

<b>Tab 1</b>	<b>SB 72 by Brandes (CO-INTRODUCERS) Perry, Baxley;</b> (Identical to H 00007) Civil Liability for Damages Relating to COVID-19				
475864	A	S	CM, Torres	btw L.163 - 164:	02/12 02:53 PM
407288	A	S	CM, Torres	btw L.163 - 164:	02/12 02:54 PM
<b>Tab 2</b>	<b>SB 374 by Bradley;</b> (Identical to H 00511) Fair Repair of Agricultural Equipment				
<b>Tab 3</b>	<b>SB 598 by Perry;</b> Back-to-school Sales Tax Holiday				
<b>Tab 4</b>	<b>CS/SB 46 by RI, Hutson;</b> (Identical to H 00737) Craft Distilleries				
406678	A	S	CM, Hutson	btw L.252 - 253:	02/12 11:02 AM
<b>Tab 5</b>	<b>SB 602 by Burgess;</b> (Identical to H 00339) Business Organizations				
454720	A	S	CM, Burgess	btw L.427 - 428:	02/12 01:06 PM
<b>Tab 6</b>	<b>SB 704 by Gruters (CO-INTRODUCERS) Stewart, Pizzo, Berman, Cruz, Hutson, Torres, Taddeo, Hooper, Ausley, Harrell, Rouson, Wright, Bracy, Polsky;</b> (Identical to H 00757) Entertainment Industry				
<b>Tab 7</b>	<b>SB 734 by Gruters;</b> Sales Tax Holiday for Disaster Preparedness Supplies				
906656	D	S	CM, Gruters	Delete everything after	02/12 11:03 AM
<b>Tab 8</b>	<b>SB 778 by Hooper;</b> (Identical to H 00675) Florida Tourism Marketing				
<b>Tab 9</b>	<b>SPB 7020 by CM;</b> OGSR/County Tourism Promotion Agencies/Florida Tourism Industry Marketing Corporation				

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**COMMERCE AND TOURISM**  
**Senator Hooper, Chair**  
**Senator Wright, Vice Chair**

**MEETING DATE:** Monday, February 15, 2021  
**TIME:** 3:30—6:00 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Building

**MEMBERS:** Senator Hooper, Chair; Senator Wright, Vice Chair; Senators Burgess, Diaz, Garcia, Gruters, Hutson, Pizzo, Powell, Taddeo, and Torres

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A1 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301

1	<b>SB 72</b> Brandes (Identical H 7)	Civil Liability for Damages Relating to COVID-19; Providing requirements for a civil action based on a COVID-19-related claim; providing that the plaintiff has the burden of proof in such action; providing a statute of limitations; providing severability; providing retroactive applicability, etc.
		JU      01/25/2021 Favorable CM      02/15/2021 RC

2	<b>SB 374</b> Bradley (Identical H 511)	Fair Repair of Agricultural Equipment; Citing this act as the "Agricultural Equipment Fair Repair Act"; requiring original equipment manufacturers of agricultural equipment to provide certain manufacturing, diagnostic, and repair information to independent repair providers and owners; prohibiting the original equipment manufacturers from excluding certain information concerning security-related functions, etc.
		AG      01/27/2021 Favorable CM      02/15/2021 RC

3	<b>SB 598</b> Perry	Back-to-school Sales Tax Holiday; Providing exemptions from the sales and use tax on the retail sale of certain clothing, wallets, bags, school supplies, personal computers, and personal computer-related accessories during a specified timeframe; defining terms; specifying locations where the exemptions do not apply; authorizing certain dealers to opt out of participating in the tax holiday, subject to certain requirements, etc.
		CM      02/15/2021 FT AP

