242 violation as provided in s. 775.08(3), punishable by:

243 (a) For a first violation, 16 hours of community service
244 or, instead of community service, a \$25 fine. In addition, the
245 person must attend a school-approved anti-tobacco program, if
246 locally available; or

247 (b) For a second or subsequent violation within 12 weeks
248 after the first violation, a \$25 fine.

249
250 Any second or subsequent violation not within the 12-week period
251 after the first violation is punishable as provided for a first
252 violation.

253 (2) It is unlawful for any person under 21 ~~18~~ years of age
254 to misrepresent his or her age ~~or military service~~ for the
255 purpose of inducing a dealer or an agent or employee of the
256 dealer to sell, give, barter, furnish, or deliver any tobacco
257 product, or to purchase, or attempt to purchase, any tobacco
258 product from a person or a vending machine. Any person under 21
259 ~~18~~ years of age who violates this subsection commits a
260 noncriminal violation as provided in s. 775.08(3), punishable
261 by:

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(a) For a first violation, 16 hours of community service or, instead of community service, a \$25 fine and, in addition, the person must attend a school-approved anti-tobacco program, if available; or

(b) For a second or subsequent violation within 12 weeks after the first violation, a \$25 fine.

Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

(3) Any person under 21 ~~18~~ years of age cited for committing a noncriminal violation under this section must sign and accept a civil citation indicating a promise to appear before the county court or comply with the requirement for paying the fine and must attend a school-approved anti-tobacco program, if locally available. If a fine is assessed for a violation of this section, the fine must be paid within 30 days after the date of the citation or, if a court appearance is mandatory, within 30 days after the date of the hearing.

(4) A person charged with a noncriminal violation under this section must appear before the county court or comply with the requirement for paying the fine. The court, after a hearing, shall make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified in subsection (1) or subsection (2). A person who participates in community service shall be considered an employee of the state for the purpose of chapter 440, for the duration of such service.

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291 (5) (a) If a person under 21 ~~18~~ years of age is found by the
292 court to have committed a noncriminal violation under this
293 section and that person has failed to complete community
294 service, pay the fine as required by paragraph (1) (a) or
295 paragraph (2) (a), or attend a school-approved anti-tobacco
296 program, if locally available, the court may direct the
297 Department of Highway Safety and Motor Vehicles to withhold
298 issuance of or suspend the driver license or driving privilege
299 of that person for a period of 30 consecutive days.

300 (b) If a person under 21 ~~18~~ years of age is found by the
301 court to have committed a noncriminal violation under this
302 section and that person has failed to pay the applicable fine as
303 required by paragraph (1) (b) or paragraph (2) (b), the court may
304 direct the Department of Highway Safety and Motor Vehicles to
305 withhold issuance of or suspend the driver license or driving
306 privilege of that person for a period of 45 consecutive days.

307 (6) Eighty percent of all civil penalties received by a
308 county court pursuant to this section shall be remitted by the
309 clerk of the court to the Department of Revenue for transfer to
310 the Department of Education to provide for teacher training and
311 for research and evaluation to reduce and prevent the use of
312 tobacco products by children. The remaining 20 percent of civil
313 penalties received by a county court pursuant to this section
314 shall remain with the clerk of the county court to cover
315 administrative costs.

316 Section 12. Paragraph (b) of subsection (2) and subsection
317 (3) of section 569.12, Florida Statutes, are amended to read:

318 569.12 Jurisdiction; tobacco product enforcement officers
319 or agents; enforcement.—

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(2)

(b) A tobacco product enforcement officer is authorized to issue a citation to a person under the age of 21 ~~18~~ when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 386.212 or s. 569.11.

(3) A correctional probation officer as defined in s. 943.10(3) is authorized to issue a citation to a person under the age of 21 ~~18~~ when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 569.11.

Section 13. Section 569.14, Florida Statutes, is amended to read:

569.14 Posting of a sign stating that the sale of tobacco products to persons under 21 ~~18~~ years of age is unlawful; enforcement; penalty.—

(1) A dealer that sells tobacco products shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following:

THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

~~(2) A dealer that sells tobacco products and nicotine products or nicotine dispensing devices, as defined in s. 877.112, may use a sign that substantially states the following:~~

~~THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR~~

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~~NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE
OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED
FOR PURCHASE.~~

~~A dealer that uses a sign as described in this subsection meets
the signage requirements of subsection (1) and s. 877.112.~~

~~(3)~~ The division shall make available to dealers of tobacco
products signs that meet the requirements of subsection (1) ~~or~~
subsection ~~(2)~~.

(3)~~(4)~~ Any dealer that sells tobacco products shall provide
at the checkout counter in a location clearly visible to the
dealer or the dealer's agent or employee instructional material
in a calendar format or similar format to assist in determining
whether a person is of legal age to purchase tobacco products.
This point of sale material must contain substantially the
following language:

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BUY TOBACCO PRODUCTS.

Upon approval by the division, in lieu of a calendar a dealer
may use card readers, scanners, or other electronic or automated
systems that can verify whether a person is of legal age to
purchase tobacco products. Failure to comply with the provisions
contained in this subsection shall result in imposition of
administrative penalties as provided in s. 569.006.

(4)~~(5)~~ The division, through its agents and inspectors,
shall enforce this section.

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378 (5)~~(6)~~ Any person who fails to comply with subsection (1)
379 is guilty of a misdemeanor of the second degree, punishable as
380 provided in s. 775.082 or s. 775.083.

381 Section 14. Subsections (3) and (4) of section 569.19,
382 Florida Statutes, are amended to read:

383 569.19 Annual report.—The division shall report annually
384 with written findings to the Legislature and the Governor by
385 December 31, on the progress of implementing the enforcement
386 provisions of this chapter. This must include, but is not
387 limited to:

388 (3) The number of violations for selling tobacco products
389 to persons under age 21 ~~18~~, and the results of administrative
390 hearings on the above and related issues.

391 (4) The number of persons under age 21 ~~18~~ cited for
392 violations of s. 569.11 and sanctions imposed as a result of
393 citation.

394 Section 15. This act shall take effect October 1, 2020, if
395 SB 1394 or similar legislation is adopted in the same
396 legislative session or an extension 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 Innovation, Industry, and Technology

BILL: CS/SB 1394

INTRODUCER: Innovation, Industry, and Technology Committee and Senator Simmons

SUBJECT: Fees

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	IT	Fav/CS
2.			FT	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1394 amends the definition of the term “tobacco products” in s. 569.002, F.S., as amended by SB 810 or similar legislation during the 2020 Regular Session. The bill amends the term “tobacco products” to include vapor-generating electronic devices (vaping products) and any substances that may be aerosolized or vaporized by such devices, whether or not any of the substances contain nicotine.

By revising the definition of “tobacco products” to include vapor-generating electronic devices, the bill requires a retail dealer of vapor-generating electronic devices, such as electronic cigarettes, to pay an annual license fee of \$50 for a retail tobacco product dealer permit.

The bill takes effect on the same date that SB 810 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof. CS/CS/SB 810 provides an effective date of October 1, 2020, contingent upon the passage of CS/SB 1394 being adopted in the same legislative session or an extension thereof and becoming law.

Article VII, Section 19 of the Florida Constitution requires that a tax or fee raised by the Legislature must be approved by two-thirds of the membership of each house of the Legislature.

II. Present Situation:

CS/CS/SB 810

CS/CS/SB 810 by Senator Simmons, relating to tobacco products, amends s. 569.002, F.S., which provides definitions related to the regulation of the retail sale of tobacco products, to redefine the term “tobacco products” to include:

- Any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; or
- Any component, part, or accessory of a product described above, whether or not any of these contain tobacco or nicotine, including but not limited to, filters, rolling papers, blunt or hemp wraps, and pipes.

Under the CS/SB 810, the term “tobacco products” does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

CS/CS/SB 810 increases the minimum age to lawfully purchase and possess tobacco products from 18 years of age to 21 years of age.

CS/CS/SB 810 provides an effective date of October 1, 2020, contingent upon the passage of CS/SB 1394 being adopted in the same legislative session or an extension thereof and becoming law.

CS/CS/SB 810 repeals s. 877.112, F.S., to eliminate the prohibition on the sale or delivery of tobacco products, nicotine dispensing devices, and nicotine products to persons under the age of 18. Many of these provisions are incorporated into the provisions of ch. 569, F.S., by CS/CS/SB 810 as amended by CS/SB 1394.

Regulation of Vaping

During the 2019 legislative session, CS/SB 7012¹ was enacted to implement Amendment 9 to the Florida Constitution,² which was approved by the voters of Florida on November 6, 2018, to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces, as part of the Florida Clean Indoor Air Act. The use of e-cigarettes is commonly referred to as vaping.

The use of vapor-generating electronic devices is permitted in the enclosed indoor workplace of a “vapor-generating device retailer” or “retail vape shop,” which is defined as “any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic devices and components, parts, and accessories for such products, in which the sale of other products or services is merely incidental.” Vaping is permitted at the same locations authorized

¹ See ch. 2019-14, Laws of Fla.

² FLA. CONST. art. X, s. 20.

to permit tobacco smoking, i.e., private residences whenever not being used for certain commercial purposes, stand-alone bars, designated rooms in hotels and other public lodging establishments, retail tobacco shops, facilities owned or leased by a membership association, smoking cessation program locations, medical or scientific research locations, and customs smoking rooms in airport in-transit lounges.

Local governments may adopt more restrictive local ordinances on the use of vapor-generating electronic devices.

The above provisions were approved by the Governor and took effect July 1, 2019.

Unlike the retail sale of tobacco products, which is subject to regulation under ch. 569, F.S., the sale of vape products is only regulated under the provisions of s. 877.112, F.S. While tobacco products in Florida are subject to specific taxation under ch. 210, F.S., vaping products are only subject to sales taxes.

Nicotine Dispensing Devices

Section 877.112, F.S., provides requirements for the sale of nicotine dispensing devices and nicotine products to minors, such as electronic cigarettes (e-cigarettes). This statute extends the current prohibitions related to tobacco products to the sale, gifting, possession, or use of nicotine dispensing devices and nicotine products to and by persons under 18 years of age.

A “nicotine dispensing device” is:

any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.³

A “nicotine product” is:

any product that contains nicotine, including liquid nicotine intended for human consumption, whether inhaled, chewed, absorbed, dissolved or ingested by any means. The definition does not include a tobacco product under Florida law, a drug or device under federal law, or a product that contains incidental nicotine.⁴

The sale or giving of nicotine products or nicotine dispensing devices to any person under 18 years of age is prohibited and punishable as a second degree misdemeanor.⁵ It is a complete defense to a violation if an underage person falsely misrepresented his or her age, the underage

³ Section 877.112(1)(a), F.S.

⁴ Section 877.112(1)(b), F.S.

⁵ Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

person had the appearance to a prudent person to 18 years of age or older, and the person carefully checked, and relied on, the driver license or identification card of the recipient.⁶

Persons under 18 years of age possessing, purchasing, or misrepresenting their age or military service to obtain nicotine products or nicotine dispensing devices commit a noncriminal violation. The penalty is 16 hours of community service or a \$25 fine for a first violation, and attendance at a school-approved anti-tobacco and nicotine program, if available. A second or subsequent violation within 12 weeks of the first violation requires a \$25 fine. Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.⁷

If a person under 18 years of age is found by the court to have committed such a noncriminal violation and that person has failed to complete community service, pay the required fine, or attend a school-approved anti-tobacco and nicotine program, if locally available, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for 30 or 45 consecutive days, depending on the infraction.⁸

Eighty percent of civil penalties specific to possession of nicotine products or nicotine dispensing devices by minors and misrepresenting age in making such purchases are remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court are retained by the clerk of the county court to cover administrative costs.⁹

Subsection 877.112(10), F.S., requires a retail dealer of nicotine products and nicotine dispensing devices to post signs that the sale of nicotine products and nicotine dispensing devices to persons under 18 years of age is prohibited.

Nicotine products or nicotine dispensing devices may not be sold or delivered by self-service merchandising, except when such products are under the direct control of, or in the line of sight where effective control may be reasonably maintained by, the retailer or their agent or employee.¹⁰

To prevent persons under 18 years of age from purchasing or receiving nicotine products or nicotine dispensing devices, s. 877.112(12), F.S., requires retailers to comply with restrictions identical to the restrictions on the sale of tobacco products in s. 569.007(1), F.S., such as requiring the products to be sold or delivered only when under the direct control or line of sight of the retailer and requiring a lock-out device if the products are sold or delivered from a vending machine.

⁶ Section 877.112(5), F.S.

⁷ Sections 877.112(6) and (7), F.S.

⁸ Section 877.112(8), F.S.

⁹ Section 877.112(9), F.S.

¹⁰ Section 877.112(11), F.S.

Rates of Youth Vaping

According to recent data from the federal Centers for Disease Control and Prevention (CDC), more than one in four high school students is an e-cigarette user.¹¹ That represents an increase from approximately one in five last year. At the same time, around 10 percent of middle school students reported using e-cigarettes in the month prior to being surveyed, up from around 5 percent last year. Nearly 70 percent of e-cigarette users reported using a flavored product, and the availability of flavors such as mint and chocolate was a reason that many students cited for trying e-cigarettes. The findings come a year after the U.S. Surgeon General declared the surge in youth vaping an epidemic.¹²

Health Issues Relating to Vaping

The findings noted above regarding the increases in youth vaping come at the same time that the CDC is conducting an ongoing national investigation of vaping-related lung injuries. The CDC, the federal Food and Drug Administration (FDA), state and local health departments, and public health and clinical stakeholders have spent the past several months investigating and monitoring the nationwide illness outbreak. The condition has been labelled as E-cigarette, or Vaping, product use-Associated Lung Injury, or EVALI. The latest count from the CDC finds that 2,409 people have been hospitalized and 52 people have died across 25 states and Washington, D.C., as of December 10, 2019.¹³ Two of the deaths have occurred in Florida, and 103 cases of vaping-related illness hospitalizations have been documented in Florida as of December 3, 2019.¹⁴

National Minimum Age of Sale of Tobacco Products

As part of the federal budget revisions adopted in December 2019, and signed into law on December 20, 2019, the minimum age for the sale of tobacco products is now 21 years of age.¹⁵ The specific tobacco provisions in the budget document amended section 906(d) of the Federal Food, Drug, and Cosmetic Act to increase the federal minimum age to purchase tobacco products from 18 to 21, and to add a provision that it is unlawful for any retailer to sell a tobacco product to any person younger than age 21. The provisions also require the FDA to update its applicable tobacco regulations within specified timelines.

¹¹ See “Tobacco Product Use and Associated Factors Among Middle and High School Students — United States, 2019” Centers for Disease Control and Prevention- Morbidity and Mortality Weekly Report (MMWR), (December 6, 2019), available at <https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm> (last visited Jan. 25, 2020).

¹² See “Surgeon General Warns Youth Vaping Is Now An ‘Epidemic,’” December 18, 2018, available at <https://www.npr.org/sections/health-shots/2018/12/18/677755266/surgeon-general-warns-youth-vaping-is-now-an-epidemic> (last visited Jan. 25, 2020).

¹³ Mikosz CA, Danielson M, Anderson KN, et al. Characteristics of Patients Experiencing Rehospitalization or Death After Hospital Discharge in a Nationwide Outbreak of E-cigarette, or Vaping, Product Use–Associated Lung Injury — United States, 2019. CDC, *Morbidity & Mortality Weekly Report* 2020;68:1183-1188. (December 20, 2019), available at <http://dx.doi.org/10.15585/mmwr.mm68152e1> (last visited January 25, 2020).

¹⁴ See “Florida reports second vaping death” (December 11, 2019), available at <http://www.orlandosentinel.com/news/os-ne-florida-reports-second-vaping-death-20191211-dvz3tehxebvpvkavhe2jdiepe-story.html> (last visited Jan. 25, 2020).

¹⁵ See the “Further Consolidated Appropriations Act, 2020,” Rules Committee print 116-44, Text of the House Amendment to the Senate Amendment to H.R. 1865, December 16, 2019, beginning at page 1492 of 1773, available at <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR1865SA-RCPI16-44.PDF> (last visited Jan. 25, 2020).

As part of this rule update process, the FDA is to update the relevant age verification requirements to require age verification for individuals under age 30 (as opposed to the current age verification threshold for individuals under age 27). This topic had been under consideration for some time, and adoption of the changes were the result of the recent increased vaping rates among youth as highlighted above, the recent EVALI cases as highlighted above, and the adoption of age 21 as the minimum age for purchase of tobacco products in multiple states as highlighted in the **Related Issues** portion of this analysis.

FDA Guidance Document

On January 2, 2020, the FDA released “Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market without Premarket Authorization” (FDA Guidance Document) as a Guidance for Industry document.¹⁶ (For all intents and purposes, the reference to ENDS products is a reference to vaping products.) The Guidance Document’s introduction describes how the FDA intends to prioritize its enforcement resources with regard to the marketing of certain deemed tobacco products that do not have premarket authorization.

The introduction further indicates that, as with FDA’s prior compliance policies on deemed new tobacco products that do not have premarket authorization, this guidance document does not apply to any deemed product that was not on the market on August 8, 2016.¹⁷ For ENDS products marketed without the FDA’s authorization, the FDA intends to prioritize enforcement against:

- Any flavored, cartridge-based ENDS product (other than a tobacco- or menthol-flavored ENDS product);
- All other ENDS products for which the manufacturer has failed to take (or is failing to take) adequate measures to prevent minors’ access; and
- Any ENDS product that is targeted to minors or whose marketing is likely to promote use of ENDS by minors.

¹⁶ See “Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market without Premarket Authorization: Guidance for Industry, released by the U.S. Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products, (January 2, 2020), *available at* <https://www.fda.gov/media/133880/download> (last visited Jan. 25, 2020). The document as released is a follow-up to a draft document that was released by the FDA in March 2019. Appendix A of the document, consisting of pages 32-52 of the 52 page document, reflects FDA’s response to comments received on the March 2019 draft document.

¹⁷ A brief explanation of “deeming” is helpful in this context. The Family Smoking Prevention and Tobacco Control Act (2009) (the act) gave the FDA the authority to regulate tobacco products. The act broadly defined “tobacco products” as any product that is “made or derived from tobacco” that is “intended for human consumption.” However, the act, when passed, only immediately applied to a few specific products, namely cigarettes, cigarette tobacco, smokeless tobacco, and roll-your-own tobacco. To regulate any other tobacco products, the act requires the FDA to assert jurisdiction through regulation. In other words, for the FDA to start regulating cigars, e-cigarettes, hookah, and other products currently unregulated by the federal government, the FDA must create a rule through its formal notice-and-comment rulemaking process. A rule, or regulation, that extends the FDA’s jurisdiction to all tobacco products is often referred to as a Deeming Regulation because the language of the Tobacco Control Act states that the FDA can regulate additional tobacco products that it “deems to be subject” to the act. While this process exists and has been used, its use is infrequent. From *A Deeming Regulation: What is Possible Under the Law*, Tobacco Control Legal Consortium, *available at* <https://www.publichealthlawcenter.org/sites/default/files/resources/tclc-fs-deeming-reg-what-is-possible-2014.pdf> (last visited Jan. 25, 2020).

The Guidance Document provides background details of the FDA’s statutory and regulatory history of tobacco related products, evidence of increasing youth use of vaping products, applicable definitions, enforcement priorities, strategies for avoiding use of “black market” products, and the FDA’s logic regarding enforcement and pre-market review for other deemed new tobacco products.

III. Effect of Proposed Changes:

The bill amends the definition for the term “tobacco products” in s. 569.002, F.S., as amended by SB 810 or similar legislation during the 2020 Regular Session or an extension thereof. The bill amends the meaning of the term “tobacco products” to include vapor-generating electronic devices (vaping products) and any substances that may be aerosolized or vaporized by such device, whether or not any of the substance contains nicotine.

The bill defines the term “vapor-generating electronic device” to mean:

[A]ny product that employs an electronic, chemical, or mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product; any replacement cartridge for such device; and any other container of nicotine in a solution or other substance form intended to be used with or within an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, a vape pen, an electronic hookah, or other similar device or product. The term includes any component, part, or accessory of the device and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine.

Under the bill, the term “vapor-generating electronic device” does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

By revising the definition of “tobacco products” to include vapor-generating electronic devices, the bill requires a retail dealer of vapor-generating electronic devices, such as electronic cigarettes, to pay an annual license fee of \$50 for a retail tobacco product dealer permit.¹⁸

The bill uses the same term, vapor-generating electronic device, used in the Florida Constitution and the Florida Clean Indoor Air Act (act) in prohibition against indoor vaping.¹⁹ The definition for the term in the bill and in the Florida Constitution and the act are consistent.

The bill takes effect on the same date that SB 810 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof. CS/CS/SB 810

¹⁸ See s. 569.003(1)(c), F.S.

¹⁹ See FLA. CONST. art. X, s. 20.

provides an effective date of October 1, 2020, contingent upon the passage of CS/SB 1394 being adopted in the same legislative session or an extension thereof and 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:

The bill amends s. 569.002(7), F.S., to revise the definition of “tobacco products” to include vapor-generating electronic devices. By amending the definition, the bill requires retail dealers of vapor-generating electronic device, such as electronic cigarettes, to pay an annual license fee of \$50 for a retail tobacco product dealer permit.²⁰

Article VII, Section 19 of the Florida Constitution requires a “state tax or fee imposed, authorized, or raised under this section must be contained in a separate bill that contains no other subject.” A “fee” is defined by the Florida Constitution to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”²¹

Article VII, Section 19 of the Florida Constitution also requires that a tax or fee raised by the Legislature must be approved by two-thirds of the membership of each house of the Legislature.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁰ See s. 569.003(1)(c), F.S.

²¹ FLA. CONST. art. VII, s. 19(d)(1)

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill amends s. 569.002(6), F.S., to modify the definition of “tobacco products” in the context of the regulation of the retail sale of tobacco products. Section 210.25(11), F.S., relating to the taxation of on tobacco products other than cigarettes or cigars, also defines the term “tobacco products.” Because the bill does not revise the definition of “tobacco products” in part II ch. 210, F.S., which governs the excise tax and surcharge imposed and collected on tobacco products other than cigars and cigarettes, the bill does not affect:

- The taxation of vapor-generating electronic devices;
- The collection of excise taxes and surcharge taxes on other tobacco products; or
- The licensure, reporting, and recordkeeping of manufacturers and distributors of vapor-generating electronic devices or other tobacco products.

Types of Vaping Devices Subject to Federal Enforcement Priorities

It should be noted that the vaping devices that will be subject to enhanced enforcement by the federal FDA under its January 2, 2020, guidance document are those vaping devices that are cartridge-based.²² This means that tank-based vaping devices will not be subject to enhanced federal FDA enforcement.

VIII. Statutes Affected:

This bill substantially amends section 569.002 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 Innovation, Industry, and Technology on February 3, 2020:

The CS:

- Does not amend s. 210.25, F.S., to revise the definition of the term “tobacco products” to include nicotine dispensing devices and nicotine products as defined in s. 877.112, F.S.

²² *Supra* note 16.

- Does not republish ss. 210.276 and 210.30, F.S., to impose the surcharge tax and excise tax, respectively, on nicotine dispensing devices and nicotine products, and to subject distributors of nicotine dispensing devices and nicotine products to tax reporting and recordkeeping requirements.
- Changes the title of the bill from an act relating to “taxes and fees” to an act relating to “fees.”
- Amends the term “tobacco products” in s. 569.002, F.S., as amended by SB 810 or similar legislation during the 2020 Regular Session or an extension thereof, to include vapor-generating electronic devices.
- Revises the effective date of the bill to provide that the bill takes effect on the same date that SB 810 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof.

B. Amendments:

None.



134350

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2020	.	
	.	
	.	
	.	

The Committee on Innovation, Industry, and Technology (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (6) of section 569.002, Florida Statutes, as amended by SB 810 or similar legislation, 2020 Regular Session, is amended, and subsection (7) is added to that section, to read:

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

(6) "Tobacco products" includes:



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(a) Any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;

(b) Any vapor-generating electronic device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or

(c) Any component, part, or accessory of a product described in paragraph (a) or paragraph (b), whether or not any of these contain tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, and pipes.

The term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(7) "Vapor-generating electronic device" means any product that employs an electronic, chemical, or mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product; any replacement cartridge for such device; and any other container of nicotine in a solution or other substance form intended to be used with or within an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, a vape pen, an electronic hookah, or other similar device or product. The term includes any component, part, or accessory of the device



134350

and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine. The term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

Section 2. This act shall take effect on the same date that SB 810 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to fees; amending s. 569.002, F.S.;
expanding the definition of the term "tobacco
products" to include vapor-generating electronic
devices and components, parts, and accessories of such
devices and to include substances that may be
aerosolized or vaporized by such devices; defining the
term "vapor-generating electronic device"; providing a
contingent effective date.



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Innovation, Industry, and Technology

Subject: Committee Agenda Request

Date: January 15, 2020

I respectfully request that **Senate Bill 1394**, relating to Taxes and Fees, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons", written over a horizontal line.

Senator David Simmons
Florida Senate, District 9

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20

Meeting Date

SB-1394

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Delorse Orlando

Job Title _____

Address 2812 Edenwood St.
Street

Phone 727-692-6452

Clearwater, FL 33759
City State Zip

Email delorse-1@msn.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-3-2020

Meeting Date

SB 1394

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Italo M Richetti

Job Title Owner/Shop

Address 5501 Ridgeway Dr

Street

Orlando

City

FL

State

32817

Zip

Phone 407-557-6950

Email italorichetti@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against

(The Chair will read this information into the record.)

Representing Vape Shop - Jim's Vape escape

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

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SB 1394
Bill Number (if applicable)

Meeting Date

Topic _____

Amendment Barcode (if applicable)

Name NICHOLAS ORLANDO

Job Title _____

Address 2512 EDENWOOD ST.
Street

Phone 813-784-3578

CLAMMATH FL. 33759
City State Zip

Email NORLANDO13@gmail

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing FLORIDA SMOKE FREE 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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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Feb 3

Meeting Date

SB 1394

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

Michael Boling

Job Title

Address

8114 Villa Grand Court

Street

Sarasota, FL 34243

City

State

Zip

Phone

941-539-7878

Email

michaelboling@gmail.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Representing

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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3 Feb 20

Meeting Date

SB 1394

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Gus Pros

Job Title Retired (Vot)

Address 522 Grace Ave
Street

Phone 386 748-0635

Deland FL 32724
City State Zip

Email gus121305@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Consumer

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2-3-2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1394

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name April Pros

Job Title Manager

Address 522 Grace Hvl

Street

DeLand

City

FL

State

32724

Zip

Phone (386) 748-0534

Email Apr0513@hotmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing E-Cig Source

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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02/03/20

Meeting Date

1394

Bill Number (if applicable)

Topic

Tobacco Taxes : Fee

Amendment Barcode (if applicable)

Name

Amanda Reyes Sr Putt 4 Less Inc

Job Title

CEO

Address

2304 W Tennessee St

Phone

813.843.3888

Street

Jallahassie

FL

32304

City

State

Zip

Email

Putt4less@gmail.com

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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SB 1394
Bill Number (if applicable)

Meeting Date

Topic _____

Amendment Barcode (if applicable)

Name Kalce VanDerBae

Job Title 6238 Summer Hollow Dr

Address Tampa FL 33647

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Self

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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SP 1394

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Thomas Mueller

Job Title

Address 8738 SWANN Hollow Dr

Phone 314 477 4121

Street

Tampa

FL

33647

City

State

Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Self

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2-3-20

Meeting Date

SB 1394

Bill Number (if applicable)

Topic 1394

Amendment Barcode (if applicable)

Name Linda McCormick

Job Title Reg. Sales Manager

Address 1965 Old Berlin Rd

Phone 321-799-1911

Street

Moultrie

GA

31788

City

State

Zip

Email mcmccormick007@msn.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020

Meeting Date

SB 1394

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Angela Weatherholt

Job Title

Address 32046 Chipola Trl

Street

Phone 407 340 7042

Sorrento

FL

32776

City

State

Zip

Email amw1147@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing

Self

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020

Meeting Date

1394

Bill Number (if applicable)

Topic VAAPING

Amendment Barcode (if applicable)

Name MICHAEL CHERUP

Job Title _____

Address 1420 CORNER OAKS DR

Phone 813-482-4258

Street

BRAUNTON FL 33510

Email MCHERUP@GMAIL.COM

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing MYSELF

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20

Meeting Date

SB1394

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Jacqueline Carao

Job Title

Address 2345 Majestic Drive

Street

Pensacola

City

FL

State

32534

Zip

Phone (850) 324-4722

Email jclcd@cox.net

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing self

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020

Meeting Date

SB 1394

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Joseph A. Cario

Job Title Owner

Address 314-B S. Navy Blvd

Street

Pensacola, FL

City

32507

State

Zip

Phone 850-898-3808

Email Vapeescape314@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against

(The Chair will read this information into the record.)

Representing Jims Vape Escape Inc

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20

Meeting Date

1394

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Jonathan Kisteen

Job Title Designer

Address 2980 S. Ridgewood Ave

Street

Phone 321 972 2207

Edgewater FL 32141

City

State

Zip

Email info@gentlemansdraw.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Gentlemans Draw

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/30

Meeting Date

SB 1394

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Patricia Stokes

Job Title RN

Address 1203 Hernandez St

Street

Phone 850-341-0195

Pensacola FL 32503

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against

(The Chair will read this information into the record.)

Representing

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/03/2020
Meeting Date

SB-1394
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Robert Lewellen

Job Title Chemist

Address 318 W Howry Ave Apt 2
Street
Peland FL 32720
City State Zip

Phone 386-315-3807

Email RobertBlakeLewellen@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Consumer

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
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/3/20

Meeting Date

SB 1394

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Norman Barkley

Job Title Full Technical Support for Servers

Address 380 Aylesbury Circle

Phone 386-864-6380

Street

Deland

City

FL

State

32720

Zip

Email Norman.Barkley@Comcast

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Consumers

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02-03-2020
Meeting Date

SB 1394
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Terebtha Lowery

Job Title Regional Manager

Address 380 Agasburg Circle Apt. C
Street
Deland FL 32720
City State Zip

Phone (386) 747-3535

Email T-Lowery13@mail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing F-Cig Source

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

February 3, 2020

Meeting Date

SB 1394

Bill Number (if applicable)

Topic Taxes and Fees

Amendment Barcode (if applicable)

Name Doug Bell

Job Title Attorney

Address 119 South Monroe Street, Suite 200

Phone 850-205-9000

Street

Tallahassee

FL

32301

Email doug.bell@mhdfirm.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing American Lung 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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2-3-2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB1394

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name J.D. McCormick

Job Title Business Owner

Address 1435 E. Lafayette St. #105

Street

Phone 407-508-0340

Tallahassee

City

FL

State

32301

Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1394
SB 1394
Bill Number (if applicable)

Meeting Date _____

Topic _____

Amendment Barcode (if applicable) _____

Name Zack Goodson

Job Title General Manager

Address 2417 Bass Bay Dr.
Street

Phone 850 544 9654

Tallahassee
City

FL
State

32312
Zip

Email Zackmort@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020

Meeting Date

SB 1394

Bill Number (if applicable)

Topic Taxes and Fees

Amendment Barcode (if applicable)

Name Melissa Villar

Job Title Executive Director

Address Po Box 11254

Phone (850) 354-8424

Street

TLH

FL

32302

City

State

Zip

Email Norm Tallahassee@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Norm Tallahassee

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20

Meeting Date

1394

Bill Number (if applicable)

Topic Tobacco

Amendment Barcode (if applicable)

Name Mark D. Landreth

Job Title Gov Rel Dir

Address 2851 Remington Green Cir #A

Phone

Street

Tallahassee FL

32308

Email

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing American Heart 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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-3-20

Meeting Date

SB 1394

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Lorelei Harper

Job Title _____

Address 326 Fern St
Street

Phone 904-627-5289

Green Cove Spgs. FL 32043
City State Zip

Email Lorelei.harper817@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing _____

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020
Meeting Date

SB 1394
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAN MARLIN

Job Title _____

Address 326 Ferris St
Street
Green Cove Springs FL 32043
City State Zip

Phone 904 572-9601

Email benben6@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing _____

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20

Meeting Date

1394

Bill Number (if applicable)

Topic Taxes & Fees

Amendment Barcode (if applicable)

Name Heather Yauman

Job Title Senior Director, Gov Relations

Address 21019 Centennial Blvd
Tallahassee FL 32308
Street City State Zip

Phone 850-251-2111
heather.yauman
Email @cancer.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing American Cancer Society Cancer Action Network

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020
Meeting Date

1394/810
Bill Number (if applicable)

Topic Vaping

Amendment Barcode (if applicable)

Name Jim Hampton

Job Title Business owner

Address 3254 Selinger Way
Street
TALL R 32311
City State Zip

Phone (850) 524-6150

Email jhampton2008@live.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3 JAN 2020

Meeting Date

SB 1394

Bill Number (if applicable)

Topic TOBACCO TAXES

Amendment Barcode (if applicable)

Name DAMECO MANNING

Job Title _____

Address 2504 W TENNESSEE ST

Street

Phone 850 553 1760

TALLAHASSEE

City

FL

State

32304

Zip

Email damecomanning26@hotmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020
Meeting Date

1394
Bill Number (if applicable)

Topic Vaping

Amendment Barcode (if applicable)

Name Jim Whaley

Job Title Small Business Owner

Address 20567 N.W. Depot Ave
Street

Phone 850 899-7906

Bloomsburg FL 32424
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

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)

COMMITTEE: Innovation, Industry, and Technology
ITEM: SB 1394
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Monday, February 3, 2020
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Building

FINAL VOTE			2/03/2020 Amendment 134350					
			Simmons					
Yea	Nay	SENATORS	Yea	Nay	Yea	Nay	Yea	Nay
	X	Bracy						
		Bradley						
	X	Brandes						
X		Braynon						
X		Farmer						
X		Gibson						
		Hutson						
X		Passidomo						
X		Benacquisto, VICE CHAIR						
X		Simpson, CHAIR						
6	2		RCS	-				
Yea	Nay	TOTALS	Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

By the Committee on Innovation, Industry, and Technology; and
Senator Simmons

580-03012-20

20201394c1

A bill to be entitled
An act relating to fees; amending s. 569.002, F.S.;
expanding the definition of the term "tobacco
products" to include vapor-generating electronic
devices and components, parts, and accessories of such
devices and to include substances that may be
aerosolized or vaporized by such devices; defining the
term "vapor-generating electronic device"; providing a
contingent effective date.

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

Section 1. Subsection (6) of section 569.002, Florida
Statutes, as amended by SB 810 or similar legislation, 2020
Regular Session, is amended, and subsection (7) is added to that
section, to read:

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

(6) "Tobacco products" includes:

(a) Any product containing, made of, or derived from
tobacco or nicotine that is intended for human consumption or is
likely to be consumed, whether inhaled, absorbed, or ingested by
any other means, including, but not limited to, a cigarette, a
cigar, pipe tobacco, chewing tobacco, snuff, or snus;

(b) Any vapor-generating electronic device and any
substances that may be aerosolized or vaporized by such device,
whether or not the substance contains nicotine; or

(c) Any component, part, or accessory of a product
described in paragraph (a) or paragraph (b), whether or not any
of these contain tobacco or nicotine, including, but not limited

580-03012-20

20201394c1

to, filters, rolling papers, blunt or hemp wraps, and pipes.

The term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(7) "Vapor-generating electronic device" means any product that employs an electronic, chemical, or mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product; any replacement cartridge for such device; and any other container of nicotine in a solution or other substance form intended to be used with or within an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, a vape pen, an electronic hookah, or other similar device or product. The term includes any component, part, or accessory of the device and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine. The term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

Section 2. This act shall take effect on the same date that SB 810 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension 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 Innovation, Industry, and Technology

BILL: SB 912

INTRODUCER: Senator Diaz

SUBJECT: Department of Business and Professional Regulation

DATE: January 31, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	IT	Pre-meeting
2.			CA	
3.			AP	

I. Summary:

SB 912 revises provisions related to the licensing and regulation of tobacco products, alcoholic beverages, pugilistic events, condominium associations, and public food and lodging establishments by the Department of Business and Professional Regulation (DBPR).

Related to reporting requirements for tobacco product wholesalers, the bill:

- Requires that reports required to be filed with the Division of Alcoholic Beverages and Tobacco must be filed through the agency's electronic system; and
- Revises the reporting requirements.

Related to procedures for licensing public lodging establishments and public food service establishments licensing, the bill:

- Deletes the requirement for a staggered license renewal schedule; and
- Requires that full annual license fee be paid at the time of application, instead of the current requirement for payment of a prorated initial license fee.

Related to regulation of pugilistic events, the bill:

- Changes the name of the Florida State Boxing Commission to the Florida Athletic Commission (commission); and
- Authorizes the commission to establish by rule the weight of any gloves used in pugilistic matches; and
- Deletes the requirement for all participants in pugilistic matches to wear gloves.

Related to alcohol beverage regulations, the bill:

- Requires applicants for an alcoholic beverage license to submit fingerprints to the DBPR electronically, provide proof of the applicant's right of occupancy for the entire premises for

which the applicant is seeking to license, and maintain a current electronic mail address with the DBPR;

- Requires licensees to submit reports on alcohol sales through the DBPR's electronic system; and
- Requires notices related to a vendor's delinquent payment to a distributor be provided by the DBPR through electronic mail; and
- Revises the compliance audit timeframes for special restaurant licensees.

Related to condominium associations, the bill:

- Requires that a proposed annual budget be provided to members of the association and adopted by its board of directors no later than 30 days before the beginning of the fiscal year;
- Defines when a person is delinquent in a payment due to an association;
- Deletes the requirement that the condominium ombudsman keep his or her principal office in Leon County; and
- Authorizes the DBPR to adopt rules for the submission of complaints against condominium associations.

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

II. Present Situation:

For ease of reference, the Present Situation for each section of SB 912 is addressed in the Effect of Proposed Changes portion of this bill analysis. Background information about the Department of Business and Professional Regulation (the DBPR) is provided below.

Organization of the Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has 12 divisions:

- Administration;
- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;
- Pari-mutuel Wagering;
- Professions;
- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

The Florida State Boxing Commission is assigned to the DBPR for administrative and fiscal accountability purposes only.¹ The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law.²

Powers and Duties of the DBPR

Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by the [DBPR] in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation,”³ as well as the procedural and administrative framework for those divisions and all of the professional boards within the DBPR.⁴

The DBPR’s regulation of professions is to be undertaken “only for the preservation of the health, safety, and welfare of the public under the police powers of the state,”⁵ and regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.⁶

However, “neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.⁷

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.⁸ FCTMH has limited regulatory authority over the following entities and individuals:⁹

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and

¹ Section 548.003(1), F.S.

² See Parts I and III of ch. 450, F.S.

³ See s. 455.01(6), F.S.

⁴ See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by staff counsel of the DBPR. See s. 455.221(1), F.S.

⁵ Section 455.201(2), F.S.

⁶ *Id.*

⁷ Section 455.201(4)(b), F.S.

⁸ Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, <http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/>, (last visited Jan. 8, 2020).

⁹ *Id.*

- Homeowners' Associations (jurisdiction is limited to arbitration of election and recall disputes).

Division of Hotels and Restaurants

The Division of Hotels and Restaurants (DH&R) licenses, inspects and regulates public lodging and food service establishments in Florida. The DH&R also licenses and regulates elevators, escalators, and other vertical conveyance devices.¹⁰

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (DABT) regulates the manufacture, distribution, sale, and service of alcoholic beverages and tobacco products in Florida, including:

- Receipt and processing of license applications;
- Collection and auditing of taxes, surcharges, and fees paid by licensees; and
- Enforcement of the laws and regulations governing the sale of alcoholic beverages and tobacco products.¹¹

III. Effect of Proposed Changes:

Tobacco Products Regulation and Taxation

Present Situation

The DABT is responsible for the regulation of tobacco products under ch. 210, F.S., which sets out tax requirements for cigarettes and other tobacco products, and ch. 569, F.S., which sets out requirements for the retail sale of tobacco products.¹²

“Cigarettes” are defined in s. 210.01(1), F.S., for the purpose of taxation, as “any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.”

“Tobacco products” are defined in s. 210.25(11), F.S., in the context of state taxes on tobacco products other than cigarettes or cigars, as “loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing.”

¹⁰ Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/> (last visited Jan. 8, 2020).

¹¹ Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, <http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/> (last visited Jan. 8, 2020).

¹² Section 561.02, F.S.

Cigars, nicotine products, and nicotine dispensing devices are not included in the above definitions, and therefore are not taxed as a cigarette or tobacco product in Florida.¹³

A person, firm, association, or corporation must obtain a permit from the DABT to function as any of the following in Florida:

- Retail tobacco products dealer;¹⁴
- Cigarette manufacturer;¹⁵
- Cigarette wholesale dealer;¹⁶
- Cigarette distributing agent;¹⁷
- Cigarette importer;¹⁸
- Cigarette exporter;¹⁹
- Cigar wholesale dealer;²⁰ or
- Tobacco wholesale dealer/distributor.²¹

The DABT collects monthly business records related to cigarettes, which are used to accurately collect and distribute cigarette taxes. Such records must be submitted to DABT by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting, or possessing cigarettes for sale or distribution in Florida. The DABT prescribes the manner in which these records are submitted.²²

The DABT also collects monthly returns showing the taxable price of each tobacco product (other than cigarettes or cigars) brought or caused to be brought into Florida for sale, or made, manufactured, or fabricated in this state for sale in this state. Such returns must be submitted by every place of business that sells or manufactures such tobacco products in Florida. The DABT prescribes the form and content for submitting such returns to the DABT. Each return must be accompanied by a remittance for the full tax liability shown.²³

Effect of Proposed Changes

The bill amends ss. 210.09(2) and 210.55(1), F.S., related to monthly reports and records for cigarettes and other tobacco products, to require that all reports filed with the DABT must be made through the DABT's electronic data submission system.

¹³ Sections 210.01(1) and 210.25(12), F.S. "Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product. "Nicotine products" do not include tobacco products, certain smoking cessation products, and products with incidental nicotine. Section 877.112(1)(a) and (b), F.S.

¹⁴ Section 569.003, F.S.

¹⁵ Sections 210.01(21) and 210.15, F.S.

¹⁶ Sections 210.01(6) and 210.15(1), F.S.

¹⁷ Sections 210.01(14) and 210.15(1), F.S.

¹⁸ Sections 210.01(20) and 210.15(1), F.S.

¹⁹ Sections 210.01(17) and 210.15(1), F.S.

²⁰ Section 210.65(2), F.S.

²¹ Sections 210.25(5) and 210.40, F.S.

²² Section 210.09(2), F.S. Some tax forms are electronically filed with the DABT, and some require manual transmission. Department of Business and Professional Regulation, *Alcoholic Beverages and Tobacco- Forms & Publications, Licensing Related Forms, Tax-Related Forms*, <http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/forms-and-publications/#1516309637983-6566a2a4-a2f1> (last visited Jan. 10, 2020).

²³ Sections 210.55(1), F.S.

The bill also amends s. 210.55(1), F.S., to require a tobacco wholesaler (the taxpayer) to submit a full and complete report with the DABT showing the tobacco products (other than cigars or cigarettes) brought or caused to be brought into Florida for sale, or made, manufactured, or fabricated in this state for sale in this state. The bill deletes the requirement that the report show the taxable price of each tobacco product.

Division of Hotels and Restaurants

Present Situation

The DH&R licenses, inspects, and regulates public lodging establishments and public food service establishments in Florida.²⁴

The term “public lodging establishment” includes:²⁵

- “Transient public lodging establishments,” which means “any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days, or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests;” and
- “Nontransient public lodging establishments,” which means “any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.”

“Public food service establishments” means “any building, vehicle, place, or structure, or any room or division thereof, 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,” with certain exceptions.²⁶

Each public lodging establishment and public food service establishment must obtain a license from the DH&R. Licenses are renewed annually, and the DH&R must adopt a rule establishing a staggered schedule for license renewals.²⁷ For public lodging establishments, the DH&R must adopt, by rule, a schedule of fees to be paid based on the number of rental units in the public lodging establishment, and based on seating capacity and services offered for public food service establishments. Such fees may not exceed \$1,000.²⁸

License fees generally range from \$91 for a temporary food vendor to \$370 for a hotel with more than 500 rental units.²⁹

²⁴ Section 509.032, F.S.

²⁵ Section 509.013(4), F.S.

²⁶ Section 509.013(5), F.S.

²⁷ Section 509.241(1), F.S.

²⁸ Section 509.251(1) and (2), F.S.

²⁹ See Fla. Admin. Code R. 61C-1.008 and Department of Business and Professional Regulation, *Hotel and Restaurants – Hotel-Motel Guide*, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/> (last visited Jan. 11, 2020); Department of Business and Professional Regulation, *Hotel and Restaurants – Food*

The fee schedule for a public lodging establishment and public food service establishment license must require an applicant for an initial license to pay the full license fee if the application is made during the annual renewal period or more than six months before the next such renewal period, and one-half of the fee if the application is made six months or less before the next renewal period.³⁰

Effect of Proposed Changes

The bill amends s. 509.241(1), F.S., to delete the requirement for a staggered license renewal schedule for public lodging establishments and public food service establishments. The bill authorized the DH&R to adopt rules to establish procedures for license issuance and renewals.

The bill amends ss. 509.251(1) and (2), F.S., to delete the requirement for payment of a prorated initial license fee based on when an application is submitted. Under the bill, the full annual license fees must be paid at the time of the initial license application.

State Boxing Commission

Present Situation:

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing,³¹ and mixed martial arts³² by the Florida State Boxing Commission (commission), which is assigned to the DBPR for administrative and fiscal purposes.³³

The commission has exclusive jurisdiction over every boxing, kickboxing, and mixed martial arts match held in Florida³⁴ which involves a professional.³⁵ Professional matches held in Florida must meet the requirements set forth in ch. 548, F.S., and the rules adopted by the commission.³⁶ Chapter 548, F.S. does not apply to certain professional or amateur “martial arts,” such as karate, aikido, judo, and kung fu; the term “martial arts” is distinct from and does not include “mixed martial arts.”³⁷

However, as to amateur matches, the commission’s jurisdiction is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for amateur boxing, kickboxing, and mixed martial arts matches held in Florida.³⁸

Service Fees, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/> (last visited Jan. 11, 2020).

³⁰ Sections 509.251(1) and (2), F.S., relating to the fee schedule for public lodging establishments and public food service establishments, respectively, and Fla. Admin. Code R. 61C-1.008.

³¹ The term “kickboxing” means the unarmed combat sport of fighting by striking with the fists, hands, feet, legs, or any combination, but does not include ground fighting techniques. *See* s. 548.002(12), F.S.

³² The term “mixed martial arts” means the unarmed combat sport involving the use of a combination of techniques, including, but not limited to, grappling, kicking, striking, and using techniques from martial arts disciplines, including, but not limited to, boxing, kickboxing, Muay Thai, jujitsu, and wrestling. *See* s. 548.002(16), F.S.

³³ *See* s. 548.003(1), F.S.

³⁴ *See* s. 548.006(1), F.S.

³⁵ The term “professional” means a person who has “received or competed for a purse or other article of a value greater than \$50, either for the expenses of training or for participating in a match. *See* s. 548.002(19), F.S.

³⁶ *See* s. 548.006(4), F.S.

³⁷ *See* s. 548.007(6), F.S., and *see supra* note 32 for the definition of “mixed martial arts.”

³⁸ *See* s. 548.006(3), F.S.

Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.³⁹ During Fiscal Year 2018-2019, there were 59 sanctioned professional events and 137 amateur events.⁴⁰

Under current law, certain persons providing certain services for a match involving a professional competing in a boxing, kickboxing, or mixed martial arts match must be licensed by the commission before directly or indirectly performing those services. Licensing is mandated for a participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, or promoter.⁴¹

The commission must establish by rule appropriate weight of gloves to be used in each boxing match. All participants in boxing matches must wear gloves weighing not less than eight ounces each, and participants in mixed martial arts matches must wear gloves weighing between four to eight ounces each. Participants must also wear any protective devices that the commission deems necessary.⁴²

Effect of Proposed Changes

The bill amends s. 458.003, F.S., to change the name of the commission to the Florida Athletic Commission.

The bill amends s. 548.043(3), F.S., to authorize the commission to establish by rule the need for gloves, if any, in each pugilistic match. The bill also authorizes the commission to establish by rule the weight of any gloves used in pugilistic matches, and deletes the requirement that the gloves weigh between four to eight ounces each. The bill also deletes the requirement for all participants in pugilistic matches to wear gloves.

The bill amends ss. 455.219, 548.002, 548.05, 548.071, and 548.077, F.S., to conform references to the name of the commission.

Division of Alcoholic Beverages and Tobacco

Present Situation

The DABT is responsible for enforcing the Beverage Law and supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages in Florida.⁴³

³⁹ Section 548.002(2), F.S.

⁴⁰ See DBPR, *Florida State Boxing Commission Annual Report, Fiscal Year 2018-2019*, at p. 2, available at: http://www.myfloridalicense.com/dbpr/os/documents/Boxing18_19.pdf (last visited Jan. 24, 2020).

⁴¹ The term “participant” means a professional competing in a boxing, kickboxing, or mixed martial arts match. See s. 548.002, F.S., for the definitions of “participant,” “manager,” “second,” “judge,” “physician,” “matchmaker,” and “promoter.” The terms “trainer,” “timekeeper,” “referee,” and “announcer” are not defined in ch. 548, F.S.

⁴² Section 548.043(3), F.S.

⁴³ Section 561.02, F.S.

License Application Process

Any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, must file a sworn application in the format prescribed by the DABT. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. The format and content of the application is determined by the DABT.⁴⁴

Before any application is approved, the DABT may require an applicant, and any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, to file a set of fingerprints with the DABT on regular United States Department of Justice forms.⁴⁵

All applications for alcoholic beverage licenses for consumption on the premises must be accompanied by a certificate from DH&R, the Department of Agriculture and Consumer Services, the Department of Health, the Agency for Health Care Administration, or the county health department stating that the place of business where the business is to be conducted meets all of the sanitary requirements of the state.⁴⁶

The application for an alcoholic beverage license must include a sketch of the licensed premises over which the applicant must have some dominion and control.⁴⁷ Current law does not require an applicant for an alcoholic beverage license to submit proof of the applicant's right of occupancy for the entire premises sought to be licensed.

Current law does not require an alcoholic beverage licensee or an applicant for a license to provide and maintain an electronic mail address for communications with the DABT.

Recordkeeping and Reporting Requirements

Each manufacturer, distributor, broker, sales agent, importer, and exporter must keep a complete and accurate record and make reports to the DABT showing the amount of alcoholic beverages:⁴⁸

- Manufactured or sold within the state and to whom sold;
- Imported from beyond the limits of the state and to whom sold; and
- Exported beyond the limits of the state, to whom sold, the place where sold, and the address of the person to whom sold.

Each manufacturer, distributor, broker, sales agent, and importer must send this full and complete report to the DABT by the 10th day of each month for the previous calendar month.

The report must be made out in triplicate with two copies sent to the DABT and a third copy to

⁴⁴ Section 561.17(1), F.S.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Section 561.01(11), F.S., defining the term "licensed premises, and s. 565.03(2)(c), F.S., dealing with craft distilleries.

⁴⁸ Section 561.55(1), F.S.

be retained for the licensee's record. Reports must be made on forms prepared and furnished by DABT.⁴⁹

Credit for the Sale of Liquor

A retail vendor must make a timely payment to a distributor of alcoholic beverages within 10 days after the calendar week in which the alcoholic beverages were purchased. When a vendor does not make a timely payment, the distributor who made the sale must, within three days, notify the DABT in writing that payment has not been made.⁵⁰

The DABT must then give notice to the vendor that it has received a notice of payment delinquency from a distributor. The vendor has five days after receipt of the notice to show cause why further sales to the vendor should not be prohibited. The vendor may demand a hearing before the DABT. The demand for a hearing must be delivered to the DABT in person or by mail within those five days.⁵¹

If a vendor does not demand a hearing, the DABT must declare in writing to the vendor and to all manufacturers and distributors in Florida that all further sales to such vendor are prohibited until the DABT certifies in writing that such vendor has fully paid for all liquors previously purchased.⁵²

Permit Carriers

Section 561.57(1), F.S., permits an alcoholic beverage vendor to make deliveries away from its place of business for sales made at the licensed place of business. Deliveries made by a manufacturer, distributor, or a vendor away from its place of business may only be made in vehicles owned or leased by the licensee. By acceptance of an alcoholic beverage license and the use of vehicles owned by or leased by the vendor, the vendor agrees the vehicle is subject to be inspected and searched without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.⁵³

The term "permit carrier" is defined as a licensee authorized to make deliveries as provided in s. 561.57, F.S.⁵⁴ A permit is not required for licensees making a delivery of alcoholic beverages under this section.

In 2015, the Legislature amended s. 561.57, F.S., to delete a requirement for a permit for each vehicle used to deliver alcoholic beverages from a distributor's place of business to the vendor's licensed premises or to an off-premises storage permitted by the DABT. The 2015 amendment to

⁴⁹ Section 561.55(2), F.S.

⁵⁰ Section 561.42(3), F.S.

⁵¹ Section 561.42(4), F.S.

⁵² *Id.*

⁵³ Section 561.57(2), F.S.

⁵⁴ Section 561.01(20), F.S.

s. 561.57, F.S., also removed a requirement for vendors to possess an invoice or sales ticket during the transportation of alcoholic beverages.⁵⁵

Special Restaurant Licenses

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as “quota” licenses. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation, if certain conditions are met.

A “special license” is an exception to the quota licensing scheme to allow the sale of beer, wine, and distilled spirits without a quota license and subject to conditions. One such special license is a “special restaurant license,” (termed and SRX license) which applies to a food service establishment that has 2,500 square feet, is equipped to serve 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages. The DABT must perform an audit to confirm compliance with the food and nonalcoholic beverage sales percentage requirements during the first 60-day operating period and each 12-month operating period thereafter.⁵⁶

If a special restaurant licensee fails to satisfy the percentage requirements for the sale of food and nonalcoholic beverage, the license must be revoked or a pending license application must be denied. A licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation or denial of a license application.⁵⁷

Effect of Proposed Changes

The bill deletes the definition for the term “permit carrier” in s. 561.01(20), F.S. The bill also corrects cross-references in s. 561.20(2)(a), F.S., affected by the deletion of the definition of the term “permit carrier.”

The bill amends the alcoholic beverage license application process in s. 561.17(1), F.S., to require applicants to file fingerprints electronically through an approved electronic fingerprinting vendor, or to use a form prescribed by the Florida Department of Law Enforcement. The bill deletes the requirement that the fingerprints be submitted on regular United States Department of Justice forms.

The bill amends s. 561.17(2), F.S., to require an applicant for any alcoholic beverage license to provide proof of the applicant’s right of occupancy for the entire premises sought to be licensed.

The bill creates s. 561.17(5), F.S., to require any person or entity licensed or permitted by the DABT to provide an electronic mail address to the DABT to function as the primary contact for all communication by the DABT to the licensee or permittee. Under the bill, licensees and permittees are responsible for maintaining accurate contact information with the DABT.

⁵⁵ Chapter 2015-52, Laws of Fla.

⁵⁶ Section 561.20(2)(a)4., F.S.

⁵⁷ Section 561.20(2)(a)4., F.S.

The bill amends s. 561.20(2)(a)4., F.S., to revise the auditing timeframes for special restaurant licensees. Under the bill, the DABT must perform the initial compliance audit within the first 120 days of operation, instead of within the first 60 days.

In addition, the bill revises the frequency of subsequent audits. Under the bill, the frequency of compliance audits is determined by the percentage of the licensee's gross revenue from the sale of food and nonalcoholic beverages, as established by the licensee's most recent audit. The bill provides the following audit levels:

- Level 1 licensees, with 51 to 60 percent, will be audited every year;
- Level 2 licensees, with 61 to 75 percent, will be audited every two years;
- Level 3 licensees, with 76 to 90 percent, will be audited every three years; and
- Level 4 licensees, with 91 to 100 percent, will be audited every four years.

The bill amends s. 561.42(4), F.S., to require the DABT to give a retail vendor notice of a payment delinquency via electronic mail. The bill deletes the requirement that the delinquency notice must be a written notice. The bill also allows a vendor to send a demand for a hearing to the DABT by electronic mail.

The bill amends s. 561.55(2), F.S., to delete the requirement that reports by a manufacturer, distributor, broker, sales agent, and importer must be made out in triplicate. Under the bill, the reports must be submitted to the DABT through the DABT's electronic data submission system.

Condominiums

Present Situation

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., (the Condominium Act) comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.⁵⁸ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.⁵⁹ All unit owners are members of the condominium association, an entity responsible for the operation and maintenance of the common elements owned by the unit owners. The condominium association is overseen by an elected board of directors, which enacts bylaws which govern the administration of the association.

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The division may investigate complaints and enforce compliance with chs. 718 and 719, F.S., with respect to associations that are still under developer control.⁶⁰ The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer

⁵⁸ Section 718.103(11), F.S.

⁵⁹ Section 718.104(2), F.S.

⁶⁰ Sections 718.501(1) and 719.501(1), F.S.

control to the association.⁶¹ After control of the condominium is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.⁶² For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.⁶³

As part of the FCTMH's authority to investigate complaints, the FCTMH may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers and associations.⁶⁴

If the FCTMH has reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or a related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The FCTMH may conduct an investigation and issue an order to cease and desist from unlawful practices and to take affirmative action to carry out the purpose of the applicable chapter. In addition, the division is authorized to petition a court to appoint a receiver or conservator to implement a court order, or to enforce of an injunction or temporary restraining order. The FCTMH may also impose civil penalties.⁶⁵

Annual Budget

Every condominium association must have an annual financial budget that sets forth the proposed expenditure of funds for the maintenance, management, and operation of the condominium association. The annual budget must include operating expenses for the coming year and reserve accounts for capital expenditures and deferred maintenance.⁶⁶

An association must hold a meeting to adopt a proposed budget. The association must provide notice of the meeting and a copy of the proposed budget to the members of the association at least 14 days before the meeting.⁶⁷ The proposed budget must be detailed, and, at a minimum, include the condominium's estimated revenues and expenses.⁶⁸ Current law does not define the timing for adoption of the budget.

Board of Directors – Eligibility based on Payment of Monetary Obligations

A condominium association is overseen by an elected board of directors (termed a Board of Administration). The board is responsible for managing the affairs of the association, has a fiduciary relationship with the unit owners, has the responsibility to act with the highest degree

⁶¹ *Id.*

⁶² Section 718.501(1), F.S.

⁶³ Section 719.501(1), F.S.

⁶⁴ Sections 718.501(1) and 719.501(1), F.S.

⁶⁵ *Id.*

⁶⁶ Section 718.112(2)(f), F.S.

⁶⁷ Section 718.112(2)(e)1., F.S.

⁶⁸ Sections 718.112(2)(f) and 718.504(21), F.S.

of good faith, and must place the interests of the unit owners above the personal interests of the directors.⁶⁹

To become a board member, a person may be:

- Elected to the board by the members of the association;⁷⁰ or
- Appointed to the board by the developer if the developer is still entitled to representation; or by the board of directors if a vacancy on the board occurs between meetings.⁷¹

A condominium association's bylaws establish the eligibility requirements to serve on the association's board of directors.⁷² However, current law also establishes minimum qualification to serve on an association's board of directors.⁷³ To serve as a director, a person may not:⁷⁴

- Be a co-owner of a unit with another director unless they own more than one unit or the condominium association is made up of less than ten units;
- Be delinquent in the payment of any monetary obligation to the condominium association;
- Have been previously suspended or removed from a condominium association's board of directors or by the FCTMH; or
- Have been convicted of a felony, under certain circumstances.⁷⁵

Chapter 718, F.S., does not define the terms “monetary obligation” or “delinquent.” According to the DBPR, the defining the term “delinquent” would assist in the FCTMH's investigation of cases in which the unit owner alleges they were left off of an election ballot because of a delinquent payment to the association.⁷⁶ The DBPR also maintains that it is the practice of a “controlling board of directors to issue fines to unit owners in an effort to limit the pool of eligible candidates who can compete in an election.”⁷⁷

Condominium Ombudsman

Present Situation

The office of the ombudsman within the FCTMH is an attorney appointed by the Governor to be a neutral resource for unit owners and condominium associations. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the division, and the Legislature on any matter or subject within the jurisdiction of the division. In addition, the ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints.⁷⁸

⁶⁹ Sections 718.103(4), 718.111, and 718.112, F.S.

⁷⁰ Section 718.112(2)(d)4., F.S.

⁷¹ Sections 617.0809 and 718.112(2)(d)9., F.S.

⁷² Section 718.112(2)(a), F.S.

⁷³ Section 718.112(2)(d), F.S.

⁷⁴ Sections 718.112(2)(d), F.S.

⁷⁵ Section 718.111(1)(d), F.S.

⁷⁶ See Department of Business and Professional Regulation, *SB 912 Bill Analysis*, p. 5 (Dec. 9, 2019) (on file with Senate Committee on Innovation, Industry, and Technology).

⁷⁷ *Id.*

⁷⁸ Sections 718.5011 and 718.5012, F.S.

The ombudsman also acts as a liaison among the division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.⁷⁹

The ombudsman is required to maintain his or her principal office in Leon County.⁸⁰

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)2.F.S., to replace the term “monetary obligation” with the term “assessment.” The bill also provides that a person is delinquent if a payment is not made by the due date identified in the association’s declaration, articles of incorporation, or bylaws (governing documents). If no due date is specifically identified in the governing documents, the due date is the first day of the monthly or quarterly assessment period.

The bill amends s. 718.112(2)(f), F.S., to require a condominium association’s annual budget to be proposed to unit owners and adopted by the board of directors no later than 30 days before the beginning of the fiscal year. Under the bill, an association must also satisfy the 14-day notice requirement in 718.112(2)(e)1., F.S., for any meeting at which a proposed annual budget of an association will be considered by the board or unit owners.

The bill amends s. 718.501, F.S., to authorize the FCTMH to adopt rules regarding the submission of a complaint against a condominium association.

The bill amends s. 718.5014, F.S., to delete the requirement that the condominium ombudsman maintain his or her principal office in Leon County.

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷⁹ *Id.*

⁸⁰ Section 718.5014, F.S.

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:

According to the Department of Business and Professional Regulation (DBPR), the bill may reduce license fees paid by food and lodging licensees during their first 12 months of licensure. The division estimates licensees will save approximately \$1.4 million in Fiscal Year 2020-2021 by the elimination of the staggered and prorated renewal schedule which would provide new licensees with a full year of licensure.

C. Government Sector Impact:

According to the DBPR, “tax revenue may be maximized by the required electronic submission of tax reports” to the Division of Alcoholic Beverages and Tobacco.

For the Division of Hotels and Restaurants, the DBPR projects that the bill will reduce the division’s revenue by approximately 3.9 percent for Fiscal Year 2020-2021.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Florida Department of Law enforcement, to facilitate state and national criminal history record checks the department recommended modifying the proposed language on lines 329-332 to read:

An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13), F.S. The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

Fees for the state and federal fingerprint processing shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in

s. 943.053(3)(e), F.S., for records provided to persons or entities other than those specified as exceptions therein.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 210.09, 210.55, 509.241, 509.251, 548.003, 548.043, 561.01, 561.17, 561.20, 561.42, 561.55, 718.112, 718.501, 718.5014, 455.219, 548.002, 548.05, 548.071, and 548.077.

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.



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Innovation, Industry, and Technology

Subject: Committee Agenda Request

Date: January 13, 2020

I respectfully request that **Senate Bill # 912**, relating to Department of Business and Professional Regulation, be placed on the:

- ☐ Committee agenda at your earliest possible convenience.
- ☒ Next committee agenda.

A handwritten signature in black ink, appearing to read "M. Diaz", is written over a horizontal line.

Senator Manny Diaz, Jr.
Florida Senate, District 36



ANALYSIS

2020 AGENCY LEGISLATIVE BILL

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION

BILL NUMBER:	<u>SB 912</u>
BILL TITLE:	<u>Department of Business and Professional Regulation</u>
BILL SPONSOR:	<u>Sen. Diaz</u>
EFFECTIVE DATE:	<u>7/01/2020</u>

COMMITTEES OF REFERENCE

1) N/A
2) Click or tap here to enter text.
3) Click or tap here to enter text.
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE

N/A

SIMILAR BILLS

BILL NUMBER:	HB 623 (compare); and SB 1154 (compare)
SPONSOR:	Rep. Shoaf; and Sen. Baxley

PREVIOUS LEGISLATION

BILL NUMBER:	N/A
SPONSOR:	N/A
YEAR:	N/A
LAST ACTION:	N/A

IDENTICAL BILLS

BILL NUMBER:	HB 689
SPONSOR:	Rep. Rodriguez (Ant)

Is this bill part of an agency package?

Yes

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	December 9, 2019
LEAD AGENCY ANALYST:	Sterling Whisenhunt, Director Alcoholic Beverages and Tobacco
ADDITIONAL ANALYST(S):	Patrick Cunningham – Executive Director, Florida State Boxing Commission Debi Winters, Alcoholic Beverages and Tobacco Michelle Keith, Division of Hotels & Restaurants

	Chris Carson, Division of Hotels & Restaurants Marc Drexler, OGC- Division of Hotels & Restaurants Julie Scarbrough- Chief, Bureau of Compliance, CTMH Tom Coker, Technology Thomas Izzo, OGC Rules Jeff Kelly, Division of Professions Tracy Dixon, Service Operations
LEGAL ANALYST:	Ross Marshman
FISCAL ANALYST:	Raleigh Close, Planning and Budget

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Alcoholic Beverages and Tobacco: The proposal requires Alcoholic Beverage and Tobacco licensees to submit and maintain electronic mailing addresses. It requires vendors replying to the initial notice of delinquency to respond via electronic mail and requires all monthly tax returns submitted for cigarettes, other tobacco products, and alcoholic beverage products to be submitted to the division through the division's electronic data interchange system, currently referred to as EDS. It authorizes the division to require alcoholic beverage applicants to submit fingerprints electronically or on forms prescribed by FDLE. The bill requires all applications for any alcoholic beverage license to be accompanied by proof of the applicant's right of occupancy for the entire premises sought to be licensed.

The proposal extends the initial timeframe or operating period during which a special food service establishment must derive at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages and establishes subsequent audit frequencies based on the license holder's performance in the immediately preceding compliance audit.

Florida State Boxing Commission: The bill changes the name of the Florida State Boxing Commission to the Florida Athletic Commission.

The bill amends statute to give the Commission discretion and flexibility to set the need for and size of gloves in each match.

Division of Hotels and Restaurants: The bill removes language from s. 509.241(1), F.S., requiring a staggered schedule of license renewals and removes language from s. 509.251, F.S., requiring full or half year licenses depending on the date applied and the time until next renewal. This will simplify the division's licensing processes by allowing the division to set the expiration and renewal date for all new licenses to one full year from the issue date. By effect, applicants will save money and avoid being charged for more license time than available based on their license issuance date.

Division of Florida Condominiums, Timeshares and Mobile Homes:

The bill amends eligibility requirements for a board member regarding the payment of assessments and defines a delinquency for payment of assessments regarding eligibility. The bill also defines parameters for proposing and adopting an annual budget.

The proposal provides statutory authority to the division to adopt rules on the complaint process and the required form for submitting complaints.

The bill amends the office location of the Condominium Ombudsman.

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:**

Alcoholic Beverages and Tobacco: Section 210.09(2), F.S., authorizes the Division of Alcoholic Beverages and Tobacco to prescribe and promulgate by rules and regulations, the records to be kept, and reports to be made to the division by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting or possessing cigarettes for sale or distribution within the state as may be

necessary to collect and properly distribute the taxes imposed by s. 210.02, F.S. All reports must be made on or before the 10th day of the month following the month for which the report is made, unless the division by rule or regulation prescribes that reports be made more often.

Section 210.55(1), F.S., requires distributors of other tobacco products, on or before the 10th of each month, to file a return with the ABT showing the taxable price of each tobacco product brought or caused to be brought into this state for sale, or made, manufactured, or fabricated in this state for sale in this state, during the preceding month. Every taxpayer outside this state must file a return showing the quantity and taxable price of each tobacco product shipped or transported to retailers in this state, to be sold by those retailers, during the preceding month. Returns must be made upon forms furnished and prescribed by the division and contain any other information that the division requires. In addition, each return must be accompanied by a remittance for the full tax liability shown.

Section 561.01, F.S., defines permit carrier to mean a licensee authorized to make alcoholic beverage deliveries as provided in s. 561.57, F.S.

Section 561.17, F.S., relating to license and registration applications, requires any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, to file, with the district licensing personnel of the division in which the place of business for which a license is sought is located, a sworn application in the format prescribed by the division. This section outlines various requirements for the applications, including but not limited to:

- The mailing address for the business being licensed, but it does not currently require an electronic mailing address;
- A set of fingerprints on regular United States Department of Justice forms for the applicant and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought; and
- A certificate of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, the Department of Agriculture and Consumer Services, the Department of Health, the Agency for Health Care Administration, or the county health department that the place of business wherein the business is to be conducted meets all of the sanitary requirements of the state.
- Section 561.20(2)(a)4, F.S., authorizes the issuance of an alcoholic beverage specialty license to a food service establishment that has 2,500 square feet of service area, is equipped to serve meals to 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 60-day operating period and each 12-month operating period thereafter.

Section 561.55(2), F.S., requires each alcoholic beverage manufacturer, distributor, broker, sales agent, and importer to make a full and complete report by the 10th day of each month for the previous calendar month. The report must be made out in triplicate; two copies shall be sent to the division, and the third copy shall be retained for the manufacturer's, distributor's, broker's, sales agent's, or importer's record. Reports must be made on forms prepared and furnished by the division.

Section 561.42, F.S., relating to Tied House Evil prohibitions, authorizes credit for the sale of liquors to be extended to any vendor up to, but not including, the 10th day after the calendar week within which such sale was made. This section outlines the procedures that must be followed when the credit extended to a vendor is not repaid by the 10th day. After notification by the distributor that the vendor has not repaid the credit, but before the division prohibits any future sales to the delinquent vendor, this section requires the division, within two days after receipt of the non-payment notice by the distributor, to give written notice to the vendor by mail of the receipt by the division of the notification of delinquency and the vendor must be directed to make payment or, upon failure to do so, to show cause before the division why further sales to such vendor should not be prohibited.

Florida State Boxing Commission: The current name is the Florida State Boxing Commission. Additionally, the minimum size of gloves is presently fixed in statute.

Division of Hotels and Restaurants: Section 509.241(1), F.S., requires each public lodging and public food service establishment under the division's authority to obtain a license and requires the division to adopt rules establishing a staggered schedule for license renewals. Under s. 509.241(1), F.S., the division adopted a rule establishing a staggered schedule for license renewals. This divided the state of Florida into seven geographic districts with five different renewal dates for Food and Lodging licenses (two districts share a renewal date).

Section 509.251, F.S., sets directives on the division's license fee schedule such as additional fees due, late fees and a maximum license fee limit. Under s. 509.251, F.S., the division adopted a fee schedule for licensees. The fee required for a new license depends on the date applied and the time until next renewal. This is defined and prorated in statute to either a full year fee, half year fee, or in some cases, both a full and half year fee.

The result is a complex licensing structure and inequitable costs for licensure. Businesses opening on the same day in different parts of the state will pay different fees and their licenses will expire at different times. As a result, license fees are unnecessarily complex and new licensees are frequently charged for more license time than they receive.

Division of Florida Condominiums, Timeshares and Mobile Homes: Currently, unit owner fines implemented by the association are considered part of the monetary obligation due to the association. A person who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot.

Chapter 718, F.S., does not currently define "delinquency" as it relates to unit owners' payment of assessments to the association and there is currently no timeline for proposing and adopting a budget other than annually.

Chapter 718, F.S., does not currently define a method for accepting complaints.

Currently the Office of the Condominium Ombudsman is required to be located in Leon County or at a location convenient to the offices of the division, if no suitable space is available

2. EFFECT OF THE BILL:

Alcoholic Beverages and Tobacco:

The proposed legislation creates s. 561.17(5), F.S., requiring:

- Any person or entity licensed or permitted by the Division of Alcoholic Beverages and Tobacco to provide an electronic mailing address to the division to function as the primary contact for all communication by the division to the licensee or permittees; and
- Licensees and permittees to be responsible for maintaining accurate contact information on file with the division.

Further, the proposed legislation amends s. 561.42(4), F.S., to require the Division to provide notice required by the section via electronic mail, and creates an option for vendors to request a hearing pursuant to this section via electronic mail.

Operational Impact – The Bureaus of Licensing and Enforcement may be tasked with bringing licensees and permittees into compliance with the requirement for providing and maintaining accurate contact information. Anticipated benefits include ease of communication with licensees and permittees and less cost for postage.

The proposal requires all monthly tax returns submitted for cigarettes, other tobacco products, and alcoholic beverage products to be submitted to the division through the division's electronic data interchange system, currently referred to as EDS. In addition, the proposal deletes current language requiring alcoholic beverage tax returns to be completed in triplicate.

Operational Impact – The proposed language mandating the electronic reporting of monthly tax returns will prevent unnecessary mathematical errors and other reporting errors, and will also reduce or remove opportunities for underreporting taxes due or claiming excess refunds from the division, ensuring the proper and timely collection of revenue due to the state. Further, the proposed changes will simplify the process for obtaining evidence required to open and/or support late tax reporting and payments.

The proposal authorizes the division to require alcoholic beverage applicants to submit fingerprints electronically through an approved electronic fingerprinting vendor or on forms prescribed by the Florida Department of Law Enforcement prior to approval of the application. In addition, all applications for any alcoholic beverage license are required to be accompanied by proof of the applicant's right of occupancy for the entire premises sought to be licensed.

Operational Impact – This clarifies and streamlines procedure for performing background checks through the use of fingerprints by allowing the division to use FDLE approved forms rather than federally approved forms that may be inconsistent with Florida practices, and by allowing for the use of electronic fingerprinting vendors rather than requiring everyone use paper and ink based fingerprinting cards.

Further, by mandating that proof of occupancy is required with all license application, rather than simply relying on implication in statute that such documentation is required, the statutory requirements for application are clarified and questions or concerns centering around whether a particular entity is authorized to sell or serve alcoholic beverages or tobacco products at a location sought to be licensed can be more easily answered at the application stage pursuant to the proposed language.

The proposal deletes s. 561.01(20), F.S., which defines permit carrier to be a licensee authorized to mail deliveries as provided in s. 561.57, F.S. The removal of an unnecessary definition cleans up the Beverage Law's text.

The proposal expands the audit timeframes that a food service establishment must derive at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages, as follows:

- A first audit conducted following the first 120-day operating period, as opposed to the current 60-day operating period; and
- A second audit performed on the following 12-month operating period.

Instead of audits performed on each 12 month operating periods thereafter, subsequent audit timeframes will be based upon the audit percentage established by the most recent audit and conducted on a staggered scale as follows:

- Level 1, 51 to 60 percent, every year;
- Level 2, 61 to 75 percent, every 2 years;
- Level 3, 76 to 90 percent, every 3 years; and
- Level 4, 91 to 100 percent, every 4 years.

Operational Impact - The auditing schedule allows the division to better focus the Bureau of Auditing's resources towards licensees that are more likely to violate the revenue percentage requirement, and to remove unnecessary regulatory burdens on those entities that are unlikely to be in violation of the statutory requirements.

Florida State Boxing Commission:

The name change to the Florida Athletic Commission recognizes that the commission sanctions more than just boxing matches. The new name is inclusive of all forms of combat sports regulated by the Commission and aligns with the official name established for comparable regulatory bodies of 34 other states.

The bill gives the commission rulemaking authority to establish glove requirements and glove weight specifications. The authority to set these requirements by rule affords the commission flexibility in an ever-evolving market for these sports to adapt glove sizes while still maintaining the highest safety standards.

The bill also amends s. 455.219, F.S., to make conforming changes by changing the reference to the Florida Boxing Commission to the Florida Athletic Commission.

Division of Hotels and Restaurants: The bill will set each new division license to expire and renew one year after the open date. This would only apply to new license applications processed after implementation of this initiative. The bill is not retroactive, thus, existing licenses will retain their current renewal dates. The benefits of this are two-fold: first, it simplifies the division's licensing structure, thereby reducing escalations, refunds, deficiencies, customer contact, and labor hours. Second, simplifying the fee structure benefits the division's licensees by reducing the costs of the license over twelve months and decreasing the number of application delays (incorrect fees are one of the common issues that prevent approval of applications), thereby helping to ensure Florida businesses open on schedule with lower fees paid during the critical first year of operation.

Division of Florida Condominiums, Timeshares and Mobile Homes:

The bill removes "monetary obligation" from consideration of eligibility to run for election to the board of directors in a condominium association and replaces it with "assessment." This change would remove the ability of a controlling board of directors to issue fines to unit owners in an effort to limit the pool of eligible candidates who can compete in an election.

Defining the term "delinquency" would assist investigation of cases where a unit owner alleges that they were improperly left off the election ballot or improperly prohibited from running for the board due to a delinquent payment(s) to the association.

Currently, s. 718.112 F.S., requires the association to propose the annual budget but does not define the timing to adopt an operating budget. The bill provides a requirement to propose and adopt a budget by a date certain which allows the association to review expenses and provide guidance and transparency to unit owners. This may also assist with reducing the need to issue special assessments as the association is better equipped to address the need for increased assessments for anticipated expenses.

The bill provides authority to the division to adopt rules regarding the submission of complaints. Adopting rules regarding the complaint form and process would allow the division to utilize an efficient method of accepting complaints along with an online method.

The bill amends the office location requirement of the Condominium Ombudsman. Currently, it is to be located in Leon County and this change allows the location of the ombudsman to be located in south Florida as this area has the highest concentration of condominium unit owners with issues regarding their associations.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☒ N ☐

If yes, explain:	Division of Hotels and Restaurants: Section 3 of the bill allows the division to adopt rules establishing procedures for license issuance and renewals. Division of Condominiums, Timeshares and Mobile Homes: Allows rule development for accepting complaints.
Is the change consistent with the agency's core mission?	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	Division of Hotels and Restaurants: Rule 61C-1.008, F.A.C. Division of Condominiums, Timeshares and Mobile Homes: Rules 61B-20.004, F.A.C. and 61B-21.001, F.A.C.

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Division of Alcoholic Beverages and Tobacco: To date, the division has not been contacted by proponents of the legislation with any stated positions. Division of Hotels and Restaurants: To date, the division has not been contacted by proponents of the legislation with any stated positions. Division of Condominiums, Timeshares and Mobile Homes: To date, the division has not been contacted by proponents of the legislation with any stated positions. Florida State Boxing Commission: To date, the division has not been contacted by proponents of the legislation with any stated positions.
Opponents and summary of position:	Division of Alcoholic Beverages and Tobacco: To date, the division has not been contacted by opponents of the legislation with any stated positions. Division of Hotels and Restaurants: To date, the division has not been contacted by opponents of the legislation with any stated positions. Division of Condominiums, Timeshares and Mobile Homes: To date, the division has not been contacted by opponents of the legislation with any stated positions. Florida State Boxing Commission: To date, the division has not been contacted by opponents of the legislation with any stated positions.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

Y ☐ N ☒

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

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6. **ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?** Y ☐ N ☒

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. **DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?** Y ☐ N ☒

Revenues:	None anticipated.
Expenditures:	None anticipated.
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. **DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?** Y ☒ N ☐

Revenues:	Division of Alcoholic Beverages and Tobacco: Tax revenue may be maximized by the required electronic submission of tax reports. Division of Hotels and Restaurants: Based on internal projections for FY 20-21, the bill would reduce the division's revenue by approximately 3.9%.
Expenditures:	Division of Alcoholic Beverages and Tobacco: None anticipated.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. **DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?** Y ☐ N ☐

Revenues:	Division of Alcoholic Beverages and Tobacco: None anticipated.
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Expenditures:	Division of Alcoholic Beverages and Tobacco: None anticipated. Division of Hotels and Restaurants: The bill will generally reduce license fees paid by food and lodging licensees during their first 12 months of licensure. The division estimates licensees will save about \$1.4 million in FY 2020-21.
Other:	Division of Alcoholic Beverages and Tobacco: N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y ☐ N ☐

If yes, explain impact.	Division of Alcoholic Beverages and Tobacco: No Division of Hotels and Restaurants: The bill will generally reduce license fees paid by food and lodging licensees during their first 12 months of licensure. The division estimates licensees will save about \$1.4 million in FY2020-21. The decrease comes from eliminating the staggered schedule and outdated prorating system which in turn provides new licensees with a full year of licensure.
Bill Section Number:	Division of Alcoholic Beverages and Tobacco: N/A

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?

Y ☐ N ☐

<p>If yes, describe the anticipated impact to the agency including any fiscal impact.</p>	<p>Division of Alcoholic Beverages and Tobacco: If the division requires additional allegation/violation codes to enforce the email requirement, modifications will need to be made to Versa: Regulation. Additionally, the Electronic Data Submission (EDS) system may need to be modified to implement changes to the audit frequency requirements and create SFS audit reports.</p> <p>Changes to Versa: Regulation (VR) – 4 hours Changes to EDS – 70 hours These modifications can be made with existing resources.</p> <p>Florida State Boxing Commission: In order to modify technology resources to recognize the change of name to the Florida Athletic Commission, the department will require a minimum effort to:</p> <ul style="list-style-type: none"> • Modify portal – 20 hours • Modify Versa: Regulation configuration – 16 hours • Modify Versa: Regulation correspondence – 5 hours • Modify license print – 16 hours • Record and implement new IVR voice files – 20 hours • Modify OnBase current routing queues – 8 hours • Modify GovQA public record tracking – 2 hours • Modify E-mail distribution lists – 4 hours • Modify RemedyForce application – 4 hours • Modify Business Objects folders – 16 hours • Modify Intranet and Internet site – 10 hours • Modify letterhead templates – 8 hours <p>These modifications can be made with existing resources.</p> <p>Division of Condominiums, Timeshares and Mobile Homes: Assuming the division adopts a rule requiring creation of a customized online complaint form, modifications to Versa: Online, Versa: Regulation and OnBase document management system routing will be required.</p> <p>Changes to Versa: Online (VO) – 80 hours Changes to Versa: Regulation (VR) – 40 hours Changes to OnBase – 16 hours These modifications can be made with existing resources.</p> <p>Division of Hotels and Restaurants: Transition from the current staggered license renewal schedule to a straight annual renewal for new licensees will require modification of Versa: Regulation configuration for thirteen (13) license types and 38 transactions.</p>
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	<p>Currently, the division's schedule requires opening of renewal transactions and creation of renewal notifications five times per year, approximately 60 days before the renewal date, with application of late fees according to the same schedule at the time of delinquency. The Division of Hotels and Restaurants will need to clarify the frequency of these activities for the annual renewal schedule. If renewal transactions will need to be opened monthly, this will increase transaction and notification from five times per year to twelve times per year. If the division wants to run renewals daily as indicated in the Additional Comments, further coordination with the Department of Revenue will be necessary. If the division wants to apply late fees more frequently, it may be necessary to create a batch job that automatically applies late fees. These issues will not be impactful until the following annual renewal cycle starting in July 2021.</p> <p>Changes to Versa: Regulation – 300 hours These modifications can be made with existing resources.</p>
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FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	None anticipated.
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ADDITIONAL COMMENTS

Division of Alcoholic Beverages and Tobacco: The proposal requires each manufacturer, distributor, broker, "supplier", sales agent, and importer shall make a full and complete report by the 10th day of each month for the previous calendar month and submitted to the division through the division's electronic data submission system.

The requirement for electronic filing will streamline the reporting process for both licensee and division. The data entered will have been curated by the licensee, resulting in a reduction of possible data entry errors. The requirement will also result in reduction in costs related to paper reporting such as postage, document storage, and destruction.

The electronic data submission system is operational outside of normal business hours giving the licensee extra time and flexibility to meet the reporting deadline.

The data submitted is housed in one system that feeds the reported information directly into the audit module, streamlining the document and data gathering process necessary for conducting audits.

The proposal expands the audit timeframes that a food service establishment must derive at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages, as follows:

- A first audit conducted following the first 120-day operating period, as opposed to the current 60-day operating period; and
- A second audit performed on the following 12-month operating period.

Instead of audits performed on each 12 month operating periods thereafter, subsequent audit timeframes will be based upon the audit percentage established by the most recent audit and conducted on a staggered scale as follows:

- Level 1, 51 to 60 percent, every year;
- Level 2, 61 to 75 percent, every 2 years;
- Level 3, 76 to 90 percent, every 3 years; and
- Level 4, 91 to 100 percent, every 4 years.

The expanded audit timeframes will result in less burdensome regulation on compliant licensees and will help direct the division's auditing resources to more substantial areas of non-compliance.

Division of Hotels and Restaurants: Division license renewals are currently run in batches by the Division of Technology. If the bill is implemented, the division would require assistance from the Division of Technology in running and printing renewals on a daily basis as needed.

Division of Condominiums, Timeshares and Mobile Homes: No additional comments

OGC Rules: Section 2 of the bill replaces the term “return” with “full and complete report,” however, the statutory title has not been revised to reflect such change.

Division of Professions: No additional comments.

Division of Service Operations: The impact to Intake Services will be minimal and can be handled with existing resources; however the impact to the Call Center is indeterminate because they may see an increase in calls received.

LEGAL - GENERAL COUNSEL’S OFFICE REVIEW	
Issues/concerns/comments:	No additional comment.

By Senator Diaz

36-00914A-20

2020912__

1 A bill to be entitled
2 An act relating to the Department of Business and
3 Professional Regulation; amending s. 210.09, F.S.;
4 requiring that certain reports relating to the
5 transportation or possession of cigarettes be filed
6 with the Division of Alcoholic Beverages and Tobacco
7 through the division's electronic data submission
8 system; amending s. 210.55, F.S.; requiring that
9 certain entities file reports, rather than returns,
10 relating to tobacco products with the division;
11 providing requirements for such reports; amending s.
12 509.241, F.S.; revising rulemaking requirements
13 relating to public lodging and food service licenses;
14 amending s. 509.251, F.S.; deleting provisions
15 relating to fee schedule requirements; specifying that
16 all fees are payable in full upon submission of an
17 application for a public lodging establishment license
18 or a public food service license; amending s. 548.003,
19 F.S.; renaming the Florida State Boxing Commission as
20 the Florida Athletic Commission; amending s. 548.043,
21 F.S.; revising rulemaking requirements for the
22 commission relating to gloves; amending s. 561.01,
23 F.S.; deleting the definition of the term "permit
24 carrier"; amending s. 561.17, F.S.; revising a
25 requirement related to the filing of fingerprints with
26 the division; requiring that applications be
27 accompanied by certain information relating to right
28 of occupancy; providing requirements relating to
29 contact information for licensees and permittees;

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amending s. 561.20, F.S.; conforming cross-references;
revising requirements for issuing special licenses to
certain food service establishments; amending s.
561.42, F.S.; requiring the division, and authorizing
vendors, to use electronic mail to give certain
notice; amending s. 561.55, F.S.; revising
requirements for reports relating to alcoholic
beverages; amending s. 718.112, F.S.; providing the
circumstances under which a person is delinquent in
the payment of an assessment in the context of
eligibility for membership on certain condominium
boards; requiring that an annual budget be proposed to
unit owners and adopted by the board before a
specified time; amending s. 718.501, F.S.; authorizing
the Division of Florida Condominiums, Timeshares, and
Mobile Homes to adopt rules regarding the submission
of complaints against a condominium association;
amending s. 718.5014, F.S.; revising the location
requirements for the principal office of the
condominium ombudsman; amending ss. 455.219, 548.002,
548.05, 548.071, and 548.077, F.S.; conforming
provisions to changes made by the act; providing an
effective date.

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

Section 1. Subsection (2) of section 210.09, Florida
Statutes, is amended to read:

210.09 Records to be kept; reports to be made;

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59 examination.—

60 (2) The division is authorized to prescribe and promulgate
61 by rules and regulations, which shall have the force and effect
62 of the law, such records to be kept and reports to be made to
63 the division by any manufacturer, importer, distributing agent,
64 wholesale dealer, retail dealer, common carrier, or any other
65 person handling, transporting or possessing cigarettes for sale
66 or distribution within the state as may be necessary to collect
67 and properly distribute the taxes imposed by s. 210.02. All
68 reports shall be made on or before the 10th day of the month
69 following the month for which the report is made, unless the
70 division by rule or regulation shall prescribe that reports be
71 made more often. All reports shall be filed with the division
72 through the division's electronic data submission system.