**COMMITTEE MEETING EXPANDED AGENDA**

Commerce and Tourism

Monday, February 15, 2021, 3:30—6:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 46</b> Regulated Industries / Hutson (Identical H 737, Compare S 142)	Craft Distilleries; Authorizing craft distilleries to be licensed as specified vendors under certain circumstances; requiring certain alcoholic beverages to be obtained through a licensed distributor; prohibiting a distillery from operating as a craft distillery until certain requirements are met; authorizing persons to have common ownership in craft distilleries under certain circumstances; requiring a minimum percentage of a craft distillery's total finished branded products to be distilled in this state and contain one or more Florida agricultural products after a specified date, etc.	
		RI 01/26/2021 Fav/CS CM 02/15/2021 RC	
5	<b>SB 602</b> Burgess (Identical H 339)	Business Organizations; Revising requirements relating to inspecting certain records of limited liability companies; revising the circumstances under which shareholders are entitled to appraisal rights and certain payments; entitling corporations to prepay a shareholder if the shareholder makes a demand for payment; revising requirements for proceedings relating to unsettled demands for payment, etc.	
		CM 02/15/2021 JU RC	
6	<b>SB 704</b> Gruters (Identical H 757)	Entertainment Industry; Creating the Film, Television, and Digital Media Targeted Rebate Program within the Department of Economic Opportunity under the supervision of the Commissioner of Film and Entertainment; requiring that film, television, and digital media projects being produced in this state meet specified criteria for rebate eligibility; requiring an applicant that receives funding to make a good faith effort to use existing providers of infrastructure or equipment in this state and to employ residents of this state; requiring the Florida Film and Entertainment Advisory Council to determine a score for each qualified project using specified criteria, etc.	
		CM 02/15/2021 ATD AP	

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**COMMITTEE MEETING EXPANDED AGENDA**

Commerce and Tourism

Monday, February 15, 2021, 3:30—6:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>SB 734</b> Gruters	Sales Tax Holiday for Disaster Preparedness Supplies; Providing exemptions from the sales and use tax for specified disaster preparedness supplies during a specified timeframe; requiring purchasers of certain items to furnish a specified affidavit and information to the selling dealer; providing a criminal penalty for furnishing a false affidavit with certain intent; authorizing the Department of Revenue to adopt emergency rules, etc.	
		CM 02/15/2021 FT AP	
8	<b>SB 778</b> Hooper (Identical H 675)	Florida Tourism Marketing; Authorizing the Florida Tourism Industry Marketing Corporation to carry forward unexpended state appropriations into succeeding fiscal years; removing the scheduled repeal of the corporation; removing the scheduled repeal of the Division of Tourism Marketing within Enterprise Florida, Inc., etc.	
		CM 02/15/2021 ATD AP	
Consideration of proposed bill:			
9	<b>SPB 7020</b>	OGSR/County Tourism Promotion Agencies/Florida Tourism Industry Marketing Corporation; Amending a provision which provides an exemption from public records requirements for trade secrets held by county tourism promotion exemption; amending a provision which provides an exemption from public records requirements for the identity of a person who responds to a marketing or advertising research project conducted by the Florida Tourism Industry Marketing Corporation and for certain trade secrets; removing the scheduled repeal of the exemption, etc.	
Other Related Meeting Documents			

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

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

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

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BILL: SB 72

INTRODUCER: Senator Brandes and others

SUBJECT: Civil Liability for Damages Relating to COVID-19

DATE: February 12, 2021

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

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

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**I. Summary:**

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

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

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

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

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

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

## II. Present Situation:

### Background

The COVID-19 pandemic has affected the state of Florida in ways that were unimaginable one year ago. The toll on individuals, businesses, and the economy has been catastrophic. According to the Department of Health, 1,790,743 positive COVID-19 cases have been diagnosed in the state, 74,884 residents have been hospitalized, and 28,048 people have died of the virus.<sup>1</sup>

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

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

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

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

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<sup>1</sup> Florida Department of Health, Division of Disease Control and Health Protection, *Florida's COVID-19 Data and Surveillance Dashboard*, <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429> (last visited Feb. 10, 2021).

<sup>2</sup> *Executive Summary, Revenue Estimating Conference for the General Revenue Fund & Financial Outlook Statement*, August 14, 2020, and subsequently updated. <http://edr.state.fl.us/Content/conferences/generalrevenue/archives/200814gr.pdf> (last visited Feb. 12, 2021).

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

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

### **COVID-Related Lawsuits**

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

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

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

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

<sup>5</sup> Congressional Research Service, *COVID-19 Liability: Tort, Workplace Safety, and Securities Law* (Sept. 24, 2020), <https://crsreports.congress.gov/product/pdf/R/R46540> (last visited Feb. 12, 2021).

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

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

### **Florida Lawsuits**

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

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

### **Legislative and Executive Responses of Other States**

At least 14 states have enacted legislation to provide civil liability immunity to individuals and entities from COVID-19-related claims.<sup>9</sup> At least two additional states have issued executive orders to provide liability limitations.<sup>10</sup> These laws do not reflect separate healthcare liability protections. To date, no similar federal legislation has been enacted, although S. 4317 was introduced in the Senate on July 27, 2020, and referred to committee.<sup>11</sup>

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

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

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

<sup>8</sup> Hunton Andrews Kurth LLP, *COVID-19 Complaint Tracker*, <https://www.huntonak.com/en/covid-19-tracker.html> (last visited Feb. 12, 2021).