73 Section 2. Subsection (1) of section 210.55, Florida
74 Statutes, is amended to read:

75 210.55 Distributors; monthly returns.—

76 (1) On or before the 10th of each month, every taxpayer
77 with a place of business in this state shall file a full and
78 complete report ~~return~~ with the division showing the tobacco
79 products ~~taxable price of each tobacco product~~ brought or caused
80 to be brought into this state for sale, or made, manufactured,
81 or fabricated in this state for sale in this state, during the
82 preceding month. Every taxpayer outside this state shall file a
83 full and complete report with the division through the
84 division's electronic data submission system ~~return~~ showing the
85 quantity and taxable price of each tobacco product shipped or
86 transported to retailers in this state, to be sold by those
87 retailers, during the preceding month. Reports must ~~Returns~~

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88 ~~shall~~ be made upon forms furnished and prescribed by the
89 division and must ~~shall~~ contain any other information that the
90 division requires. Each report must ~~return shall~~ be accompanied
91 by a remittance for the full tax liability shown and be filed
92 with the division through the division's electronic data
93 submission system.

94 Section 3. Subsection (1) of section 509.241, Florida
95 Statutes, is amended to read:

96 509.241 Licenses required; exceptions.—

97 (1) LICENSES; ANNUAL RENEWALS.—Each public lodging
98 establishment and public food service establishment shall obtain
99 a license from the division. Such license may not be transferred
100 from one place or individual to another. It shall be a
101 misdemeanor of the second degree, punishable as provided in s.
102 775.082 or s. 775.083, for such an establishment to operate
103 without a license. Local law enforcement shall provide immediate
104 assistance in pursuing an illegally operating establishment. The
105 division may refuse a license, or a renewal thereof, to any
106 establishment that is not constructed and maintained in
107 accordance with law and with the rules of the division. The
108 division may refuse to issue a license, or a renewal thereof, to
109 any establishment an operator of which, within the preceding 5
110 years, has been adjudicated guilty of, or has forfeited a bond
111 when charged with, any crime reflecting on professional
112 character, including soliciting for prostitution, pandering,
113 letting premises for prostitution, keeping a disorderly place,
114 or illegally dealing in controlled substances as defined in
115 chapter 893, whether in this state or in any other jurisdiction
116 within the United States, or has had a license denied, revoked,

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117 or suspended pursuant to s. 429.14. Licenses shall be renewed
118 annually, and the division shall adopt rules ~~a rule~~ establishing
119 procedures ~~a staggered schedule~~ for license issuance and
120 renewals. If any license expires while administrative charges
121 are pending against the license, the proceedings against the
122 license shall continue to conclusion as if the license were
123 still in effect.

124 Section 4. Subsections (1) and (2) of section 509.251,
125 Florida Statutes, are amended to read:

126 509.251 License fees.—

127 (1) The division shall adopt, by rule, a schedule of fees
128 to be paid by each public lodging establishment as a
129 prerequisite to issuance or renewal of a license. Such fees
130 shall be based on the number of rental units in the
131 establishment. The aggregate fee per establishment charged any
132 public lodging establishment may not exceed \$1,000; however, the
133 fees described in paragraphs (a) and (b) may not be included as
134 part of the aggregate fee subject to this cap. Vacation rental
135 units or timeshare projects within separate buildings or at
136 separate locations but managed by one licensed agent may be
137 combined in a single license application, and the division shall
138 charge a license fee as if all units in the application are in a
139 single licensed establishment. ~~The fee schedule shall require an~~
140 ~~establishment which applies for an initial license to pay the~~
141 ~~full license fee if application is made during the annual~~
142 ~~renewal period or more than 6 months before the next such~~
143 ~~renewal period and one-half of the fee if application is made 6~~
144 ~~months or less before such period.~~ The fee schedule shall
145 include fees collected for the purpose of funding the

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146 Hospitality Education Program, pursuant to s. 509.302. All fees,
147 ~~which~~ are payable in full for each application at the time
148 ~~regardless of when~~ the application is submitted.

149 (a) Upon making initial application or an application for
150 change of ownership, the applicant shall pay to the division a
151 fee as prescribed by rule, not to exceed \$50, in addition to any
152 other fees required by law, which shall cover all costs
153 associated with initiating regulation of the establishment.

154 (b) A license renewal filed with the division after the
155 expiration date shall be accompanied by a delinquent fee as
156 prescribed by rule, not to exceed \$50, in addition to the
157 renewal fee and any other fees required by law.

158 (2) The division shall adopt, by rule, a schedule of fees
159 to be paid by each public food service establishment as a
160 prerequisite to issuance or renewal of a license. The fee
161 schedule shall prescribe a basic fee and additional fees based
162 on seating capacity and services offered. The aggregate fee per
163 establishment charged any public food service establishment may
164 not exceed \$400; however, the fees described in paragraphs (a)
165 and (b) may not be included as part of the aggregate fee subject
166 to this cap. ~~The fee schedule shall require an establishment~~
167 ~~which applies for an initial license to pay the full license fee~~
168 ~~if application is made during the annual renewal period or more~~
169 ~~than 6 months before the next such renewal period and one-half~~
170 ~~of the fee if application is made 6 months or less before such~~
171 ~~period.~~ The fee schedule shall include fees collected for the
172 purpose of funding the Hospitality Education Program, pursuant
173 to s. 509.302. All fees, ~~which~~ are payable in full for each
174 application at the time ~~regardless of when~~ the application is

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submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed \$50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed \$50, in addition to the renewal fee and any other fees required by law.

Section 5. Section 548.003, Florida Statutes, is amended to read:

548.003 Florida Athletic ~~State Boxing~~ Commission.—

(1) The Florida Athletic ~~State Boxing~~ Commission is created and is assigned to the Department of Business and Professional Regulation for administrative and fiscal accountability purposes only. The ~~Florida State Boxing~~ commission shall consist of five members appointed by the Governor, subject to confirmation by the Senate. One member must be a physician licensed pursuant to chapter 458 or chapter 459, who must maintain an unencumbered license in good standing, and who must, at the time of her or his appointment, have practiced medicine for at least 5 years. Upon the expiration of the term of a commissioner, the Governor shall appoint a successor to serve for a 4-year term. A commissioner whose term has expired shall continue to serve on the commission until such time as a replacement is appointed. If a vacancy on the commission occurs prior to the expiration of the term, it shall be filled for the unexpired portion of the term in the same manner as the original appointment.

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(2) The ~~Florida State Boxing~~ commission, as created by subsection (1), shall administer the provisions of this chapter. The commission has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter and to implement each of the duties and responsibilities conferred upon the commission, including, but not limited to:

(a) Development of an ethical code of conduct for commissioners, commission staff, and commission officials.

(b) Facility and safety requirements relating to the ring, floor plan and apron seating, emergency medical equipment and services, and other equipment and services necessary for the conduct of a program of matches.

(c) Requirements regarding a participant's apparel, bandages, handwraps, gloves, mouthpiece, and appearance during a match.

(d) Requirements relating to a manager's participation, presence, and conduct during a match.

(e) Duties and responsibilities of all licensees under this chapter.

(f) Procedures for hearings and resolution of disputes.

(g) Qualifications for appointment of referees and judges.

(h) Qualifications for and appointment of chief inspectors and inspectors and duties and responsibilities of chief inspectors and inspectors with respect to oversight and coordination of activities for each program of matches regulated under this chapter.

(i) Designation and duties of a knockdown timekeeper.

(j) Setting fee and reimbursement schedules for referees and other officials appointed by the commission or the

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representative of the commission.

(k) Establishment of criteria for approval, disapproval, suspension of approval, and revocation of approval of amateur sanctioning organizations for amateur boxing, kickboxing, and mixed martial arts held in this state, including, but not limited to, the health and safety standards the organizations use before, during, and after the matches to ensure the health, safety, and well-being of the amateurs participating in the matches, including the qualifications and numbers of health care personnel required to be present, the qualifications required for referees, and other requirements relating to the health, safety, and well-being of the amateurs participating in the matches. The commission may adopt by rule, or incorporate by reference into rule, the health and safety standards of USA Boxing as the minimum health and safety standards for an amateur boxing sanctioning organization, the health and safety standards of the International Sport Kickboxing Association as the minimum health and safety standards for an amateur kickboxing sanctioning organization, and the minimum health and safety standards for an amateur mixed martial arts sanctioning organization. The commission shall review its rules for necessary revision at least every 2 years and may adopt by rule, or incorporate by reference into rule, the then-existing current health and safety standards of USA Boxing and the International Sport Kickboxing Association. The commission may adopt emergency rules to administer this paragraph.

(3) The commission shall maintain an office in Tallahassee. At the first meeting of the commission after June 1 of each year, the commission shall select a chair and a vice chair from

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among its membership. Three members shall constitute a quorum and the concurrence of at least three members is necessary for official commission action.

(4) Three consecutive unexcused absences or absences constituting 50 percent or more of the commission's meetings within any 12-month period shall cause the commission membership of the member in question to become void, and the position shall be considered vacant. The commission shall, by rule, define unexcused absences.

(5) Each commission member shall be accountable to the Governor for the proper performance of duties as a member of the commission. The Governor shall cause to be investigated any complaint or unfavorable report received by the Governor or the department concerning an action of the commission or any member and shall take appropriate action thereon. The Governor may remove from office any member for malfeasance, unethical conduct, misfeasance, neglect of duty, incompetence, permanent inability to perform official duties, or pleading guilty or nolo contendere to or being found guilty of a felony.

(6) Each member of the commission shall be compensated at the rate of \$50 for each day she or he attends a commission meeting and shall be reimbursed for other expenses as provided in s. 112.061.

(7) The commission shall be authorized to join and participate in the activities of the Association of Boxing Commissions (ABC).

(8) The department shall provide all legal and investigative services necessary to implement this chapter. The department may adopt rules as provided in ss. 120.536(1) and

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120.54 to carry out its duties under this chapter.

Section 6. Subsection (3) of section 548.043, Florida Statutes, is amended to read:

548.043 Weights and classes, limitations; gloves.—

(3) The commission shall establish by rule the need for gloves, if any, and the weight of any such gloves to be used in each pugilistic match ~~the appropriate weight of gloves to be used in each boxing match; however, all participants in boxing matches shall wear gloves weighing not less than 8 ounces each and participants in mixed martial arts matches shall wear gloves weighing 4 to 8 ounces each.~~ Participants shall wear such protective devices as the commission deems necessary.

Section 7. Subsection (20) of section 561.01, Florida Statutes, is amended to read:

561.01 Definitions.—As used in the Beverage Law:

~~(20) "Permit carrier" means a licensee authorized to make deliveries as provided in s. 561.57.~~

Section 8. Subsections (1) and (2) of section 561.17, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

561.17 License and registration applications; approved person.—

(1) Any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, shall file, with the district licensing personnel of the district of the division in which the place of business for which a license is sought is located, a sworn application in the format prescribed by the division. The applicant must be a legal or business entity, person, or persons

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and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. However, the applicant does not include any person that derives revenue from the license solely through a contractual relationship with the licensee, the substance of which contractual relationship is not related to the control of the sale of alcoholic beverages. Before any application is approved, the division may require the applicant to file a set of fingerprints electronically through an approved electronic fingerprinting vendor or on regular United States Department of Justice forms prescribed by the Florida Department of Law Enforcement for herself or himself and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, when required by the division. If the applicant or any person who is interested with the applicant either directly or indirectly in the business or who has a security interest in the license being sought or has a right to a percentage payment from the proceeds of the business, either by lease or otherwise, is not qualified, the division shall deny the application. However, any company regularly traded on a national securities exchange and not over the counter; any insurer, as defined in the Florida Insurance Code; or any bank or savings and loan association chartered by this state, another state, or the United States which has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain the division's approval of its officers, directors, or stockholders or any change of such positions or interests. A shopping center with five or more

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349 stores, one or more of which has an alcoholic beverage license
350 and is required under a lease common to all shopping center
351 tenants to pay no more than 10 percent of the gross proceeds of
352 the business holding the license to the shopping center, is not
353 considered as having an interest, directly or indirectly, in the
354 license. A performing arts center, as defined in s. 561.01,
355 which has an interest, directly or indirectly, in an alcoholic
356 beverage license is not required to obtain division approval of
357 its volunteer officers or directors or of any change in such
358 positions or interests.

359 (2) All applications for any alcoholic beverage license
360 must be accompanied by proof of the applicant's right of
361 occupancy for the entire premises sought to be licensed. All
362 applications for alcoholic beverage licenses for consumption on
363 the premises shall be accompanied by a certificate of the
364 Division of Hotels and Restaurants of the Department of Business
365 and Professional Regulation, the Department of Agriculture and
366 Consumer Services, the Department of Health, the Agency for
367 Health Care Administration, or the county health department that
368 the place of business wherein the business is to be conducted
369 meets all of the sanitary requirements of the state.

370 (5) Any person or entity licensed or permitted by the
371 division must provide an electronic mail address to the division
372 to function as the primary contact for all communication by the
373 division to the licensee or permittees. Licensees and permittees
374 are responsible for maintaining accurate contact information on
375 file with the division.

376 Section 9. Paragraph (a) of subsection (2) of section
377 561.20, Florida Statutes, is amended to read:

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561.20 Limitation upon number of licenses issued.—

(2)(a) The limitation of the number of licenses as provided in this section does not prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure, as defined in s. 561.01(20) ~~s. 561.01(21)~~, with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. 561.01(20) ~~s. 561.01(21)~~, in a municipality that on the effective date of this act has a population, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents and that is within a constitutionally chartered county may be issued a special license. This special license shall allow the sale and consumption of alcoholic beverages only on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages; provided that this subparagraph shall supersede local laws requiring a greater number of hotel rooms;

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2. Any condominium accommodation of which no fewer than 100 condominium units are wholly rentable to transients and which is licensed under chapter 509, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

3. Any condominium accommodation of which no fewer than 50 condominium units are wholly rentable to transients, which is licensed under chapter 509, and which is located in any county having home rule under s. 10 or s. 11, Art. VIII of the State Constitution of 1885, as amended, and incorporated by reference in s. 6(e), Art. VIII of the State Constitution, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

4. A food service establishment that has 2,500 square feet of service area, is equipped to serve meals to 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 120-day ~~60-day~~ operating period and the first each 12-month operating period thereafter. Subsequent audit timeframes must be based upon the audit percentage established by the most recent audit and conducted on a staggered scale as follows: level 1, 51 percent to 60 percent, every year; level 2, 61 percent to 75 percent, every 2 years; level 3, 76 percent to 90 percent, every 3 years; and level 4, 91 percent to 100 percent, every 4 years. A food service establishment granted a special license on or after January 1, 1958, pursuant to general or special law may not operate as a

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436 package store and may not sell intoxicating beverages under such
437 license after the hours of serving or consumption of food have
438 elapsed. Failure by a licensee to meet the required percentage
439 of food and nonalcoholic beverage gross revenues during the
440 covered operating period shall result in revocation of the
441 license or denial of the pending license application. A licensee
442 whose license is revoked or an applicant whose pending
443 application is denied, or any person required to qualify on the
444 special license application, is ineligible to have any interest
445 in a subsequent application for such a license for a period of
446 120 days after the date of the final denial or revocation;

447 5. Any caterer, deriving at least 51 percent of its gross
448 food and beverage revenue from the sale of food and nonalcoholic
449 beverages at each catered event, licensed by the Division of
450 Hotels and Restaurants under chapter 509. This subparagraph does
451 not apply to a culinary education program, as defined in s.
452 381.0072(2), which is licensed as a public food service
453 establishment by the Division of Hotels and Restaurants and
454 provides catering services. Notwithstanding any law to the
455 contrary, a licensee under this subparagraph shall sell or serve
456 alcoholic beverages only for consumption on the premises of a
457 catered event at which the licensee is also providing prepared
458 food, and shall prominently display its license at any catered
459 event at which the caterer is selling or serving alcoholic
460 beverages. A licensee under this subparagraph shall purchase all
461 alcoholic beverages it sells or serves at a catered event from a
462 vendor licensed under s. 563.02(1), s. 564.02(1), or licensed
463 under s. 565.02(1) subject to the limitation imposed in
464 subsection (1), as appropriate. A licensee under this

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subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s.

565.02(1)(b). A licensee under this subparagraph must maintain for a period of 3 years all records and receipts for each catered event, including all contracts, customers' names, event locations, event dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by the department by rule to demonstrate compliance with the requirements of this subparagraph. Notwithstanding any law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph shall not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this section shall permit the licensee to conduct activities that are

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otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first \$300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072; or

6. A culinary education program as defined in s. 381.0072(2) which is licensed as a public food service establishment by the Division of Hotels and Restaurants.

a. This special license shall allow the sale and consumption of alcoholic beverages on the licensed premises of the culinary education program. The culinary education program shall specify designated areas in the facility where the alcoholic beverages may be consumed at the time of application. Alcoholic beverages sold for consumption on the premises may be consumed only in areas designated pursuant to s. 561.01(11) and may not be removed from the designated area. Such license shall be applicable only in and for designated areas used by the culinary education program.

b. If the culinary education program provides catering services, this special license shall also allow the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. A

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culinary education program that provides catering services is not required to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages.

Notwithstanding any law to the contrary, a licensee that provides catering services under this sub-subparagraph shall prominently display its beverage license at any catered event at which the caterer is selling or serving alcoholic beverages.

Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this sub-subparagraph.

c. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph does not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this subparagraph shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. Any culinary education program that holds a license to sell alcoholic beverages shall comply with the age requirements set forth in ss. 562.11(4), 562.111(2), and 562.13.

d. The Division of Alcoholic Beverages and Tobacco may adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement.

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e. A license issued pursuant to this subparagraph does not permit the licensee to sell alcoholic beverages by the package for off-premises consumption.

However, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law shall not be moved to a new location, such license being valid only on the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general law and held by such hotels, motels, motor courts, or restaurants on May 24, 1947, shall be counted in the quota limitation contained in subsection (1). Any license issued for any hotel, motel, or motor court under this law shall be issued only to the owner of the hotel, motel, or motor court or, in the event the hotel, motel, or motor court is leased, to the lessee of the hotel, motel, or motor court; and the license shall remain in the name of the owner or lessee so long as the license is in existence. Any special license now in existence heretofore issued under this law cannot be renewed except in the name of the owner of the hotel, motel, motor court, or restaurant or, in the event the hotel, motel, motor court, or restaurant is leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of the owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing herein provided shall limit, restrict, or prevent the issuance of a special license for any

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581 restaurant or motel which shall hereafter meet the requirements
582 of the law existing immediately prior to the effective date of
583 this act, if construction of such restaurant has commenced prior
584 to the effective date of this act and is completed within 30
585 days thereafter, or if an application is on file for such
586 special license at the time this act takes effect; and any such
587 licenses issued under this proviso may be annually renewed as
588 now provided by law. Nothing herein prevents an application for
589 transfer of a license to a bona fide purchaser of any hotel,
590 motel, motor court, or restaurant by the purchaser of such
591 facility or the transfer of such license pursuant to law.

592 Section 10. Subsection (4) of section 561.42, Florida
593 Statutes, is amended to read:

594 561.42 Tied house evil; financial aid and assistance to
595 vendor by manufacturer, distributor, importer, primary American
596 source of supply, brand owner or registrant, or any broker,
597 sales agent, or sales person thereof, prohibited; procedure for
598 enforcement; exception.—

599 (4) Before the division shall so declare and prohibit such
600 sales to such vendor, ~~it shall~~, within 2 days after receipt of
601 such notice, the division shall give ~~written~~ notice to such
602 vendor by electronic mail of the receipt by the division of such
603 notification of delinquency and such vendor shall be directed to
604 forthwith make payment thereof or, upon failure to do so, to
605 show cause before the division why further sales to such vendor
606 shall not be prohibited. Good and sufficient cause to prevent
607 such action by the division may be made by showing payment,
608 failure of consideration, or any other defense which would be
609 considered sufficient in a common-law action. The vendor shall

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610 have 5 days after service ~~receipt~~ of such notice via electronic
611 mail within which to show such cause, and he or she may demand a
612 hearing thereon, provided he or she does so in writing within
613 said 5 days, such written demand to be delivered to the division
614 either in person, by electronic mail, or by due course of mail
615 within such 5 days. If no such demand for hearing is made, the
616 division shall thereupon declare in writing to such vendor and
617 to all manufacturers and distributors within the state that all
618 further sales to such vendor are prohibited until such time as
619 the division certifies in writing that such vendor has fully
620 paid for all liquors previously purchased. In the event such
621 prohibition of sales and declaration thereof to the vendor,
622 manufacturers, and distributors is ordered by the division, the
623 vendor may seek review of such decision by the Department of
624 Business and Professional Regulation within 5 days. In the event
625 application for such review is filed within such time, such
626 prohibition of sales shall not be made, published, or declared
627 until final disposition of such review by the department.

628 Section 11. Subsection (2) of section 561.55, Florida
629 Statutes, is amended to read:

630 561.55 Manufacturers', distributors', brokers', sales
631 agents', importers', vendors', and exporters' records and
632 reports.—

633 (2) Each manufacturer, distributor, broker, sales agent,
634 and importer shall make a full and complete report by the 10th
635 day of each month for the previous calendar month. The report
636 must be ~~shall be made out in triplicate; two copies shall be~~
637 ~~sent to the division, and the third copy shall be retained for~~
638 ~~the manufacturer's, distributor's, broker's, sales agent's, or~~

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~~importer's record. Reports shall be made on forms prepared and~~
~~furnished by the division and filed with the division through~~
the division's electronic data submission system.

Section 12. Paragraphs (d) and (f) of subsection (2) of
section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the
following and, if they do not do so, shall be deemed to include
the following:

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at the
location provided in the association bylaws and, if the bylaws
are silent as to the location, the meeting must be held within
45 miles of the condominium property. However, such distance
requirement does not apply to an association governing a
timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the
board caused by the expiration of a director's term must be
filled by electing a new board member, and the election must be
by secret ballot. An election is not required if the number of
vacancies equals or exceeds the number of candidates. For
purposes of this paragraph, the term "candidate" means an
eligible person who has timely submitted the written notice, as
described in sub-subparagraph 4.a., of his or her intention to
become a candidate. Except in a timeshare or nonresidential
condominium, or if the staggered term of a board member does not
expire until a later annual meeting, or if all members' terms
would otherwise expire but there are no candidates, the terms of
all board members expire at the annual meeting, and such members

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may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent

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697 in the payment of any assessment ~~monetary obligation~~ due to the
698 association, is not eligible to be a candidate for board
699 membership and may not be listed on the ballot. A person is
700 delinquent if a payment is not made by the due date as
701 specifically identified in the declaration of condominium,
702 bylaws, or articles of incorporation. If a due date is not
703 specifically identified in the declaration of condominium,
704 bylaws, or articles of incorporation, the due date is the first
705 day of the monthly or quarterly assessment period. A person who
706 has been convicted of any felony in this state or in a United
707 States District or Territorial Court, or who has been convicted
708 of any offense in another jurisdiction which would be considered
709 a felony if committed in this state, is not eligible for board
710 membership unless such felon's civil rights have been restored
711 for at least 5 years as of the date such person seeks election
712 to the board. The validity of an action by the board is not
713 affected if it is later determined that a board member is
714 ineligible for board membership due to having been convicted of
715 a felony. This subparagraph does not limit the term of a member
716 of the board of a nonresidential or timeshare condominium.

717 3. The bylaws must provide the method of calling meetings
718 of unit owners, including annual meetings. Written notice must
719 include an agenda, must be mailed, hand delivered, or
720 electronically transmitted to each unit owner at least 14 days
721 before the annual meeting, and must be posted in a conspicuous
722 place on the condominium property at least 14 continuous days
723 before the annual meeting. Upon notice to the unit owners, the
724 board shall, by duly adopted rule, designate a specific location
725 on the condominium property where all notices of unit owner

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meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically

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transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must

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784 give written notice of his or her intent to be a candidate to
785 the association at least 40 days before a scheduled election.
786 Together with the written notice and agenda as set forth in
787 subparagraph 3., the association shall mail, deliver, or
788 electronically transmit a second notice of the election to all
789 unit owners entitled to vote, together with a ballot that lists
790 all candidates. Upon request of a candidate, an information
791 sheet, no larger than 8 1/2 inches by 11 inches, which must be
792 furnished by the candidate at least 35 days before the election,
793 must be included with the mailing, delivery, or transmission of
794 the ballot, with the costs of mailing, delivery, or electronic
795 transmission and copying to be borne by the association. The
796 association is not liable for the contents of the information
797 sheets prepared by the candidates. In order to reduce costs, the
798 association may print or duplicate the information sheets on
799 both sides of the paper. The division shall by rule establish
800 voting procedures consistent with this sub-subparagraph,
801 including rules establishing procedures for giving notice by
802 electronic transmission and rules providing for the secrecy of
803 ballots. Elections shall be decided by a plurality of ballots
804 cast. There is no quorum requirement; however, at least 20
805 percent of the eligible voters must cast a ballot in order to
806 have a valid election. A unit owner may not authorize any other
807 person to vote his or her ballot, and any ballots improperly
808 cast are invalid. A unit owner who violates this provision may
809 be fined by the association in accordance with s. 718.303. A
810 unit owner who needs assistance in casting the ballot for the
811 reasons stated in s. 101.051 may obtain such assistance. The
812 regular election must occur on the date of the annual meeting.

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Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's

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842 election or the duration of the director's uninterrupted tenure,
843 whichever is longer. Failure to have such written certification
844 or educational certificate on file does not affect the validity
845 of any board action.

846 c. Any challenge to the election process must be commenced
847 within 60 days after the election results are announced.

848 5. Any approval by unit owners called for by this chapter
849 or the applicable declaration or bylaws, including, but not
850 limited to, the approval requirement in s. 718.111(8), must be
851 made at a duly noticed meeting of unit owners and is subject to
852 all requirements of this chapter or the applicable condominium
853 documents relating to unit owner decisionmaking, except that
854 unit owners may take action by written agreement, without
855 meetings, on matters for which action by written agreement
856 without meetings is expressly allowed by the applicable bylaws
857 or declaration or any law that provides for such action.

858 6. Unit owners may waive notice of specific meetings if
859 allowed by the applicable bylaws or declaration or any law.
860 Notice of meetings of the board of administration, unit owner
861 meetings, except unit owner meetings called to recall board
862 members under paragraph (j), and committee meetings may be given
863 by electronic transmission to unit owners who consent to receive
864 notice by electronic transmission. A unit owner who consents to
865 receiving notices by electronic transmission is solely
866 responsible for removing or bypassing filters that block receipt
867 of mass emails sent to members on behalf of the association in
868 the course of giving electronic notices.

869 7. Unit owners have the right to participate in meetings of
870 unit owners with reference to all designated agenda items.

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871 However, the association may adopt reasonable rules governing
872 the frequency, duration, and manner of unit owner participation.

873 8. A unit owner may tape record or videotape a meeting of
874 the unit owners subject to reasonable rules adopted by the
875 division.

876 9. Unless otherwise provided in the bylaws, any vacancy
877 occurring on the board before the expiration of a term may be
878 filled by the affirmative vote of the majority of the remaining
879 directors, even if the remaining directors constitute less than
880 a quorum, or by the sole remaining director. In the alternative,
881 a board may hold an election to fill the vacancy, in which case
882 the election procedures must conform to sub-subparagraph 4.a.
883 unless the association governs 10 units or fewer and has opted
884 out of the statutory election process, in which case the bylaws
885 of the association control. Unless otherwise provided in the
886 bylaws, a board member appointed or elected under this section
887 shall fill the vacancy for the unexpired term of the seat being
888 filled. Filling vacancies created by recall is governed by
889 paragraph (j) and rules adopted by the division.

890 10. This chapter does not limit the use of general or
891 limited proxies, require the use of general or limited proxies,
892 or require the use of a written ballot or voting machine for any
893 agenda item or election at any meeting of a timeshare
894 condominium association or nonresidential condominium
895 association.

896
897 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
898 association of 10 or fewer units may, by affirmative vote of a
899 majority of the total voting interests, provide for different

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voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). The annual budget must be proposed to unit owners and adopted by the board of directors no later than 30 days before the beginning of the fiscal year. A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a

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929 deferred maintenance expense or replacement cost that exceeds
930 \$10,000. The amount to be reserved must be computed using a
931 formula based upon estimated remaining useful life and estimated
932 replacement cost or deferred maintenance expense of each reserve
933 item. The association may adjust replacement reserve assessments
934 annually to take into account any changes in estimates or
935 extension of the useful life of a reserve item caused by
936 deferred maintenance. This subsection does not apply to an
937 adopted budget in which the members of an association have
938 determined, by a majority vote at a duly called meeting of the
939 association, to provide no reserves or less reserves than
940 required by this subsection.

941 b. Before turnover of control of an association by a
942 developer to unit owners other than a developer pursuant to s.
943 718.301, the developer may vote the voting interests allocated
944 to its units to waive the reserves or reduce the funding of
945 reserves through the period expiring at the end of the second
946 fiscal year after the fiscal year in which the certificate of a
947 surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or
948 an instrument that transfers title to a unit in the condominium
949 which is not accompanied by a recorded assignment of developer
950 rights in favor of the grantee of such unit is recorded,
951 whichever occurs first, after which time reserves may be waived
952 or reduced only upon the vote of a majority of all nondeveloper
953 voting interests voting in person or by limited proxy at a duly
954 called meeting of the association. If a meeting of the unit
955 owners has been called to determine whether to waive or reduce
956 the funding of reserves and no such result is achieved or a
957 quorum is not attained, the reserves included in the budget

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shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

Section 13. Paragraph (m) of subsection (1) of section 718.501, Florida Statutes, is amended to read:

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987 718.501 Authority, responsibility, and duties of Division
988 of Florida Condominiums, Timeshares, and Mobile Homes.—

989 (1) The division may enforce and ensure compliance with the
990 provisions of this chapter and rules relating to the
991 development, construction, sale, lease, ownership, operation,
992 and management of residential condominium units. In performing
993 its duties, the division has complete jurisdiction to
994 investigate complaints and enforce compliance with respect to
995 associations that are still under developer control or the
996 control of a bulk assignee or bulk buyer pursuant to part VII of
997 this chapter and complaints against developers, bulk assignees,
998 or bulk buyers involving improper turnover or failure to
999 turnover, pursuant to s. 718.301. However, after turnover has
1000 occurred, the division has jurisdiction to investigate
1001 complaints related only to financial issues, elections, and unit
1002 owner access to association records pursuant to s. 718.111(12).

1003 (m) If a complaint is made, the division must conduct its
1004 inquiry with due regard for the interests of the affected
1005 parties. Within 30 days after receipt of a complaint, the
1006 division shall acknowledge the complaint in writing and notify
1007 the complainant whether the complaint is within the jurisdiction
1008 of the division and whether additional information is needed by
1009 the division from the complainant. The division shall conduct
1010 its investigation and, within 90 days after receipt of the
1011 original complaint or of timely requested additional
1012 information, take action upon the complaint. However, the
1013 failure to complete the investigation within 90 days does not
1014 prevent the division from continuing the investigation,
1015 accepting or considering evidence obtained or received after 90

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1016 days, or taking administrative action if reasonable cause exists
1017 to believe that a violation of this chapter or a rule has
1018 occurred. If an investigation is not completed within the time
1019 limits established in this paragraph, the division shall, on a
1020 monthly basis, notify the complainant in writing of the status
1021 of the investigation. When reporting its action to the
1022 complainant, the division shall inform the complainant of any
1023 right to a hearing pursuant to ss. 120.569 and 120.57. The
1024 division may adopt rules regarding the submission of a complaint
1025 against an association.

1026 Section 14. Section 718.5014, Florida Statutes, is amended
1027 to read:

1028 718.5014 Ombudsman location.—The ombudsman shall maintain
1029 his or her principal office at a ~~in Leon County on the premises~~
1030 ~~of the division or, if suitable space cannot be provided there,~~
1031 ~~at another~~ place convenient to the offices of the division which
1032 will enable the ombudsman to expeditiously carry out the duties
1033 and functions of his or her office. The ombudsman may establish
1034 branch offices elsewhere in the state upon the concurrence of
1035 the Governor.

1036 Section 15. Subsection (1) of section 455.219, Florida
1037 Statutes, is amended to read:

1038 455.219 Fees; receipts; disposition; periodic management
1039 reports.—

1040 (1) Each board within the department shall determine by
1041 rule the amount of license fees for its profession, based upon
1042 department-prepared long-range estimates of the revenue required
1043 to implement all provisions of law relating to the regulation of
1044 professions by the department and any board; however, when the

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department has determined, based on the long-range estimates of such revenue, that a profession's trust fund moneys are in excess of the amount required to cover the necessary functions of the board, or the department when there is no board, the department may adopt rules to implement a waiver of license renewal fees for that profession for a period not to exceed 2 years, as determined by the department. Each board, or the department when there is no board, shall ensure license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the department, with advice of the applicable board. If sufficient action is not taken by a board within 1 year of notification by the department that license fees are projected to be inadequate, the department shall set license fees on behalf of the applicable board to cover anticipated costs and to maintain the required cash balance. The department shall include recommended fee cap increases in its annual report to the Legislature. Further, it is legislative intent that no regulated profession operate with a negative cash balance. The department may provide by rule for the advancement of sufficient funds to any profession or the Florida Athletic State ~~Boxing~~ Commission operating with a negative cash balance. Such advancement may be for a period not to exceed 2 consecutive years and shall require interest to be paid by the regulated profession. Interest shall be calculated at the current rate earned on Professional Regulation Trust Fund investments. Interest earned shall be allocated to the various funds in accordance with the allocation of investment earnings during the period of the advance.

Section 16. Subsection (4) of section 548.002, Florida

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Statutes, is amended to read:

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

(4) "Commission" means the Florida Athletic ~~State Boxing~~ Commission.

Section 17. Subsections (3) and (4) of section 548.05, Florida Statutes, are amended to read:

548.05 Control of contracts.—

(3) The commission may require that each contract contain language authorizing the ~~Florida State Boxing~~ commission to withhold any or all of any manager's share of a purse in the event of a contractual dispute as to entitlement to any portion of a purse. The commission may establish rules governing the manner of resolution of such dispute. In addition, if the commission deems it appropriate, the commission is hereby authorized to implead interested parties over any disputed funds into the appropriate circuit court for resolution of the dispute prior to release of all or any part of the funds.

(4) Each contract subject to this section shall contain the following clause: "This agreement is subject to the provisions of chapter 548, Florida Statutes, and to the rules of the Florida Athletic ~~State Boxing~~ Commission and to any future amendments of either."

Section 18. Subsection (12) of section 548.071, Florida Statutes, is amended to read:

548.071 Suspension or revocation of license or permit by commission.—The commission may suspend or revoke a license or permit if the commission finds that the licensee or permittee:

(12) Has been disciplined by the ~~Florida State Boxing~~ commission or similar agency or body of any jurisdiction.

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1103 Section 19. Section 548.077, Florida Statutes, is amended
1104 to read:

1105 548.077 Florida Athletic ~~State-Boxing~~ Commission;
1106 collection and disposition of moneys.—All fees, fines,
1107 forfeitures, and other moneys collected under the provisions of
1108 this chapter shall be paid by the commission to the Chief
1109 Financial Officer who, after the expenses of the commission are
1110 paid, shall deposit them in the Professional Regulation Trust
1111 Fund to be used for the administration and operation of the
1112 commission and to enforce the laws and rules under its
1113 jurisdiction. In the event the unexpended balance of such moneys
1114 collected under the provisions of this chapter exceeds \$250,000,
1115 any excess of that amount shall be deposited in the General
1116 Revenue Fund.

1117 Section 20. This act shall take effect July 1, 2020.

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 Innovation, Industry, and Technology

BILL: SB 1084

INTRODUCER: Senators Diaz and Montford

SUBJECT: Emotional Support Animals

DATE: January 31, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Becker	Becker	AG	Favorable
2.	Kraemer	Imhof	IT	Pre-meeting
3.			RC	

I. Summary:

SB 1084 prohibits a landlord, to the extent required by federal law, rule, or regulation, to deny housing to a person with a disability or a disability-related need who has an animal that is required as support. It defines emotional support animal as an animal that is not required to be trained to assist a person with a disability but, by virtue of its presence, provides support to alleviate one or more identified symptoms or effects of a person's disability.

The bill prohibits a landlord to charge a person with an emotional support animal additional fees. It does allow a landlord to prohibit the animal if it poses a direct threat to the safety, health, or property of others and to request certain written documentation prepared by a health care practitioner¹ in a format prescribed in rule by the Department of Health. The documentation may not be prepared by a health care practitioner whose exclusive service is to prepare documentation in exchange for a fee. The landlord may also require proof of compliance with state and local licensing and vaccination requirements.

Under the bill, a person who falsifies written documentation or knowingly or willfully misrepresents the use of an emotional support animal commits a misdemeanor of the second degree, which could result in incarceration for 60 days, a fine of \$500, or both. The bill requires such person to perform 30 hours of community service for an organization that serves individual with disabilities. It makes an emotional support animal's owner liable for any damages caused by the animal and removes landlord liability for damage done by an authorized emotional support

¹ Section 456.001(4), F.S., defines the term "health care practitioner" to include persons licensed or certified as an acupuncturist, physician, osteopathic physician, chiropractor, podiatric physician, naturopathic practitioner, optometrist, registered and certified nurse, pharmacist, dentist, dental hygienist, midwife, speech and language pathologist, audiologist, nursing home administrator, occupational therapist, respiratory therapist, dietetics and nutrition practitioner, athletic trainer, orthoptist, prosthetist, electrologist, massage therapist, clinical laboratory scientist and personnel, medical physicist, optician, physical therapist, psychologist, hypnotist, sex therapist, clinical social worker, marriage and family therapist, and mental health counselor.

animal. The bill expressly states that the guidelines for emotional support animals do not apply to service animals.

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

II. Present Situation:

Americans with Disabilities Act

The Americans with Disabilities Act (ADA)² prohibits discrimination against individuals with disabilities³ in employment,⁴ in the provision of public services,⁵ and in public accommodation.⁶ One of the requirements of the ADA is that public accommodation or public entity provide reasonable accommodations to disabled individuals accompanied by a service animal in all areas that are open to the public.⁷

A “service animal” is defined as a dog that is individually trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.⁸ The work or tasks performed by a service dog must be directly related to the individual’s disability.⁹ Emotional support, comfort, and companionship provided by a dog, even for therapeutic or medical purposes, are insufficient to classify it as a service animal.¹⁰

Service dogs must be harnessed or leashed, unless doing so interferes with the dog’s work or the individual’s disability prevents doing so.¹¹ A person with a disability cannot be asked to remove his or her service dog from the premises, unless it is out of control and the dog’s handler does not take action to control it, or if the dog is not housebroken.¹² However, if the dog is removed under such circumstances, the public accommodation or public entity must still allow the individual with a disability the opportunity to remain on the premises of the public accommodation or public entity without the service dog.¹³

Generally, when it is clear that a dog is trained to do work or perform tasks (such as a guide dog), a public accommodation or public entity may not ask about the necessity of the service dog. If it is not obvious what service or task the dog is providing, extremely limited questions are allowed: staff may only ask if a service dog is required because of a disability, and what tasks the

² 42 U.S.C. s. 12101 *et seq.*

³ Under the ADA, a disability is broadly defined to mean a physical or mental impairment that substantially limits the major life activities of an individual. 42 U.S.C. s. 12102(1)(a).

⁴ 42 U.S.C. s. 12112.

⁵ 42 U.S.C. s. 12132.

⁶ 42 U.S.C. s. 12182. Under the ADA, a “public entity” includes any state or local government, any department or agency of state or local government, and certain commuter authorities. *See* 42 U.S.C. s. 12131.

⁷ 28 C.F.R. ss. 36.302(a) and (c)(7) and 35.136(a) and (g).

⁸ 28 C.F.R. ss. 35.104 and 36.104.

⁹ *Id.*

¹⁰ *Id.*; ADA National Network, *Service Animals and Emotional Support Animals: Where are they allowed and under what conditions?* 3 (2014), available at [http://adata.org/sites/adata.org/files/files/Service_Animal_Booklet_2014\(1\).pdf](http://adata.org/sites/adata.org/files/files/Service_Animal_Booklet_2014(1).pdf) (last visited Jan. 28, 2020).

¹¹ 28 C.F.R. ss. 35.136(d) and 36.302(c)(4).

¹² 28 C.F.R. ss. 35.136(b) and 36.302(c)(2).

¹³ 28 C.F.R. ss. 35.136(c) and 36.302(c)(3).

dog has been trained to perform.¹⁴ Any other questions, including the nature and extent of the person's disability or medical documentation, are prohibited.¹⁵

Although the definition of a service animal is limited to dogs, the ADA contains an additional provision related to miniature horses that have been individually trained to work or perform tasks for people with disabilities.¹⁶ Miniature horses are an alternative service animal for individuals with disabilities who may be allergic to dogs; miniature horses also have life spans considerably longer than dogs and are generally stronger than most dogs.¹⁷ Similar to the requirements for service dogs, public accommodations and public entities must permit the use of a miniature horse by a person with a disability where reasonable. In determining whether permitting a miniature horse is reasonable, a facility must consider four factors: whether the miniature horse is housebroken; whether the miniature horse is under the owner's control; whether the facility can accommodate the miniature horse's type, size, and weight; and whether the miniature horse's presence will compromise safety requirements.¹⁸

If a public accommodation or public entity violates the ADA, a private party may file suit to obtain a court order to stop the violation. No monetary damages will be available in such suits; however, reasonable attorney's fee may be awarded.¹⁹ Individuals may also file complaints with the U.S. Attorney General, who is authorized to file lawsuits in cases of general public importance or where a "pattern or practice" of discrimination is alleged. In suits by the Attorney General, monetary damages and civil penalties may be awarded. Civil penalties may not exceed \$50,000 for a first violation or \$100,000 for any subsequent violation.²⁰

Fair Housing Act

The federal Fair Housing Act (federal FHA)²¹ prohibits discrimination against a person with a disability in the sale or rental of housing.²² Similar to the ADA, the federal FHA also requires a landlord to provide reasonable accommodations, including permitting the use of service animals, to a person with a disability.²³ However, unlike the ADA which does not require reasonable accommodations for emotional support animals, accommodation of untrained emotional support animals may be required under the federal FHA, if such an accommodation is reasonably

¹⁴ 28 C.F.R. ss. 35.136(f) and 36.302(c)(6).

¹⁵ *Id.*

¹⁶ 28 C.F.R. ss. 35.136(i) and 36.302(c)(9). Miniature horses generally range in height from 2 to 3 feet to the shoulders and weigh between 70 and 100 pounds. U.S. Dep't of Justice, Civil Rights Division, *Service Animals*, 3 (July 2011), available at http://www.ada.gov/service_animals_2010.pdf (last visited Jan. 28, 2020).

¹⁷ U.S. Dep't. of Justice, *Americans with Disabilities Act Title III Regulations: Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*, 96 (Sept. 15, 2010) available at http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.pdf (last visited Jan. 28, 2020).

¹⁸ 28 C.F.R. ss. 35.136(i) and 36.302(c)(9)ii.

¹⁹ 42 U.S.C. ss. 12188 and 2000a-3.

²⁰ 42 U.S.C. s. 12188.

²¹ 42 U.S.C. s. 3601 *et seq.*

²² 42 U.S.C. s. 3604(f).

²³ *Id.*; 24 C.F.R. s. 5.303.

necessary to allow a person with a handicap an equal opportunity to enjoy and use housing.²⁴ A reasonable accommodation may include waiving a no-pet rule or a pet deposit.²⁵

A landlord may not ask about the existence, nature, and extent of a person's disability. However, an individual with a disability who requests a reasonable accommodation may be asked to provide documentation for proper review of the accommodation request. A landlord may ask a person to certify, in writing, that the tenant or a member of his or her family is a person with a disability; the need for the animal to assist the person with that specific disability; and that the animal actually assists the person with a disability.²⁶

The United States Department of Housing and Urban Development (HUD) recently released guidance dated January 28, 2020 clarifying how housing providers can comply with the FHA when assessing a person's request to have an animal as a reasonable accommodation.²⁷

Florida Service Animal Law

Section 413.08, F.S., is Florida's companion to the ADA and federal FHA provisions regarding service animals.

Section 413.08, F.S., provides that an individual with a disability is entitled to equal access in public accommodations,²⁸ public employment,²⁹ and housing.³⁰ An "individual with a disability" means a person who has a physical or mental impairment that substantially limits one or more major life activities of the individual.³¹

²⁴ Pet Ownership for the Elderly and Persons With Disabilities, 73 Fed. Reg. 63834, 63836 (Oct. 27, 2008); *see, Fair Housing of the Dakotas, Inc. v. Goldmark Prop. Mgmt., Inc.*, 778 F. Supp. 2d 1028, 1036 (D.N.D. 2011) (finding that "the FHA encompasses all types of assistance animals regardless of training . . ."); *Overlook Mut. Homes, Inc. v. Spencer*, 666 F. Supp. 2d 850, 859 (S.D. Ohio 2009).

²⁵ *See* 24 C.F.R. s. 100.204 (Example (1)); *Intermountain Fair Housing Council v. CVE Falls Park, L.L.C.*, 2011 WL 2945824 (D. Idaho 2011); *Bronk v. Ineichen*, 54 F. 3d 425, 429 (7th Cir. 1995).

²⁶ 73 Fed. Reg. 63834.

²⁷ *See* HUD's press release (HUD No. 20-013) relating to the guidance at https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_013 (last visited Jan. 30, 2020) and HUD's Office of Fair Housing and Equal Opportunity notice (FHEO-2020-01) at <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf> (last visited Jan. 30, 2020). In FHEO-2020-01, the two sections of the notice are explained as follows. "The first [section], "Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act," recommends a set of best practices for complying with the FHA when assessing accommodation requests involving animals to assist housing providers and help them avoid violations of the FHA. The second section to the notice, "Guidance on Documenting an Individual's Need for Assistance Animals in Housing," provides guidance on information that an individual seeking a reasonable accommodation for an assistance animal may need to provide to a housing provider about his or her disability-related need for the requested accommodation, including supporting information from a health care professional." *Id.* at p. 2.

²⁸ Section 413.08(1)(c), F.S., defines a "public accommodation" to mean "a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation; hotel; a timeshare that is a transient public lodging [...]; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. The term does not include air carriers...."

²⁹ Sections 413.08(5) and (7), F.S.

³⁰ Section 413.08(6), F.S.

³¹ Section 413.08(1)(b), F.S.

Under s. 413.08, F.S., an individual with a disability has the right to be accompanied by a trained service animal in all areas of public accommodations that the public is normally allowed to occupy.³² Section 413.08, F.S., requires a public accommodation to modify its policies, practices, and procedures to permit use of a service animal by an individual with a disability. However, the public accommodation is not required to modify or provide any vehicle, premises, facility, or service to a higher degree of accommodation than is required for a non-disabled person.

Section 413.08(1)(d), F.S., in part, defines “service animal” to mean “an animal that is trained to perform tasks for an individual with a disability.” Respecting access to or enjoyment of public accommodations, the term “service animal” is limited to mean a dog or miniature horse. The term “service animal” is not limited to a dog or miniature horse in the context of an employment-related accommodation.

Similar to the ADA, s. 413.08, F.S., provides that documentation that a service animal is trained is not a precondition for providing service, though a public accommodation may ask if an animal is a service animal required because of a disability and what tasks it is trained to perform.³³ Additionally, a public accommodation:

- May not ask about the nature or extent of a disability;³⁴
- May require the service animal to be under the control of its handler and have a harness, leash, or other tether;³⁵
- May not impose a deposit or surcharge on an individual with a disability as a precondition to providing service to one accompanied by a service animal, even if a deposit is routinely required for pets;³⁶
- May hold an individual with a disability liable for damage caused by a service animal if it is the regular policy and practice of the public accommodation to charge nondisabled persons for damages caused by their pets;³⁷
- Is not required to provide care or food or a special location for the service animal or assistance with removing animal excrement;³⁸ and
- May exclude or remove a service animal from the premises if the animal is out of control and the animal’s handler does not take effective action to control it, the animal is not housebroken, or the animal’s behavior poses a direct threat to the health and safety of others.³⁹

Like the federal FHA, under s. 413.08, F.S., an individual with a disability is entitled to rent or purchase any housing accommodations subject to the same conditions that are applicable to everyone.⁴⁰ An individual with a disability who has a service animal is entitled to full and equal

³² Sections 413.08(3), F.S.

³³ Sections 413.08(3)(b), F.S.

³⁴ *Id.*

³⁵ Sections 413.08(3)(a), F.S.

³⁶ Sections 413.08(3)(c), F.S.

³⁷ Sections 413.08(3)(d), F.S.

³⁸ Sections 413.08(3)(e), F.S.

³⁹ Sections 413.08(3)(f), F.S., which also provides allergies and fear of animals are not valid reasons for denying access or refusing service to an individual with a service animal. Further, if a service animal is excluded or removed for being a direct threat to others, the public accommodation must provide the individual access to the public accommodation without the service animal.

⁴⁰ Sections 413.08(6), F.S.

access to all housing accommodations, and may not be required to pay extra compensation for the service animal.⁴¹

Section 413.08(9), F.S., provides that any person who denies or interferes with the rights of a person with a disability or an individual training a service animal commits a second-degree misdemeanor.⁴²

Emotional Support Animals

According to the United States Department of Housing and Urban Development (HUD),⁴³ an emotional support animal (ESA) is not a pet, but includes any animal providing emotional support to a person with a disability.⁴⁴ Unlike a service animal, an ESA is not trained to work or perform certain tasks, but provides emotional support alleviating one or more symptoms or effects of a person's disability.⁴⁵ The most common type of ESA is a dog; however, other species of animals may be an ESA.

According to HUD, "ESAs provide very private functions for persons with mental and emotional disabilities. Specifically, ESAs by their very nature and without training, may relieve depression and anxiety, and help reduce stress-induced pain in persons with certain medical conditions affected by stress."⁴⁶

ESAs provide therapeutic support to relieve symptoms of psychiatric disabilities, including depression, anxiety, and post-traumatic stress disorder.⁴⁷

III. Effect of Proposed Changes:

Section 1 creates s. 760.27, F.S., to amend Florida's Fair Housing Act⁴⁸ to prohibit discrimination in the rental of a dwelling to persons with a disability who use an emotional support animal (ESA).

⁴¹ Sections 413.08(6)(b), F.S. Proof of compliance with vaccination requirements may be requested by certain housing accommodations. *Id.*

⁴² Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

⁴³ HUD is the Federal agency responsible for national policy and programs addressing America's housing needs, improving and developing the nation's communities, and enforcing fair housing laws, including violations of the Fair Housing Act. HUD.GOV, *Questions and Answers about HUD*, <https://www.hud.gov/about/qaintro> (last visited Jan. 28, 2020).

⁴⁴ U.S. Department of Housing and Urban Development, *FEHO Notice: FHEO-2013-01*, (Apr. 25, 2013), https://archives.hud.gov/news/2013/servanimals_ntcfheo2013-01.pdf (last visited Jan. 28, 2020).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Bazelon Center for Mental Health Law, *Right to Emotional Support Animals in "No Pet" Housing*, (Jun. 16, 2017), <http://www.bazelon.org/wp-content/uploads/2017/04/2017-06-16-Emotional-Support-Animal-Fact-Sheet-for-Website-final.pdf> (last visited Jan. 28, 2020).

⁴⁸ Florida's Fair Housing Act (ss. 760.20 through 760.37, F.S.) is patterned after the federal FHA. *See Bhogaita v. Altamonte Heights Condo. Ass'n*, 765 F.3d 1277, 1285 (11th Cir. 2014) ("The [federal] FHA and the Florida Fair Housing Act are substantively identical, and therefore the same legal analysis applies to each.").

The bill defines the term:

- “Emotional support animal” as an animal that does not require training to do specific work or perform special tasks for a person with a disability but, by virtue of its presence, provides support to alleviate one or more identified symptoms or effects of a person’s disability.
- “Landlord” as the owner or lessor of a dwelling.

Under the bill, a landlord, to the extent required by federal law, rule, or regulation, may not:

- Discriminate in the rental of a dwelling to a person with a disability or a disability-related need for an ESA; and
- Charge additional fees to a person with an ESA

The bill allows a landlord to:

- Prohibit an ESA if the animal poses a direct threat to the safety, health, or property of others which cannot be reduced or eliminated by another reasonable accommodation;
- Request additional information, prepared by a health care practitioner, regarding each emotional support animal when a person’s disability or disability-related need is not apparent. The requested documentation must verify that the renter has a disability or a disability-related need, has been under the practitioner’s care or treatment for such disability or need, and the animal provides support to alleviate one or more identified symptoms or effects of the person’s disability or disability-related need. If more than one animal is to be kept in the dwelling, the documentation must establish the need for each animal. The documentation must be prepared by a health care practitioner, as defined in s. 456.001, F.S.,⁴⁹ in a format prescribed by the Department of Health. The documentation may not be prepared by a health care practitioner whose exclusive service is to prepare documentation in exchange for a fee. The Department of Health must establish the format a health care practitioner must follow when providing documentation to a patient and must adopt rules relating to the ESA documentation requirements; and
- Require proof of compliance with state and local licensing and vaccination requirements.

A person who falsifies written documentation for an ESA or knowingly or willfully misrepresents being qualified to use an emotional support animal commits a misdemeanor of the second degree, which could result in incarceration for 60 days, a fine of \$500, or both.⁵⁰ The person must also perform 30 hours of community service for an organization that serves individuals with disabilities or for another entity or organization at the discretion of the court, to be completed within six months after conviction.

Under the bill, an ESA’s owner is liable for any damages caused by the animal and the landlord is not liable for damage done by an ESA that is authorized as a reasonable accommodation under

⁴⁹ Section 456.001(4), F.S., defines the term “health care practitioner” to include persons licensed or certified as an acupuncturist, physician, osteopathic physician, chiropractor, podiatric physician, naturopathic practitioner, optometrist, registered and certified nurse, pharmacist, dentist, dental hygienist, midwife, speech and language pathologist, audiologist, nursing home administrator, occupational therapist, respiratory therapist, dietetics and nutrition practitioner, athletic trainer, orthoptist, prosthetist, electrologist, massage therapist, clinical laboratory scientist and personnel, medical physicist, optician, physical therapist, psychologist, hypnotist, sex therapist, clinical social worker, marriage and family therapist, and mental health counselor.

⁵⁰ See, ss. 775.082 and 775.083, F.S., for the penalties applicable to a second degree misdemeanor.

this section, the federal FHA, s. 504 of the Rehabilitation Act of 1973,⁵¹ or any other federal, state, or local law.

The bill expressly provides that the guidelines for ESAs do not apply to service animals.

Section 2 amends s. 413.08, F.S., to make technical and clarifying changes.

Section 3 amends s. 419.001, F.S., to make conform terminology to changes made by the bill. It also replaces a reference to “handicap” with “disability.”

Section 4 amends s. 760.22, F.S., to replace the term “handicap” with the term “disability.”

Section 5 amends s. 760.23, F.S., to replace the term “handicap” with the term “disability.” It also replaces the term “handicapped person” with the term “person with a disability.”

Section 6 amends s. 760.24, F.S., to replace the term “handicap” with the term “disability.”

Section 7 amends s. 760.25, F.S., to replace the term “handicap” with the term “disability.”

Section 8 amends s. 760.29, F.S., to include s. 760.27, F.S., created by the bill, in the list of exemptions under the Fair Housing Act. It also replaces the term “handicap” with the term “disability.”

Section 9 amends s. 760.31, F.S., to replace the term “handicapped” with the term “for persons with disabilities.”

Section 10 provides an effective date of July 1, 2020.

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.

⁵¹ Section 504 of the 1973 Rehabilitation Act (Pub. L. 93–112, title V, s. 504) prohibits discrimination against people with disabilities in programs that receive federal financial assistance. This act and subsequent amendments are codified in 29 U.S.C. s. 794, relating to nondiscrimination under federal grants and programs.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If requested by a landlord, a renter of a dwelling who has a disability or a disability-related need who has one or more ESAs may be required pay for written documentation that uses the specified DOH form, prepared by a health care practitioner that has cared for or treated the renter for such disability or need. This may create a barrier to renters who do not have the means to access and be cared for or treated by such a health care practitioner, or to obtain the documentation in the specified DOH format.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 1084 provides that a landlord may request additional information regarding each emotional support animal when a person's disability or disability-related need is not apparent. The requested documentation must be issued by a health care practitioner as defined in s. 456.001, F.S., which results in an extensive list of eligible health care practitioners authorized to issue such documentation.

Section 456.001(4), F.S., defines the term "health care practitioner" to include persons licensed or certified under 19 practice acts, which cover persons licensed or certified as an acupuncturist, physician, osteopathic physician, chiropractor, podiatric physician, naturopathic practitioner, optometrist, registered and certified nurse, pharmacist, dentist, dental hygienist, midwife, speech and language pathologist, audiologist, nursing home administrator, occupational therapist, respiratory therapist, dietetics and nutrition practitioner, athletic trainer, orthoptist, prosthetist, electrologist, massage therapist, clinical laboratory scientist and personnel, medical physicist, optician, physical therapist, psychologist, hypnotist, sex therapist, clinical social worker, marriage and family therapist, and mental health counselor.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 413.08, 419.001, 760.22, 760.23, 760.24, 760.25, 760.29, and 760.31.

This bill creates section 760.27 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Innovation, Industry and Technology

Subject: Committee Agenda Request

Date: January 27, 2020

I respectfully request that **Senate Bill # 1084**, relating to Emotional Support Animals, be placed on the:

- ☐ Committee agenda at your earliest possible convenience.
- ☒ Next committee agenda.

A handwritten signature in black ink, appearing to read "M. Diaz", is written over a horizontal line.

Senator Manny Diaz, Jr.
Florida Senate, District 36

By Senator Diaz

36-00536B-20

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A bill to be entitled

An act relating to emotional support animals; creating s. 760.27, F.S.; providing definitions; prohibiting discrimination in the rental of a dwelling to a person with a disability or a disability-related need who has an emotional support animal; prohibiting a landlord from requiring such person to pay extra compensation for such animal; providing an exception; authorizing a landlord to request certain written documentation under certain circumstances; authorizing the Department of Health to adopt rules; prohibiting the falsification of written documentation or other misrepresentation regarding the use of an emotional support animal; providing penalties; specifying that a person with a disability or a disability-related need is liable for certain damage done by her or his emotional support animal; exempting a landlord from certain liability; providing applicability; amending s. 413.08, F.S.; providing applicability; amending s. 419.001, F.S.; conforming terminology to changes made by the act; conforming a cross-reference; amending s. 760.22, F.S.; updating terminology; amending s. 760.29, F.S.; extending specified exemptions to conform to changes made by the act; conforming terminology to changes made by the act; amending ss. 760.23, 760.24, 760.25, and 760.31, F.S.; conforming terminology to changes made by the act; providing an effective date.

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

Section 1. Section 760.27, Florida Statutes, is created to read:

760.27 Prohibited discrimination in the rental of housing to persons with a disability or disability-related need who use an emotional support animal.—

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

(a) "Emotional support animal" means an animal that does not require training to do specific work or perform special tasks for a person with a disability but, by virtue of its presence, provides support to alleviate one or more identified symptoms or effects of a person's disability.

(b) "Landlord" means the owner or lessor of a dwelling.

(2) To the extent required by federal law, rule, or regulation, it is unlawful to discriminate in the rental of a dwelling to a person with a disability or disability-related need who has or obtains an emotional support animal. A person with a disability or a disability-related need must, upon request, be allowed to keep such animal in the dwelling as a reasonable accommodation in housing, and such person may not be required to pay extra compensation for such animal.

(3) Unless otherwise prohibited by federal law, rule, or regulation, a landlord may:

(a) Prohibit an emotional support animal if such animal poses a direct threat to the safety or health of others or poses a direct threat of physical damage to the property of others which cannot be reduced or eliminated by another reasonable accommodation.

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59 (b) If a person's disability or disability-related need is
60 not readily apparent, request written documentation prepared by
61 a health care practitioner, as defined in s. 456.001, which
62 verifies that the person has a disability or a disability-
63 related need and has been under the practitioner's care or
64 treatment for such disability or need, and the animal provides
65 support to alleviate one or more identified symptoms or effects
66 of the person's disability or disability-related need. If a
67 person requests to keep more than one emotional support animal,
68 the landlord may request such written documentation establishing
69 the need for each animal. The written documentation must be
70 prepared in a format prescribed by the Department of Health in
71 rule and may not be prepared by a health care practitioner whose
72 exclusive service to the person with a disability is preparation
73 of the written documentation in exchange for a fee. The
74 department may adopt rules to administer this paragraph.

75 (c) Require proof of compliance with state and local
76 requirements for licensing and vaccination of an emotional
77 support animal.

78 (4) A person who falsifies written documentation, as
79 described in subsection (3), for an emotional support animal or
80 otherwise knowingly and willfully misrepresents herself or
81 himself, through conduct or verbal or written notice, as having
82 a disability or disability-related need and being qualified to
83 use an emotional support animal commits a misdemeanor of the
84 second degree, punishable as provided in s. 775.082 or s.
85 775.083, and must perform 30 hours of community service for an
86 organization that serves persons with disabilities or for
87 another entity or organization at the discretion of the court,

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to be completed within 6 months after conviction.

(5) (a) A person with a disability or disability-related need is liable for any damage done to the premises or to another person on the premises by her or his emotional support animal.

(b) A landlord is not liable for any damage done to the premises or to any person on the premises by an emotional support animal that is authorized as a reasonable accommodation for a person with a disability or disability-related need under this section, the federal Fair Housing Act, s. 504 of the Rehabilitation Act of 1973, or any other federal, state, or local law.

(6) This section does not apply to a service animal as defined in s. 413.08.

Section 2. Paragraph (b) of subsection (6) of section 413.08, Florida Statutes, is amended to read:

413.08 Rights and responsibilities of an individual with a disability; use of a service animal; prohibited discrimination in public employment, public accommodations, and housing accommodations; penalties.—

(6) An individual with a disability is entitled to rent, lease, or purchase, as other members of the general public, any housing accommodations offered for rent, lease, or other compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.

(b) An individual with a disability who has a service animal or who obtains a service animal is entitled to full and equal access to all housing accommodations provided for in this section, and such individual ~~a person~~ may not be required to pay

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extra compensation for such animal. However, such individual ~~a person~~ is liable for any damage done to the premises or to another individual person on the premises by the animal. A housing accommodation may request proof of compliance with vaccination requirements. This paragraph does not apply to an emotional support animal as defined in s. 760.27.

Section 3. Paragraph (e) of subsection (1) of section 419.001, Florida Statutes, is amended to read:

419.001 Site selection of community residential homes.—

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

(e) "Resident" means any of the following: a frail elder as defined in s. 429.65; a person who has a disability ~~handicap~~ as defined in s. 760.22(3)(a) ~~s. 760.22(7)(a)~~; a person who has a developmental disability as defined in s. 393.063; a nondangerous person who has a mental illness as defined in s. 394.455; or a child who is found to be dependent as defined in s. 39.01 or s. 984.03, or a child in need of services as defined in s. 984.03 or s. 985.03.

Section 4. Present subsections (3) through (6) of section 760.22, Florida Statutes, are redesignated as subsections (4) through (7), respectively, and present subsection (7) of that section is amended, to read:

760.22 Definitions.—As used in ss. 760.20-760.37, the term:

~~(3)-(7)~~ "Disability" ~~"Handicap"~~ means:

(a) A person has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment; or

(b) A person has a developmental disability as defined in

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146 s. 393.063.

147 Section 5. Section 760.23, Florida Statutes, is amended to
148 read:

149 760.23 Discrimination in the sale or rental of housing and
150 other prohibited practices.—

151 (1) It is unlawful to refuse to sell or rent after the
152 making of a bona fide offer, to refuse to negotiate for the sale
153 or rental of, or otherwise to make unavailable or deny a
154 dwelling to any person because of race, color, national origin,
155 sex, disability ~~handicap~~, familial status, or religion.

156 (2) It is unlawful to discriminate against any person in
157 the terms, conditions, or privileges of sale or rental of a
158 dwelling, or in the provision of services or facilities in
159 connection therewith, because of race, color, national origin,
160 sex, disability ~~handicap~~, familial status, or religion.

161 (3) It is unlawful to make, print, or publish, or cause to
162 be made, printed, or published, any notice, statement, or
163 advertisement with respect to the sale or rental of a dwelling
164 that indicates any preference, limitation, or discrimination
165 based on race, color, national origin, sex, disability ~~handicap~~,
166 familial status, or religion or an intention to make any such
167 preference, limitation, or discrimination.

168 (4) It is unlawful to represent to any person because of
169 race, color, national origin, sex, disability ~~handicap~~, familial
170 status, or religion that any dwelling is not available for
171 inspection, sale, or rental when such dwelling is in fact so
172 available.

173 (5) It is unlawful, for profit, to induce or attempt to
174 induce any person to sell or rent any dwelling by a

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representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

(6) The protections afforded under ss. 760.20-760.37 against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(7) It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability ~~handicap~~ of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person associated with the buyer or renter.

(8) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability ~~handicap~~ of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person associated with the buyer or renter.

(9) For purposes of subsections (7) and (8), discrimination includes:

(a) A refusal to permit, at the expense of the ~~handicapped~~ person with a disability, reasonable modifications of existing

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premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; or

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

(10) Covered multifamily dwellings as defined herein which are intended for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site as determined by commission rule. Such buildings shall also be designed and constructed in such a manner that:

(a) The public use and common use portions of such dwellings are readily accessible to and usable by ~~handicapped~~ persons with disabilities.

(b) All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by a person in a wheelchair.

(c) All premises within such dwellings contain the following features of adaptive design:

1. An accessible route into and through the dwelling.
2. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.
3. Reinforcements in bathroom walls to allow later installation of grab bars.
4. Usable kitchens and bathrooms such that a person in a wheelchair can maneuver about the space.

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(d) Compliance with the appropriate requirements of the American National Standards Institute for buildings and facilities providing accessibility and usability for persons with a physical disability ~~physically handicapped people~~, commonly cited as ANSI A117.1-1986, suffices to satisfy the requirements of paragraph (c).

State agencies with building construction regulation responsibility or local governments, as appropriate, shall review the plans and specifications for the construction of covered multifamily dwellings to determine consistency with the requirements of this subsection.

Section 6. Section 760.24, Florida Statutes, is amended to read:

760.24 Discrimination in the provision of brokerage services.—It is unlawful to deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership, or participation, on account of race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

Section 7. Subsection (1) and paragraph (a) of subsection (2) of section 760.25, Florida Statutes, are amended to read:

760.25 Discrimination in the financing of housing or in residential real estate transactions.—

(1) It is unlawful for any bank, building and loan association, insurance company, or other corporation,

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association, firm, or enterprise the business of which consists in whole or in part of the making of commercial real estate loans to deny a loan or other financial assistance to a person applying for the loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him or her in the fixing of the amount, interest rate, duration, or other term or condition of such loan or other financial assistance, because of the race, color, national origin, sex, disability ~~handicap~~, familial status, or religion of such person or of any person associated with him or her in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or because of the race, color, national origin, sex, disability ~~handicap~~, familial status, or religion of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

(2)(a) It is unlawful for any person or entity whose business includes engaging in residential real estate transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, national origin, sex, disability ~~handicap~~, familial status, or religion.

Section 8. Paragraph (a) of subsection (1) and paragraph (a) of subsection (5) of section 760.29, Florida Statutes, are amended to read:

760.29 Exemptions.—

(1)(a) Nothing in ss. 760.23, ~~and~~ 760.25, and 760.27 applies to:

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291 1. Any single-family house sold or rented by its owner,
292 provided such private individual owner does not own more than
293 three single-family houses at any one time. In the case of the
294 sale of a single-family house by a private individual owner who
295 does not reside in such house at the time of the sale or who was
296 not the most recent resident of the house prior to the sale, the
297 exemption granted by this paragraph applies only with respect to
298 one sale within any 24-month period. In addition, the bona fide
299 private individual owner shall not own any interest in, nor
300 shall there be owned or reserved on his or her behalf, under any
301 express or voluntary agreement, title to, or any right to all or
302 a portion of the proceeds from the sale or rental of, more than
303 three single-family houses at any one time. The sale or rental
304 of any single-family house shall be excepted from the
305 application of ss. 760.20-760.37 only if the house is sold or
306 rented:

307 a. Without the use in any manner of the sales or rental
308 facilities or the sales or rental services of any real estate
309 licensee or such facilities or services of any person in the
310 business of selling or renting dwellings, or of any employee or
311 agent of any such licensee or person; and

312 b. Without the publication, posting, or mailing, after
313 notice, of any advertisement or written notice in violation of
314 s. 760.23(3).

315
316 Nothing in this provision prohibits the use of attorneys, escrow
317 agents, abstractors, title companies, and other such
318 professional assistance as is necessary to perfect or transfer
319 the title.

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320 2. Rooms or units in dwellings containing living quarters
321 occupied or intended to be occupied by no more than four
322 families living independently of each other, if the owner
323 actually maintains and occupies one of such living quarters as
324 his or her residence.

325 (5) Nothing in ss. 760.20-760.37:

326 (a) Prohibits a person engaged in the business of
327 furnishing appraisals of real property from taking into
328 consideration factors other than race, color, national origin,
329 sex, disability ~~handicap~~, familial status, or religion.

330 Section 9. Subsection (5) of section 760.31, Florida
331 Statutes, is amended to read:

332 760.31 Powers and duties of commission.—The commission
333 shall:

334 (5) Adopt rules necessary to implement ss. 760.20-760.37
335 and govern the proceedings of the commission in accordance with
336 chapter 120. Commission rules shall clarify terms used with
337 regard to ~~handicapped~~ accessibility for persons with
338 disabilities, exceptions from accessibility requirements based
339 on terrain or site characteristics, and requirements related to
340 housing for older persons. Commission rules shall specify the
341 fee and the forms and procedures to be used for the registration
342 required by s. 760.29(4)(e).

343 Section 10. This act shall take effect July 1, 2020.

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 Innovation, Industry, and Technology

BILL: SB 1698

INTRODUCER: Senator Diaz

SUBJECT: Regulation of Pet Stores

DATE: January 31, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	IT	Pre-meeting
2.			AEG	
3.			AP	

I. Summary:

SB 1698 creates the “Florida Pet Protection Act) (act) to require the licensing of pet stores in Florida that display, sell, offer to sell, deliver, auction, broker, give away, or transfer certain household pets (i.e., domestic dogs or domestic cats). Under the bill, a valid pet store license issued by the Department of Business and Professional Regulation (DBPR) is required to operate a pet store that sells household pets (licensed pet store). A licensed pet store must be annually inspected by the DBPR.

The bill requires that, as to household pets, a licensed pet store must:

- Acquire the pets only from certain sources, as defined in the bill; and
- Not sell a pet:
 - Younger than eight weeks old;
 - Without an identification microchip and the pet’s professional breeder history unless there is proof the pet was acquired through an animal rescue or animal shelter;
 - To a person younger than 18 years old
 - That is acquired from a qualified breeder or pet broker, unless the pet store provides to the buyer of the pet, before completing the transaction, a written certification of information specified in the bill, including identifying information for the pet and the breeder who bred the pet.

The bill requires a pet store to provide all of the following for household pets at the store:

- Specified flooring in animal enclosures;
- Daily cleaning of animal enclosures, as necessary to prevent body waste accumulation;
- An isolation enclosure for animals under veterinarian-directed observation;
- Climate control to maintain enclosure temperatures between 67 and 78 degrees at all times;
- Veterinary visits to the pet store at least three times weekly;
- Dog trainer visits to the pet store at least once per week;

- A daily enrichment program for puppies of exercise and socialization; and
- Photographs, digital images, or video footage depicting all breeding facilities from which the pet store acquires household pets.

Administrative, civil, and criminal penalties are set forth in the bill. If a person is convicted of engaging in unlawful practices in the sale of household pets or the operation of a pet store, the person may be punished by up to 60 days in jail or a fine up to \$500.

The bill provides that the act preempts county and municipal ordinances and regulations that prohibit or regulate pet stores, but does not preempt the authority of a local government's authority to levy a local business tax.

The bill is estimated to have an impact on state government. See Section V, Fiscal Impact Statement.

The bill is effective July 1, 2020.

II. Present Situation:

The regulation in Florida law of retail pet stores and the sale of dogs and cats is limited, and no state license is required under current law to engage in such activities.

Section s. 823.15, F.S., provides requirements for the handling of dogs and cats taken in by a public or private animal shelter, humane organization, or animal control agency operated by a humane organization or by a county, municipality, or other incorporated political subdivision (shelter). A shelter must maintain certain records about the animals it takes in and make the records available for public inspection and dissemination.¹

All dogs and cats sold or released for adoption from a shelter must be sterilized, by either:

- Providing sterilization by a licensed veterinarian before relinquishing custody of the animal; or
- Entering into a written agreement with the adopter or purchaser guaranteeing that sterilization will be performed within 30 days or prior to sexual maturity.²

As to pet shops, current state law mandates the procedure for the euthanasia of warm-blooded animals, except those held as food for another animal, offered for sale, or obtained for sale by a pet shop.³

Local Ordinance Regulation

A number of local governments in Florida have adopted ordinances to regulate the operations of pet stores in their jurisdictions. The Hillsborough County Commission (commission) continues

¹ See s. 823.15(2)(a), F.S.; data for species other than domestic cats and domestic dogs is to be separately recorded.

² See s. 828.15(3), F.S.; the shelter must require a sufficient deposit from the adopter or purchaser, refundable upon presentation to the shelter of written evidence of sterilization by the veterinarian performing procedure.

³ Section 828.065, F.S.

to address perceived abuses at pet stores in that jurisdiction. The county commission has enacted retail sale regulations for grandfathered and existing pet shops⁴ and for new pet shops.⁵

The commission is considering modifying its retail sales ordinance and implementing new breeder regulations,⁶ and the commission's staff notes the following circumstances occurring in that county:

On May 26, 2017, the Board of County Commissioners (BOCC) enacted the Pet Retail Sales Ordinance. Hillsborough County is one of over 200 jurisdictions that have enacted similar ordinances in the U.S. and Canada, with nearly 70 ordinances existing in Florida. The Ordinance regulates the sale of dogs and cats by pet retail businesses that existed in Hillsborough County at the time the Ordinance became effective. The Ordinance also requires new pet retail businesses to sell only dogs or cats obtained from an animal shelter or rescue organization and prohibits retail sale of these animals in public places, like flea markets, and yard sales.

On September 23, 2019, Hillsborough County Pet Resources was awarded custody of more than 300 dogs living in deplorable conditions at an animal breeding and retail business in Tampa. In view of this event, on October 2, 2019, the BOCC directed the County Attorney's Office, with the assistance of County Administration, to bring back recommendations to strengthen the Pet Retail Sales Ordinance, including addressing commercial dog breeding facilities at the November 6, 2019 BOCC meeting. After meeting with individual Commissioners, Pet Resources, County Administration, and other interested persons, including Pet Retail business owners and representatives from various breeding associations, the matter was postponed to December 4, 2019 to further explore new ideas that developed.

Staff's recommendations include addressing pet retail sales and proposed breeder regulations separately; eliminating grandfather privilege for existing pet retail shops in the County within an approximate two year period; including additional interim restrictions and penalties for existing pet shops; redefining the term breeder and defining the term hobby breeder; banning all unregulated breeding activities; establishing permitting/licensing and zoning requirements for hobby breeders and

⁴ See the Hillsborough County Code of Ordinances, Part A, s. 6-6, Grandfathering in existing pet shops, registration requirements, and certain regulations, and the Hillsborough County Code of Ordinances, Part A, s. 6-62, Additional retail sale regulations for existing pet shops, at https://library.municode.com/fl/hillsborough_county/codes/code_of_ordinances_part_a?nodeId=HICOCOORLA_CH6AN (last visited Jan. 29, 2020).

⁵ *Id.*, and see the Hillsborough County Code of Ordinances, Part A, s. 6-63, Adoption-based business model for retail sale of dogs and cats and other requirements for new pet shops.

⁶ See the county's Agenda Item Cover Sheet and Staff Report Outlining Recommendations, at <https://eagenda.hillsboroughcounty.org/portal/PTL29560/search?D=01/23/2020&T=Regular%20BOCC%20Meeting&Y=Backup&o=B-4.pdf> (last visited Jan. 29, 2020).

eliminating the County's current permitting process; and setting forth breeder care/treatment regulations, enforcement, and penalties.

The commission is holding a public hearing to consider modifications to its ordinances at its next meeting on February 5, 2020.⁷

According to the Humane Society of the United States, there are a total of 70 municipalities and counties in Florida that have passed ordinances banning the retail sales of dogs and cats.⁸ There are 340 such ordinances nationwide.⁹

United States Department of Agriculture Breeder Inspections

The Animal Care program under the Animal and Plant Health Inspection Service within the United States Department of Agriculture licenses breeders under the federal Animal Welfare Act.¹⁰ Information from the animal care program regarding compliance with the federal Animal Welfare Act provides the program will not cite in an inspection report a noncompliance other than a critical noncompliance, if the facility:

- Timely discovers a noncompliance using its own monitoring program; and
- Immediately takes appropriate corrective action and swiftly establishes measures to prevent reoccurrence.

Further, the program will not cite on an inspection report a critical noncompliance occurring outside a routine or focused inspection if it does not constitute a repeat noncompliance and the facility:

- Has no repeat or critical noncompliance on any inspection report for the relevant approved site during the preceding 12 months;
- Timely discovers the critical noncompliance using its own compliance monitoring program;
- Has not voluntarily reported a noncompliance that falls within the same section or subsection of the animal welfare act regulations and standards during the preceding 24 months for relevant approved site;
- Immediately takes appropriate corrective action and establishes measures to prevent recurrence; and
- Promptly reports the incident generally within five days of discovering a noncompliance orally or in writing to its animal care inspector or any animal care office and cooperates with the inspector as he or she reviews the incident.¹¹

⁷ See Anastasia Dawson, *Commissioners look to snuff out animal breeders, sales within Hillsborough County*, at <https://www.tampabay.com/news/hillsborough/2020/01/23/commissioners-look-to-snuff-out-animal-breeders-sales-within-hillsborough-county/> (last visited Jan. 29, 2020).

⁸ *FL Localities Banning Retail Pet Store Puppy Sales*, Humane Society of the United States (on file with the Senate Committee on Innovation, Industry, and Technology).

⁹ *[US] Localities Banning Retail Pet Store Puppy Sales*, Humane Society of the United States (on file with the Senate Committee on Innovation, Industry, and Technology).

¹⁰ See 7 U.S.C. ss. 2131 *et seq.*

¹¹ See *Tech Note*, Animal Care Program, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, May 2018 at https://www.aphis.usda.gov/animal_welfare/downloads/awa/ac-tech-note-incentives-animal-welfare-act-compliance.pdf (last visited January 29, 2020).

III. Effect of Proposed Changes:

Statutory Framework and Definitions

Section 1 of the bill provides direction to the Division of Law Revision to create part XVII of ch. 468, F.S., consisting of ss. 468.901 through 468.919, F.S., with the title “Household Pet Stores.”

Section 2 of the bill creates s. 468.901, F.S., which provides part VII of ch. 468, F.S., may be cited as the “Florida Pet Protection Act” (act). Under the bill, the term “household pet” includes a domestic dog or a domestic cat (regardless of age, thus puppies and kittens are deemed household pets also). See **Section 3** for the definitions applicable to the act.

Section 3 of the bill creates s. 468.903, F.S., to define the following terms used in the act.

- “Accredited veterinarian” means a veterinarian accredited by the United States Department of Agriculture.¹²
- “Adult cat” means a domestic cat that is one year of age or older.
- “Adult dog” means a domestic dog that is one year of age or older.
- “Animal rescue” means:
 - A nonprofit organization exempt from federal income taxation under s. 501(c)(3) of the Internal Revenue Code which:
 1. Keeps, houses, and maintains household pets (defined as domestic dogs or domestic cats); and
 2. Is dedicated to the welfare, health, safety, and protection of such pets; or
 - An organization that offers for adoption spayed or neutered household pets in exchange for payment of reasonable adoption fees to cover the organization’s costs, including, but not limited to, costs related to spaying or neutering.
- “Animal shelter” means a public facility, or a private facility operated by a nonprofit organization that is exempt from federal income taxation under s. 501(c)(3) of the Internal Revenue Code, which keeps, houses, and maintains household pets, such as a county or municipal animal control agency or pound, humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of such pets.
- “Department” means the Department of Business and Professional Regulation (DBPR).
- “Hobby breeder” means an establishment that:
 - Sells no more than four puppies or adult dogs and no more than four kittens or adult cats in any calendar year; or

¹² The Animal and Plant Health Inspection Service under the U. S. Department of Agriculture provides a voluntary program for accreditation of veterinarians. Accredited veterinarians under the program are the “first line of defense in ensuring the health of this Nation’s livestock and poultry. APHIS is dependent on accredited veterinarians for carrying out many of the programs and services designed to protect public health and safeguard animal health.” See <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/nvap/NVAP-Reference-Guide/Introduction> (last visited Jan. 29, 2020). The responsibilities under the program include: animal identification, disease prevention, control, and eradication, regulatory immunization, regulations for intrastate, interstate, and international shipment of animals and animal byproducts, and instructions on the proper selection, completion, and submission of regulatory forms. *Id.*

- Keeps, houses, and maintains in any location no more than three intact (unspayed) adult female dogs, one intact (unneutered) male adult dog, three intact (unspayed) adult female cats, and one intact (unneutered) male adult cat.
- “Household pet” means a domestic dog or a domestic cat.
- “Intact” means that an animal’s reproductive organs have not been removed through spaying or neutering.
- “Kitten” means a domestic cat younger than one year old.
- “Pet broker” means a person who buys, sells, or offers for sale household pets, at wholesale for resale to another, or who sells or gives one or more such pets to a pet store.
- “Pet store” means:
 - A retail store that sells or offers for sale household pets, to the public and, with respect to such sales, the store’s salesperson, the pet’s buyer, and the pet being sold are each physically present during the sale so that the buyer may personally observe the pet and help ensure its health before taking custody; and
 - An animal rescue or animal shelter that purchases household pets for resale from a pet broker or professional breeder.
- “Professional breeder” means an establishment other than an animal rescue, an animal shelter, or a hobby breeder, that sells in any calendar year for money or other consideration, five or more puppies or adult dogs, or five or more kittens or adult cats.
- “Puppy” means a domestic dog that is younger than one year old.
- “Veterinarian” means a health care practitioner licensed to engage in the practice of veterinary medicine under ch. 474, F.S., or licensed by the appropriate authority in another state to engage in the practice of veterinary medicine in that state.

Licensure of Pet Stores; Prohibitions

Section 4 of the bill creates s. 468.905, F.S., to prohibit a person who does not have a valid pet store license issued by the DBPR in accordance with the act, from operating a pet store in Florida that displays, offers for sale, delivers, barter, auctions, brokers, gives away, transfers, or sells any household pet from the store. The bill provides that an animal rescue or an animal shelter must be licensed as a pet store if it purchases household pets for resale from a pet broker or professional breeder as those terms are defined in the act.

The bill requires the DBPR to adopt procedures for the licensure of pet stores, and an applicant for a pet store license must apply to the DBPR in the format required by the DBPR. Under the bill, the DBPR must assign each licensee a unique license number for each licensed location.

The bill authorizes the DBPR to establish annual licenses. Under the bill, an application for license renewal must be submitted to the DBPR in a format required by the DBPR.

Requirements for Pet Stores; Unlawful Practices

Section 5 of the bill creates s. 468.907, F.S., to set forth the requirements for sales of household pets, pet store operations and procedures, pet store features and services.

Sales and Transfers of Household Pets by Pet Stores

The bill prohibits displaying, offering for sale, delivery, bartering, auctioning, brokering, giving away, transferring, or selling of any household pet from a pet store, unless such pet is acquired from one of the following sources:

- A qualified breeder (qualification requirements are set forth below);
- A hobby breeder;
- An animal rescue;
- An animal shelter;
- Another pet store; and
- A pet broker, and if the pet broker acquire a pet from a professional breeder, that breeder must be a qualified breeder.

Under the bill, for the purposes of sale or transfer of household pets by pet stores, the term “qualified breeder” means a professional breeder located inside or outside Florida that meets all of the following requirements:

- Is licensed by the United States Department of Agriculture (USDA) under the federal Animal Welfare Act¹³ and, if required, by a state agency.
- Has not been issued a report of a direct¹⁴ noncompliance violation by the USDA¹⁵ under the federal Animal Welfare Act, in the two years immediately before offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling a household pet.
- Has not had three or more noncompliance violations documented in any report issued by the USDA under the federal Animal Welfare Act for the year immediately before the offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling of a household pet.

The bill provides that a pet store may not sell, deliver, barter, auction, broker, give away, or transfer (sell) a household pet that:

- Is younger than eight weeks old;
- Is not implanted with an identification microchip;
- Does not have a health certificate signed by an accredited veterinarian;
- Is to be sold to a person younger than 18 years old (verified by a valid driver license, state identification card, or other government-issued identification card with the person’s photograph); or

¹³ See 7 U.S.C. ss. 2131 *et seq.* Licensing of dealers and exhibitors is addressed in 7 U.S.C. s. 2133.

¹⁴ According to the USDA Animal and Plant Health Inspection Service (APHIS), a “direct” noncompliance is a critical noncompliance that is currently (at the time of the inspection) having a serious or severe adverse effect on the health and well-being of the animal. See the APHIS Animal Care Inspection Guide (8/19/19) Appendix B for examples that include heavy tick/flea infestation and embedded overgrown toenails causing gait problems, at https://www.aphis.usda.gov/animal_welfare/downloads/Animal-Care-Inspection-Guide.pdf (last visited Jan. 29, 2020).

¹⁵ For information on noncompliance issues and the noncompliance process, see *Tech Note*, Animal Care Program, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, May 2018 at https://www.aphis.usda.gov/publications/animal_welfare/2017/ac-tech-note-incentives-animal-welfare-act-compliance.pdf (last visited Jan. 29, 2020).

- Is acquired from a qualified breeder or pet broker, unless the pet store provides to the buyer of the pet, before completing the transaction, a written certification of the following (pre-sale certification documents):
 - 1. The name, address, and USDA license number, if applicable, of the breeder who bred the pet;
 - 2. A copy of the breeder's most recent USDA inspection report, if applicable;
 - 3. The pet's date of birth, if known;
 - 4. The date the pet store took possession of the pet;
 - 5. The breed, gender, color, and any identifying marks of the pet;
 - 6. A signed statement by an accredited veterinarian which describes any known disease, illness, or congenital or hereditary condition that adversely affects the health of the pet at the time of examination; and
 - 7. A document signed by the owner or a manager or employee of the pet store certifying that all information required to be provided to the person acquiring the household pet is accurate.

The owner or a manager or employee of a pet store may not fraudulently alter or provide false information on a certification, and a pet store must keep a copy of the certification for at least three years after the date of acquisition of the pet.

The bill requires a licensed pet store to provide to the buyer of a household pet the following information (identity and history data):

- The pet's microchip identification number;
- The complete name, address, and telephone number of all professional breeders or other persons who kept, housed, or maintained the pet before its coming into possession of the pet store, or proof that the pet was acquired through an animal rescue or animal shelter; and
- A photograph or digital image of both of the pet's parents (sire and dam).

A pet store must keep a copy of the pre-sale certification documents and the required identity and history data for at least three years after the date it acquired the household pet.

Required Pet Store Features and Services

The bill requires a pet store to provide all of the following for household pets at the store:

- Flooring in the primary housing enclosures constructed of a solid surface; if grid-style or wire flooring is used, the surface must be covered with a rubberized or coated material that prevents an animal's toe or foot from passing through or being entrapped by the flooring;
- Cleaning of all primary enclosures daily, or as often as necessary to prevent body waste accumulation, and maintenance of a sanitation log of such cleanings;
- An isolation enclosure with separate ventilation which allows an animal to be kept separately from others while under veterinarian-directed observation;
- Climate control that ensures temperatures in animal enclosures are kept between 67 degrees and 78 degrees at all times;
- Maintenance of daily logs of temperatures in animal enclosures, and if such temperatures fall outside the required range for any reason, maintenance of a corrective action record detailing the steps taken to adjust temperatures;

- Visits by a veterinarian licensed in Florida who visits the pet store at least three times weekly to observe the condition of the pets' health and overall well-being;
- Visits by a dog trainer who visits the pet store at least once every week to assist with any behavioral or training issues;
- An enrichment program for puppies which consists of exercise and socialization for at least two 30-minute periods each day;
- Maintenance of a log for each puppy of the daily activities that the puppy participates in as part of an enrichment program; and
- Photographs, digital images, or video footage depicting all breeding facilities from which the pet store acquires household pets.