<sup>9</sup> The states are: Georgia, Idaho, Iowa, Kansas, Louisiana, Michigan, Mississippi, Nevada, North Carolina, Ohio, Oklahoma, Tennessee, Utah, and Wyoming. Additional, and sometimes separate, legislation has been enacted by 17 states that provides medical liability limitations for health care facilities and workers. The database was current as of December 14, 2020. National Conference of State Legislatures, *State Action on Coronavirus (COVID-19)*, <https://www.ncsl.org/research/health/state-action-on-coronavirus-covid-19.aspx#db> (last visited Feb. 12, 2021).

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

<sup>11</sup> Safe to Work Act, s. 4317 –116<sup>th</sup> Cong. (2020) <https://www.congress.gov/bill/116th-congress/senate-bill/4317/actions> (last visited Feb. 12, 2021).



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

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

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

### ***Negligence Pleadings***

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

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

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

To establish liability, the plaintiff must prove four elements:

- Duty – That the defendant owed a duty, or obligation, of care to the plaintiff;
- Breach – That the defendant breached that duty by not conforming to the standard required;
- Causation – That the breach of the duty was the legal cause of the plaintiff’s injury; and
- Damages – That the plaintiff suffered actual harm or loss.

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Clear and Convincing**

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

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

Courts have developed general definitions for the degrees of negligence.

### **Slight Negligence**

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

### **Ordinary Negligence**

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

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

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

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

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

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

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

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

### **Gross Negligence**

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

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

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

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

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

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

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

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

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

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

### **Statute of Limitations**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### III. Effect of Proposed Changes:

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

#### WHEREAS Clauses

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

#### Legislative Findings

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

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

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

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

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

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

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

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

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

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

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

## **The Court’s Responsibilities**

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

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

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

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

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

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

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

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

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

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

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

### **Statute of Limitations**

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

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

### **Retroactive Application**

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

## **IV. Constitutional Issues:**

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

None.

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

None.

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

None.

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

None.

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

None identified.

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

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

None.

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

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

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

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



**C. Government Sector Impact:**

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates s. 768.38 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

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

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<sup>47</sup> Office of the State Courts Administrator, *2021 Judicial Impact Statement, SB 72* (Jan. 21, 2021) <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=31076> (last visited Feb. 12, 2021).



475864

LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment (with title amendment)**

Between lines 163 and 164

insert:

(5) (a) For the purposes of benefits provided under chapters 112 and 440 and any other benefits provided by law to individuals suffering injury or illness through the course and scope of employment, the following individuals shall be presumed to have contracted COVID-19 in the course and scope of his or her employment:



11 1. A person licensed under chapter 458, chapter 459,  
12 chapter 461, chapter 463, chapter 464, chapter 465, chapter 466,  
13 or chapter 483;

14 2. An employee of a:

15 a. Facility licensed, certified, or approved by any state  
16 agency and for which chapter 395, chapter 400, chapter 429, or  
17 chapter 766 apply;

18 b. Federally qualified health center as defined in 42  
19 U.S.C. s. 1396d(1)(2)(B); or

20 c. Sole proprietorship, group practice, partnership, or  
21 corporation that provides health care services by physicians  
22 covered by s. 627.419, that is directly supervised by one or  
23 more of such physicians, and that is wholly owned by one or more  
24 of those physicians or by a physician and the spouse, parent,  
25 child, or sibling of that physician;

26 3. An emergency medical technician as defined in s.  
27 401.23(11); or

28 4. A paramedic as defined in 401.23(17).

29 (b) The presumption in paragraph (a) may be rebutted if the  
30 defendant proves by clear and convincing evidence that the  
31 individual's infection did not arise out of the course and scope  
32 of his or her employment.

33  
34 ===== T I T L E A M E N D M E N T =====

35 And the title is amended as follows:

36 Delete line 8

37 and insert:

38 providing a statute of limitations; providing that  
39 certain individuals are presumed to have contracted



40 COVID-19 in the course and scope of their employment;  
41 specifying how a defendant may rebut such presumption;  
42 providing



407288

LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment (with title amendment)**

Between lines 163 and 164

insert:

(5) Any business that is insured under an insurance policy providing coverage for premises liability shall receive a rebate of any insurance premiums paid or accrued from an insurance carrier or insurance provider for any period where the business was unable to use the business premises due to authoritative or controlling government-issued health standards or guidance.