Inspections of Pet Stores

Section 6 of the bill creates s. 468.909, F.S., to require the DBPR to annually inspect each pet store subject to licensure to ensure compliance with the act and any administrative rules adopted pursuant to the act, including, but not limited to, an audit of the pre-sale certification documents and required identity and history data that the licensee must maintain as required in s. 468.907, F.S., as discussed above.

The bill authorizes, but does not require, the DBPR to conduct an inspection upon receipt of a complaint or other information alleging a violation of the act or administrative rules adopted pursuant to the act. In addition, the bill requires the DBPR to establish procedures for conducting inspections and for creating inspection records. Under the bill, inspections must be conducted during regular business hours in accordance with the DBPR's procedures, may be conducted without prior notice, and a record of each inspection must be maintained by the DBPR in accordance with its procedures. The bill authorizes the DBPR to enter into a contract or agreement with one or more veterinarians to conduct pet store inspections.

Administrative, Civil, and Criminal Penalties and Remedies

Section 7 of the bill creates s. 468.911, F.S., to set forth administrative requirements, remedies and penalties for violations, and authorizes the DBPR to adopt rules to administer the act.

Under the bill, the DBPR must deny an application for issuance or renewal of a pet store license if:

- The licensee or applicant violates the act or any rule or order issued under the act, if the violation materially threatens the health or welfare of a household pet; or
- The licensee or applicant, in the past 20 years, has been convicted of or pled guilty or nolo contendere to, regardless of adjudication, a misdemeanor or felony under ch. 828, F.S., [Animals: Cruelty, Sales; Animal Enterprise Protection],¹⁶ or a misdemeanor or felony under ch. 741, F.S., involving an act of domestic violence.

¹⁶ Sections 828.40 to 828.43, F.S., constitute the Florida Animal Enterprise Protection Act." An "animal enterprise" is defined in s. 828.41(1), F.S., as a commercial or academic enterprise that uses animals for food or fiber production, agriculture, research, or testing; a zoo, aquarium, circus, rodeo, or lawful competitive animal event; or any fair or similar event intended to advance agricultural arts and sciences.

The bill provides, if the DBPR finds that a pet store, or a person employed or contracted by a pet store, has violated or is operating in violation of the act or any rule or order issued under the act, the DBPR may:

- Issue a notice of noncompliance under s. 120.695, F.S.;¹⁷
- Impose an administrative fine for each act or omission (with each day a violation continues constituting a separation violation), not to exceed the following amounts:
 - 1. For a first violation, \$250;
 - 2. For a second violation, \$500;
 - 3. For a third or subsequent violation, \$1,000;
- Direct that the person cease and desist from specified activities;
- Refuse to issue or renew a license or revoking or suspending a license; or
- Place the licensee on probation, subject to conditions specified by the DBPR.

Under the bill, the administrative proceedings that could result in the entry of an order imposing any of the above penalties are governed by ch. 120, F.S., the Florida Administrative Procedure Act, which provides uniform procedures for the exercise of specified authority.

Section 8 of the bill creates s. 468.913, F.S., to authorize legal action to recover civil penalties and for injunctive relief. Under the bill, the DBPR may bring a civil action in a court of competent jurisdiction to recover any penalties or damages authorized by the act and for injunctive relief to enforce compliance with the act.

Section 9 of the bill creates s. 468.915, F.S., to set forth criminal penalties for violations of certain requirements in the act. A person commits a misdemeanor of the second degree, punishable by a term of imprisonment not to exceed 60 days or a fine not to exceed \$500,¹⁸ if he or she violates:

- Section 468.907(2) or (3), F.S., created by the bill, relating to unlawful practices in the sale of household pets by pet stores; or
- Section 468.905(1) or (4), F.S., created by the bill, relating to operation of a pet store without a license.

Section 10 of the bill creates s. 468.917, F.S., to require the deposit of license fees and civil penalties collected by the DBPR under the act into the Professional Regulation Trust Fund for the DBPR's use in administering the act.

Preemption of Local Government Regulation of Pet Stores

Section 11 of the bill creates s. 468.919, F.S., to provide that part VII of ch. 468, F.S., created in the bill, preempts county and municipal ordinances and regulations that prohibit or regulate pet stores. A local government's authority to levy a local business tax under ch. 205, F.S., for the

¹⁷ Section 120.695(2), F.S., provides each state agency must issue a notice of noncompliance as a first response to a minor violation of an administrative rule. Section 120.695(1), F.S., sets forth the state's policy that the purpose of regulation is to protect the public through compliance with policies established by the Legislature; while fines and other penalties may be imposed in order to assure compliance, they are secondary to the primary goal of attaining compliance with agency rules.

¹⁸ See ss. 775.082 and 775.083, F.S.

privilege of engaging in or managing any business, profession, or occupation within its jurisdiction,¹⁹ is not preempted under the bill.

The bill is effective July 1, 2020.

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:

Under Article VII, Section 19 of the Florida Constitution, a “state tax or fee imposed, authorized, or raised under this section must be contained in a separate bill that contains no other subject.” A “fee” is defined by the Florida Constitution to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”²⁰

Section 10 of the bill provides in part that “monies collected by the [Department of Professional Regulation (DBPR) under the act] from license fees . . . must be deposited into the [DBPR’s] Professional Regulation Trust Fund for use by the [DBPR] for administration of [the act]. Authorization for the DBPR to impose license fees for its administration of the act may be required to be addressed in a separate bill as required by Article VII, Section 19 of the Florida Constitution.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁹ See s. 205.022(5), F.S., for the definition of “local business tax.” The term does not mean fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection, which, unless otherwise provided by law, are deemed to be regulatory and in addition to, but not in lieu of, any local business tax imposed under the provisions of [ch. 205, F.S.]. *Id.*

²⁰ FLA. CONST. art. VII, s. 19(d)(1).

B. Private Sector Impact:

The bill requires pet stores in Florida, if the stores sell or offer to sell domestic dogs or domestic cats, to have the features, offer the services, perform the activities, and maintain the records required under the bill, and the cost of meeting these requirements will be borne by the affected pet stores.

C. Government Sector Impact:

The creation of an additional licensing, inspection, and regulatory structure for pet stores will result in a fiscal impact to the state.

The Department of Business and Professional Regulation (DBPR) estimates, based on its calculation that as many as 500 pet stores in the state sell household pets and will be required to be licensed and inspected, the new regulatory program will increase expenditures by approximately \$105,573 in Fiscal Year 2020-2021, \$99,517 in Fiscal Year 2021-2022 and \$99,517 in Fiscal Year 2022-2023.²¹ The DBPR estimates one environmental health specialist position is necessary to accomplish the inspections of pet stores required by the bill, with an associated FTE expense of \$60,886 (\$54,830 recurring) and nonrecurring costs for technology hardware and software licenses and service of approximately \$2,700.²²

The DBPR's Office of General Counsel addresses concerns about the terms used in the bill and the basis for agency decisions and rules, and notes that programs within the DBPR must fund themselves through adequate associated license fees as other programs may not offset the costs of another program.²³

VI. Technical Deficiencies:

None.

VII. Related Issues:

The language on retention of required certifications in lines 198 to 200 appears to be applicable to all of the information required in s. 468.907(3)(e), F.S., not just paragraph 7 thereof. If this is not intentional, an amendment to move that language to the left margin so it applies to s. 468.907(3)(e), F.S., in its entirety should be considered.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 468.901, 468.919, 468.903, 468.905, 468.907, 468.909, 468.911, 468.913, 468.915, and 468.917.

²¹ See 2020 Agency Legislative Bill Analysis (Department of Business and Professional Regulation) for SB 1698, Jan. 30, 2020 (on file with Senate Committee on Innovation, Industries, and Technology) at page 4.

²² *Id.* at pp. 5-7.

²³ *Id.* at p. 6.

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.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Innovation, Industry, and Technology (Diaz)
recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. The Division of Law Revision is directed to
create part XVII of chapter 468, Florida Statutes, consisting of
ss. 468.901-468.919, Florida Statutes, to be entitled "Retail
Pet Stores."

Section 2. Section 468.901, Florida Statutes, is created to
read:



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468.901 Short title.—This part may be cited as the “Florida Pet Protection Act.”

Section 3. Section 468.903, Florida Statutes, is created to read:

468.903 Definitions.—As used in this part, the term:

(1) “Animal rescue” means a nonprofit organization exempt from federal income taxation under s. 501(c)(3) of the Internal Revenue Code which keeps, houses, and maintains household pets and which is dedicated to the welfare, health, safety, and protection of such pets. The term includes an organization that offers spayed or neutered household pets for adoption and charges only reasonable adoption fees to cover the organization’s costs, including, but not limited to, costs related to spaying or neutering the pets.

(2) “Animal shelter” means a public facility, or a private facility operated by a nonprofit organization that is exempt from federal income taxation under s. 501(c)(3) of the Internal Revenue Code, which keeps, houses, and maintains household pets, such as a county or municipal animal control agency or pound, a humane society, an animal welfare society, a society for the prevention of cruelty to animals, or another nonprofit organization devoted to the welfare, protection, and humane treatment of household pets.

(3) “Department” means the Department of Business and Professional Regulation.

(4) “Household pet” means a domestic dog or a domestic cat.

(5) “Pet broker” means a person who buys, sells, or offers for sale household pets for resale to other persons, or who sells or gives one or more pets to a retail pet store, and who



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holds a valid Class B animal dealer license issued by the United States Department of Agriculture.

(6) "Professional breeder" means a person who is required to be licensed as a Class A animal dealer by the United States Department of Agriculture.

(7) "Retail pet store" means a retail store that sells or offers for sale household pets to the public. The term does not include an animal rescue; an animal shelter; or a breeder who sells or transfers, directly to the public, household pets bred and raised on the breeder's premises.

(8) "Veterinarian" means a health care practitioner licensed under chapter 474, or licensed out of state by the applicable entity in that state, to engage in the practice of veterinary medicine.

Section 4. Section 468.905, Florida Statutes, is created to read:

468.905 Licensure of retail pet stores.—

(1) A person may not operate a retail pet store in this state without having a valid retail pet store license issued by the department in accordance with this section.

(2) The department shall adopt procedures for the licensure of retail pet stores. An applicant for a retail pet store license shall apply to the department in a format prescribed by the department. Upon licensure, the department shall assign a unique license number for each licensed premises.

(3) The department may establish annual license periods that are valid for 1 year and that may be renewed. An application for renewal of a license must be submitted to the department in a format prescribed by the department.



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(4) A retail pet store that does not have a valid license may not display, offer for sale, deliver, barter, auction, broker, give away, transfer, or sell any household pet from the store.

(5) Nothing in this part shall be construed to prohibit or regulate the sale of hunting dogs, field trial dogs, sporting dogs, or cattle dogs.

Section 5. Section 468.907, Florida Statutes, is created to read:

468.907 Sale or transfer of household pets by retail pet stores.—

(1) As used in this section, the term "qualified breeder" means a professional breeder that is located inside or outside this state and meets all of the following requirements:

(a) Holds a valid Class A animal license issued by the United States Department of Agriculture and, if required by the respective state, is licensed by a state agency.

(b) Has not been issued a report of a finally adjudicated direct noncompliance violation by the United States Department of Agriculture under the federal Animal Welfare Act, 7 U.S.C. ss. 2131 et seq., in the 2 years immediately before offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling a household pet. However, a professional breeder is not considered a qualified breeder until a pending report of a direct noncompliance violation is finally adjudicated.

(c) Has not had three or more finally adjudicated noncompliance violations documented in any report issued by the United States Department of Agriculture under the federal Animal



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98 Welfare Act, 7 U.S.C. ss. 2131 et seq., for the year immediately
99 before offering for sale, delivering, bartering, auctioning,
100 brokering, giving away, transferring, or selling a household
101 pet. However, a professional breeder is not considered a
102 qualified breeder until a pending report of a noncompliance
103 violation is finally adjudicated.

104 (2) A retail pet store may not display, offer for sale,
105 deliver, barter, auction, broker, give away, transfer, or sell
106 any household pet from the store unless such pet was acquired
107 from one of the following sources:

108 (a) A qualified breeder.

109 (b) A person who, pursuant to 9 C.F.R. s. 2.1(a)(3)(ii)-
110 (vii), is exempt from licensure by the United States Department
111 of Agriculture.

112 (c) An animal rescue.

113 (d) An animal shelter.

114 (e) A pet broker; however, if the pet broker acquires the
115 pet from a professional breeder, the breeder must be a qualified
116 breeder.

117 (3) A retail pet store may not sell, deliver, barter,
118 auction, broker, give away, or transfer any of the following:

119 (a) A household pet younger than 8 weeks of age.

120 (b) A household pet that has not been implanted with an
121 identification microchip.

122 (c) A household pet that does not have a valid veterinary
123 certification, including the United States Interstate and
124 International Certificate of Health Examination for Small
125 Animals prescribed by the United States Department of
126 Agriculture or the official certificate of veterinary inspection



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prescribed by the Department of Agriculture and Consumer
Services pursuant to s. 828.29.

(d) A household pet to a person younger than 18 years of
age, as verified by a valid driver license, state identification
card, or other government-issued identification card bearing a
photograph of the cardholder.

(e) A household pet acquired from a qualified breeder or
pet broker, unless the retail pet store provides to the buyer
acquiring the pet, before completing the transaction, a written
certification that includes the following:

1. The name, address, and United States Department of
Agriculture license number, if applicable, of the breeder who
bred the household pet.

2. A copy of the breeder's most recent United States
Department of Agriculture inspection report, if applicable.

3. The household pet's date of birth, if known.

4. The date the retail pet store took possession of the
household pet.

5. The breed, gender, color, and any identifying marks of
the household pet.

6. A signed statement by the store's Florida-licensed
veterinarian, in a format prescribed by the department, which
describes any known disease, illness, or congenital or
hereditary condition that adversely affects the health of the
household pet at the time of examination.

7. A document signed by the owner or a manager or employee
of the retail pet store certifying that all information required
to be provided to the person acquiring the household pet under
this paragraph is accurate.



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A retail pet store shall keep a copy of the certification for at least 3 years after the date of acquisition of the household pet. The owner or a manager or an employee of a retail pet store may not fraudulently alter or provide false information on a certification provided in accordance with this paragraph.

(4) A licensed retail pet store shall provide to the buyer of a household pet:

(a) The pet's microchip identification number.

(b) The complete name, address, and telephone number of all professional breeders, pet brokers, or other persons who kept, housed, or maintained the pet before its coming into possession of the retail pet store or proof that the pet was acquired through an animal rescue or animal shelter.

(c) A photograph or digital image of both of the pet's parents, sire and dam.

A retail pet store shall keep a copy of the documentation required under this subsection for at least 3 years after the date it acquired the household pet.

(5) A retail pet store shall provide for all of the following:

(a) Flooring in the primary enclosures that house household pets which is constructed of a solid surface or, if grid-style or wire flooring is used, the surface of which is covered with a rubberized or coated material that prevents a pet's toe or foot from passing through or being entrapped by the flooring. A retail pet store shall clean all primary enclosures daily, or as often as necessary to prevent accumulation of body waste, and



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keep a daily sanitation log.

(b) An isolation enclosure with separate ventilation which allows a household pet to be kept separately from other pets while under veterinarian-directed isolation.

(c) Climate control that ensures that the ambient air temperature of the store's premises is kept between 67 and 78 degrees at all times. Retail pet stores shall keep daily logs of the temperature. If, for any reason, the temperature falls outside the required range, a corrective action record detailing steps taken to adjust the temperature must be kept.

(d) A Florida-licensed veterinarian who visits the retail pet store at least twice a week to observe the condition of the pets' health and overall well-being.

(e) An enrichment program for puppies which consists of exercise and socialization for at least two 30-minute periods each day. A retail pet store must keep a log for each puppy of the daily activities that the puppy participates in as part of the program.

(f) A photograph or digital image and video footage depicting each breeding facility from which the retail pet store acquires household pets.

Section 6. Section 468.909, Florida Statutes, is created to read:

468.909 Inspections.—

(1) (a) At least annually, the department shall inspect each retail pet store that is subject to licensure to ensure compliance with this part and with rules adopted under this part, including, but not limited to, an audit of the records that the licensee maintains pursuant to s. 468.907(3)(e) and



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(4) .

(b) The department also may conduct an inspection upon receipt of a complaint or other information alleging a violation of this part or rules adopted under this part.

(2) The department shall establish procedures for conducting inspections and making records of inspections. Inspections shall be conducted during regular business hours in accordance with the department's procedures and may be conducted without prior notice. A record of each inspection must be maintained by the department in accordance with such procedures.

(3) The department may enter into a contract or agreement with one or more veterinarians to conduct inspections under this section. Such veterinarians must be independent and may not be affiliated with an animal rights advocacy organization.

Section 7. Section 468.911, Florida Statutes, is created to read:

468.911 Administrative remedies; penalties.—

(1) The department shall deny an application for issuance or renewal of a retail pet store license if:

(a) The licensee or applicant violates this part or any rule or order issued under this part, if the violation materially threatens the health or welfare of a household pet; or

(b) The licensee or applicant, in the past 20 years, has been convicted of or pled guilty or nolo contendere to, regardless of adjudication, a misdemeanor or felony under chapter 828 or a misdemeanor or felony under chapter 741 involving an act of domestic violence.

(2) The department may enter an order doing one or more of



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the following if the department finds that the owner of a retail pet store, or a person employed or contracted by a retail pet store about who the owner knows or reasonably should have known, has violated or is operating in violation of this part or any rule or order issued pursuant to this part:

(a) Issuing a notice of noncompliance under s. 120.695.

(b) Imposing an administrative fine for each act or omission, not to exceed the following amounts:

1. For a first violation, \$250.

2. For a second violation, \$500.

3. For a third or subsequent violation, \$1,000.

Each day that a violation continues constitutes a separate violation.

(c) Directing that the person cease and desist specified activities.

(d) Refusing to issue or renew a license or revoking or suspending a license.

(e) Placing the licensee on probation, subject to the conditions specified by the department.

(3) The administrative proceedings that could result in the entry of an order imposing any of the penalties specified in subsection (1) or subsection (2) are governed by chapter 120.

(4) The department may adopt rules to administer this part. Section 8. Section 468.913, Florida Statutes, is created to read:

468.913 Civil penalties; remedies.—The department may bring a civil action in a court of competent jurisdiction to recover any penalties or damages authorized by this part and for



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injunctive relief to enforce compliance with this part.

Section 9. Section 468.915, Florida Statutes, is created to read:

468.915 Criminal penalties.—A person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, if he or she violates:

(1) Section 468.907(2) or (3), relating to unlawful practices in the sale of household pets by retail pet stores; or

(2) Section 468.905(1) or (4), relating to operation of a retail pet store without a license.

Section 10. Section 468.917, Florida Statutes, is created to read:

468.917 Deposit of funds.—All moneys collected by the department under this part from license fees or civil penalties must be deposited into the department's Professional Regulation Trust Fund for use by the department for administration of this part.

Section 11. Section 468.919, Florida Statutes, is created to read:

468.919 Local regulation.—This part preempts any local ordinance or regulation of a county or municipality which prohibits or regulates retail pet stores or the purchase or sale of hunting dogs, field trial dogs, sporting dogs, or cattle dogs. This section does not preempt a local government's authority to levy a local business tax pursuant to chapter 205.

Section 12. This act shall take effect July 1, 2020.

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

And the title is amended as follows:



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301 Delete everything before the enacting clause
302 and insert:
303 An act relating to the regulation of retail pet
304 stores; providing a directive to the Division of Law
305 Revision; creating s. 468.901, F.S.; providing a short
306 title; creating s. 468.903, F.S.; defining terms;
307 creating s. 468.905, F.S.; requiring the licensure of
308 retail pet stores; requiring the Department of
309 Business and Professional Regulation to adopt
310 procedures for such licensure; creating s. 468.907,
311 F.S.; defining the term "qualified breeder";
312 regulating the sale or transfer of household pets by
313 retail pet stores; limiting the sources from which
314 retail pet stores may acquire pets for sale; providing
315 certain restrictions on the sale of household pets;
316 requiring certain documentation of the sources from
317 which retail pet stores acquire pets for sale;
318 providing requirements for the living conditions for
319 pets at retail pet stores; providing retail pet store
320 veterinarian, exercise, and socialization
321 requirements; creating s. 468.909, F.S.; requiring the
322 department to conduct periodic inspections of retail
323 pet stores and to audit sales records; requiring the
324 department to establish procedures for the inspections
325 and records of the inspections; authorizing contracts
326 with certain veterinarians to conduct inspections;
327 creating s. 468.911, F.S.; requiring the department to
328 deny a license under certain circumstances;
329 authorizing disciplinary action against licensees and



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applicants for licensure under certain circumstances;
providing civil penalties; authorizing the department
to adopt rules; creating s. 468.913, F.S.; authorizing
civil actions for purposes of enforcement; creating s.
468.915, F.S.; providing criminal penalties for
specified violations; creating s. 468.917, F.S.;
requiring certain moneys to be deposited into the
department's Professional Regulation Trust Fund;
creating s. 468.919, F.S.; preempting certain county
and municipal ordinances and regulations; providing
construction; providing an effective date.



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Innovation, Industry and Technology

Subject: Committee Agenda Request

Date: January 27, 2020

I respectfully request that **Senate Bill # 1698**, relating to Regulation of Pet Stores, be placed on the:

- ☐ Committee agenda at your earliest possible convenience.
- ☒ Next committee agenda.

A handwritten signature in black ink, appearing to read "M. Diaz", is written over a horizontal line.

Senator Manny Diaz, Jr.
Florida Senate, District 36



ANALYSIS

2020 AGENCY LEGISLATIVE BILL

AGENCY: Department of Business & Professional Regulation

<u>BILL INFORMATION</u>	
BILL NUMBER:	<u>SB 1698</u>
BILL TITLE:	<u>Regulation of Pet Stores</u>
BILL SPONSOR:	<u>Sen. Diaz</u>
EFFECTIVE DATE:	<u>7/01/2020</u>

<u>COMMITTEES OF REFERENCE</u>	<u>CURRENT COMMITTEE</u>	
1) Innovation, Industry, and Technology	On Committee agenda - Innovation, Industry, and Technology, 02/03/20, 1:30 pm, 110 S	
2) Appropriations Subcommittee on Agriculture, Environment and General Government		
3) Appropriations		
4) Click or tap here to enter text.		
5) Click or tap here to enter text.		
<u>SIMILAR BILLS</u>		
BILL NUMBER:		HB 1237 (similar) SB 1700 (linked)
SPONSOR:		Rep. Avila Sen. Diaz

<u>PREVIOUS LEGISLATION</u>	<u>IDENTICAL BILLS</u>
BILL NUMBER:	N/A
SPONSOR:	N/A
YEAR:	N/A
LAST ACTION:	N/A
Is this bill part of an agency package?	
No	

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	January 30, 2020
LEAD AGENCY ANALYST:	Ruthanne Christie, Executive Director
ADDITIONAL ANALYST(S):	Jeff Kelly, Deputy Director; Division of Professions Tom Coker, Technology Jerry Wilson, Regulation
	Tracy Dixon, Service Operations Thomas Izzo, OGC Rules
LEGAL ANALYST:	Tom Thomas, OGC
FISCAL ANALYST:	Raleigh Close, Planning and Budget

POLICY ANALYSIS**1. EXECUTIVE SUMMARY**

The bill creates licensing and inspection requirements under the Department of Business and Professional Regulation (department) for retail pet stores that sell dogs and cats.

2. SUBSTANTIVE BILL ANALYSIS**1. PRESENT SITUATION:**

Section 828.29, F.S., establishes health requirements and documentation guidelines for dogs and cats offered for sale in the State of Florida. This section states that all dogs and cats offered for sale and their related health certificates are subject to inspection by the Florida Department of Agriculture and Consumer Services. Additionally, s. 828.29, F.S., establishes guidelines for consumers who purchase animals found to be unfit to retain, return or exchange the animal and receive reimbursement for related veterinary costs.

2. EFFECT OF THE BILL:

The bill creates Part XVII under ch. 468, F.S., which establishes requirements and guidelines for licensure and inspection of pet stores selling dogs and cats under the Department of Business and Professional Regulation. It also establishes requirements and prohibitions for licensed pet stores including record keeping, physical facilities, veterinary care and enrichment.

The bill creates s. 468.919, F.S., to preempt any local ordinance or regulation of a county or municipality which prohibits or regulates pet stores. However, the bill does not preempt a local government's authority to levy a local business tax pursuant to ch. 205, F.S.

The bill defines "pet store" to mean a retail store that sells or offers for sale household pets to the public and, with respect to such sales, the store's salesperson, the pet's buyer, and the pet being sold are each physically present during the sale so that the buyer may personally observe the pet and help ensure its health before taking custody. The term does not include an animal rescue or animal shelter unless the animal rescue or animal shelter purchases household pets for resale from a pet broker or professional breeder.

The bill provides that a person may not operate a pet store in this state without having a valid pet store license issued by the department.

The bill provides that the department may establish annual license periods and that are valid for one year and that may be renewed.

The bill requires pet stores to keep copies of certain documents for at least three years after the date of acquiring household pets.

The bill requires the department to inspect each pet store subject to licensure and audit the records that the licensee maintains. Additionally, the department must conduct an inspection up receipt of a complaint or other information alleging a violation. The department must establish procedures for conducting inspections and making records of inspections. Further, the department must maintain a record of each inspection in accordance with such procedures. The bill permits the department to enter into a contract or agreement with one or more veterinarians to conduct inspections.

The bill creates s. 468.911(1), F.S., which provides that the department can deny an application for issuance or renewal of a pet store license, if the licensee or applicant materially threatens the health or welfare of a household pet, or the licensee or applicant has been convicted of or pled nolo contendere to certain misdemeanors or felonies in the past 20 years.

The provides that the department may enter an order if the department finds that a pet store, or a person employed or contracted by a pet store is in violation of this part.

The bill provides that the department may bring a civil action in a court of competent jurisdiction to recover any penalties or damages. The bill provides that all moneys collected by the department under this part from license fees or civil penalties must be deposited into the department's Professional Regulation Trust Fund for use by the department for administration of this part. The bill has an effective date of July 1, 2020.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☒ N ☐

If yes, explain:	<p>The bill creates s. 468.911(4), F.S., which states the department may adopt rules to administer this part.</p> <p>The bill also creates s. 468.905(3), F.S., which permits the department to prescribe a required form for application, and s. 468.909(2), F.S., which directs the Department to establish procedures for conducting inspections.</p>
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

Y ☐ N ☒

If yes, provide a description:	N/A
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Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Y ☒ N ☐

Revenues:	Indeterminate
Expenditures:	N/A
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Y ☒ N ☐

Revenues:	The bill does not authorize application or renewal fees; however some revenue will be generated from civil penalties imposed for violations of the bill. The amount of the revenue is indeterminate.
Expenditures:	Based upon a projected licensee base of 500 (see Additional Comments) the program will increase expenditures by approximately \$105,573 in Fiscal Year 2020-21, \$99,517 in Fiscal Year 2021-22 and \$99,517 in Fiscal Year 2022-23.

Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?Y ☒ N ☐

Revenues:	None
Expenditures:	Indeterminate costs associated with compliance.
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y ☐ N ☐

If yes, explain impact.	This bill creates s. 468.911, F.S., which establishes administrative fines for violations of the provisions of ch. 468 Part XVII, F.S.
Bill Section Number:	Section 7

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?

Y ☒ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	<p>This bill will require modifications to Versa: Regulation, Versa: Online, OnBase document management system, and the Interactive Voice Response (IVR) system to add a new license category and transactions for licensure of pet stores. It will also require modification to the iPad inspection application.</p> <p>Changes to Versa: Regulation – 44 hours Changes to Versa: Online – 40 hours Changes to OnBase – 4 hours Changes to iPad – 40 hours Changes to IVR – 4 hours These modifications can be made with existing resources.</p> <p><u>Infrastructure and Licensing Costs</u></p> <p>Additional staffing required to implement the provisions of this bill (see Additional Comments below) would result in technology infrastructure and licensing costs. Assuming there is not adequate office space in existing DBPR offices, additional undetermined infrastructure costs will be incurred based on the number, location and suitability of adequate space to support the full workforce.</p> <p>For 1 Environmental Health Specialist position:</p> <ul style="list-style-type: none"> • Non-recurring cost of iPad - \$732.24 • Non-recurring costs for software licenses – \$1,197.40 • Recurring software license maintenance and data service - \$784.26
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FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?

Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	N/A
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ADDITIONAL COMMENTS

Professions:

This bill does not authorize the department to establish fees for licensure, renewal or inspection of facilities regulated under this part. The bill does not address corporate ownership of pet stores with regard to s. 468.911(1)(b), F.S.

Pursuant to the Whitepages, Florida has 2,818 pet stores, of which the vast majority most likely sell only supplies and not dogs and cats as referenced in the bill. A projection of 500 licensed pet stores is used for

the fiscal projections in this analysis, utilizing the veterinarian licensing program to extrapolate projected expenses.

Regulation:

This bill will cause each licensed pet store to be inspected at least once a year to ensure compliance with this part and any rules adopted to regulate pet stores. An inspection will also be conducted when a complaint about the establishments is filed. The Division of Regulation currently conducts inspections of Cosmetology, Barber and Veterinary establishments and in Fiscal Year 2018-19, the division conducted 25,097 inspections of these establishments with 16 FTE Inspectors (Environmental Health Specialists). The Division has been able to conduct all of the statutorily mandated inspections each year, but they are generally not completed until the end of the fiscal year. Therefore, the division requests 1 Inspector (Environmental Health Specialist) to conduct the additional 500 pet store inspections.

DSO: There will be a minimal impact to the division which can be accommodated with existing resources.

OGC Rules: The bill does not provide a definition of what constitutes “an establishment” or establish any criteria or standards for agency decisions. The bill defines the term “qualified breeder” under s. 468.907(1), F.S., however, it is unclear how agency determination is to be made in terms of being in compliance to the specified requirements set forth therein, including the manner or method of providing notice to the department of any “noncompliance violations by U.S. Department of Agriculture.” Additionally, the bill is inconsistent in application of requirements regarding “accredited veterinarians” in lines 171-172 and 191-192, “veterinarian-direct observation” in lines 228-230, “Florida-licensed veterinarians” in lines 237-239, and “veterinarians” in lines 267-269. Furthermore, it is unclear what constitutes “adversely affecting the health of the pet” as provided in lines 193-194, and the bill does not provide any established criteria or standards for an agency decision. Moreover, the bill does not provide any guidance in lines 211-212 on what constitutes sufficient “proof” to demonstrate compliance. Lastly, it is unclear from the language provided in lines 276-277 what is considered “a violation that materially threatens the health or welfare of a household pet” or provide any criteria or standards on what constitutes “materially threatening the health or welfare of a household pet.”

Fiscal Comment: The fiscal impact of the bill is estimated using a percentage of the Board of Veterinary Medicine actual expenditures as of June 30, 2019. The department estimates there will be 500 pet shops licensed and inspected. The department also estimates the pet shop licensees will be 4.21% of the Board of Veterinary Medicine license count of 11,865 as of June 30, 2019 (500 divided by 11,865 equals .0421). This estimated percentage was applied to the Board of Veterinary Medicine actual expenditures as of June 30, 2019 to get an estimate of regulatory costs for pet shops.

Anticipated Expenditures

	JUNE 30 2021	JUNE 30 2022	JUNE 30 2023
EXPENSES			
<u>Board Office</u>			
Board Administrative Office	8,564	8,564	8,564
<u>Professional Regulation Division</u>			
Inspections	3,232	3,232	3,232
Investigations	8,405	8,405	8,405
Attorney General's Office	1,424	1,424	1,424
<u>Service Operations</u>			
Central Intake/Licensure	6,131	6,131	6,131
Call Center	2,000	2,000	2,000

Department Administrative Costs

Administration	2,636	2,636	2,636
Information Technology	3,438	3,438	3,438
General Counsel/Legal	7,980	7,980	7,980
<u>Unlicensed Activity</u>	877	877	877
Total Expenses	44,687	44,687	44,687

In addition to the above expenses, one Environmental Health Specialist FTE will be necessary for inspections. The costs for this FTE are anticipated to be \$60,886 (\$54,830 recurring).

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	<p>OGC: The bill creates a brand new regulatory program within the department. With an estimated license population of 500 businesses, the department will incur associated costs to implement this program. The bill requires each business to be inspected at least one time each year. These inspections may lead to legal cases and enforcement. There will also be more calls to the call center, more applications to process, etc. It appears \$25 per licensee (SB 1700) is inadequate to cover the costs associated with the new workload.</p> <p>Programs within the department must fund themselves through adequate associated license fees – other programs may not be asked to offset the costs of another programs. It appears the license fees set for this new program may lead to the program running a recurring annual deficit.</p>
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**PET INDUSTRY JOINT
ADVISORY COUNCIL**

1615 Duke Street, Suite 100
Alexandria, VA 22314
Tel: 202-452-1525

February 3, 2020

Re: Support for SB1698 as amended

Dear Members of the Senate Innovation, Industry and Technology Committee:

The Pet Industry Joint Advisory Council (PIJAC) appreciates the opportunity to offer our strong support for Senate Bill 1698 as amended and being heard today by this committee.

As an organization that routinely supports legislative efforts to advance the welfare of animals, we at PIJAC focus on the legislative and regulatory activity which impacts responsible pet businesses, responsible pet ownership, and the availability of pets. We represent the interests of all segments of the U.S. pet industry--from retailers and product manufacturers to live animal producers and pet owners in the Sunshine State and across the country.

We also work with many governmental entities on legislative and regulatory activity that may impact the ownership of companion animals, including the United States Department of Agriculture (USDA) and the Centers for Disease Control and Prevention (CDC). We believe the products of these public-private collaborations point to our commitment to ensuring people and pets are protected while enjoying the mutual benefits of the human-animal bond.

We encourage this committee advance SB1698 as amended in the interest of animal well-being and consumer protection.

Regulation of pet stores at the state level makes good sense, as this allows a more comprehensive approach to ensuring animal welfare is a priority from a puppy's birth through to its arrival at its new home. After all, animal care is the same no matter where a pet comes from – these requirements shouldn't vary from town to town.

This approach would eliminate a patchwork of local ordinances that can actually allow bad actors to thrive. Regulating pet sales at the local level, as Florida does currently, creates pockets of strict limitation and pockets of little to no oversight while relying on local enforcement to ensure that laws are being followed. When local ordinances govern the sale of pets, stores (good *and* bad) can simply relocate from jurisdiction to jurisdiction, which does nothing to protect animals *or* consumers. Additionally, local bans do nothing to impact demand for specific breeds; they simply shift consumers to less readily regulated and overseen sources.

Uniform state laws that limit pet stores to animals sourced from licensed, inspected sources allow for increased transparency and consumer protection. When the public can review breeders' records for themselves, they can make informed decisions about whether or not to acquire a specific animal from a specific breeder with greater confidence. For many Floridians, the opportunity to travel long distances to visit with breeders simply does not exist. Rather than forcing families to settle for the best of what's around, regulated pet stores can help them find their ideal companion and form a bond that is statistically far more likely to last for the pet's natural lifetime.

State regulation protects pet choice *and* positively effects shelter populations. Responsible pet ownership begins with finding the ideal companion animal for a given family situation – this is the single greatest factor in reducing incidences of relinquishment to shelters and rescues. Statewide regulation ensures that families can readily acquire dogs with necessary characteristics – due to allergies, space considerations, temperament, etc.

Finally, regulation at the state level allows Florida to speak with a single, unified voice on this issue. This allows lawmakers, retailers *and* the general public to play a much more impactful role in this important national conversation about responsible breeding and sale of companion animals.

Thank you for the opportunity to share our perspective on SB1698. We strongly encourage you to pass it as amended. Please do not hesitate to contact us to discuss further at 202/452-1525 or via email at mbober@pijac.org.

Sincerely,



Mike Bober
President & CEO
Pet Industry Joint Advisory Council (PIJAC)

By Senator Diaz

36-01494-20

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A bill to be entitled
An act relating to the regulation of pet stores;
providing a directive to the Division of Law Revision;
creating s. 468.901, F.S.; providing a short title;
creating s. 468.903, F.S.; defining terms; creating s.
468.905, F.S.; requiring the licensure of pet stores;
requiring the Department of Business and Professional
Regulation to adopt procedures for such licensure;
creating s. 468.907, F.S.; defining the term
"qualified breeder"; regulating the sale or transfer
of household pets by pet stores; limiting the sources
from which pet stores may acquire pets for sale;
providing certain restrictions on the sale of
household pets; requiring certain documentation of the
sources from which pet stores acquire pets for sale;
providing requirements for the living conditions for
pets at pet stores; providing pet store veterinarian,
trainer, and exercise and socialization requirements;
creating s. 468.909. F.S.; requiring the department to
conduct periodic inspections of pet stores and audit
sales records; requiring the department to establish
procedures for the inspections and records of the
inspections; authorizing contracts with veterinarians
to conduct inspections; creating s. 468.911, F.S.;
requiring the department to deny a license under
certain circumstances; authorizing disciplinary action
against licensees and applicants for licensure;
providing civil penalties; authorizing the department
to adopt rules; creating s. 468.913, F.S.; authorizing

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civil actions for purposes of enforcement; creating s.
468.915, F.S.; providing criminal penalties for
specified violations; creating s. 468.917, F.S.;
requiring certain moneys to be deposited into the
department's Professional Regulation Trust Fund;
creating s. 468.919, F.S.; preempting county and
municipal ordinances and regulations; providing an
effective date.

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

Section 1. The Division of Law Revision is directed to
create part XVII of chapter 468, Florida Statutes, consisting of
ss. 468.901-468.919, Florida Statutes, to be entitled "Household
Pet Stores."

Section 2. Section 468.901, Florida Statutes, is created to
read:

468.901 Short title.—This part may be cited as the "Florida
Pet Protection Act."

Section 3. Section 468.903, Florida Statutes, is created to
read:

468.903 Definitions.—As used in this part, the term:

(1) "Accredited veterinarian" means a veterinarian
accredited by the United States Department of Agriculture.

(2) "Adult cat" means a domestic cat that is 1 year of age
or older.

(3) "Adult dog" means a domestic dog that is 1 year of age
or older.

(4) "Animal rescue" means a nonprofit organization exempt

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59 from federal income taxation under s. 501(c)(3) of the Internal
60 Revenue Code which keeps, houses, and maintains household pets
61 and which is dedicated to the welfare, health, safety, and
62 protection of such pets. The term includes an organization that
63 offers spayed or neutered household pets for adoption and
64 charges only reasonable adoption fees to cover the
65 organization's costs, including, but not limited to, costs
66 related to spaying or neutering the pets.

67 (5) "Animal shelter" means a public facility, or private
68 facility operated by a nonprofit organization that is exempt
69 from federal income taxation under s. 501(c)(3) of the Internal
70 Revenue Code, which keeps, houses, and maintains household pets,
71 such as a county or municipal animal control agency or pound,
72 humane society, animal welfare society, society for the
73 prevention of cruelty to animals, or other nonprofit
74 organization devoted to the welfare, protection, and humane
75 treatment of household pets.

76 (6) "Department" means the Department of Business and
77 Professional Regulation.

78 (7) "Hobby breeder" means an establishment that:

79 (a) Sells no more than four puppies or adult dogs and no
80 more than four kittens or adult cats in any calendar year; or

81 (b) Keeps, houses, and maintains in any location no more
82 than three intact adult female dogs, one intact male adult dog,
83 three intact adult female cats, and one intact male adult cat.

84 (8) "Household pet" means a domestic dog or a domestic cat.

85 (9) "Intact" means that an animal's reproductive organs
86 have not been removed through spaying or neutering.

87 (10) "Kitten" means a domestic cat younger than 1 year of

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age.

(11) "Pet broker" means a person who buys, sells, or offers for sale household pets at wholesale for resale to another or who sells or gives one or more pets to a pet store.

(12) "Pet store" means a retail store that sells or offers for sale household pets to the public and, with respect to such sales, the store's salesperson, the pet's buyer, and the pet being sold are each physically present during the sale so that the buyer may personally observe the pet and help ensure its health before taking custody. The term does not include an animal rescue or animal shelter unless the animal rescue or animal shelter purchases household pets for resale from a pet broker or professional breeder.

(13) "Professional breeder" means an establishment that, in exchange for money or other consideration, sells five or more puppies or adult dogs or five or more kittens or adult cats in any calendar year. The term does not include an animal rescue, an animal shelter, or a hobby breeder.

(14) "Puppy" means a domestic dog that is younger than 1 year of age.

(15) "Veterinarian" means a health care practitioner licensed under chapter 474, or licensed out of state by the applicable entity in that state, to engage in the practice of veterinary medicine.

Section 4. Section 468.905, Florida Statutes, is created to read:

468.905 Licensure of pet stores.—

(1) A person may not operate a pet store in this state without having a valid pet store license issued by the

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department in accordance with this section. An animal rescue or animal shelter is not required to be licensed as a pet store unless it purchases household pets for resale from a pet broker or professional breeder.

(2) The department shall adopt procedures for the licensure of pet stores. An applicant for a pet store license shall apply to the department in a format prescribed by the department. Upon licensure, the department shall assign a unique license number for each licensed location.

(3) The department may establish annual license periods that are valid for 1 year and that may be renewed. An application for renewal of a license must be submitted to the department in a format prescribed by the department.

(4) A pet store that does not have a valid license may not display, offer for sale, deliver, barter, auction, broker, give away, transfer, or sell any household pet from the store.

Section 5. Section 468.907, Florida Statutes, is created to read:

468.907 Sale or transfer of household pets by pet stores.-

(1) As used in this section, the term "qualified breeder" means a professional breeder that is located inside or outside this state and meets all of the following requirements:

(a) Is licensed by the United States Department of Agriculture under 7 U.S.C. s. 2133 and, if required, by a state agency.

(b) Has not been issued a report of a direct noncompliance violation by the United States Department of Agriculture under the federal Animal Welfare Act, 7 U.S.C. ss. 2131 et seq., in the 2 years immediately before offering for sale, delivering,

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146 bartering, auctioning, brokering, giving away, transferring, or
147 selling a household pet.

148 (c) Has not had three or more noncompliance violations
149 documented in any report issued by the United States Department
150 of Agriculture under the federal Animal Welfare Act, 7 U.S.C.
151 ss. 2131 et seq., for the year immediately before offering for
152 sale, delivering, bartering, auctioning, brokering, giving away,
153 transferring, or selling a household pet.

154 (2) A pet store may not display, offer for sale, deliver,
155 barter, auction, broker, give away, transfer, or sell any
156 household pet from the store unless such pet was acquired from
157 one of the following sources:

158 (a) A qualified breeder.

159 (b) A hobby breeder.

160 (c) An animal rescue.

161 (d) An animal shelter.

162 (e) Another pet store.

163 (f) A pet broker; however, if the pet broker acquires the
164 pet from a professional breeder, the breeder must be a qualified
165 breeder.

166 (3) A pet store may not sell, deliver, barter, auction,
167 broker, give away, or transfer any of the following:

168 (a) A household pet younger than 8 weeks of age.

169 (b) A household pet that has not been implanted with an
170 identification microchip.

171 (c) A household pet without a health certificate signed by
172 an accredited veterinarian.

173 (d) A household pet to a person younger than 18 years of
174 age, as verified by a valid driver license, state identification

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card, or other government-issued identification card bearing a photograph of the cardholder.

(e) A household pet acquired from a qualified breeder or pet broker, unless the pet store provides to the buyer acquiring the pet, before completing the transaction, a written certification that includes the following:

1. The name, address, and United States Department of Agriculture license number, if applicable, of the breeder who bred the household pet.

2. A copy of the breeder's most recent United States Department of Agriculture inspection report, if applicable.

3. The household pet's date of birth, if known.

4. The date the pet store took possession of the household pet.

5. The breed, gender, color, and any identifying marks of the household pet.

6. A signed statement by an accredited veterinarian which describes any known disease, illness, or congenital or hereditary condition that adversely affects the health of the household pet at the time of examination.

7. A document signed by the owner or a manager or employee of the pet store certifying that all information required to be provided to the person acquiring the household pet under this paragraph is accurate. A pet store shall keep a copy of the certification for at least 3 years after the date of acquisition of the household pet.

The owner or a manager or employee of a pet store may not fraudulently alter or provide false information on a

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certification provided in accordance with this paragraph.

(4) A licensed pet store must provide to the buyer of a household pet:

(a) The pet's microchip identification number.

(b) The complete name, address, and telephone number of all professional breeders or other persons who kept, housed, or maintained the pet before its coming into possession of the pet store or proof that the pet was acquired through an animal rescue or animal shelter.

(c) A photograph or digital image of both of the pet's parents, sire and dam.

A pet store shall keep a copy of the documentation required under this subsection for at least 3 years after the date it acquired the household pet.

(5) A pet store must provide for all of the following:

(a) Flooring in the primary enclosures that house household pets which is constructed of a solid surface or, if grid-style or wire flooring is used, the surface of which is covered with a rubberized or coated material that prevents a pet's toe or foot from passing through or being entrapped by the flooring. A pet store shall clean all primary enclosures daily, or as often as necessary to prevent accumulation of body waste, and keep a sanitation log of such cleanings.

(b) An isolation enclosure with separate ventilation which allows a household pet to be kept separately from other pets while under veterinarian-directed observation.

(c) Climate control that ensures temperatures in animal enclosures are kept between 67 and 78 degrees at all times. Pet

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stores shall keep daily logs of temperatures in animal enclosures. If, for any reason, temperatures fall outside the required range, a corrective action record detailing steps taken to adjust temperatures must be kept.

(d) A veterinarian who is licensed in this state and who visits the pet store at least three times a week to observe the condition of the pets' health and overall well-being.

(e) A dog trainer who visits the pet store at least once a week to assist with any behavioral or training issues.

(f) An enrichment program for puppies which consists of exercise and socialization for at least two 30-minute periods each day. A pet store must keep a log for each puppy of the daily activities that the puppy participates in as part of the program.

(g) Photographs, digital images, or video footage depicting all breeding facilities from which the pet store acquires household pets.

Section 6. Section 468.909, Florida Statutes, is created to read:

468.909 Inspections.—

(1)(a) At least annually, the department shall inspect each pet store that is subject to licensure to ensure compliance with this part and rules adopted under this part, including, but not limited to, an audit of the records that the licensee maintains pursuant to s. 468.907(3)(e) and (4).

(b) The department also may conduct an inspection upon receipt of a complaint or other information alleging a violation of this part or rules adopted under this part.

(2) The department shall establish procedures for

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conducting inspections and making records of inspections.
Inspections shall be conducted during regular business hours in
accordance with the department's procedures and may be conducted
without prior notice. A record of each inspection must be
maintained by the department in accordance with such procedures.

(3) The department may enter into a contract or agreement
with one or more veterinarians to conduct inspections under this
section.

Section 7. Section 468.911, Florida Statutes, is created to
read:

468.911 Administrative remedies; penalties.—

(1) The department shall deny an application for issuance
or renewal of a pet store license, if:

(a) The licensee or applicant violates this part or any
rule or order issued under this part, if the violation
materially threatens the health or welfare of a household pet;
or

(b) The licensee or applicant, in the past 20 years, has
been convicted of or pled guilty or nolo contendere to,
regardless of adjudication, a misdemeanor or felony under
chapter 828 or a misdemeanor or felony under chapter 741
involving an act of domestic violence.

(2) The department may enter an order doing one or more of
the following if the department finds that a pet store, or a
person employed or contracted by a pet store, has violated or is
operating in violation of this part or any rule or order issued
pursuant to this part:

(a) Issuing a notice of noncompliance under s. 120.695.

(b) Imposing an administrative fine for each act or

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291 omission, not to exceed the following amounts:

292 1. For a first violation, \$250.

293 2. For a second violation, \$500.

294 3. For a third or subsequent violation, \$1,000.

295

296 Each day that a violation continues constitutes a separate

297 violation.

298 (c) Directing that the person cease and desist specified

299 activities.

300 (d) Refusing to issue or renew a license or revoking or

301 suspending a license.

302 (e) Placing the licensee on probation, subject to the

303 conditions specified by the department.

304 (3) The administrative proceedings that could result in the

305 entry of an order imposing any of the penalties specified in

306 subsection (1) or subsection (2) are governed by chapter 120.

307 (4) The department may adopt rules to administer this part.

308 Section 8. Section 468.913, Florida Statutes, is created to

309 read:

310 468.913 Civil penalties; remedies.—The department may bring

311 a civil action in a court of competent jurisdiction to recover

312 any penalties or damages authorized by this part and for

313 injunctive relief to enforce compliance with this part.

314 Section 9. Section 468.915, Florida Statutes, is created to

315 read:

316 468.915 Criminal penalties.—A person commits a misdemeanor

317 of the second degree, punishable as provided in s. 775.082 or s.

318 775.083, if he or she violates:

319 (1) Section 468.907(2) or (3), relating to unlawful

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practices in the sale of household pets by pet stores; or

(2) Section 468.905(1) or (4), relating to operation of a
pet store without a license.

Section 10. Section 468.917, Florida Statutes, is created
to read:

468.917 Deposit of funds.—All moneys collected by the
department under this part from license fees or civil penalties
must be deposited into the department's Professional Regulation
Trust Fund for use by the department for administration of this
part.

Section 11. Section 468.919, Florida Statutes, is created
to read:

468.919 Local regulation.—This part preempts any local
ordinance or regulation of a county or municipality which
prohibits or regulates pet stores. This section does not preempt
a local government's authority to levy a local business tax
pursuant to chapter 205.

Section 12. This act shall take effect July 1, 2020.

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 Innovation, Industry, and Technology

BILL: CS/SB 708

INTRODUCER: Health Policy Committee and Senator Hutson

SUBJECT: Automated Pharmacy Systems

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/CS
2.	Kraemer	Imhof	IT	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 708 amends s. 465.0235, F.S., to permit a licensed community pharmacy to provide outpatient pharmacy services for the dispensing of medicinal drugs through the use of an automated pharmacy system (APS) located inside a community pharmacy or located inside the same establishment as the community pharmacy, if specific requirements are met.

See Section V, Fiscal Impact Statement.

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

II. Present Situation:

The Practice of Pharmacy

Pharmacy is the third largest health profession behind nursing and medicine.¹ The Board of Pharmacy (BOP), in conjunction with the Department of Health (DOH), regulates the practice of pharmacists and pharmacies pursuant to ch. 465, F.S.² There are seven types of pharmacies eligible for various operating permits issued by the DOH:

¹ American Association of Colleges of Pharmacy, *About AACP*, available at <https://www.aacp.org/about-aacp> (last visited Jan. 25, 2020).

² Sections 465.004 and 465.005, F.S.

- Community pharmacy;
- Institutional pharmacy;³
- Nuclear pharmacy;⁴
- Special pharmacy;⁵
- Internet pharmacy;⁶
- Non-resident sterile compounding pharmacy;⁷ and
- Special sterile compounding pharmacy.⁸

Community Pharmacy

The term “community pharmacy” includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.⁹ A community pharmacy permit is required for every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.¹⁰ Any person desiring a permit to operate a community pharmacy must apply to the DOH. If the BOP certifies that an application complies with the laws and the rules governing pharmacies, the DOH must issue the permit.

No permit shall be issued unless a licensed pharmacist is designated as the prescription department manager.¹¹ A registered pharmacist may not serve as the prescription department manager in more than one location unless approved by the BOP.¹² Permits issued by the DOH are not transferable.¹³ Passing an on-site inspection is a prerequisite to the issuance of an initial permit or a permit for a change of location. The DOH must make the inspection within 90 days before issuance of the permit.¹⁴

The BOP may suspend or revoke the permit of, or may refuse to issue a permit to:

³ See ss. 465.003(11)(a)2. and 465.019, F.S.

⁴ The term “nuclear pharmacy” includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold. The term “nuclear pharmacy” does not include hospitals licensed under ch. 395, F.S., or the nuclear medicine facilities of such hospitals. See ss. 465.003(11)(a)3. and 465.0193, F.S.

⁵ The term “special pharmacy” includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined in this subsection. See ss. 465.003(11)(a)4. and 465.0196, F.S.

⁶ The term “internet pharmacy” includes locations not otherwise licensed or issued a permit under this chapter, within or outside this state, which use the Internet to communicate with or obtain information from consumers in this state and use such communication or information to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state. See ss. 465.003(11)(a)5. and 465.0197, F.S.

⁷ The term “nonresident sterile compounding pharmacy” includes a pharmacy that ships, mails, delivers, or dispenses, in any manner, a compounded sterile product into Florida, a nonresident pharmacy registered under s. 465.0156, F.S., or an outsourcing facility, must hold a nonresident sterile compounding permit See s. 465.0158, F.S.

⁸ See Fla. Admin. Code R. 64B16-28.100 and 64B16-28.802 (2020). An outsourcing facility is considered a pharmacy and needs to hold a special sterile compounding permit if it engages in sterile compounding.

⁹ See ss. 465.003(11)(a)1. and 465.018, F.S.

¹⁰ Fla. Admin. Code R. 64B16-28.100(2) (2020).

¹¹ Section 465.018(2), F.S.

¹² Section 465.022(11)(c), F.S.

¹³ Section 465.022(13), F.S.

¹⁴ Section 465.018(6), F.S.

- Any person who has been disciplined or who has abandoned a permit or allowed a permit to become void after written notice that disciplinary proceedings had been or would be brought against the permit;
- Any person who is an officer, director, or person interested directly or indirectly in a person or business entity that has had a permit disciplined or abandoned or become void after written notice that disciplinary proceedings had been or would be brought against the permit; or
- Any person who is or has been an officer of a business entity, or who was interested directly or indirectly in a business entity, the permit of which has been disciplined or abandoned or become null and void after written notice that disciplinary proceedings had been or would be brought against the permit.¹⁵

A community pharmacy that dispenses controlled substances must maintain a record of all such dispensing, consistent with the requirements of s. 893.07, F.S., and must make the record available to the DOH or law enforcement agencies upon request.¹⁶

Pharmacist Licensure

A person desiring to be licensed in Florida as a pharmacist must:¹⁷

- Complete an application and remit an examination fee;
- Be at least 18 years of age;
- Hold a degree from an accredited and approved school or college of pharmacy;¹⁸
- Have completed a board-approved internship; and
- Successfully complete the board-approved examination.

A pharmacist must complete at least 30 hours of board-approved continuing education during each biennial renewal period.¹⁹ Pharmacists who are certified to administer vaccines or epinephrine autoinjections must complete a three-hour continuing education course on the safe and effective administration of vaccines and epinephrine injections as a part of the biennial licensure renewal.²⁰ Pharmacists who administer long-acting antipsychotic medications must complete an approved eight-hour continuing education course as a part of the continuing education for biennial licensure renewal.²¹

¹⁵ Section 465.018(3), F.S.

¹⁶ Section 465.018(7), F.S.

¹⁷ Section 465.007, F.S. The DOH may also issue a license by endorsement to a pharmacist who is licensed in another state upon meeting the applicable requirements set forth in law and rule. *See* s. 465.0075, F.S.

¹⁸ If the applicant has graduated from a 4-year undergraduate pharmacy program of a school or college of pharmacy located outside the United States, the applicant must demonstrate proficiency in English, pass the board-approved Foreign Pharmacy Graduate Equivalency Examination, and complete a minimum of 500 hours in a supervised work activity program within Florida under the supervision of a DOH-licensed pharmacist. Section 465.007(1)(b)2., F.S.

¹⁹ Section 465.009, F.S.

²⁰ Section 465.009(6), F.S.

²¹ Section 465.1893, F.S.

Pharmacist Scope of Practice

In Florida, the “practice of the profession of pharmacy” includes:²²

- Compounding, dispensing, and consulting concerning contents, therapeutic values, and uses of a medicinal drug;
- Consulting concerning therapeutic values and interactions of patent or proprietary preparations;
- Monitoring a patient’s drug therapy and assisting the patient in the management of his or her drug therapy, including the review of the patient’s drug therapy and communication with the patient’s prescribing health care provider or other persons specifically authorized by the patient, regarding the drug therapy;
- Transmitting information from prescribers to their patients;
- Administering vaccines to adults;²³
- Administering epinephrine injections;²⁴
- Administering antipsychotic medications by injection at the direction of a physician;²⁵ and
- Other pharmaceutical services.²⁶

A pharmacist may not alter a prescriber’s directions, diagnose or treat any disease, initiate any drug therapy, or practice medicine or osteopathic medicine, unless permitted by law.²⁷

Automated Pharmacy Systems (APS)

An APS is a mechanical system that delivers prescription drugs from a Florida-licensed pharmacy and maintains related transaction information.²⁸ A mechanical pharmacy system performs operations or activities, other than compounding or administration, relative to storage, packaging, dispensing, or distribution of medication, and collects, controls, and maintains all transaction information.²⁹

²² Section 465.003(13), F.S.

²³ See s. 465.189, F.S.

²⁴ *Id.*

²⁵ Section 465.1893, F.S.

²⁶ Section 465.003(13), F.S. The term “other pharmaceutical services” means the monitoring of the patient’s drug therapy and assisting the patient in the management of his or her drug therapy, and includes review of the patient’s drug therapy and communication with the patient’s prescribing health care provider as licensed under chs. 458, 459, 461, or 466, F.S., or similar statutory provision in another jurisdiction, or such provider’s agent or such other persons as specifically authorized by the patient, regarding the drug therapy The “practice of the profession of pharmacy” also includes any other act, service, operation, research, or transaction incidental to, or forming a part of, any of the foregoing acts, requiring, involving, or employing the science or art of any branch of the pharmaceutical profession, study, or training, and shall expressly permit a pharmacist to transmit information from persons authorized to prescribe medicinal drugs to their patients. The practice of the profession of pharmacy also includes the administration of vaccines to adults. *Id.*

²⁷ *Supra* note 22.

²⁸ Section 465.003(17), F.S.

²⁹ Fla. Admin. Code Rule 64B16-28.141(1)(a) (2020).

Current Florida law³⁰ provides that a pharmacy may provide pharmacy services to a long-term care facility,³¹ a hospice,³² or a state correctional institution³³ through the use of an APS under the following parameters:

- The APS need not be located at the same location as the pharmacy.
- Drugs stored in bulk or unit of use in the APS are part of the inventory of the pharmacy providing the services, and drugs delivered by the APS are considered to have been dispensed by that pharmacy.
- The operation of the APS must be under the supervision of a Florida-licensed pharmacist. Such a supervisor need not be physically present at the site of the APS and may supervise the system electronically.
- The supervising pharmacist is required to develop and implement policies and procedures to verify that drugs delivered by the APS are accurate and valid and that the machine is properly restocked.
- The BOP is required to adopt rules governing APS use which must specify requirements for recordkeeping, security, and labeling. The labeling requirements must permit the use of unit-dose medications if the facility, hospice, or correctional institution maintains medication-administration records that include directions for use of the medication and if the APS identifies the dispensing pharmacy, the prescription number, the name of the patient, and the name of the prescribing practitioner.

Florida law does not currently provide for a pharmacy to provide pharmacy services via an APS in any venue other than a long-term care facility, hospice, or state correctional institution.

Under BOP rules, a community pharmacy may use an automated pharmacy system if:

- The APS is:
 - Located within the prescription department, adjacent to the prescription department, or is located on the establishment³⁴ of the licensed pharmacy, and its operation is under the supervision of a pharmacist.
 - Not located within the prescription department but is operated as an extension of the licensed pharmacy.
 - Not located within the prescription department but has the name, address, contact information, and permit number of the community pharmacy that is responsible for the operation of the automated pharmacy system conspicuously displayed on the automated pharmacy system.
- The pharmacy develops and maintains a policy and procedure manual.

³⁰ See s. 465.0235, F.S.

³¹ A “long-term care facility” means a nursing home facility, assisted living facility, adult family-care home, board and care facility, or any other similar residential adult care facility. Section 400.0060(6), F.S.

³² Section 400.601(6), F.S., defines a “hospice residential unit” as a homelike living facility, and includes a facility licensed under chs. 395 or 429, F.S. that is operated by a hospice for the benefit of its patients and is considered by a patient who lives there to be his or her primary residence.

³³ A “state correctional institution” means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the Department of Corrections. See 944.02 (8), F.S.

³⁴ An “establishment” is one general physical location that may extend to one or more contiguous suites, units, floors, or buildings operated and controlled exclusively by entities under common operation and control. Where multiple buildings are under common ownership, operation, and control, an intervening thoroughfare does not affect the contiguous nature of the buildings. Fla. Admin. Code Rule 64B16-28.141(1)(b) (2020).

- The APS ensures that each prescription is dispensed according to the definition of “dispense” found in s. 465.003, F.S., and as used in the practice of the profession of pharmacy. The system must include a mechanism to ensure that the patient has a means to communicate with a pharmacist responsible for dispensing the medical drug product, and the means of communication may include in-person, electronic, digital, or telephonic.
- The APS must maintain a readily retrievable electronic record to identify all pharmacists, pharmacy interns, registered pharmacy technicians, or other personnel involved in the dispensing of a prescription.
- The APS must provide the ability to comply with product recalls generated by the manufacturer, distributor, or pharmacy. The system must have a process in place to isolate affected lot numbers, including an intermix of drug product lot numbers.³⁵

III. Effect of Proposed Changes:

CS/SB 708 amends s. 465.0235, F.S., to permit a licensed community pharmacy to provide outpatient pharmacy services for dispensing of medicinal drugs through the use of an automated pharmacy system (APS) if all of the following requirements are met:

- The APS is located inside the community pharmacy’s pharmacy department or is located inside the same establishment as the community pharmacy;
- The APS is under the supervision and control of the community pharmacy;
- The community pharmacy providing services through the APS notifies the BOP of the location of the APS and any changes in such location;
- The APS is under the supervision and control of a Florida-licensed pharmacist³⁶ who is available and accessible for patient counseling before the dispensing of any medicinal drug;
- The APS does not contain or dispense any controlled substances listed in s. 893.03, F.S., or 21 U.S.C. s. 812;
- The community pharmacy maintains a record of the medicinal drugs dispensed, including the identity of the pharmacist responsible for verifying the accuracy of the dosage and directions and providing patient counseling; and
- The APS ensures the confidentiality of personal health information.

The bill provides that all other provisions in s. 465.0235, F.S., currently pertaining to the use of an APS in a long-term care facility, hospice, or state correctional institution, will also pertain to outpatient dispensing conducted by a community pharmacy via an APS.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³⁵ Fla. Admin. Code R. 64B16-28.141(2) (2020).

³⁶ Section 465.003(10), F.S., defines pharmacist as a person licensed under ch. 465, F.S., to practice the profession of pharmacy.

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:

There may be an indeterminate cost, or a savings, to the public of having medicinal drugs readily available for dispensing through the use of an APS at locations inside a community pharmacy or inside the same establishment as a community pharmacy.

C. Government Sector Impact:

The DOH will experience a recurring increase in workload associated with the requirement for community pharmacies to notify the Board of Pharmacy of the location and any changes to the location of the automated pharmacy systems, yet it is anticipated that current resources are adequate to absorb such costs.³⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill permits a licensed community pharmacy to provide outpatient pharmacy services for the dispensing of medicinal drugs through the use of an automated pharmacy system (APS) located inside a community pharmacy or located inside the same establishment as the community pharmacy. The APS must be “under the supervision and control” of the community pharmacy. The term “establishment” is not defined in the bill or in ch. 465, F.S., the Florida Pharmacy Act.

³⁷ The Department of Health, *Senate Bill 708 Agency Legislative Bill Analysis* (Nov. 13, 2019) (on file with the Senate Committee on Innovation, Industry, and Technology).

Section 499.003(18), F.S., in the Florida Drug and Cosmetic Act,³⁸ defines the term “establishment” as:

[A] place of business which is at one general physical location and may extend to one or more contiguous suites, units, floors, or buildings operated and controlled exclusively by entities under common operation and control. Where multiple buildings are under common exclusive ownership, operation, and control, an intervening thoroughfare does not affect the contiguous nature of the buildings. For purposes of permitting, each suite, unit, floor, or building must be identified in the most recent permit application.

The above definition includes locations in other suites, floors, or building under common operation, even if there is an intervening thoroughfare. Defining the term “establishment” for locations of a community pharmacy would provide clarity respecting the supervision and control of an APS by a community pharmacy which is required under the bill, and consideration of an amendment may be appropriate.

VIII. Statutes Affected:

This bill substantially amends section 465.0235 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 Health Policy on January 14, 2020:

The CS:

- Eliminates the authorization for the use of an APS not located at the same location as the community pharmacy;
- Adds the requirement that the automated pharmacy system be located either:
 - Inside the community pharmacy’s pharmacy department; or
 - Inside the same establishment as the community pharmacy; and
- Mandates that an APS may not contain or dispense any controlled substances listed in s. 893.03, F.S., or 21 U.S.C. s. 812 and eliminates reference to schedules II through V for controlled substances.

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 See ss. 499.001 through 499.94, F.S.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/31/2020	.	
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	.	

The Committee on Innovation, Industry, and Technology (Hutson) recommended the following:

Senate Amendment (with title amendment)

Between lines 87 and 88
insert:

Section 2. Section 465.003, Florida Statutes, is reordered
and amended to read:

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

(1) "Administration" means the obtaining and giving of a
single dose of medicinal drugs by a legally authorized person to
a patient for her or his consumption.



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(3)~~(2)~~ "Board" means the Board of Pharmacy.

(9)~~(3)~~ "Consultant pharmacist" means a pharmacist licensed by the department and certified as a consultant pharmacist pursuant to s. 465.0125.

(10)~~(4)~~ "Data communication device" means an electronic device that receives electronic information from one source and transmits or routes it to another, including, but not limited to, any such bridge, router, switch, or gateway.

(11)~~(5)~~ "Department" means the Department of Health.

(12)~~(6)~~ "Dispense" means the transfer of possession of one or more doses of a medicinal drug by a pharmacist to the ultimate consumer or her or his agent. As an element of dispensing, the pharmacist shall, prior to the actual physical transfer, interpret and assess the prescription order for potential adverse reactions, interactions, and dosage regimen she or he deems appropriate in the exercise of her or his professional judgment, and the pharmacist shall certify that the medicinal drug called for by the prescription is ready for transfer. The pharmacist shall also provide counseling on proper drug usage, either orally or in writing, if in the exercise of her or his professional judgment counseling is necessary. The actual sales transaction and delivery of such drug shall not be considered dispensing. The administration shall not be considered dispensing.

(13) "Establishment" means a place of business that is located at one general physical location and that may extend to one or more contiguous suites, units, floors, or buildings operated and controlled exclusively by entities under common operation and control. The term includes multiple buildings with



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an intervening thoroughfare if the buildings are under common exclusive ownership, operation, and control. For purposes of permitting, each suite, unit, floor, or building must be identified in the most recent permit application.

~~(14)(7)~~ "Institutional formulary system" means a method whereby the medical staff evaluates, appraises, and selects those medicinal drugs or proprietary preparations that, ~~which~~ in the medical staff's clinical judgment, are most useful in patient care, ~~and that which~~ are available for dispensing by a practicing pharmacist in a Class II or Class III institutional pharmacy.

~~(15)(8)~~ "Medicinal drugs" or "drugs" means those substances or preparations commonly known as "prescription" or "legend" drugs which are required by federal or state law to be dispensed only on a prescription, but does ~~shall~~ not include patents or proprietary preparations as ~~hereafter~~ defined in subsection (18).

~~(18)(9)~~ "Patent or proprietary preparation" means a medicine in its unbroken, original package which is sold to the public by, or under the authority of, the manufacturer or primary distributor thereof and which is not misbranded under the provisions of the Florida Drug and Cosmetic Act.

~~(19)(10)~~ "Pharmacist" means any person licensed pursuant to this chapter to practice the profession of pharmacy.

~~(20)(11)~~ (a) "Pharmacy" includes a community pharmacy, an institutional pharmacy, a nuclear pharmacy, a special pharmacy, and an Internet pharmacy.

1. The term "community pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold



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or where prescriptions are filled or dispensed on an outpatient basis.

2. The term "institutional pharmacy" includes every location in a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility, ~~hereinafter~~ referred to as "health care institutions," where medicinal drugs are compounded, dispensed, stored, or sold.

3. The term "nuclear pharmacy" includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold. The term "nuclear pharmacy" does not include hospitals licensed under chapter 395 or the nuclear medicine facilities of such hospitals.

4. The term "special pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined in this subsection.

5. The term "Internet pharmacy" includes locations not otherwise licensed or issued a permit under this chapter, within or outside this state, which use the Internet to communicate with or obtain information from consumers in this state and use such communication or information to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state. Any act described in this definition constitutes the practice of pharmacy as defined in subsection (22) ~~(13)~~.

(b) The pharmacy department of any permittee is ~~shall be~~ considered closed whenever a Florida licensed pharmacist is not present and on duty. The term "not present and on duty" may ~~shall~~ not be construed to prevent a pharmacist from exiting the



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prescription department for the purposes of consulting or responding to inquiries or providing assistance to patients or customers, attending to personal hygiene needs, or performing any other function for which the pharmacist is responsible, provided that such activities are conducted in a manner consistent with the pharmacist's responsibility to provide pharmacy services.

(21)~~(12)~~ "Pharmacy intern" means a person who is currently registered in, and attending, a duly accredited college or school of pharmacy, or who is a graduate of such a school or college of pharmacy, and who is duly and properly registered with the department as provided by department rule ~~for under its rules~~.

(22)~~(13)~~ "Practice of the profession of pharmacy" includes compounding, dispensing, and consulting concerning contents, therapeutic values, and uses of any medicinal drug; consulting concerning therapeutic values and interactions of patent or proprietary preparations, whether pursuant to prescriptions or in the absence and entirely independent of such prescriptions or orders; and conducting other pharmaceutical services. For purposes of this subsection, "other pharmaceutical services" means the monitoring of the patient's drug therapy and assisting the patient in the management of his or her drug therapy, and includes review of the patient's drug therapy and communication with the patient's prescribing health care provider as licensed under chapter 458, chapter 459, chapter 461, or chapter 466, or similar statutory provision in another jurisdiction, or such provider's agent or such other persons as specifically authorized by the patient, regarding the drug therapy. However,



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~~nothing in~~ this subsection may not be interpreted to permit an alteration of a prescriber's directions, the diagnosis or treatment of any disease, the initiation of any drug therapy, the practice of medicine, or the practice of osteopathic medicine, unless otherwise permitted by law. The term "practice of the profession of pharmacy" also includes any other act, service, operation, research, or transaction incidental to, or forming a part of, any of the foregoing acts, requiring, involving, or employing the science or art of any branch of the pharmaceutical profession, study, or training, and ~~shall~~ expressly authorizes ~~permit~~ a pharmacist to transmit information from persons authorized to prescribe medicinal drugs to their patients. The practice of the profession of pharmacy also includes the administration of vaccines to adults pursuant to s. 465.189 and the preparation of prepackaged drug products in facilities holding Class III institutional pharmacy permits.

(23) ~~(14)~~ "Prescription" includes any order for drugs or medicinal supplies written or transmitted by any means of communication by a duly licensed practitioner authorized by the laws of this ~~the~~ state to prescribe such drugs or medicinal supplies and which drugs or medicinal supplies are intended to be dispensed by a pharmacist. The term also includes an orally transmitted order by the lawfully designated agent of such a practitioner. The term also includes an order written or transmitted by a practitioner licensed to practice in a jurisdiction other than this state, but only if the pharmacist called upon to dispense such order determines, in the exercise of her or his professional judgment, that the order is valid and necessary for the treatment of a chronic or recurrent illness;



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156 ~~and. The term "prescription" also includes~~ a pharmacist's order
157 for a product selected from the formulary created pursuant to s.
158 465.186. Prescriptions may be retained in written form or the
159 pharmacist may cause them to be recorded in a data processing
160 system, provided that such order can be produced in printed form
161 upon lawful request.

162 (16)~~(15)~~ "Nuclear pharmacist" means a pharmacist licensed
163 by the department and certified as a nuclear pharmacist pursuant
164 to s. 465.0126.

165 (5)~~(16)~~ "Centralized prescription filling" means the
166 filling of a prescription by one pharmacy upon the request of ~~by~~
167 another pharmacy to fill or refill the prescription. The term
168 includes the performance by one pharmacy for another pharmacy of
169 other pharmacy duties, such as drug utilization review,
170 therapeutic drug utilization review, claims adjudication, and
171 the obtaining of refill authorizations.

172 (2)~~(17)~~ "Automated pharmacy system" means a mechanical
173 system that delivers prescription drugs received from a Florida-
174 licensed ~~Florida-licensed~~ pharmacy and maintains related
175 transaction information.

176 (8)~~(18)~~ "Compounding" means combining, mixing, or altering
177 the ingredients of one or more drugs or products to create
178 another drug or product.

179 (17)~~(19)~~ "Outsourcing facility" means a single physical
180 location registered as an outsourcing facility under the federal
181 Drug Quality and Security Act, Pub. L. No. 113-54, at which
182 sterile compounding of a drug or product is conducted.

183 (7)~~(20)~~ "Compounded sterile product" means a drug that is
184 intended for parenteral administration, an ophthalmic or oral



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inhalation drug in aqueous format, or a drug or product that is required to be sterile under federal or state law or rule, which is produced through compounding, but is not approved by the United States Food and Drug Administration.

(4)~~(21)~~ "Central distribution facility" means a facility under common control with a hospital holding a Class III institutional pharmacy permit that may dispense, distribute, compound, or fill prescriptions for medicinal drugs; prepare prepackaged drug products; and conduct other pharmaceutical services.

(6)~~(22)~~ "Common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise.

Section 3. Paragraph (a) of subsection (1) of section 409.9201, Florida Statutes, is amended to read:

409.9201 Medicaid fraud.—

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

(a) "Prescription drug" means any drug, including, but not limited to, finished dosage forms or active ingredients that are subject to, defined in, or described in s. 503(b) of the Federal Food, Drug, and Cosmetic Act or in s. 465.003(15) ~~s. 465.003(8)~~, s. 499.003(17), s. 499.007(13), or s. 499.82(10).

The value of individual items of the legend drugs or goods or services involved in distinct transactions committed during a single scheme or course of conduct, whether involving a single person or several persons, may be aggregated when determining the punishment for the offense.



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Section 4. Paragraph (pp) of subsection (1) of section 458.331, Florida Statutes, is amended to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(pp) Applicable to a licensee who serves as the designated physician of a pain-management clinic as defined in s. 458.3265 or s. 459.0137:

1. Registering a pain-management clinic through misrepresentation or fraud;

2. Procuring, or attempting to procure, the registration of a pain-management clinic for any other person by making or causing to be made, any false representation;

3. Failing to comply with any requirement of chapter 499, the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq., the Drug Abuse Prevention and Control Act; or chapter 893, the Florida Comprehensive Drug Abuse Prevention and Control Act;

4. Being convicted or found guilty of, regardless of adjudication to, a felony or any other crime involving moral turpitude, fraud, dishonesty, or deceit in any jurisdiction of the courts of this state, of any other state, or of the United States;

5. Being convicted of, or disciplined by a regulatory agency of the Federal Government or a regulatory agency of another state for, any offense that would constitute a violation of this chapter;

6. Being convicted of, or entering a plea of guilty or nolo



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contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to the practice of, or the ability to practice, a licensed health care profession;

7. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to health care fraud;

8. Dispensing any medicinal drug based upon a communication that purports to be a prescription as defined in s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 if the dispensing practitioner knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship; or

9. Failing to timely notify the board of the date of his or her termination from a pain-management clinic as required by s. 458.3265(3).

Section 5. Paragraph (rr) of subsection (1) of section 459.015, Florida Statutes, is amended to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(rr) Applicable to a licensee who serves as the designated physician of a pain-management clinic as defined in s. 458.3265 or s. 459.0137:

1. Registering a pain-management clinic through misrepresentation or fraud;

2. Procuring, or attempting to procure, the registration of a pain-management clinic for any other person by making or



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causing to be made, any false representation;

3. Failing to comply with any requirement of chapter 499, the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq., the Drug Abuse Prevention and Control Act; or chapter 893, the Florida Comprehensive Drug Abuse Prevention and Control Act;

4. Being convicted or found guilty of, regardless of adjudication to, a felony or any other crime involving moral turpitude, fraud, dishonesty, or deceit in any jurisdiction of the courts of this state, of any other state, or of the United States;

5. Being convicted of, or disciplined by a regulatory agency of the Federal Government or a regulatory agency of another state for, any offense that would constitute a violation of this chapter;

6. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to the practice of, or the ability to practice, a licensed health care profession;

7. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to health care fraud;

8. Dispensing any medicinal drug based upon a communication that purports to be a prescription as defined in s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 if the dispensing practitioner knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship; or



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9. Failing to timely notify the board of the date of his or her termination from a pain-management clinic as required by s. 459.0137(3).

Section 6. Subsection (1) of section 465.014, Florida Statutes, is amended to read:

465.014 Pharmacy technician.—

(1) A person other than a licensed pharmacist or pharmacy intern may not engage in the practice of the profession of pharmacy, except that a licensed pharmacist may delegate to pharmacy technicians who are registered pursuant to this section those duties, tasks, and functions that do not fall within the purview of s. 456.003(22) ~~s. 465.003(13)~~. All such delegated acts must be performed under the direct supervision of a licensed pharmacist who is responsible for all such acts performed by persons under his or her supervision. A registered pharmacy technician, under the supervision of a pharmacist, may initiate or receive communications with a practitioner or his or her agent, on behalf of a patient, regarding refill authorization requests. A licensed pharmacist may not supervise more than one registered pharmacy technician unless otherwise permitted by the guidelines adopted by the board. The board shall establish guidelines to be followed by licensees or permittees in determining the circumstances under which a licensed pharmacist may supervise more than one pharmacy technician.

Section 7. Paragraph (c) of subsection (2) of section 465.015, Florida Statutes, is amended to read:

465.015 Violations and penalties.—

(2) It is unlawful for any person:



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(c) To sell or dispense drugs as defined in s. 465.003(15)
~~s. 465.003(8)~~ without first being furnished with a prescription.

Section 8. Subsection (9) of section 465.0156, Florida
Statutes, is amended to read:

465.0156 Registration of nonresident pharmacies.—

(9) Notwithstanding s. 465.003(19) ~~s. 465.003(10)~~, for
purposes of this section, the registered pharmacy and the
pharmacist designated by the registered pharmacy as the
prescription department manager or the equivalent must be
licensed in the state of location in order to dispense into this
state.

Section 9. Paragraph (s) of subsection (1) of section
465.016, Florida Statutes, is amended to read:

465.016 Disciplinary actions.—

(1) The following acts constitute grounds for denial of a
license or disciplinary action, as specified in s. 456.072(2):

(s) Dispensing any medicinal drug based upon a
communication that purports to be a prescription as defined in
s. 465.003 ~~by s. 465.003(14)~~ or s. 893.02 when the pharmacist
knows or has reason to believe that the purported prescription
is not based upon a valid practitioner-patient relationship.

Section 10. Subsection (4) of section 465.0197, Florida
Statutes, is amended to read:

465.0197 Internet pharmacy permits.—

(4) Notwithstanding s. 465.003(19) ~~s. 465.003(10)~~, for
purposes of this section, the Internet pharmacy and the
pharmacist designated by the Internet pharmacy as the
prescription department manager or the equivalent must be
licensed in the state of location in order to dispense into this



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state.

Section 11. Paragraph (j) of subsection (5) of section 465.022, Florida Statutes, is amended to read:

465.022 Pharmacies; general requirements; fees.—

(5) The department or board shall deny an application for a pharmacy permit if the applicant or an affiliated person, partner, officer, director, or prescription department manager or consultant pharmacist of record of the applicant:

(j) Has dispensed any medicinal drug based upon a communication that purports to be a prescription as defined in s. 465.003 ~~by s. 465.003(14)~~ or s. 893.02 when the pharmacist knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship that includes a documented patient evaluation, including history and a physical examination adequate to establish the diagnosis for which any drug is prescribed and any other requirement established by board rule under chapter 458, chapter 459, chapter 461, chapter 463, chapter 464, or chapter 466.

For felonies in which the defendant entered a plea of guilty or nolo contendere in an agreement with the court to enter a pretrial intervention or drug diversion program, the department shall deny the application if upon final resolution of the case the licensee has failed to successfully complete the program.

Section 12. Paragraph (h) of subsection (1) of section 465.023, Florida Statutes, is amended to read:

465.023 Pharmacy permittee; disciplinary action.—

(1) The department or the board may revoke or suspend the permit of any pharmacy permittee, and may fine, place on



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probation, or otherwise discipline any pharmacy permittee if the permittee, or any affiliated person, partner, officer, director, or agent of the permittee, including a person fingerprinted under s. 465.022(3), has:

(h) Dispensed any medicinal drug based upon a communication that purports to be a prescription as defined in s. 465.003 ~~by s. 465.003(14)~~ or s. 893.02 when the pharmacist knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship that includes a documented patient evaluation, including history and a physical examination adequate to establish the diagnosis for which any drug is prescribed and any other requirement established by board rule under chapter 458, chapter 459, chapter 461, chapter 463, chapter 464, or chapter 466.

Section 13. Section 465.1901, Florida Statutes, is amended to read:

465.1901 Practice of orthotics and pedorthics.—The provisions of chapter 468 relating to orthotics or pedorthics do not apply to any licensed pharmacist or to any person acting under the supervision of a licensed pharmacist. The practice of orthotics or pedorthics by a pharmacist or any of the pharmacist's employees acting under the supervision of a pharmacist shall be construed to be within the meaning of the term "practice of the profession of pharmacy" as defined in s. 465.003 ~~set forth in s. 465.003(13)~~, and shall be subject to regulation in the same manner as any other pharmacy practice. The Board of Pharmacy shall develop rules regarding the practice of orthotics and pedorthics by a pharmacist. Any pharmacist or person under the supervision of a pharmacist engaged in the



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practice of orthotics or pedorthics is not precluded from continuing that practice pending adoption of these rules.

Section 14. Subsection (40) of section 499.003, Florida Statutes, is amended to read:

499.003 Definitions of terms used in this part.—As used in this part, the term:

(40) "Prescription drug" means a prescription, medicinal, or legend drug, including, but not limited to, finished dosage forms or active pharmaceutical ingredients subject to, defined by, or described by s. 503(b) of the federal act or s. 465.003(15) ~~s. 465.003(8)~~, s. 499.007(13), subsection (31), or subsection (47), except that an active pharmaceutical ingredient is a prescription drug only if substantially all finished dosage forms in which it may be lawfully dispensed or administered in this state are also prescription drugs.

Section 15. Paragraph (c) of subsection (24) of section 893.02, Florida Statutes, is amended to read:

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(24) "Prescription" includes any order for drugs or medicinal supplies which is written or transmitted by any means of communication by a licensed practitioner authorized by the laws of this state to prescribe such drugs or medicinal supplies, is issued in good faith and in the course of professional practice, is intended to be dispensed by a person authorized by the laws of this state to do so, and meets the requirements of s. 893.04.

(c) A prescription for a controlled substance may not be



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issued on the same prescription blank with another prescription
for a controlled substance that is named or described in a
different schedule or with another prescription for a medicinal
drug, as defined in s. 465.003 ~~s. 465.003(8)~~, that is not a
controlled substance.

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

And the title is amended as follows:

Between lines 9 and 10

insert:

reordering and amending s. 465.003, F.S.; defining the
term "establishment"; amending ss. 409.9201, 458.331,
459.015, 465.014, 465.015, 465.0156, 465.016,
465.0197, 465.022, 465.023, 465.1901, 499.003, and
893.02, F.S.; conforming cross-references;



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Innovation, Industry, and Technology

Subject: Committee Agenda Request

Date: January 21, 2020

I respectfully request that **Senate Bill #708**, relating to Automated Pharmacy Systems, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink, reading "Travis J. Hutson". The signature is written in a cursive style with a long horizontal line extending from the end.

Senator Travis Hutson
Florida Senate, District 7



2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Florida Department of Health

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 708
BILL TITLE:	Automated Pharmacy Systems
BILL SPONSOR:	Hutson
EFFECTIVE DATE:	7/1/2020

<u>COMMITTEES OF REFERENCE</u>
1) Health Policy
2) Innovation, Industry, and Technology
3) Rules
4) Click or tap here to enter text.
5) Click or tap here to enter text.

<u>CURRENT COMMITTEE</u>
Health Policy

<u>SIMILAR BILLS</u>	
BILL NUMBER:	HB 0059
SPONSOR:	Willhite

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

Is this bill part of an agency package?
No

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	11/13/2019
LEAD AGENCY ANALYST:	Jennifer Wenhhold
ADDITIONAL ANALYST(S):	N/A
LEGAL ANALYST:	Louise Saint Laurent
FISCAL ANALYST:	Ann Courtney

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

This bill allows community pharmacies to use automated pharmacy systems under certain circumstances. The effective date of the bill is July 1, 2020.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

An automated dispensing system is a mechanical system that delivers prescription drugs received from a Florida-permitted pharmacy and maintains related transaction information. A pharmacy may use an automated pharmacy system to provide services to a long-term care facility, hospice, or a state correctional institution. The automated dispensing system does not have to be located at the same location as the pharmacy. A Florida-licensed pharmacist must supervise the automated pharmacy system, but they are not required to be at the same site of the automated pharmacy system and may supervise electronically. The pharmacy operating the system must have policies and procedures in place to ensure enough security and protect patient confidentiality.

Rule 64B16-28.141, F.A.C., requires that in a community pharmacy, the automated pharmacy system must be located within or adjacent to the prescription department and must collect, control, and maintain all transaction information. The system may not compound or administer medicinal drugs. All prescriptions dispensed from the system are certified by the pharmacist. The pharmacy operating the automated pharmacy system must:

- Have policies and procedures that address, among other things, security, a process for stocking the system, a method for identifying pharmacy personnel involved in the dispensing process, and a method for ensuring patient confidentiality;
- Ensure that each prescription is being dispensed in compliance with law;
- Maintain a readily retrievable electronic record to identify pharmacy personnel involved in the dispensing of a prescription;
- Be able to comply with product recalls;
- Only be stocked or restocked by a Florida-licensed pharmacist; and
- Use two separate verifications, such as a bar code verification, electronic verification, weight verification, or similar process to ensure that the proper medication is being dispensed.

Although the Board of Pharmacy has adopted rules, current law does not explicitly authorize the use of an automated dispensing system at a location other than a long-term care facility, hospice, or a state correctional institution.

2. EFFECT OF THE BILL:

The bill allows a community pharmacy to use an automated pharmacy system for outpatient dispensing. The system must meet all current statutory requirements that facility-based automated pharmacy systems must meet. A community pharmacy may deploy such system on an outpatient basis if it:

- Is under the supervision and control of the community pharmacy;
- The community pharmacy using an automated pharmacy system notifies the board of the location of the system and any changes in such location;
- Is under the supervision of a pharmacist who is available and accessible for patient counseling before dispensing any medicinal drug;
- Does not store or dispense any controlled substances;
- Maintains a record of medicinal drugs dispensed, including the identity of the pharmacist responsible for

verifying the accuracy of the dosage and directions, and providing patient counseling; and

- Ensures the confidentiality of personal health information.

The bill requires the community pharmacy to notify the Board of Pharmacy of the location and any changes to the location of the system. The pharmacy must maintain a record of the medicinal drugs dispensed by the automated pharmacy system, including the identity of the pharmacist responsible for verifying the accuracy of the dosage and directions of the medicinal drug and providing patient counseling. Additionally, this bill prohibits the storing or dispensing of controlled substances at automated pharmacy systems.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☒ N ☐

If yes, explain:	64B16-28.141, FAC.
Is the change consistent with the agency's core mission?	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	64B16-28.141, FAC.

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

Y ☐ N ☒

If yes, provide a description:	Click or tap here to enter text.
Date Due:	Click or tap here to enter text.
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒

Board:	Click or tap here to enter text.
Board Purpose:	Click or tap here to enter text.
Who Appoints:	Click or tap here to enter text.
Changes:	N/A

Bill Section Number(s):	N/A
-------------------------	-----

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Y ☐ N ☒

Revenues:	None
Expenditures:	None
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Y ☒ N ☐

Revenues:	None
Expenditures:	DOH/MQA will experience a recurring increase in workload associated with the requirement for community pharmacies to notify the Board of Pharmacy of the location and any changes to the location of the automated pharmacy systems, yet it is anticipated that current resources are adequate to absorb. DOH/MQA will incur non-recurring costs associated with rulemaking, which current budget authority is adequate to absorb.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?

Y ☐ N ☒

Revenues:	Unknown
Expenditures:	Unknown
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Y ☐ N ☒

If yes, explain impact.	Click or tap here to enter text.
-------------------------	--

Bill Section Number:	Click or tap here to enter text.

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact to the agency including any fiscal impact.

N/A

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.

Click or tap here to enter text.

ADDITIONAL COMMENTS

N/A

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:

No legal issues, concerns or comments identified at this time.