407288

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

And the title is amended as follows:

Delete line 8

and insert:

providing a statute of limitations; requiring that  
certain businesses receive rebates from insurance  
carriers or providers for any period where the  
business was unable to use the business premises due  
to certain government-issued standards or guidance;  
providing

By Senator Brandes

24-00824B-21

202172\_\_

1 A bill to be entitled  
 2 An act relating to civil liability for damages  
 3 relating to COVID-19; creating s. 768.38, F.S.;  
 4 providing legislative findings and intent; defining  
 5 terms; providing requirements for a civil action based  
 6 on a COVID-19-related claim; providing that the  
 7 plaintiff has the burden of proof in such action;  
 8 providing a statute of limitations; providing  
 9 severability; providing retroactive applicability;  
 10 providing an effective date.  
 11  
 12 WHEREAS, on March 9, 2020, Governor Ron DeSantis issued  
 13 Executive Order Number 20-52 declaring a state of emergency for  
 14 the State of Florida due to the COVID-19 pandemic, and  
 15 WHEREAS, in light of the ongoing nature of the COVID-19  
 16 pandemic, the Governor has repeatedly extended the state of  
 17 emergency, including most recently on December 29, 2020, in  
 18 Executive Order Number 20-316, and  
 19 WHEREAS, the State of Florida continues under a declared  
 20 state of emergency, and  
 21 WHEREAS, throughout the declared state of emergency, the  
 22 Governor's executive orders included industry-specific  
 23 restrictions to prevent the spread of COVID-19 based on the best  
 24 information available at the time, allowing and encouraging  
 25 certain businesses to continue to safely operate, and  
 26 WHEREAS, a strong and vibrant economy is essential to  
 27 ensure that Floridians may continue in their meaningful work and  
 28 ultimately return to the quality of life they enjoyed before the  
 29 COVID-19 outbreak, and

Page 1 of 6

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

24-00824B-21

202172\_\_

30 WHEREAS, Floridians must be allowed to earn a living and  
 31 support their families without unreasonable government  
 32 intrusion, and  
 33 WHEREAS, the Governor's responsible reopening strategy  
 34 allowed businesses to continue to safely operate, bolstering  
 35 consumer confidence, while also enforcing reasonable  
 36 restrictions, and  
 37 WHEREAS, the Legislature recognizes that certain  
 38 businesses, entities, and institutions operating within the  
 39 state are essential to the state's continuing success and well-  
 40 being, and  
 41 WHEREAS, the Legislature recognizes that many businesses,  
 42 entities, and institutions accept significant risk in order to  
 43 provide their services to the public, and  
 44 WHEREAS, the Legislature further recognizes that the threat  
 45 of frivolous and potentially limitless civil liability,  
 46 especially in the wake of a pandemic, causes businesses,  
 47 entities, and institutions to react in a manner detrimental to  
 48 the state's economy and residents, and  
 49 WHEREAS, the Legislature recognizes that practical, bright-  
 50 line guidance protecting prudent businesses, entities, and  
 51 institutions significantly alleviates such liability concerns,  
 52 while also continuing to provide for the public health, and  
 53 WHEREAS, the Legislature finds that the unprecedented and  
 54 rare nature of the COVID-19 pandemic, together with the  
 55 indefinite legal environment that has followed, requires the  
 56 Legislature to act swiftly and decisively, NOW, THEREFORE,  
 57  
 58 Be It Enacted by the Legislature of the State of Florida:

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

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202172\_\_

59  
60 Section 1. Section 768.38, Florida Statutes, is created to  
61 read:  
62 768.38 Liability protections for COVID-19-related claims.—  
63 (1) The Legislature finds that the COVID-19 outbreak in the  
64 state threatens the continued viability of certain business  
65 entities, educational institutions, governmental entities, and  
66 religious institutions that contribute to the overall well-being  
67 of the state. The threat of unknown and potentially unbounded  
68 liability to such businesses, entities, and institutions, in the  
69 wake of a pandemic that has already left many of these  
70 businesses, entities, and institutions vulnerable, has created  
71 an overpowering public necessity to provide an immediate and  
72 remedial legislative solution. Therefore, the Legislature  
73 intends for certain business entities, educational institutions,  
74 governmental entities, and religious institutions to enjoy  
75 heightened legal protections against liability as a result of  
76 the COVID-19 pandemic. The Legislature also finds that there are  
77 no alternative means to meet this public necessity, especially  
78 in light of the sudden, unprecedented nature of the COVID-19  
79 pandemic. The Legislature finds the public interest as a whole  
80 is best served by providing relief to these businesses,  
81 entities, and institutions so that they may remain viable and  
82 continue to contribute to the state.  
83 (2) As used in this section, the term:  
84 (a) "Business entity" has the same meaning as provided in  
85 s. 606.03. The term also includes a charitable organization as  
86 defined in s. 496.404 and a corporation not for profit as  
87 defined in s. 617.01401.