From: [Borrego, Tiffany](#)
To: [Koon, Lynn](#)
Cc: [Imhof, Booter](#)
Subject: SB 708 Barcoded Amendment
Date: Friday, January 31, 2020 4:59:58 PM

Good afternoon,

Please withdraw barcoded amendment 936048 from SB 708. Please let me know if you have any questions. Thank you.

Tiffany Borrego

Legislative Assistant

Senator Hutson- District 7

Borrego.Tiffany@flsenate.gov

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-3-2020

Meeting Date

708

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Richard Pinsky

Job Title _____

Address 106 E. College Ave. # 1200

Street

Phone _____

Tallahassee

FL

32301

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

(The Chair will read this information into the record.)

Representing MedAvail Technologies

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-3-2020

Meeting Date

SB 708

Bill Number (if applicable)

Topic Automated Pharmacy Systems

Amendment Barcode (if applicable)

Name Carlos Cruz

Job Title Govt Consultant

Address 307 W Park Ave

Street

Phone 904-214-5724

Tallahassee FL 32301

City

State

Zip

Email Cruz@convergegov.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Walgreens

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-3-20

Meeting Date

708

Bill Number (if applicable)

Topic Automated Pharmacy Systems

Amendment Barcode (if applicable)

Name JAKE FARMER

Job Title Director of Gov Affairs

Address 227 S Adams St

Street

Phone 352 359 6835

Tallahassee FL 32301

City

State

Zip

Email Jake@frt.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Retail Federation

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
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20

Meeting Date

708

Bill Number (if applicable)

Topic Automated Pharmacy Systems

Amendment Barcode (if applicable)

Name Phillip Suderman

Job Title Policy Director

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Americans for Prosperity

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/03/2020

Meeting Date

0708

*Bill Number (if applicable)*Topic AUTOMATED PHARMACY SYSTEMS*Amendment Barcode (if applicable)*Name Ivonne FernandezJob Title Associate State DirectorAddress 215 South Monroe StreetPhone 954-850-7262*Street*TallahasseeFL*City**State**Zip*Email ifernandez@aarp.orgSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing AARPAppearing 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)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-3-20

Meeting Date

708

Bill Number (if applicable)

Topic AUTO PHARM. SYSTEMS

Amendment Barcode (if applicable)

Name Sal Nuzzo

Job Title Vice President of Policy

Address 100 N Duval Street

Phone 850-322-9941

Street

Tallahassee

FL

32301

City

State

Zip

Email snuzzo@jamesmadison.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The James Madison Institute

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)

Duplicates

THE FLORIDA SENATE
APPEARANCE RECORD

February 3, 2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB708

Bill Number (if applicable)

Topic Automated Pharmacy Systems

Amendment Barcode (if applicable)

Name Michael Jackson

Job Title Executive Vice President and CEO

Address 610 North Adams Street

Phone (850) 222-2400

Street

Tallahassee

Florida

32301

Email mjackson@pharmview.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Florida Pharmacy 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)

COMMITTEE:	Innovation, Industry, and Technology
ITEM:	CS/SB 708
FINAL ACTION:	Favorable
MEETING DATE:	Monday, February 3, 2020
TIME:	1:30—3:30 p.m.
PLACE:	110 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

By the Committee on Health Policy; and Senator Hutson

588-02265-20

2020708c1

A bill to be entitled

An act relating to automated pharmacy systems;
amending s. 465.0235, F.S.; authorizing a community
pharmacy to use an automated pharmacy system under
certain circumstances; providing that certain
medicinal drugs stored in an automated pharmacy system
for outpatient dispensing are part of the inventory of
the pharmacy providing services through such system;
requiring the Board of Pharmacy to adopt rules;
providing an effective date.

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

Section 1. Section 465.0235, Florida Statutes, is amended
to read:

465.0235 Automated pharmacy systems used by long-term care
facilities, hospices, or state correctional institutions, or for
outpatient dispensing.—

(1) A pharmacy may provide pharmacy services to a long-term
care facility or hospice licensed under chapter 400 or chapter
429 or a state correctional institution operated under chapter
944 through the use of an automated pharmacy system that need
not be located at the same location as the pharmacy.

(2) A community pharmacy, as defined in s. 465.003, which
is licensed in this state may provide pharmacy services for
outpatient dispensing through the use of an automated pharmacy
system if:

(a) The automated pharmacy system is located inside the
community pharmacy's pharmacy department or is located inside

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2020708c1

the same establishment as the community pharmacy.

(b) The automated pharmacy system is under the supervision and control of the community pharmacy.

(c) The community pharmacy providing services through the automated pharmacy system notifies the board of the location of the automated pharmacy system and any changes in such location.

(d) The automated pharmacy system is under the supervision and control of a pharmacist, as defined in s. 465.003, who is licensed in this state and is available and accessible for patient counseling before the dispensing of any medicinal drug.

(e) The automated pharmacy system does not contain or dispense any controlled substances listed in s. 893.03 or 21 U.S.C. s. 812.

(f) The community pharmacy maintains a record of the medicinal drugs dispensed, including the identity of the pharmacist responsible for verifying the accuracy of the dosage and directions and providing patient counseling.

(g) The automated pharmacy system ensures the confidentiality of personal health information.

(3)(2) Medicinal drugs stored in bulk or unit of use in an automated pharmacy system servicing a long-term care facility, hospice, or correctional institution, or for outpatient dispensing, are part of the inventory of the pharmacy providing pharmacy services to that facility, hospice, or institution, or for outpatient dispensing, and medicinal drugs delivered by the automated pharmacy system are considered to have been dispensed by that pharmacy.

(4)(3) The operation of an automated pharmacy system must be under the supervision of a ~~Florida-licensed~~ pharmacist

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2020708c1

59 licensed in this state. To qualify as a supervisor for an
60 automated pharmacy system, the pharmacist need not be physically
61 present at the site of the automated pharmacy system and may
62 supervise the system electronically. The ~~Florida-licensed~~
63 pharmacist shall be required to develop and implement policies
64 and procedures designed to verify that the medicinal drugs
65 delivered by the automated pharmacy ~~dispensing~~ system are
66 accurate and valid and that the machine is properly restocked.

67 (5)~~(4)~~ The Legislature does not intend for this section to
68 limit the current practice of pharmacy in this state. This
69 section is intended to allow automated pharmacy systems to
70 enhance the ability of a pharmacist to provide pharmacy services
71 in locations that do not employ a full-time pharmacist. This
72 section does not limit or replace the use of a consultant
73 pharmacist.

74 (6)~~(5)~~ The board shall adopt rules governing the use of ~~an~~
75 automated pharmacy systems ~~system by January 1, 2005,~~ which must
76 include ~~specify~~:

77 (a) Recordkeeping requirements.~~.~~.

78 (b) Security requirements.~~.~~.~~and~~

79 (c) Labeling requirements that permit the use of unit-dose
80 medications if the facility, hospice, or institution maintains
81 medication-administration records that include directions for
82 use of the medication and the automated pharmacy system
83 identifies:

84 1. The dispensing pharmacy.~~.~~.

85 2. The prescription number.~~.~~.

86 3. The name of the patient.~~.~~.~~and~~

87 4. The name of the prescribing practitioner.

588-02265-20

2020708c1

88

Section 2. This act shall take effect July 1, 2020.

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 Innovation, Industry, and Technology

BILL: SB 1174

INTRODUCER: Senator Hutson

SUBJECT: Communications Services Tax

DATE: January 31, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	Favorable
2.			CA	
3.			AP	

I. Summary:

SB 1174 amends the definition of “video service” for purposes of the Communications Services Tax (CST) to include streaming and similar services. This codifies the existing interpretation and implementation by the Department of Revenue (DOR).

The bill reduces the state CST rate from 4.92 percent to 4.9 percent.

The bill reduces the local CST to implement a streamlined rate system with one tax rate for municipalities and charter counties and a second tax rate for noncharter counties. First, it deletes the authority for the current rate caps of: 5.1 percent for municipalities and charter counties that have not chosen to levy permit fees; 4.98 percent for municipalities and charter counties that have chosen to levy permit fees; and 1.6 percent for noncharter counties. Second, it deletes the authority for add-ons for local governments that have chosen not to levy right-of-way permit fees; these add-ons are of up to 0.12 percent for municipalities and charter counties and up to 0.24 percent for noncharter counties. Third, it deletes the authority for conversion or emergency rates. Fourth, it replaces these current local CST rates and add-ons with standardized local CST rates, through phased-in rate reductions, with the end result being a local CST rate of a flat 4 percent for a charter county or municipality and a flat 2 percent for a noncharter county.

The bill creates a process by which a local government expecting that local CST revenues which have, due to the bill’s local CST rate changes, become insufficient to timely pay principal and interest or to comply with any covenant under a bond resolution for bonds or other indebtedness may seek a legislative appropriation in an amount necessary to eliminate the insufficiency.

The bill takes effect January 1, 2021, except for the effective date provision and the amendment to the definition of “video service,” which take effect upon the act becoming a law.

II. Present Situation:

Chapter 202, F.S., is the Communications Services Tax Simplification Law. The term “communications services” includes video services transmitted or conveyed by or through any medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.¹ The term “video service” means the transmission of video, audio, or other programming service to a purchaser, regardless of whether the programming is transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services. The term includes point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser’s premises, but does not include direct-to-home satellite service. The term includes basic, extended, premium, pay-per-view, digital video, two-way cable, and music services.² The Department of Revenue (DOR) has interpreted this to include video streaming services.³

Section 202.105, F.S., provides the legislative findings and intent related to enactment of the CST simplification law. The law simplified an extremely complicated state and local tax and fee system, restructuring separate taxes and fees into a revenue-neutral communications services tax centrally administered by the Department of Revenue (DOR), a single tax to replace multiple taxes and fees previously imposed. Among the Legislature’s stated intentions in creating the communications services tax (CST) was that it not reduce the authority that municipalities or counties had to raise revenue in the aggregate, as such authority existed on February 1, 1989.

The state CST is 4.92 percent.⁴ Local governments may also levy a discretionary CST:

- Charter counties and municipalities may levy the CST at a rate of up to 5.1 percent for municipalities and charter counties that have not chosen to levy permit fees, and at a rate of up to 4.98 percent for municipalities and charter counties that have chosen to levy permit fees; and
- Noncharter counties may levy the CST at a rate of up to 1.6 percent.

These maximum rates do not include the add-ons of up to 0.12 percent for municipalities and charter counties or of up to 0.24 percent for noncharter counties, if those local governments have elected not to require right-of-way permit fees.⁵

The local CST includes and is in lieu of any fee or other consideration, including, but not limited to, application fees, transfer fees, renewal fees, or claims for related costs, to which the municipality or county is otherwise entitled for granting permission to dealers of communications services to use or occupy its roads or rights-of-way for the placement, construction, and maintenance of poles, wires, and other fixtures used in the provision of communications services.⁶ Additionally, the term “replaced revenue sources” includes permit fees relating to use of rights-of-way collected from communication services providers; however,

¹ Section 202.11(1), F.S.

² Section 202.11(24), F.S.

³ See, Department of Revenue, Technical Assistance Advisement 14A-010.

⁴ Section 202.12(1)(a) and (b), F.S.

⁵ Section 337.401(3)(c), F.S.

⁶ Section 202.19(3)(a), F.S.

if a municipality or charter county elects the option to charge permit fees pursuant to s. 337.401(3)(c), F.S., such fees are not be included as a replaced revenue source.⁷

The state CST is deposited into the General Revenue Fund and the proceeds of the local CSTs, less DOR's costs of administration, are transferred to the Local Communications Services Tax Clearing Trust Fund and held there to be distributed to such municipality or county.⁸

III. Effect of Proposed Changes:

Effective upon the act becoming law, the bill (Section 2) amends the definition of "video service" to include subscriptions to digital video content and the rental of digital video content delivered to a Florida service address by download, streaming, or some combination thereof, and where the access to such content expires at a specific time or on the occurrence of a condition subsequent. The term does not include the sale of digital video content stored online or downloaded to a customer's device if the purchaser's access to such content does not expire and may be viewed as long as the purchaser retains the digital video content. This codifies DOR's current interpretation of the term.⁹

The bill (Section 3) reduces the state CST rate from 4.92 percent to 4.9 percent.

The bill (Section 1) amends the statements of legislative intent regarding local CST rates by deleting an existing statement that the simplification law "will not reduce the authority that municipalities or counties had to raise revenue in the aggregate, as such authority existed on February 1, 1989" and replacing this with a statement that "to promote greater tax transparency and improve tax compliance, the local communications services tax rates, which vary substantially across more than 480 jurisdictions, should be replaced by a streamlined rate system with one tax rate for municipalities and charter counties and a second tax rate for noncharter counties."

The new intent is accomplished (Section 6) in four steps. The first step is the deletion of the current local CST rate caps of: 5.1 percent for municipalities and charter counties that have not chosen to levy permit fees; 4.98 percent for municipalities and charter counties that have chosen to levy permit fees; and 1.6 percent for noncharter counties. The second is the deletion of the authority for add-ons for local governments that have chosen not to levy right-of-way permit fees; these add-ons are of up to 0.12 percent for municipalities and charter counties and up to 0.24 percent for noncharter counties. The third step is the deletion of the authority for conversion or emergency rates. The fourth step is the replacement of these current local CST rates and add-ons with standardized local CST rates, through provisions which phase in rate reductions.

The bill provides that local CST rates in effect on January 1, 2020, which are 5 percent or less may not be amended beyond their current rates. Local CST rates in effect on January 1, 2020, which are greater than 5 percent must be reduced to 5 percent or less on January 1, 2021. Each county and municipality must adopt a local CST rate ordinance of 5 percent or less by September 1, 2020. If a county or municipality fails to adopt a rate ordinance on or before September 1,

⁷ Section 202.20(2)(b)1.e, F.S.

⁸ Section 202.18, F.S.

⁹ See *supra* note 5.

2020, a dealer may not collect or remit the local communications services tax in excess of 5 percent on or after January 1, 2021.

Beginning January 1, 2022, the local CST rate is a flat 4 percent for a charter county or municipality and a flat 2 percent for a noncharter county. To levy the tax at these rates on this date, the county or municipality must adopt the specified rate by ordinance by September 1, 2021. If a county or municipality that levies the local CST on January 1, 2021, fails to adopt the rate ordinance by that date, a dealer must collect and remit the local CST at the specified rate on and after January 1, 2022. Each county and municipality may levy a tax at the specified rate or repeal a tax at any time, but the levy or repeal is effective for bills dated on or after the following January 1.

The bill deletes the current provision that the local CST includes and is in lieu of any fee or other consideration to which the municipality or county is otherwise entitled for granting permission to dealers of communications services to use or occupy its roads or rights-of-way. It replaces this language with a provision that the local CST replaces other revenue sources for municipalities and counties, including specified taxes and fees.

To conform to these new standard CST provisions, the bill: deletes existing provisions authorizing local governments to adjust their CST rate (Section 8); repeals the current provisions allowing and providing for local CST conversion rates (Section 12); and deletes existing provisions for allocation and disposition of CST proceeds (Section 5).

The bill (Section 7) provides that if in any year, as a direct result of the CST rate changes required by the bill, local CST revenues are expected to be insufficient to timely pay principal and interest or to comply with any covenant under a bond resolution for bonds or other indebtedness outstanding as of January 1, 2020, the Legislature may appropriate to the affected jurisdiction an amount needed to eliminate the insufficiency. Either a general pledge of local CST revenues or a pledge of multiple revenue streams creates a presumption that the jurisdiction's insufficient revenue amount does not directly result from the CST rate changes. Additionally, local CST revenue decreases due to consumer price reductions for taxable services or due to reduced purchases of taxable services are not a direct result of the bill's CST rate changes. To obtain a legislative appropriation, on or before November 15 each affected jurisdiction expecting an insufficient amount of CST revenue must apply to DOR for an appropriation on a form and in the manner prescribed by DOR. DOR must review the applications and, on or before January 1, submit a report to the Legislature containing each jurisdiction's application, aggregate taxable sales amounts, and any supporting documentation provided by the jurisdiction to substantiate the expected shortfall in revenues to meet debt service or bond covenant requirements.

The bill also make technical, conforming changes (Sections 4, 9, 10, and 11).

The bill takes effect January 1, 2021, except for the effective date provision and the amendment to the definition of "video service" to include streaming (Section 2), which take effect upon the act becoming a law. The bill directs the Division of Law Revision within the Office of Legislative Services to replace the phrase "this act" (in Section 7 on a legislative appropriation to offset a loss in local CST revenues) with the chapter law of this act.

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 Revenue Estimating Conference does not have a consensus estimate of the impact of the language in this bill. It is anticipated to have an impact on both state and local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 202.105, 202.11, 202.12, 202.13, 202.18, 202.19, 202.21, 202.24, 202.37, and 337.401.

This bill creates section 202.197 of the Florida Statutes.

This bill repeals section 202.20 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Innovation, Industry, and Technology

Subject: Committee Agenda Request

Date: January 28, 2020

I respectfully request that **Senate Bill #1174**, relating to Communications Services Tax, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in blue ink, appearing to read "Travis Hutson", is written over a light blue grid background.

Senator Travis Hutson
Florida Senate, District 7

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-3-20
Meeting Date

1174
Bill Number (if applicable)

Topic CST

Amendment Barcode (if applicable)

Name Chris Doolin

Job Title Consultant

Address 1118 B THOMASVILLE Rd

Phone ⁸⁵⁰ 508-5492

Street
TALLA. FL. 32308
City State Zip

Email cdoolin@nettally.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing SMALL COUNTY COALITION

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/3/2020
Meeting Date

1174
Bill Number (if applicable)

Topic Communications Services Tax

Amendment Barcode (if applicable)

Name Edgar G. Fernandez

Job Title

Address 201 W Park
Street Tallahassee FL 32301
City State Zip

Phone (786) 255-5755

Email Edg.G.Fernandez@comcast.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Polk + Broward Counties

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-3-20

Meeting Date

1174

Bill Number (if applicable)

Topic LST

Amendment Barcode (if applicable)

Name Andy Dubois

Job Title _____

Address _____

Street

Howey in the Hills FL 34737

City

State

Zip

Phone 352874 5084

Email andy@libertycitizen.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Self

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2-3-20

Meeting Date

1174

Bill Number (if applicable)

Topic

CST

Amendment Barcode (if applicable)

Name

Marie Jacobs

Job Title

Address

Street

Howey in the Hills FL

City

State

Zip

34737

Phone

352 874 5458

Email

marie@libertycitizen.com

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

(The Chair will read this information into the record.)

Representing

Self

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2-3-20

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1174

Meeting Date

Bill Number (if applicable)

Topic Communications Services Tax

Amendment Barcode (if applicable)

Name Kurt Wenner

Job Title Vice President

Address 106 N. Bronough

Phone 222-5052

Street

Tallahassee

FL

32301

City

State

Zip

Email kwenner@floridataxwatch.org

Speaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida TaxWatch

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/3/2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1174

Bill Number (if applicable)

Topic Communications Services Tax

Amendment Barcode (if applicable)

Name Christie Mason

Job Title Director of Government Affairs

Address 132 N. Monroe Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-599-1073

Email Christie.A.Pontis@centurylink.com

Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing CenturyLink

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20

Meeting Date

1174

Bill Number (if applicable)

Topic CST

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Brunaugh St

Phone 521-1200

Street

Tallahassee

FL

32301

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL chamber of commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20

Meeting Date

1174

Bill Number (if applicable)

Topic CST

Amendment Barcode (if applicable)

Name Amber Hughes

Job Title Sr. Legislative Advocate

Address PO Box 1757

Phone 850-222-6984

Street

Tallahassee,

FL

32302

City

State

Zip

Email ahughes@flcities.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

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.

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S-001 (10/14/14)

APPEARANCE RECORD2/3/2020

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1174*Meeting Date**Bill Number (if applicable)*Topic Communications Services Tax*Amendment Barcode (if applicable)*Name Cory GuzzoJob Title Governmental Affairs ConsultantAddress 108 S Monroe StreetPhone 850-681-0024*Street*TallahasseeFL32308*City**State**Zip*Email Cory@flapartners.comSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Associated Industries of Florida (AIF)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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20

Meeting Date

1174

Bill Number (if applicable)

Topic Communications Services TAX

Amendment Barcode (if applicable)

Name Charles Dudley

Job Title General Counsel, FIT

Address 108 S. Monroe St.

Phone 681 0024

Tallahassee FL 32301

Email cdudley@FlaPartners.com

Speaking: ☒ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Fl. Internet & Television Assoc.

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-3-20

Meeting Date

1174

Bill Number (if applicable)

Topic COMMUNICATIONS SERVICES TAX

Amendment Barcode (if applicable)

Name LAURA YOUNMAN S

Job Title LEGISLATIVE COUNSEL

Address 100 N. MONROE
Street

Phone _____

TAL FL 32301
City State Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA ASSOCIATION OF COUNTIES

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.3.20
Meeting Date

1174
Bill Number (if applicable)

Topic C.S.T.

Amendment Barcode (if applicable)

Name Sal Nuzzo

Job Title Vice President of Policy

Address 100 N Duval Street

Phone 850-322-9941

Street

Tallahassee

FL

32301

Email snuzzo@jamesmadison.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The James Madison Institute

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)

Duplicate

COMMITTEE:	Innovation, Industry, and Technology
ITEM:	SB 1174
FINAL ACTION:	Favorable
MEETING DATE:	Monday, February 3, 2020
TIME:	1:30—3:30 p.m.
PLACE:	110 Senate Building

FINAL VOTE								
Yea	Nay	SENATORS	Yea	Nay	Yea	Nay	Yea	Nay
X		Bracy						
X		Bradley						
X		Brandes						
X		Braynon						
X		Farmer						
X		Gibson						
X		Hutson						
X		Passidomo						
X		Benacquisto, VICE CHAIR						
X		Simpson, CHAIR						
10	0							
Yea	Nay	TOTALS	Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

By Senator Hutson

7-01308-20

20201174__

A bill to be entitled

An act relating to the communications services tax;
amending s. 202.105, F.S.; revising legislative intent
regarding local communications services tax rates;
amending s. 202.11, F.S.; revising the definition of
the term "video service"; amending s. 202.12, F.S.;
revising downward the tax rate on the retail sale of
communications services; amending s. 202.13, F.S.;
conforming provisions to changes made by the act;
amending s. 202.18, F.S.; deleting a provision that
specifies where proceeds of a communications services
tax must be deposited and disbursed; amending s.
202.19, F.S.; revising the local communications
services tax rates levied by counties and
municipalities at certain dates; requiring reductions
of certain tax rates at specified dates; requiring
dealers to collect and remit local communications
services taxes under certain conditions; specifying
the fees, taxes, charges, and other impositions that
the revised local communications services tax rates
replace; providing an exception; conforming provisions
to changes made by the act; creating s. 202.197, F.S.;
authorizing the Legislature to appropriate moneys to
offset specified direct reductions of the local
communications services tax by certain counties and
municipalities; providing a procedure for certain
counties and municipalities that expect an
insufficient revenue amount as a result of reduced
local communications services tax rates to apply to

7-01308-20

20201174__

the Department of Revenue for a legislative appropriation; requiring the department to submit a report to the Legislature regarding aggregate taxable sales amounts and expected shortfalls in revenues; amending s. 202.21, F.S.; deleting provisions authorizing local governments to adjust the rate of their local communications services taxes for specified reasons; authorizing the department to amend specified forms without first adopting a rule; amending ss. 202.24, 202.37, and 337.401, F.S.; conforming provisions to changes made by the act; repealing s. 202.20, F.S., relating to local communications services tax conversion rates; providing a directive to the Division of Law Revision; providing effective dates.

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

Section 1. Subsection (2) of section 202.105, Florida Statutes, is amended to read:

202.105 Legislative findings and intent.—

(2) It is declared to be a specific legislative finding that to promote greater tax transparency and improve tax compliance, the local communications services tax rates, which vary substantially across more than 480 jurisdictions, should be replaced by a streamlined rate system with one tax rate for municipalities and charter counties and a second tax rate for noncharter counties ~~this chapter will not reduce the authority that municipalities or counties had to raise revenue in the~~

7-01308-20

20201174__

aggregate, as such authority existed on February 1, 1989.

Section 2. Effective upon this act becoming a law, subsection (24) of section 202.11, Florida Statutes, is amended to read:

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

(24) "Video service" means the transmission of video, audio, or other programming service to a purchaser, and the purchaser interaction, if any, required for the selection or use of a programming service, regardless of whether the programming is transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services. The term includes:

(a) Point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises, but does not include direct-to-home satellite service.

(b) The term includes Basic, extended, premium, pay-per-view, digital video, two-way cable, and music services.

(c) The rental of digital video content and subscriptions to digital video content delivered to a Florida service address by download, streaming, or some combination thereof, and where the access to such content expires at a specific time or on the occurrence of a condition subsequent.

The term does not include the sale of digital video content stored online or downloaded to a customer's device if the purchaser's access to such content does not expire and may be viewed as long as the purchaser retains the digital video content.

7-01308-20

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Section 3. Paragraph (a) of subsection (1) of section 202.12, Florida Statutes, is amended to read:

202.12 Sales of communications services.—The Legislature finds that every person who engages in the business of selling communications services at retail in this state is exercising a taxable privilege. It is the intent of the Legislature that the tax imposed by chapter 203 be administered as provided in this chapter.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction and is due and payable as follows:

(a) Except as otherwise provided in this subsection, at the rate of 4.9 ~~4.92~~ percent applied to the sales price of the communications service that:

1. Originates and terminates in this state;7 or

2. Originates or terminates in this state and is charged to a service address in this state,

when sold at retail, computed on each taxable sale for the purpose of remitting the tax due. The gross receipts tax imposed by chapter 203 shall be collected on the same taxable transactions and remitted with the tax imposed by this paragraph. If no tax is imposed by this paragraph due to the exemption provided under s. 202.125(1), the tax imposed by chapter 203 shall nevertheless be collected and remitted in the manner and at the time prescribed for tax collections and remittances under this chapter.

Section 4. Subsection (3) of section 202.13, Florida Statutes, is amended to read:

202.13 Intent.—

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117 (3) The tax on dealers of communications services
118 authorized under this chapter, including the tax imposed by
119 local governments under s. ss. 202.19 and 202.20, supersedes
120 ~~shall supersede~~ the authority of local governments to levy
121 franchise fees as set out in 47 U.S.C. s. 542 without regard to
122 the fact that this is a tax of general applicability on all
123 providers of communications services.

124 Section 5. Paragraphs (a) and (c) of subsection (3) of
125 section 202.18, Florida Statutes, are amended to read:

126 202.18 Allocation and disposition of tax proceeds.—The
127 proceeds of the communications services taxes remitted under
128 this chapter shall be treated as follows:

129 (3)(a) Notwithstanding any law to the contrary, the
130 proceeds of each local communications services tax levied by a
131 municipality or county pursuant to s. 202.19(1) ~~or s. 202.20(1)~~,
132 less the department's costs of administration, shall be
133 transferred to the Local Communications Services Tax Clearing
134 Trust Fund and held there to be distributed to such municipality
135 or county. ~~However, the proceeds of any communications services~~
136 ~~tax imposed pursuant to s. 202.19(5) shall be deposited and~~
137 ~~disbursed in accordance with ss. 212.054 and 212.055.~~ For
138 purposes of this section, the proceeds of any tax levied by a
139 municipality or, county, ~~or school board under s. 202.19(1) or~~
140 ~~s. 202.20(1)~~ are all funds collected and received by the
141 department pursuant to a specific levy authorized ~~by such~~
142 ~~sections~~, including any interest and penalties attributable to
143 the tax levy.

144 (c)1. Except as otherwise provided in this paragraph,
145 proceeds of the taxes levied pursuant to s. 202.19, less amounts

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deducted for costs of administration in accordance with paragraph (b), shall be distributed monthly to the appropriate jurisdictions. ~~The proceeds of taxes imposed pursuant to s. 202.19(5) shall be distributed in the same manner as discretionary surtaxes are distributed, in accordance with ss. 212.054 and 212.055.~~

2. The department shall make any adjustments to the distributions pursuant to this section which are necessary to reflect the proper amounts due to individual jurisdictions or trust funds. In the event that the department adjusts amounts due to reflect a correction in the situsing of a customer, such adjustment shall be limited to the amount of tax actually collected from such customer by the dealer of communications ~~communication~~ services.

3.a. Adjustments in distributions which are necessary to correct misallocations between jurisdictions shall be governed by this subparagraph. If the department determines that misallocations between jurisdictions occurred, it shall provide written notice of such determination to all affected jurisdictions. The notice shall include the amount of the misallocations, the basis upon which the determination was made, data supporting the determination, and the identity of each affected jurisdiction. The notice shall also inform all affected jurisdictions of their authority to enter into a written agreement establishing a method of adjustment as described in sub-subparagraph c.

b. An adjustment affecting a distribution to a jurisdiction which is less than 90 percent of the average monthly distribution to that jurisdiction for the 6 months immediately

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preceding the department's determination, as reported by all communications services dealers, shall be made in the month immediately following the department's determination that misallocations occurred.

c. If an adjustment affecting a distribution to a jurisdiction equals or exceeds 90 percent of the average monthly distribution to that jurisdiction for the 6 months immediately preceding the department's determination, as reported by all communications services dealers, the affected jurisdictions may enter into a written agreement establishing a method of adjustment. If the agreement establishing a method of adjustment provides for payments of local communications services tax monthly distributions, the amount of any such payment agreed to may not exceed the local communications services tax monthly distributions available to the jurisdiction that was allocated amounts in excess of those to which it was entitled. If affected jurisdictions execute a written agreement specifying a method of adjustment, a copy of the written agreement shall be provided to the department no later than the first day of the month following 90 days after the date the department transmits notice of the misallocation. If the department does not receive a copy of the written agreement within the specified time period, an adjustment affecting a distribution to a jurisdiction made pursuant to this sub-subparagraph shall be prorated over a time period that equals the time period over which the misallocations occurred.

Section 6. Section 202.19, Florida Statutes, is amended to read:

202.19 Authorization to impose local communications

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services tax.—

(1) The governing authority of each county and municipality may, by ordinance, levy a local ~~discretionary~~ communications services tax as provided in this section.

(2) (a) Local communications services tax rates in effect on January 1, 2020, which are 5 percent or less may not be amended beyond their current rates. Local communications services tax rates in effect on January 1, 2020, which are greater than 5 percent must be reduced to 5 percent or less on January 1, 2021. Each county and municipality must adopt a local communications services tax rate ordinance of 5 percent or less by September 1, 2020, as provided in s. 202.21. If a county or municipality fails to adopt a rate ordinance on or before September 1, 2020, a dealer may not collect or remit the local communications services tax in excess of 5 percent on or after January 1, 2021
~~Charter counties and municipalities may levy the tax authorized by subsection (1) at a rate of up to 5.1 percent for municipalities and charter counties that have not chosen to levy permit fees, and at a rate of up to 4.98 percent for municipalities and charter counties that have chosen to levy permit fees.~~

(b) 1. Beginning January 1, 2022, a charter county or municipality may levy the tax authorized by subsection (1) at a flat rate of 4 percent. To levy the local communications services tax beginning January 1, 2022, each charter county and municipality must adopt by ordinance a flat 4 percent tax rate by September 1, 2021, as provided in s. 202.21. If a charter county or municipality that levies the local communications services tax on January 1, 2021, fails to adopt an ordinance

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before September 1, 2021, to adjust its tax rate to 4 percent, a dealer must collect and remit the local communications services tax at a rate of 4 percent on and after January 1, 2022. Each charter county and municipality may levy a 4 percent tax or repeal a tax at any time. However, the 4 percent tax rate or repeal is effective for bills dated on or after the following January 1.

2. Beginning January 1, 2022, a noncharter county may levy the tax authorized by subsection (1) at a flat rate of 2 percent. If a noncharter county that levies the local communications services tax on January 1, 2021, fails to adopt an ordinance before September 1, 2021, to adjust its tax rate to 2 percent, a dealer must collect and remit the local communications services tax at a rate of 2 percent on and after January 1, 2022. A noncharter county may levy a 2 percent tax rate or repeal a tax at any time. However, the 2 percent tax rate or repeal is effective for bills dated on or after the following January 1 ~~Noncharter counties may levy the tax authorized by subsection (1) at a rate of up to 1.6 percent.~~

~~(c) The maximum rates authorized by paragraphs (a) and (b) do not include the add-ons of up to 0.12 percent for municipalities and charter counties or of up to 0.24 percent for noncharter counties authorized pursuant to s. 337.401, nor do they supersede conversion or emergency rates authorized by s. 202.20 which are in excess of these maximum rates.~~

(3) (a) The tax authorized under this section replaces other revenue sources for municipalities and counties and includes the following taxes, charges, fees, and other impositions to the extent that the respective local taxing jurisdictions were

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authorized to impose those taxes, charges, fees, and other impositions before July 1, 2000, and after October 1, 2020:

1. With respect to a charter county or municipality:

a. The public service tax on telecommunications authorized by s. 166.231(9), Florida Statutes (2001).

b. Franchise fees on providers of cable television services as authorized by 47 U.S.C. s. 542.

c. The public service tax on prepaid calling arrangements.

d. Franchise fees on dealers of communications services that use the public roads or rights-of-way.

e. Actual permit fees relating to placing or maintaining facilities in or on public roads or rights-of-way collected from providers of long-distance, cable, and mobile communications services for the fiscal year ending September 30, 1999; however, if a municipality or charter county elected to continue charging permit fees as authorized by s. 337.401 on or before January 1, 2019, the fees may not be included as a replaced revenue source.

f. Application fees, transfer fees, renewal fees, or claims for related costs to which the municipality or county is otherwise entitled for granting permission to dealers of communications services, including providers of cable television services as authorized by 47 U.S.C. s. 542, to use or occupy its roads or rights-of-way for the placement, construction, and maintenance of poles, wires, and other fixtures used in the provision of communications services.

2. With respect to a noncharter county, franchise fees on providers of cable television services as authorized by 47 U.S.C. s. 542 ~~The tax authorized under this section includes and is in lieu of any fee or other consideration, including, but not~~

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291 ~~limited to, application fees, transfer fees, renewal fees, or~~
292 ~~claims for related costs, to which the municipality or county is~~
293 ~~otherwise entitled for granting permission to dealers of~~
294 ~~communications services, including, but not limited to,~~
295 ~~providers of cable television services, as authorized in 47~~
296 ~~U.S.C. s. 542, to use or occupy its roads or rights-of-way for~~
297 ~~the placement, construction, and maintenance of poles, wires,~~
298 ~~and other fixtures used in the provision of communications~~
299 ~~services.~~

300 (b) This subsection does not supersede or impair the right,
301 if any, of a municipality or county to require the payment of
302 consideration or to require the payment of regulatory fees or
303 assessments by persons using or occupying its roads or rights-
304 of-way in a capacity other than that of a dealer of
305 communications services.

306 (4)(a)1. Except as otherwise provided in this section, the
307 tax imposed by any municipality shall be on all communications
308 services subject to tax under s. 202.12 which:

309 a. Originate or terminate in this state; and

310 b. Are charged to a service address in the municipality.

311 2. With respect to private communications services, the tax
312 shall be on the sales price of such services provided within the
313 municipality, which shall be determined in accordance with the
314 following provisions:

315 a. Any charge with respect to a channel termination point
316 located within such municipality;

317 b. Any charge for the use of a channel between two channel
318 termination points located in such municipality; and

319 c. Where channel termination points are located both within

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and outside of the municipality:

(I) If any segment between two such channel termination points is separately billed, 50 percent of such charge; and

(II) If any segment of the circuit is not separately billed, an amount equal to the total charge for such circuit multiplied by a fraction, the numerator of which is the number of channel termination points within such municipality and the denominator of which is the total number of channel termination points of the circuit.

(b)1. Except as otherwise provided in this section, the tax imposed by any county under subsection (1) shall be on all communications services subject to tax under s. 202.12 which:

- a. Originate or terminate in this state; and
- b. Are charged to a service address in the unincorporated area of the county.

2. With respect to private communications services, the tax shall be on the sales price of such services provided within the unincorporated area of the county, which shall be determined in accordance with the following provisions:

- a. Any charge with respect to a channel termination point located within the unincorporated area of such county;
- b. Any charge for the use of a channel between two channel termination points located in the unincorporated area of such county; and
- c. Where channel termination points are located both within and outside of the unincorporated area of such county:

(I) If any segment between two such channel termination points is separately billed, 50 percent of such charge; and

(II) If any segment of the circuit is not separately

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349 billed, an amount equal to the total charge for such circuit
350 multiplied by a fraction, the numerator of which is the number
351 of channel termination points within the unincorporated area of
352 such county and the denominator of which is the total number of
353 channel termination points of the circuit.

354 ~~(5) In addition to the communications services taxes~~
355 ~~authorized by subsection (1), a discretionary sales surtax that~~
356 ~~a county or school board has levied under s. 212.055 is imposed~~
357 ~~as a local communications services tax under this section, and~~
358 ~~the rate shall be determined in accordance with s. 202.20(3).~~

359 ~~(a) Except as otherwise provided in this subsection, each~~
360 ~~such tax rate shall be applied, in addition to the other tax~~
361 ~~rates applied under this chapter, to communications services~~
362 ~~subject to tax under s. 202.12 which:~~

363 ~~1. Originate or terminate in this state; and~~

364 ~~2. Are charged to a service address in the county.~~

365 ~~(b) With respect to private communications services, the~~
366 ~~tax shall be on the sales price of such services provided within~~
367 ~~the county, which shall be determined in accordance with the~~
368 ~~following provisions:~~

369 ~~1. Any charge with respect to a channel termination point~~
370 ~~located within such county;~~

371 ~~2. Any charge for the use of a channel between two channel~~
372 ~~termination points located in such county; and~~

373 ~~3. Where channel termination points are located both within~~
374 ~~and outside of such county:~~

375 ~~a. If any segment between two such channel termination~~
376 ~~points is separately billed, 50 percent of such charge; and~~

377 ~~b. If any segment of the circuit is not separately billed,~~

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~~an amount equal to the total charge for such circuit multiplied by a fraction, the numerator of which is the number of channel termination points within such county and the denominator of which is the total number of channel termination points of the circuit.~~

(5)~~(6)~~ Notwithstanding any other provision of this section, a tax imposed under this section does not apply to any direct-to-home satellite service.

(6)~~(7)~~ Notwithstanding any law to the contrary, a tax imposed under this section shall not exceed \$25,000 per calendar year on communications services charges billed to a service address located in a municipality or county imposing a local communications services tax for interstate communications services that originate outside this state and terminate within this state. This subsection applies only to holders of a direct-pay permit issued under s. 202.12(3). A person who does not qualify for a direct-pay permit under s. 202.12(3) does not qualify for a direct-pay permit under this subsection. A refund may not be given for taxes paid before receiving a direct-pay permit. Upon application, the department shall identify the service addresses qualifying for the limitation provided by this subsection on the direct-pay permit issued under s. 202.12(3) and authorize such purchaser to pay the local communications tax on such interstate services directly to the department if the application indicates that the majority of such services used by such person and billed to a service address are for communications originating outside of this state and terminating in this state. The direct-pay permit shall also indicate the counties or municipalities to which it applies. Any dealer of

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communications services furnishing communications services to the holder of a valid direct-pay permit is relieved of the obligation to collect and remit the tax on such services. Tax payments and returns pursuant to a direct-pay permit shall be monthly. As used in this subsection, "person" means a single legal entity and does not mean a group or combination of affiliated entities or entities controlled by one person or group of persons.

(7)~~(8)~~ The revenues raised by any tax imposed under subsection (1) ~~or s. 202.20(1)~~, or distributed to a local government pursuant to s. 202.18, may be used by a municipality or county for any public purpose, including, but not limited to, pledging such revenues for the repayment of current or future bonded indebtedness. ~~Revenues raised by a tax imposed under subsection (5) shall be used for the same purposes as the underlying discretionary sales surtax imposed by the county or school board under s. 212.055.~~

(8)~~(9)~~ Notwithstanding any provision of law to the contrary, the exemption set forth in s. 202.125(1) does ~~shall~~ not apply to the local communications services ~~a tax imposed by this section a municipality, school board, or county pursuant to subsection (4) or subsection (5).~~

(9)~~(10)~~ To the extent that a provider of communications services is required to pay to a local taxing jurisdiction a tax, charge, or other fee under any franchise agreement or ordinance with respect to the services or revenues that are also subject to the tax imposed by this section, such provider is entitled to a credit against the amount payable to the state pursuant to this section in the amount of such tax, charge, or

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fee with respect to such services or revenues. The amount of such credit shall be deducted from the amount that such local taxing jurisdiction is entitled to receive under s. 202.18(3).

(10)~~(11)~~ Notwithstanding any other provision of this section, with respect to mobile communications services, the rate of a local communications services tax levied under this section shall be applied to the sales price of all mobile communications services deemed to be provided to a customer by a home service provider pursuant to s. 117(a) of the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, if such customer's service address is located within the municipality levying the tax or within the unincorporated area of the county levying the tax, as the case may be.

Section 7. Section 202.197, Florida Statutes, is created to read:

202.197 Offset for certain local communications services tax loss associated with tax rate reductions.—

(1) If in any year, as a direct result of the tax rate changes required by this act, local communications services tax revenues are expected to be insufficient to timely pay principal and interest or to comply with any covenant under a bond resolution for bonds or other indebtedness outstanding as of January 1, 2020, the Legislature may appropriate to the affected jurisdiction an amount needed to eliminate the insufficiency. The fact that the revenues of a local communications services tax are pledged generally or that multiple revenue streams are pledged creates a presumption that the jurisdiction's insufficient revenue amount does not directly result from the tax rate changes. Local communications services tax revenue

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465 decreases due to consumer price reductions for taxable services
466 or due to reduced purchases of taxable services are not a direct
467 result of the tax rate changes required by this act.

468 (2) On or before November 15, each affected jurisdiction
469 expecting an insufficient revenue amount under subsection (1)
470 shall apply for an appropriation to the department on a form and
471 in the manner prescribed by the department. The department shall
472 review the application and report the jurisdiction's aggregate
473 taxable sales amounts for each of the two prior 12-month periods
474 to allow the Legislature to calculate any reductions due to the
475 affected jurisdiction as a result of changes in taxable sales.
476 On or before January 1, the department shall submit a report to
477 the Legislature containing each jurisdiction's application,
478 aggregate taxable sales amounts, and any supporting
479 documentation provided by the jurisdiction to substantiate the
480 expected shortfall in revenues to meet debt service or bond
481 covenant requirements.

482 Section 8. Section 202.21, Florida Statutes, is amended to
483 read:

484 202.21 Effective dates; procedures for informing dealers of
485 communications services of tax levies and rate adoptions or
486 repeals ~~changes.~~ Any adoption or ~~repeal, or change~~ in the rate
487 of a local communications services tax imposed under s. 202.19
488 is effective with respect to taxable services included on bills
489 that are dated on or after the January 1 subsequent to such
490 adoption or ~~repeal, or change~~. A municipality or county
491 adopting or ~~repealing, or changing~~ the rate of such tax must
492 notify the department of the adoption or ~~repeal, or change~~ by
493 September 1 immediately preceding such January 1. Notification

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494 must be furnished on a form prescribed by the department and
495 must specify the rate of tax; the effective date of the adoption
496 ~~or~~ repeal, ~~or change~~ thereof; and the name, mailing address,
497 and telephone number of a person designated by the municipality
498 or county to respond to inquiries concerning the tax. The
499 department shall provide notice of such adoption ~~or~~ repeal, ~~or~~
500 ~~change~~ to all affected dealers of communications services at
501 least 90 days before the effective date of the tax. The
502 department is not required to adopt by rule as set forth in s.
503 120.54 amendments to the communications services tax return form
504 that solely add local communications services tax rates which
505 adopted or remove local communications services tax rates which
506 were repealed Any local government that adjusts the rate of its
507 local communications services tax by emergency ordinance or
508 resolution pursuant to s. 202.20(2) shall notify the department
509 of the new tax rate immediately upon its adoption. The
510 department shall provide written notice of the adoption of the
511 new rate to all affected dealers within 30 days after receiving
512 such notice. In any notice to providers or publication of local
513 tax rates for purposes of this chapter, the department shall
514 express the rate for a municipality or charter county as the sum
515 of the tax rates levied within such jurisdiction pursuant to s.
516 202.19(2)(a) and (5), and shall express the rate for any other
517 county as the sum of the tax rates levied pursuant to s.
518 202.19(2)(b) and (5). The department is not liable for any loss
519 of or decrease in revenue by reason of any error, omission, or
520 untimely action that results in the nonpayment of a tax imposed
521 under s. 202.19.