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

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88 (b) "COVID-19-related claim" means a civil liability claim  
89 against a person, including a natural person, a business entity,  
90 an educational institution, a governmental entity, or a  
91 religious institution which arises from or is related to COVID-  
92 19, otherwise known as the novel coronavirus. The term includes  
93 any such claim for damages, injury, or death. Any such claim, no  
94 matter how denominated, is a COVID-19-related claim for purposes  
95 of this section. The term does not include a claim against a  
96 healthcare provider, regardless of whether the healthcare  
97 provider meets one or more of the definitions in this  
98 subsection.  
99 (c) "Educational institution" means a school, including a  
100 preschool, elementary school, middle school, junior high school,  
101 secondary school, career center, or postsecondary school,  
102 whether public or nonpublic.  
103 (d) "Governmental entity" means the state or any political  
104 subdivision thereof, including the executive, legislative, and  
105 judicial branches of government; the independent establishments  
106 of the state, counties, municipalities, districts, authorities,  
107 boards, or commissions; or any agencies that are subject to  
108 chapter 286.  
109 (e) "Healthcare provider" means:  
110 1. A provider as defined in s. 408.803.  
111 2. A clinical laboratory providing services in the state or  
112 services to health care providers in the state, if the clinical  
113 laboratory is certified by the Centers for Medicare and Medicaid  
114 Services under the federal Clinical Laboratory Improvement  
115 Amendments and the federal rules adopted thereunder.  
116 3. A federally qualified health center as defined in 42

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



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202172\_\_

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

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

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

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

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

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

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

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

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

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

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

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

145 a. During this stage of the proceeding, admissible evidence

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202172\_\_

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

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

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

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

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

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

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

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

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

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

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BILL: SB 374

INTRODUCER: Senator Bradley

SUBJECT: Fair Repair of Agricultural Equipment

DATE: February 12, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Argote</u>	<u>Becker</u>	<u>AG</u>	<b>Favorable</b>
2.	<u>Reeve</u>	<u>McKay</u>	<u>CM</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

---

**I. Summary:**

SB 374 creates the “Agricultural Equipment Fair Repair Act,” requiring original equipment manufacturers of agricultural equipment to provide certain manufacturing, diagnostic, and repair information to independent repair providers and owners. Original equipment manufacturers are prohibited from excluding certain information concerning security-related functions from information provided to an owner or independent repair provider.

The bill does not apply to motor vehicle manufacturers or motor vehicle dealers. Additionally, a civil penalty may be collected from any original equipment manufacturer found to be in violation of the bill’s provisions.

The bill takes effect July 1, 2021.

**II. Present Situation:**

**Agricultural Equipment Manufacturers and Dealers Act**

Section 686.401, F.S., provides that the distribution and sale of equipment primarily designed for or used in agriculture affects the general economy of the state, the public interest, and the public welfare.<sup>1</sup> It is therefore deemed necessary to regulate the conduct of manufacturers, distributors, and dealers of agricultural equipment doing business in Florida in order to prevent fraud, unfair business practices, unfair methods of competition, impositions, and other abuses upon its citizens.<sup>2</sup> Currently, the state does not regulate the distribution of information related to manufacturing, diagnostics, and repair between original equipment manufacturers (OEMs) and independent repair providers and owners.

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<sup>1</sup> See ch. 686, F.S.

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

## **Right to Repair Legislation**

Over 32 states have considered right to repair legislation, and 20 of those states introduced legislation in 2019 alone. Though its legislation is related to vehicle manufacturers, Massachusetts<sup>3</sup> has been the only state successful in this endeavor to date. Georgia,<sup>4</sup> New York,<sup>5</sup> Washington,<sup>6</sup> Missouri,<sup>7</sup> Kansas,<sup>8</sup> and Nebraska<sup>9</sup> are among the states that have introduced legislation surrounding the availability of diagnostic and repair information to any independent repair provider or owner of products manufactured by an OEM.

### ***Massachusetts***

Massachusetts law requires vehicle owners and independent repair facilities in Massachusetts to have access to the same vehicle diagnostic and repair information made available to manufacturers, dealers located in Massachusetts, and authorized repair facilities.<sup>10</sup> The Massachusetts legislation includes provisions similar to provisions in this bill, including protections surrounding trade secrets and the terms of an authorized repair agreement.

## **Association of Equipment Manufacturers and Equipment Dealers Association**

The Association of Equipment Manufacturers and the Equipment Dealers Association created R2R Solutions, which compiles maintenance, diagnostic, and repair information for tractors and combines.<sup>11</sup> The publication is available online and includes access to manuals, product guides, product service demonstrations, fleet management information, and other information related to repairs. R2R Solutions provides owners with access to descriptions for fault codes on equipment, allowing owners the ability to choose whether to repair machinery independently or turn to an authorized repair provider.

### **III. Effect of Proposed Changes:**

#### **The Agricultural Equipment Fair Repair Act**

The bill creates s. 686.35, F.S., to be known as the “Agricultural Equipment Fair Repair Act.” The bill requires that original equipment manufacturers (OEMs) provide diagnostic and repair documentation, including updates and corrections to embedded software, to any independent repair provider or owner of equipment manufactured by the OEM. Such information must be available free of charge or provided to an independent repair provider or owner in the same manner that the OEM would divulge such information to an authorized repair provider. Following the dissemination of this information, the OEM is not responsible for the content and functionality of such aftermarket diagnostic tools, diagnostics, or service information systems.

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<sup>3</sup> Mass. Gen. Laws Ann. ch. 165, § 93K (2013).

<sup>4</sup> Georgia HB 286 (2019).

<sup>5</sup> New York SB 710 (2020).

<sup>6</sup> Washington HB 1342 (2020).

<sup>7</sup> Missouri HB 1079 (2019).

<sup>8</sup> Kansas HB 2122 (2017).

<sup>9</sup> Nebraska LB 67 (2017).

<sup>10</sup> *Supra* note 3.

<sup>11</sup> Association of Equipment Manufacturers, *Right to Repair*, available at <https://www.aem.org/advocacy-old/right-to-repair> (last visited Feb. 12, 2021).

## **Definitions**

The bill defines:

- Authorized repair provider;
- Embedded software;
- Equipment;
- Fair and reasonable terms;
- Firmware;
- Independent repair provider;
- Motor vehicle;
- Motor vehicle dealer;
- Motor vehicle manufacturer;
- Original equipment manufacturer;
- Owner;
- Part; and
- Trade secret.

## **Information Concerning Security-Related Functions**

The bill requires that diagnostic, service, and repair documentation needed to reset a security-related electronic function be included in information provided to an owner or independent repair provider. If such documentation is not included, the necessary documentation must be obtained by an owner or independent repair provider through the appropriate secure data release systems.

## **Exclusions**

The bill explicitly does not:

- Require that an OEM divulge a trade secret;
- Interfere with the terms of an agreement between the OEM and an authorized repair provider with the exception of any provision within the agreement that waives, avoids, restricts, or limits an OEM's compliance with the terms defined within this bill;
- Require that OEMs or authorized repair providers give an owner or independent repair provider access to non-diagnostic and repair documentation provided by an OEM to an authorized repair provider pursuant to the terms of an authorized repair agreement; or
- Apply to motor vehicle manufacturers, any product or service of a motor vehicle manufacturer, or motor vehicle dealers.

## **Other Provisions**

The bill provides that any OEM found in violation of the provisions set forth in the bill is liable to a civil penalty of up to \$500 per violation.

## **Effective Date**

This bill takes effect July 1, 2021.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Original equipment manufacturers may be susceptible to liability if modifications are made on equipment that result in serious injury. Original equipment manufacturers may also be subject to a decrease in revenue related to repairs as owners will be authorized to seek repair services from independent repair providers and may be subject to a civil penalty of not more than \$500.

Owners of equipment will acquire the ability to maintain, service, repair, and rebuild their agricultural equipment on their own accord or by the repair shop of their choice as a result of the provisions implemented by this bill. This may cause a positive fiscal impact for owners as they will no longer bear the cost of transportation of faulty equipment to an authorized repair provider or dealer for service.

## C. Government Sector Impact:

The bill creates a new civil penalty of up to \$500, which may increase revenue if the provisions set forth by this bill are violated.

**VI. Technical Deficiencies:**

Line 41 defines “fair and reasonable terms,” but that definition is not used elsewhere in the bill.

**VII. Related Issues:**

As written, the bill allows equipment owners autonomy over repairs. Equipment owners will have the ability to make modifications that may lead to environmental, safety, and liability implications for customers and dealers.

**VIII. Statutes Affected:**

The bill creates section 686.35 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.