522 Section 9. Paragraph (c) of subsection (2) of section

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202.24, Florida Statutes, is amended to read:

202.24 Limitations on local taxes and fees imposed on
dealers of communications services.—

(2)

(c) This subsection does not apply to:

1. Local communications services taxes levied under this
chapter.

2. Ad valorem taxes levied pursuant to chapter 200.

3. Business taxes levied under chapter 205.

4. "911" service charges levied under chapter 365.

5. Amounts charged for the rental or other use of property
owned by a public body which is not in the public rights-of-way
to a dealer of communications services for any purpose,
including, but not limited to, the placement or attachment of
equipment used in the provision of communications services.

6. Permit fees of general applicability which are not
related to placing or maintaining facilities in or on public
roads or rights-of-way.

7. Permit fees related to placing or maintaining facilities
in or on public roads or rights-of-way pursuant to s. 337.401.

8. Any in-kind requirements, institutional networks, or
contributions for, or in support of, the use or construction of
public, educational, or governmental access facilities allowed
under federal law and imposed on providers of video service
pursuant to any existing ordinance or an existing franchise
agreement granted by each municipality or county, under which
ordinance or franchise agreement service is provided before July
1, 2007, or as permitted under chapter 610. This subparagraph
does not prohibit providers of video service from recovering the

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expenses as allowed under federal law.

9. Special assessments and impact fees.

10. Pole attachment fees that are charged by a local government for attachments to utility poles owned by the local government.

11. Utility service fees or other similar user fees for utility services.

12. Any other generally applicable tax, fee, charge, or imposition authorized by general law on July 1, 2000, which is not specifically prohibited by this subsection or included as a replaced revenue source in s. 202.19 ~~s. 202.20~~.

Section 10. Paragraphs (a) and (b) of subsection (1) and subsection (2) of section 202.37, Florida Statutes, are amended to read:

202.37 Special rules for administration of local communications services tax.—

(1) (a) Except as otherwise provided in this section, all statutory provisions and administrative rules applicable to the communications services tax imposed by s. 202.12 apply to any local communications services tax imposed under s. 202.19, and the department shall administer, collect, and enforce all taxes imposed under s. 202.19, including interest and penalties attributable thereto, in accordance with the same procedures used in the administration, collection, and enforcement of the communications services tax imposed by s. 202.12. Audits performed by the department shall include a determination of the dealer's compliance with the jurisdictional siting of its customers' service addresses and a determination of whether the rate collected for the local tax pursuant to s. 202.19 ~~and~~

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202.20 is correct. The person or entity designated by a local government pursuant to s. 213.053(8) may provide evidence to the department demonstrating a specific person's failure to fully or correctly report taxable communications services sales within the jurisdiction. The department may request additional information from the designee to assist in any review. The department shall inform the designee of what action, if any, the department intends to take regarding the person.

(b) The department may contract with one or more private entities to assist it in fulfilling its obligation of administering the local communications services taxes imposed under this chapter, including, but not limited to, the compilation, maintenance, and publication of data pursuant to s. ss. 202.21 and 202.22.

(2) Each dealer of communications services obligated to collect and remit one or more local communications services taxes imposed under s. 202.19 shall separately report and identify each such tax to the department, by jurisdiction, on a form prescribed by the department, and shall pay such taxes to the department. ~~However, taxes imposed under s. 202.19(5) shall be added to and included in the amounts reported to the department as taxes imposed under s. 202.19(1).~~ A dealer of communications services may include in a single payment to the department:

(a) The total amount of all local communications services taxes imposed pursuant to s. 202.19; and

(b) The amount of communications services tax imposed by ss. 202.12 and 203.01.

Section 11. Paragraph (c) of subsection (3) of section

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337.401, Florida Statutes, is amended to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(3)

(c) Any municipality or county that, as of January 1, 2019, elected to require permit fees from any provider of communications services that uses or occupies municipal or county roads or rights-of-way pursuant to former paragraph (c) or former paragraph (j), Florida Statutes 2018, may continue to require and collect such fees. A municipality or county that elected as of January 1, 2019, to require permit fees may elect to forego such fees as provided herein. A municipality or county that elected as of January 1, 2019, not to require permit fees may not elect to impose permit fees. All fees authorized under this paragraph must be reasonable and commensurate with the direct and actual cost of the regulatory activity, including issuing and processing permits, plan reviews, physical inspection, and direct administrative costs; must be demonstrable; and must be equitable among users of the roads or rights-of-way. A fee authorized under this paragraph may not be offset against the tax imposed under chapter 202; include the costs of roads or rights-of-way acquisition or roads or rights-of-way rental; include any general administrative, management, or maintenance costs of the roads or rights-of-way; or be based on a percentage of the value or costs associated with the work to be performed on the roads or rights-of-way. In an action to recover amounts due for a fee not authorized under this paragraph, the prevailing party may recover court costs and attorney fees at trial and on appeal. In addition to the

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limitations set forth in this section, a fee levied by a municipality or charter county under this paragraph may not exceed \$100. However, permit fees may not be imposed with respect to permits that may be required for service drop lines not required to be noticed under s. 556.108(5) or for any activity that does not require the physical disturbance of the roads or rights-of-way or does not impair access to or full use of the roads or rights-of-way, including, but not limited to, the performance of service restoration work on existing facilities, extensions of such facilities for providing communications services to customers, and the placement of micro wireless facilities in accordance with subparagraph (7)(e)3.

1. If a municipality or charter county elects to not require permit fees, the total rate for the local communications services tax ~~as computed under s. 202.20~~ for that municipality or charter county may be increased by ordinance or resolution by an amount not to exceed a rate of 0.12 percent.

2. If a noncharter county elects to not require permit fees, the total rate for the local communications services tax ~~as computed under s. 202.20~~ for that noncharter county may be increased by ordinance or resolution by an amount not to exceed a rate of 0.24 percent, to replace the revenue the noncharter county would otherwise have received from permit fees for providers of communications services.

Section 12. Section 202.20, Florida Statutes, is repealed.

Section 13. The Division of Law Revision is directed to replace the phrase "this act" in Section 7 of this act with the chapter law of this act.

Section 14. Except as otherwise expressly provided in this

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668 act and except for this section, which shall take effect upon
669 this act becoming a law, this act shall take effect January 1,
670 2021.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Innovation, Industry, and Technology

BILL: SB 630

INTRODUCER: Senator Mayfield

SUBJECT: Regulation of Smoking

DATE: January 27, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2. <u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	Favorable
3. _____	_____	<u>RC</u>	_____

I. Summary:

SB 630 amends the “Florida Clean Indoor Air Act” in part II of ch. 386, F.S., which regulates vaping and tobacco smoking in Florida, to allow counties and municipalities to restrict smoking within the boundaries of any park they own. Currently, the regulation of smoking is preempted to the state and counties and municipalities are prohibited from regulating smoking. “Smoking” is defined in ch. 386, F.S., as “inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.”

The bill takes effect July 1, 2020.

II. Present Situation:

The Florida Clean Indoor Air Act (act) in part II of ch. 386, F.S., regulates vaping and tobacco smoking in Florida. The legislative purpose of the act is to protect the public from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in s. 20, Art. X of the State Constitution.¹

Florida Constitution

Tobacco Smoking

On November 5, 2002, the voters of Florida approved Amendment 6 to the State Constitution, which prohibits tobacco smoking in enclosed indoor workplaces. Codified as s. 20, Art. X, Florida Constitution, the amendment defines an “enclosed indoor workplace,” in part, as “any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers ... without regard to whether work is

¹ Section 386.202, F.S.

occurring at any given time.” The amendment defines “work” as “any persons providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not.” The amendment provides limited exceptions for private residences “whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof,” retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments, and stand-alone bars.

The constitutional amendment directed the Legislature to implement the “amendment in a manner consistent with its broad purpose and stated terms.” The amendment required that implementing legislation have an effective date of no later than July 1, 2003, and required that implementing legislation provide civil penalties for violations; provided for administrative enforcement, and required and authorized agency rules for implementation and enforcement. The amendment further provided that the Legislature may enact legislation more restrictive of tobacco smoking than that provided in the Florida Constitution.

Vaping

On November 6, 2018, the voters of Florida approved Amendment 9 to the Florida Constitution, to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces.² The use of e-cigarettes is commonly referred to as vaping.

Amendment 9 adds vapor-generating electronic devices to the current prohibition against tobacco smoking in enclosed indoor workplaces. The amendment makes exceptions for the same enclosed indoor workplace locations where tobacco smoking is permitted and further permits tobacco smoking and the use of vapor-generating electronic devices in a “vapor-generating electronic device retailer.”

The amendment defines a “vapor-generating electronic device retailer” to mean “any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic devices and components, parts, and accessories for such products, in which the sale of other products or services is merely incidental.”

A vapor-generating electronic device is defined as “any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance.” The definition includes electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, and other similar devices or products, replacement cartridge for such devices, and other containers of a solution or other substance intended to be used with or within the devices.

Section 20, Art. X, Florida Constitution, as amended, directs the Legislature to implement the “amendment in a manner consistent with its broad purpose and stated terms.” The implementing legislation must have an effective date of no later than July 1 of the year following approval (July 1, 2019). The implementing legislation must also provide civil penalties for violations; provide for administrative enforcement; and require and authorize agency rules for

² Amendment 9 also bans offshore oil and natural gas drilling on lands beneath state waters. *See* FLA. CONST. art II, s. 7.

implementation and enforcement. The Legislature may enact legislation more restrictive of tobacco smoking or vaping than that provided in the State Constitution.

Under the amendment, local governments may adopt more restrictive local ordinances on the use of vapor-generating electronic devices.

Florida's Clean Indoor Air Act

The Legislature implemented the smoking ban by enacting ch. 2003-398, Laws of Fla., which amended part. II of ch. 386, F.S., and created s. 561.695, F.S., of the Beverage Law. The act, as amended, implements the constitutional amendment's prohibition. Specifically, s. 386.204, F.S., prohibits smoking in an enclosed indoor workplace unless the act provides an exception. The act adopts and implements the amendment's definitions and adopts the amendment's exceptions for private residences whenever not being used for certain commercial purposes;³ stand-alone bars;⁴ designated smoking rooms in hotels and other public lodging establishments;⁵ and retail tobacco shops, including businesses that manufacture, import, or distribute tobacco products and tobacco loose leaf dealers.⁶

Section 386.207, F.S., provides for enforcement of the act by the Department of Health (DOH) and the Department of Business and Professional Regulation (DBPR) within each department's specific areas of regulatory authority. Sections 386.207(1) and 386.2125, F.S., grant rulemaking authority to the DOH and the DBPR and require that the departments consult with the State Fire Marshal during the rulemaking process.

Section 386.207(3), F.S., provides penalties for violations of the act by proprietors or persons in charge of an enclosed indoor workplace.⁷ The penalty for a first violation is a fine of not less than \$250 and not more than \$750. The act provides fines for subsequent violations in the amount of not less than \$500 and not more than \$2,000. Penalties for individuals who violate the act are provided in s. 386.208, F.S., which provides for a fine of not more than \$100 for a first violation and not more than \$500 for a subsequent violation. The penalty range for an individual violation is identical to the penalties for violations of the act before the implementation of the constitutional smoking prohibition.

During the 2019, Regular Session, the Legislature amended part II of 386, F.S., to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces. The use of e-cigarettes is commonly referred to as vaping.⁸

Smoking Prohibited Near School Property

Section 386.212(1), F.S., prohibits smoking by any person under 18 years of age in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary

³ Section 386.2045(1), F.S. *See also* definition of the term "private residence" in s. 386.203(1), F.S.

⁴ Section 386.2045(4), F.S. *See also* definition of the term "stand-alone bar" in s. 386.203(11), F.S.

⁵ Section 386.2045(3), F.S. *See also* definition of the term "designated guest smoking room" in s. 386.203(4), F.S.

⁶ Section 386.2045(2), F.S. *See also* definition of the term "retail tobacco shop" in s. 386.203(8), F.S.

⁷ The applicable penalties for violations by designated stand-alone bars are set forth in s. 561.695(8), F.S.

⁸ *See* ch. 2019-14, Laws of Fla.

school between the hours of 6 a.m. and midnight. The prohibition does not apply to any person occupying a moving vehicle or within a private residence.

Enforcement

Section 386.212(2), F.S., authorizes law enforcement officers to issue citations in the form as prescribed by a county or municipality to any person violating the provisions of ch. 386, F.S., and prescribes the information that must be included in the citation.

The issuance of a citation under s. 386.212(2), F.S., constitutes a civil infraction punishable by a maximum civil penalty not to exceed \$25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco “alternative to suspension” program.⁹

If a person fails to comply with the directions on the citation, the person will waive his or her right to contest the citation, and the court may issue an order to show cause.¹⁰

Regulation of Smoking Preempted to State

Section 386.209, F.S., provides that the act expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

As an exception to the state’s preemption of smoking regulation, s. 386.209, F.S., permits school districts to further restrict smoking by persons on school district property.

Section 386.209, F.S., adopts and implements the Florida Constitution’s grant of authority to local governments to adopt more restrictive local ordinances on the use of vapor-generating electronic devices.

Regarding the issue of preemption, a Florida Attorney General Opinion concluded that the St. Johns Water Management District could not adopt a regulation prohibiting smoking by all persons on district property.¹¹ The Attorney General reasoned that s. 386.209, F.S., represents a clear expression of the legislative intent that the act preempts the field of smoking regulation for indoor and outdoor smoking. The Attorney General noted that the 2011 amendment of s. 386.209, F.S.,¹² authorizes school districts to prohibit smoking on school district property and concluded that further legislative authorization would be required for the water management district to regulate smoking on its property.

⁹ Section 386.212(3), F.S.

¹⁰ Section 386.212(4), F.S.

¹¹ Op. Att’y Gen. Fla. 2011-15 (July 21, 2011). *See also*, Op. Att’y Gen. Fla. 2005-63 (Nov. 21, 2005), which opined that a municipality is preempted from regulating smoking in a public park other than as prescribed by the Legislature.

¹² Chapter 2011-108, L.O.F.

Public Parks Owned by Counties and Municipalities

In Florida, there are 67 separate county park systems and more than 400 separate municipal park systems.¹³ For example, Orange County Florida maintains and operates 118 county-owned parks, which consist of a wide array of available activities and facilities.¹⁴ Parks provide a variety of activities to the public, including nature trails, bird watching, youth and adult athletics, bike paths, horse trails, boat ramps, fishing piers, metal detecting locations, outdoor gyms, and outdoor pavilions.¹⁵ Additionally, municipalities within Orange County also own and operate parks and outdoor recreational facilities. For example, the city of Winter Park, within Orange County, owns and operates 11 city parks, which offer similar recreational activities.¹⁶

The Division of Recreation and Parks within the Florida Department of Environmental Protection maintains a comprehensive inventory of the existing park facilities and outdoor resources in Florida. The inventory provides details about the parks and recreation areas in the state and consists of over 13,000 separate records, the majority of which are county and municipal parks.¹⁷

Laws in Other States

In 2009, Maine passed a law prohibiting “[smoking] tobacco or any other substance in, on or within 20 feet of a beach, playground, snack bar, group picnic shelter, business facility, enclosed area, public place or restroom in a state park or state historic site.”¹⁸ In 2015, Hawaii passed a law prohibiting smoking within its state park system.¹⁹ In 2018, New Jersey banned smoking at public parks and beaches.²⁰ New Jersey’s legislature found that “[t]he prohibition of smoking at public parks and beaches would better preserve and maintain the natural assets of this State by reducing litter and increasing fire safety in those areas, while lessening exposure to secondhand tobacco smoke and providing for a more pleasant park or beach experience for the public[.]”²¹

¹³ Florida Division of Recreation and Parks, *Frequently Asked Questions*, available at: <http://prodenv.dep.state.fl.us/DrpOrpcr/StaticFiles/FAQ.pdf> (last visited Jan. 27, 2020).

¹⁴ Orange County Government Florida, *Parks*, available at: <http://www.orangecountyfl.net/CultureParks/Parks.aspx?m=lstaz#.Xcwjw8GP6Uk> (last visited Jan. 27, 2020).

¹⁵ *Id.*

¹⁶ City of Winter Park, *Parks*, available at: <https://cityofwinterpark.org/departments/parks-recreation/parks-playgrounds/parks/> (last visited Jan. 27, 2020).

¹⁷ Florida Division of Recreation and Parks, *Florida Outdoor Recreation Inventory*, available at: <https://floridadep.gov/parks/florida-outdoor-recreation-inventory> (last visited Jan. 27, 2020).

¹⁸ Me. Rev. Stat. tit. 22, ss. 1580-E(2) and 1541(6). Under Maine law, “‘Smoking’ includes carrying or having in one’s possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. ‘Smoking’ includes the use of an electronic smoking device.”

¹⁹ Haw. Rev. Stat. Ann. § 184-4.5. “Smoking” is defined in the statute as “inhaling or exhaling upon, burning, or carrying any lit cigarette, cigar, or pipe or the use of an electronic smoking device.”

²⁰ 2018 NJ Sess. Law Serv. Ch. 64, S. 2534 (2018), available at: https://www.njleg.state.nj.us/2018/Bills/PL18/64_.PDF (last visited Jan. 27, 2020). The law defines “smoking” as “the burning of, inhaling from, exhaling the smoke from, or the possession of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked, or the inhaling or exhaling of smoke or vapor from an electronic smoking device.”

²¹ N.J. Stat. Ann. § 26:3D-56(e).

Alaska law prohibits individuals from smoking outdoors “within 10 feet of playground equipment located at a public or private school or a state or municipal park while children are present.”²² Puerto Rico prohibits smoking in “public or private recreational installations.”²³ The definition of public or private recreational installations under Puerto Rico law includes parks.²⁴ Oklahoma law designates all buildings and other properties owned or operated by the state as nonsmoking, effectively prohibiting smoking at state parks in Oklahoma, except for at any designated outdoor smoking areas.²⁵

Oregon’s Parks and Recreation Department prohibits smoking tobacco products at park properties but provides exceptions, including smoking in vehicles and at designated campsites.²⁶ Outside of Florida, many local governments in the United States have restricted or prohibited smoking in public parks.²⁷

Health and Environmental Concerns

In 2018, an estimated 16 percent of the adults in Florida were tobacco smokers.²⁸ Tobacco smoke contains over 7,000 chemicals, including hundreds that are toxic and up to 69 that are known to cause cancer.²⁹ Exposure to secondhand smoke can cause numerous health problems and has been causally linked to cancer and other fatal diseases.³⁰ Secondhand smoke is generally defined as smoke from burning tobacco products or smoke that is exhaled by a tobacco smoker.³¹ Studies suggest that secondhand smoke in crowded outdoor areas can cause concentrations of air contaminants comparable to those caused by indoor smoking.³²

²² Alaska Stat. Ann. ss. 18.35.301(c)(1) and 18.35.399(12). Alaska law defines “smoking” as “using an e-cigarette or other oral smoking device or inhaling, exhaling, burning, or carrying a lighted or heated cigar, cigarette, pipe, or tobacco or plant product intended for inhalation.”

²³ 24 L.P.R.A. ss. 891 and 892. “Smoking” is defined as “the activity of inhaling and exhaling smoke from [tobacco] and other substances that are lit in cigars, cigarettes, and pipes, and to possess or transport cigars, cigarettes, pipes, and smoking articles while lit and it shall also include the use of the so-called electronic cigarette.”

²⁴ 24 L.P.R.A. § 891.

²⁵ Okla. Stat. Ann. tit. 21, § 1247(B).

²⁶ Or. Admin. R. 736-010-0040(8)(j).

²⁷ American Nonsmokers’ Rights Foundation, *Municipalities with Smokefree Park Laws* (2017), available at: <https://no-smoke.org/wp-content/uploads/pdf/SmokefreeParks.pdf> (last visited Jan. 27, 2020). This document lists local governments in the U.S. that have created laws that restrict or prohibit smoking in public parks within their jurisdiction.

²⁸ United Health Foundation, America’s Health Rankings, *Annual Report*, available at: <https://www.americahealthrankings.org/explore/annual/measure/Smoking/state/FL> (last visited Jan. 27, 2020).

²⁹ *Id.*; U.S. Department of Health and Human Services, *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*, 148 (2014), available at: <https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf> (last visited Jan. 27, 2020).

³⁰ U.S. Department of Health and Human Services, *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*, 7 (2014); Center for Disease Control and Prevention, *Secondhand Smoke (SHS) Facts*, available at: https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm (last visited Jan. 27, 2020).

³¹ Center for Disease Control and Prevention, *Secondhand Smoke (SHS) Facts*, available at: https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm (last visited Jan. 27, 2020).

³² Nipapun Kungskulniti et al., *Secondhand Smoke Point-Source Exposures Assessed By Particulate Matter At Two Popular Public Beaches in Thailand*, 40 J. PUBLIC HEALTH 3, 527–532 (2017), available at: <https://academic.oup.com/jpubhealth/article/40/3/527/4110319?guestAccessKey=5947c328-fd75-4b6c-acfe-28f989c4c639> (last visited Jan. 27, 2020); James Repace, *Benefits of Smoke-free Regulations in Outdoor Settings: Beaches, Golf Courses*,

Another significant issue with tobacco smoking in natural areas is litter consisting of used cigarette filters, commonly known as cigarette butts. Cigarette butts are typically comprised mainly of cellulose acetate, a plastic-like material that can take years to decompose.³³ It is estimated that, of the roughly 6 trillion cigarettes smoked annually worldwide, up to two-thirds of the cigarette butts are discarded as litter.³⁴ Furthermore, cigarette butts contain hazardous substances, and studies have shown these substances to be potentially toxic to animals.³⁵

Under Florida law, it is illegal to discard any tobacco product as litter.³⁶ Discarding a cigarette butt is a noncriminal infraction, punishable by a penalty of \$100 in addition to any court-ordered litter pickup or other commensurate labor.³⁷

Fires are another significant issue regarding smoking tobacco in public parks. The Legislature has found that cigarettes are the leading cause of fire deaths in Florida and the nation.³⁸ Florida law requires that cigarettes sold in the state meet standards for reduced ignition propensity.³⁹ In addition to the risk of fires in buildings, Florida generally has a year-round risk of wildfire.⁴⁰ Cigarettes or other smoking materials can cause wildfires when discarded as litter. Data from the United States Forest Service shows that a significant number of wildfires were started by “smoking” between 1992 and 2015.⁴¹ The Florida Forest Service has reported an increased risk of wildfires for areas of northwest Florida in the aftermath of Hurricane Michael, due to factors such as increased fuel loadings and reduced access for fire mitigation equipment.⁴²

Parks, Patios and in Motor Vehicles, 34 WM MITCHELL L. REV. 1621, 1622–1624 (2008), available at: <https://www.publichealthlawcenter.org/sites/default/files/resources/tclc-symposium-repace.pdf> (last visited Jan. 27, 2020).

³³ NOAA, National Ocean Service, *What Is the Most Common Form of Ocean Litter?* available at: <https://oceanservice.noaa.gov/facts/most-common-ocean-litter.html> (last visited Nov. 13, 2019); Bonanomi, Giuliano et al., *Cigarette Butt Decomposition and Associated Chemical Changes Assessed by 13C CPMAS NMR*, 10 PLoS ONE 1 e0117393, 2 (2015), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4307979/pdf/pone.0117393.pdf> (last visited Jan. 27, 2020).

³⁴ World Health Organization, *Tobacco and Its Environmental Impact: An Overview*, 24 (2017) available at: <https://apps.who.int/iris/bitstream/handle/10665/255574/9789241512497-eng.pdf;jsessionid=8E8DFDA81D9C76448B2C9EAD445BC784?sequence=1> (last visited Jan. 27, 2020); Thomas E. Novotny and Elli Slaughter, *Tobacco Product Waste: An Environmental Approach to Reduce Tobacco Waste*, 1 CURR. ENVIRON. HEALTH REP. 3: 208–216, 208 (2014), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4129234/> (last visited Jan. 27, 2020).

³⁵ Wenjau Lee and Chih Chun Lee, *Developmental Toxicity of Cigarette Butts - An Underdeveloped Issue*, 113 ECOTOXICOLOGY AND ENVIRON. SAFETY 362–368, 362–363, 367 (2015), available at: http://tweb.cjcu.edu.tw/journal/2015_03_04_11_23_24.114.pdf (last visited Jan. 27, 2020); Stephanie L. Wright, *Bioaccumulation and Biological Effects of Cigarette Litter in Marine Worms*, 2015 SCI. REP. 5: 14119, 1 (2015), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4569891/> (last visited Jan. 27, 2020).

³⁶ Section 403.413(2)(d) and (f), (4), F.S.

³⁷ Section 403.413(6)(a), F.S. Littering is a noncriminal infraction if the litter does not exceed 15 pounds in weight or 27 cubic feet in volume.

³⁸ Section 633.142(2)(a), F.S.

³⁹ Section 633.142, F.S.

⁴⁰ Florida Department of Agriculture and Consumer Services, *Wildland Fire, Prevention*, available at: <https://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Wildland-Fire> (last visited Jan. 27, 2020).

⁴¹ Karen C. Short, *Spatial Wildfire Occurrence Data For the United States, 1992-2015* (2017), available at: <https://www.fs.usda.gov/rds/archive/Product/RDS-2013-0009.4/> (last visited Jan. 27, 2020). The data can be viewed by clicking on the file labeled “RDS-2013-0009.4_ACCDB.zip,” and viewing the column labeled “STAT_CAUSE_DESCR.”

⁴² Jim Karels, Director, Florida Forest Service, Presentation to the Florida Senate Environment and Natural Resources Committee, January 8, 2019, *Hurricane Michael Impacts, Actions and Needs*, slides 14-16, 18 (2019).

III. Effect of Proposed Changes:

Section 1 amends s. 386.209, F.S., within part II of ch. 386, F.S. The bill allows municipalities and counties to further restrict smoking within the boundaries of any public park they own. Given the existing definition of “smoking” in ch. 386, F.S., the bill would allow municipalities and counties to further restrict the ability for any person to inhale, exhale, burn, carry, or possess any lighted tobacco product, including cigarettes, cigars, pipe tobacco, or any other lighted tobacco product, in a public county or municipal park.

Although this bill specifically relates to “smoking,” counties and municipalities are currently allowed to impose more restrictive regulation on the use of vapor-generating devices under s. 386.209, F.S.

Section 2 provides an effective date of July 1, 2020.

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:

Visitors to county or municipal parks who violate smoking restrictions imposed by a county or municipality may be subject to the applicable fines or civil penalty for such violations.

C. Government Sector Impact:

Counties and municipalities that opt to restrict smoking within the boundaries of public parks may incur indeterminate expenses related to enacting and enforcing such restrictions.

To the extent any imposed smoking restrictions deter or encourage visitation of a county or municipal park, a county or municipality may experience fluctuation in revenues generated by a public park admittance fee.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There is no definition for “public park” in ch. 386, F.S., so it may not be clear exactly which areas are subject to the bill’s optional prohibition on smoking.

The short title of part II of ch. 386, F.S., which is entitled the “Florida Clean Indoor Air Act,” should be amended to remove the term “indoor” since the bill expands the scope of the act to regulate smoking beyond indoor areas, such as public parks.

VIII. Statutes Affected:

This bill substantially amends section 386.206 of the Florida Statutes.

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

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

None.

B. Amendments:

None.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Agriculture,
Environment, and General Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Appropriations
Environment and Natural Resources
Health Policy

SENATOR DEBBIE MAYFIELD

17th District

January 22, 2020

The Honorable Wilton Simpson
Chair, Committee on Innovation, Industry, and Technology
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: SB 630

Dear Chair Simpson,

I am respectfully requesting Senate Bill 630, a bill relating to the Regulation of Smoking, be placed on the agenda for your Committee on Innovation, Industry, and Technology.

I appreciate your consideration of this bill and I look forward to working with you and the Committee on Innovation, Industry, and Technology staff. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017.

Thank you,

A handwritten signature in blue ink that reads "Debbie Mayfield". The signature is fluid and cursive, with the first name "Debbie" and last name "Mayfield" clearly legible.

Debbie Mayfield
State Senator, District 17

Cc: Booter Imhof, Lynn Koon,

REPLY TO:

- ☐ 900 East Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025 FAX: (888) 263-3815
- ☐ 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- ☐ 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/3/2020
Meeting Date

630
Bill Number (if applicable)

Topic Regulation of Smoking

Amendment Barcode (if applicable)

Name Edgar G. Fernandez

Job Title _____

Address 201 W Park Ave Ste 100
Street
Killgussee FL 32301
City State Zip

Phone (786) 255-5755
Email Edgar@ArtfieldFlorida.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Broward County

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2020
Meeting Date

SB 630
Bill Number (if applicable)

Topic Smoking

Amendment Barcode (if applicable)

Name Rebecca Dela Rosa

Job Title Legislative Affairs Director

Address 301 N Olive Ave #701

Phone 850.284.7235

West Palm Beach, FL 33401
City State Zip

Email rdelarosa@phagev.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Palm Beach County

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
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20

Meeting Date

SB 630

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Martha Edenfield

Job Title _____

Address 215 S. Monroe Street #815

Phone 850-999-4100

Street

Tallahassee

FL

32301

City

State

Zip

Email medenfield@deanmead.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Charlotte County

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
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20

Meeting Date

630

Bill Number (if applicable)

Topic Tobacco

Amendment Barcode (if applicable)

Name Mark Landreth

Job Title Gov Rel Dir

Address 2851 Remington Green Cir #A

Street

Tallahassee

City

State

32308

Zip

Phone 850.544.3376

MARK.LANDRETH@

Email heart.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing American Heart 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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20

Meeting Date

SB 630

Bill Number (if applicable)

Topic Regulation of Smoking

Amendment Barcode (if applicable)

Name Casey Cook

Job Title Sr. Legislative Advocate

Address 301 S. Bronough St #300

Phone 850 222-6984

Street

Tallahassee

FL

32301

City

State

Zip

Email ccook@flcities.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

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
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3.3.2020

Meeting Date

SB 630

Bill Number (if applicable)

Topic Regulation of Smoking

Amendment Barcode (if applicable)

Name Tonnette [tone-Net] Graham

Job Title Assoc. Director of Public Policy

Address 100 S. Monroe Street

Phone 850.922.4300

Talahassee, FL 32301

City

State

Zip

Email tgraham@fl-counties.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Association of Counties

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/20
Meeting Date

630
1080
Bill Number (if applicable)

Topic Regulation of Smoking

Amendment Barcode (if applicable)

Name Heather Yaumans

Job Title Senior Director, Gov Relations

Address 2419 Centennial Blvd
Street
Tallahassee FL 32300
City State Zip

Phone (850) 251-2111
Email heather.yaumans@carcanet.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing American Cancer Society Cancer Action Network

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

Feb 3 2020

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

630

Meeting DateBill Number (if applicable)Topic Smoking CessationAmendment Barcode (if applicable)Name H Lee MoffittJob Title AttorneyAddress 3327 NW Perimeter RdPhone 813 760-5712StreetPalm CityFL34990Email MrSpeaker@aol.comCityStateZipSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Moffitt Cancer CenterAppearing 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)

COMMITTEE: Innovation, Industry, and Technology
ITEM: SB 630
FINAL ACTION: Favorable
MEETING DATE: Monday, February 3, 2020
TIME: 1:30—3:30 p.m.
PLACE: 110 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

By Senator Mayfield

17-00742A-20

2020630__

1 A bill to be entitled

2 An act relating to regulation of smoking; amending s.
3 386.209, F.S.; authorizing municipalities and counties
4 to further restrict smoking within the boundaries of
5 certain public parks; providing an effective date.
6

7 Be It Enacted by the Legislature of the State of Florida:
8

9 Section 1. Section 386.209, Florida Statutes, is amended to
10 read:

11 386.209 Regulation of smoking preempted to state.—This part
12 expressly preempts regulation of smoking to the state and
13 supersedes any municipal or county ordinance on the subject;
14 however, municipalities and counties may further restrict
15 smoking within the boundaries of any public parks they own, and
16 school districts may further restrict smoking ~~by persons~~ on
17 school district property. This section does not preclude the
18 adoption of municipal or county ordinances that impose more
19 restrictive regulation on the use of vapor-generating devices
20 than is provided in this part.

21 Section 2. This act shall take effect July 1, 2020.

CourtSmart Tag Report

Room: EL 110
Caption: Senate Innovation, Industry and Technology Committee

Case No.:

Type:
Judge:

Started: 2/3/2020 1:38:52 PM
Ends: 2/3/2020 3:24:54 PM **Length:** 01:46:03

1:38:51 PM Meeting called to order by Chair Simpson
1:38:54 PM Roll call by AA Lynn Koon
1:39:02 PM Quorum present
1:39:13 PM Pledge of Allegiance
1:39:37 PM Comments from Chair Simpson
1:39:57 PM Introduction of Tab 1 by Chair Simpson
1:40:07 PM Explanation of SB 1656, Reclaimed Water by Senator Albritton
1:43:17 PM Introduction of Amendment Barcode No. 451010 and Substitute Amendment Barcode No. 276212 by Chair Simpson
1:43:41 PM Explanation of Amendments by Senator Albritton
1:44:13 PM Closure waived
1:44:16 PM Amendment adopted
1:44:30 PM Speaker David Geddis, Jr. in opposition
1:46:00 PM Garrett Wallace, The Nature Conservancy waives in support
1:46:07 PM Louis Rotundo, City of Altamonte Springs waives in support
1:46:18 PM Speaker Rebecca O'Hara, Florida League of Cities
1:47:50 PM Speaker David Childs, FWEA Utility Council
1:49:22 PM Speaker Laura Donaldson, Watereuse Florida in support
1:49:53 PM Jim Spratt, Associated Industries of Florida waives in support
1:50:12 PM Question from Senator Farmer
1:50:18 PM Senator Albritton in closure
1:51:31 PM Roll call by AA
1:52:17 PM CS/SB 1656 reported favorably
1:52:36 PM Introduction of Tab 7 by Chair Simpson
1:53:07 PM Explanation of CS/SB 708, Automated Pharmacy Systems by Senator Hutson
1:53:52 PM Question from Senator Gibson
1:54:00 PM Response from Senator Hutson
1:55:01 PM Follow-up question from Senator Gibson
1:55:07 PM Response from Senator Hutson
1:55:59 PM Michael Jackson, Florida Pharmacy Association waives in opposition
1:56:09 PM Sal Nuzzo, The James Madison Institute waives in support
1:56:14 PM Ivonne Fernandez, Associate State Director, AARP waives in support
1:56:20 PM Phillip Suderman, Americans for Prosperity waives in support
1:56:26 PM Jake Farmer, Florida Retail Federation waives in support
1:56:34 PM Carlos Cruz, Walgreens waives in support
1:56:40 PM Richard Pinsky, MedAvail Technologies waives in support
1:56:54 PM Senator Gibson in debate
1:57:25 PM Senator Bradley in debate
1:58:40 PM Senator Hutson in closure
1:58:52 PM Roll call by AA
1:59:53 PM CS/SB 708 reported favorably
2:00:10 PM Introduction of Tab 9 by Chair Simpson

2:00:27 PM Explanation of SB 630, Regulation of Smoking by Senator Mayfield
2:01:17 PM Question from Senator Bracy
2:01:22 PM Response from Senator Mayfield
2:01:37 PM H. Lee Moffitt, Moffitt Cancer Center waives in support
2:01:42 PM Heather Youmans, American Cancer Society Cancer Action Network waives in support
2:01:52 PM Tonnette Graham, Florida Association of Counties waives in support
2:02:00 PM Casey Cook, Florida League of Cities waives in support
2:02:07 PM Mark Landreth, American Heart Association waives in support
2:02:13 PM Martha Edenfield, Charlotte County waives in support
2:02:20 PM Rebecca DeLaRosa, Palm Beach County waives in support
2:02:25 PM Edgar Fernandez, Broward County waives in support
2:02:41 PM Closure waived
2:02:44 PM Roll call by AA
2:02:50 PM SB 630 reported favorably
2:03:07 PM Recording Paused
2:08:06 PM Recording Resumed
2:08:15 PM Meeting continued
2:09:14 PM Introduction of Tab 8 by Chair Simpson
2:09:23 PM Explanation of SB 1174, Communications Services Tax by Senator Hutson
2:11:05 PM Sal Nuzzo, The James Madison Institute waives in support
2:11:14 PM Speaker Laura Youmans, Florida Association of Counties in opposition
2:12:34 PM Speaker Charles Dudley, Florida Internet & Television Association in support
2:13:31 PM Cory Guzzo, Associated Industries of Florida waives in support
2:13:39 PM Speaker Amber Hughes, Florida League of Cities in opposition
2:15:42 PM Carolyn Johnson, Florida Chamber of Commerce waives in support
2:15:49 PM Christie Mason, CenturyLink waives in support
2:15:55 PM Kurt Wenner, Florida TaxWatch waives in support
2:16:01 PM Marie DuBose waives in support
2:16:10 PM Andy DuBose waives in support
2:16:16 PM Edgar Fernandez, Polk and Broward Counties waives in opposition
2:16:26 PM Chris Doolin, Small County Coalition waives in opposition
2:16:41 PM Senator Gibson in debate
2:17:18 PM Senator Hutson in debate
2:17:23 PM Roll call by AA
2:17:29 PM SB 1174 reported favorably
2:18:07 PM Introduction of Tab 2 by Chair Simpson
2:19:07 PM Explanation of CS/SB 810, Tobacco and Nicotine Products by Senator Simmons
2:20:47 PM Introduction of Late-filed Amendment Barcode No. 570962 by Chair Simpson
2:21:06 PM Explanation of Amendment by Senator Simmons
2:23:08 PM Question from Senator Gibson
2:23:16 PM Response from Senator Simmons
2:23:29 PM Question from Senator Brandes
2:23:34 PM Response from Senator Simmons
2:25:13 PM Question from Senator Brandes
2:25:19 PM Response from Senator Simmons
2:26:23 PM Question from Senator Brandes
2:26:28 PM Response from Senator Simmons
2:28:16 PM Question from Senator Braynon
2:28:22 PM Response from Senator Simmons
2:29:39 PM Question from Senator Bradley
2:29:50 PM Response from Senator Simmons
2:30:52 PM Response from Miguel Oxamendi

2:32:23 PM Question from Senator Gibson
 2:32:31 PM Response from Senator Simmons
 2:33:02 PM Follow-up question from Senator Gibson
 2:33:23 PM Response from Senator Simmons
 2:34:04 PM Question from Senator Bracy
 2:34:10 PM Response from Senator Simmons
 2:35:56 PM Closure waived on Amendment
 2:36:01 PM Amendment adopted
 2:36:19 PM Lorelei Harper waives in opposition
 2:36:26 PM Dan Marlin waives in opposition
 2:36:30 PM Speaker Mark Landreth, American Heart Association in support
 2:37:55 PM Jim Hinson waives in opposition
 2:38:01 PM Speaker Heather Youmans, American Cancer Society Cancer Action Network in support
 2:39:54 PM Question from Senator Brandes
 2:40:00 PM Response from Ms. Youmans
 2:40:26 PM Follow-up question from Senator Brandes
 2:40:38 PM Response from Ms. Youmans
 2:40:57 PM Comments from Chair Simpson
 2:41:09 PM Response from Senator Brandes
 2:41:24 PM Robert Lewellen, Chemist waives in opposition
 2:41:32 PM Amy Hampton waives in opposition
 2:41:42 PM Speaker Meagan Phillip-O'Bryan
 2:42:41 PM Question from Senator Braynon
 2:42:49 PM Response from Ms. Phillips-O'Bryan
 2:43:47 PM Follow-up question from Senator Braynon
 2:43:52 PM Response from Ms. Phillips-O'Bryan
 2:45:03 PM Amy Hampton waives in opposition
 2:45:11 PM Zack Goodson waives in opposition
 2:46:12 PM Question from Senator Braynon
 2:47:11 PM Response from Mr. Goodson
 2:47:53 PM Toni Large, Florida Society of Respiratory Care waives in support
 2:48:01 PM J.B. McCormick waives in opposition
 2:48:07 PM Alexandra Abboud, Florida Dental Association waives in support
 2:48:16 PM Doug Bell, American Lung Association; American Academy of Pediatrics waives in support
 2:48:25 PM Jonathan Risteen waives in opposition
 2:48:31 PM Patricia Stokes waives in opposition
 2:48:41 PM Thomas Muellen waives in opposition
 2:48:47 PM Norman Barkley waives in opposition
 2:48:53 PM Linda McCormick waives in opposition
 2:49:02 PM Nicholas Orlando, Florida Smoke Free Association waives in opposition
 2:49:10 PM Jennifer Cunningham waives in support
 2:49:18 PM Joseph Carco, Jim's Vape Escape, Inc. waives in opposition
 2:49:27 PM Jacqueline Carco waives in opposition
 2:49:35 PM Kalee VanDeBoe in opposition
 2:50:10 PM Speaker Melissa Villar, NORML Tallahassee
 2:53:11 PM Michael Cherup waives in opposition
 2:53:22 PM Angela Weatherholt waives in opposition
 2:53:25 PM April Pros, E-Cig Source waives in opposition
 2:53:35 PM Speaker Greg Pound
 2:55:10 PM Gus Pros waives in opposition

2:55:14 PM Michael Boling waives in opposition
2:55:20 PM Robert Lewellen, Chemist in opposition
2:55:28 PM Italo M. Richetti, Vape Shop, Jim's Vape Escape in opposition
2:55:33 PM Tachetho Lowery, _E-Cig Source waives in support
2:55:37 PM Speaker Dr. Brad Rodu, Professor of Medicine, University of Louisville
2:59:22 PM Senator Simmons in closure
2:59:44 PM Roll call by AA
2:59:49 PM CS/SB 810 reported favorably
3:00:31 PM Introduction of Tab 3 and Late-filed Amendment Barcode No. 134350 by Chair Simpson
3:01:31 PM Explanation of SB 1394, Taxes and Fees by Senator Simmons
3:03:17 PM Question from Senator Braynon
3:03:22 PM Response from Senator Simmons
3:03:56 PM Follow-up question from Senator Braynon
3:04:03 PM Response from Senator Simmons
3:04:25 PM Question from Senator Bracy
3:04:31 PM Response from Senator Simmons
3:06:22 PM Closure waived
3:06:38 PM Amendment adopted
3:06:43 PM Question from Senator Gibson
3:06:50 PM Response from Senator Simmons
3:07:45 PM
3:11:21 PM Amanda Reyes, Puff 7 Less, Inc. waives in opposition
3:12:58 PM Speaker Jim Hampton, Business Owner in opposition
3:15:48 PM Speaker Heather Youmans, American Cancer Society Cancer Action Network
3:16:35 PM Dan Marlin waives in opposition
3:16:39 PM Lorelie Harper waives in opposition
3:16:43 PM Mark Landreth, American Heart Association in support
3:16:47 PM Melissa Villar, NORML for information
3:17:00 PM Zack Goodson in opposition
3:17:05 PM J.B. McCormick waives in opposition
3:17:08 PM Doug Bell, American Lung Association; American Academy of Pediatrics waives in support
3:17:14 PM Tachathe Lowery waives in opposition
3:17:19 PM Norman Barkley waives in opposition
3:17:25 PM Robert Lewellen waives in opposition
3:17:28 PM Patricia Stokes waives in opposition
3:17:35 PM Jonathan Risteen for information
3:17:45 PM Joseph Carco waives in opposition
3:17:54 PM Jacqueline Carco waives in opposition
3:17:58 PM Michael Cherup waives in opposition
3:18:02 PM Angela Weatherholt waives in opposition
3:18:08 PM Linda McCormick waives in opposition
3:18:12 PM Thomas Muellen waives in opposition
3:18:19 PM Kalee VanDeboe waives in opposition
3:18:24 PM Amanda Reyes waives in opposition
3:18:28 PM April Pros, E-Cig Source waives in opposition
3:18:36 PM Gus Pros waives in opposition
3:18:39 PM Michael Boling waives in opposition
3:18:42 PM Nicholas Orlando waives in opposition
3:18:47 PM Italo Richetti, Jim's Vape Escape waives in opposition
3:19:04 PM Delores Orlando for information
3:19:12 PM Senator Gibson in debate

3:20:04 PM Senator Bracy in debate
3:21:37 PM Senator Simmons in closure
3:22:59 PM Roll call by AA
3:23:59 PM CS/SB 1394 reported favorably
3:24:34 PM Senator Benacquisto moves to adjourn, meeting adjourned