By Senator Bradley

5-00459-21

2021374\_\_

1 A bill to be entitled  
 2 An act relating to the fair repair of agricultural  
 3 equipment; providing a short title; creating s.  
 4 686.35, F.S.; defining terms; requiring original  
 5 equipment manufacturers of agricultural equipment to  
 6 provide certain manufacturing, diagnostic, and repair  
 7 information to independent repair providers and  
 8 owners; prohibiting the original equipment  
 9 manufacturers from excluding certain information  
 10 concerning security-related functions; providing  
 11 construction and applicability; providing civil  
 12 liability; providing an effective date.  
 13  
 14 Be It Enacted by the Legislature of the State of Florida:  
 15  
 16 Section 1. This act may be cited as the "Agricultural  
 17 Equipment Fair Repair Act."  
 18 Section 2. Section 686.35, Florida Statutes, is created to  
 19 read:  
 20 686.35 Fair repair of agricultural equipment.-  
 21 (1) As used in this section, the term:  
 22 (a) "Authorized repair provider" means an individual or an  
 23 entity that has an arrangement for a definite or indefinite  
 24 period in which an original equipment manufacturer grants to a  
 25 separate individual or entity a license to use a trade name,  
 26 service mark, or related characteristic for the purpose of  
 27 offering repair services under the name of the original  
 28 equipment manufacturer.  
 29 (b) "Embedded software" means any programmable instructions

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

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30 provided on firmware delivered with the equipment for the  
 31 purpose of equipment operation, including all relevant patches  
 32 and fixes made by the original equipment manufacturer for this  
 33 purpose. The term includes, but is not limited to, a basic  
 34 internal operating system, an internal operating system, a  
 35 machine code, an assembly code, a robot code, or a microcode.  
 36 (c) "Equipment" means digital electronic equipment, or a  
 37 part for such equipment, which is originally manufactured for  
 38 farm equipment, including combines, tractors, implements, self-  
 39 propelled equipment, and related attachments and implements, and  
 40 that is manufactured for distribution and sale in this state.  
 41 (d) "Fair and reasonable terms" means an equitable price in  
 42 light of relevant factors, including, but not limited to:  
 43 1. The net cost to the authorized repair provider for  
 44 similar information obtained from an original equipment  
 45 manufacturer, excluding any discounts, rebates, or other  
 46 incentive programs;  
 47 2. The cost to the original equipment manufacturer for  
 48 preparing and distributing the information, excluding any  
 49 research and development costs incurred in designing and  
 50 implementing, upgrading, or altering the product, but including  
 51 amortized capital costs for the preparation and distribution of  
 52 the information;  
 53 3. The price charged by other original equipment  
 54 manufacturers for similar information;  
 55 4. The price charged by original equipment manufacturers  
 56 for similar information before the launch of original equipment  
 57 manufacturer websites;  
 58 5. The ability of aftermarket technicians or shops to

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

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59 afford the information;

60 6. The means by which the information is distributed;

61 7. The extent to which the information is used, including  
 62 the number of users and the frequency, duration, and volume of  
 63 use; and

64 8. Inflation.

65 (e) "Firmware" means a software program or set of  
 66 instructions programmed on a hardware device to allow the device  
 67 to communicate with other computer hardware.

68 (f) "Independent repair provider" means a person or  
 69 business operating in this state which is not affiliated with an  
 70 original equipment manufacturer or an original equipment  
 71 manufacturer's authorized repair provider and which is engaged  
 72 in the diagnosis, service, maintenance, or repair of equipment.  
 73 However, an original equipment manufacturer meets the definition  
 74 of an independent repair provider when such original equipment  
 75 manufacturer engages in the diagnosis, service, maintenance, or  
 76 repair of equipment that is not affiliated with the original  
 77 equipment manufacturer.

78 (g) "Motor vehicle" means any vehicle that is designed for  
 79 transporting persons or property on a street or highway and  
 80 certified by the motor vehicle manufacturer under all applicable  
 81 federal safety and emissions standards and requirements for  
 82 distribution and sale in the United States. The term does not  
 83 include a motorcycle or a recreational vehicle or manufactured  
 84 home equipped for habitation.

85 (h) "Motor vehicle dealer" means a person or business that,  
 86 in the ordinary course of business, is engaged in the selling or  
 87 leasing of new motor vehicles to a person or business pursuant

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88 to a franchise agreement; is engaged in the diagnosis, service,  
 89 maintenance, or repair of motor vehicles or motor vehicle  
 90 engines pursuant to such franchise agreement; and has obtained a  
 91 license under s. 320.27.

92 (i) "Motor vehicle manufacturer" means a person or business  
 93 engaged in the manufacturing or assembling of new motor  
 94 vehicles.

95 (j) "Original equipment manufacturer" means a person or  
 96 business that, in the ordinary course of business, is engaged in  
 97 the selling or leasing of new equipment to a person or business  
 98 and is engaged in the diagnosis, service, maintenance, or repair  
 99 of such equipment.

100 (k) "Owner" means a person or business that owns or leases  
 101 a digital electronic product purchased or used in this state.

102 (l) "Part" means a replacement part, either new or used,  
 103 which the original equipment manufacturer makes available to the  
 104 authorized repair provider for purposes of effecting repair.

105 (m) "Trade secret" means anything tangible or intangible or  
 106 electronically stored or kept which constitutes, represents,  
 107 evidences, or records intellectual property, including secret or  
 108 confidentially held designs, processes, procedures, formulas,  
 109 inventions, or improvements or secret or confidentially held  
 110 scientific, technical, merchandising, production, financial,  
 111 business, or management information. The term also includes any  
 112 other trade secret as defined in 18 U.S.C. 1839, as such section  
 113 existed on January 1, 2020.

114 (2) For equipment sold and used in this state, the original  
 115 equipment manufacturer shall make available diagnostic and  
 116 repair documentation, including repair technical updates and



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117 updates and corrections to embedded software, to any independent  
 118 repair provider or owner of equipment manufactured by such  
 119 original equipment manufacturer. The information must be made  
 120 available for no charge or provided in the same manner as the  
 121 original equipment manufacturer makes such diagnostic and repair  
 122 documentation available to an authorized repair provider.  
 123 Thereafter, the original equipment manufacturer is not  
 124 responsible for the content and functionality of such  
 125 aftermarket diagnostic tools, diagnostics, or service  
 126 information systems.

127 (3) Original equipment manufactured by the original  
 128 equipment manufacturer which is sold or used in this state to  
 129 provide security-related functions may not exclude diagnostic,  
 130 service, and repair documentation that is necessary to reset a  
 131 security-related electronic function from information provided  
 132 to an owner or independent repair provider. If such  
 133 documentation is excluded under this section, the documentation  
 134 necessary to reset an immobilizer system or a security-related  
 135 electronic module must be obtained by an owner or independent  
 136 repair provider through the appropriate secure data release  
 137 systems.

138 (4) This section may not be construed to do any of the  
 139 following:

140 (a) Require an original equipment manufacturer to divulge a  
 141 trade secret.

142 (b) Abrogate, interfere with, contradict, or alter the  
 143 terms of an agreement executed and in force between an  
 144 authorized repair provider and an original equipment  
 145 manufacturer, including, but not limited to, the performance or

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146 provision of warranty or recall repair work by an authorized  
 147 repair provider on behalf of an original equipment manufacturer  
 148 pursuant to such authorized repair agreement, except that any  
 149 provision in such an authorized repair agreement which purports  
 150 to waive, avoid, restrict, or limit an original equipment  
 151 manufacturer's compliance with this section is void and  
 152 unenforceable.

153 (c) Require original equipment manufacturers or authorized  
 154 repair providers to provide an owner or independent repair  
 155 provider access to nondiagnostic and repair documentation  
 156 provided by an original equipment manufacturer to an authorized  
 157 repair provider pursuant to the terms of an authorized repair  
 158 agreement.

159 (5) This section does not apply to motor vehicle  
 160 manufacturers, any product or service of a motor vehicle  
 161 manufacturer, or motor vehicle dealers.

162 (6) Any original equipment manufacturer found in violation  
 163 of this section is liable to a civil penalty of not more than  
 164 \$500 for each violation.

165 Section 3. This act shall take effect July 1, 2021.

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

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

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

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BILL: SB 598

INTRODUCER: Senator Perry

SUBJECT: Back-to-school Sales Tax Holiday

DATE: February 12, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	<b>Pre-meeting</b>
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

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**I. Summary:**

SB 598 establishes a 10-day “back-to-school” sales tax holiday from Friday, July 30 to Sunday, August 8, 2021, for certain clothing, school supplies, personal computers, and personal computer-related accessories.

The bill appropriates \$237,000 in nonrecurring funds from the General Revenue Fund to the Department of Revenue in Fiscal Year 2021-2022.

The Revenue Estimating Conference has not yet estimated the revenue impact of the bill.

The bill takes effect upon becoming law.

**II. Present Situation:**

**Florida Sales Tax**

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,<sup>1</sup> admissions,<sup>2</sup> transient rentals,<sup>3</sup> and a limited number of services. Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida’s sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser at

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<sup>1</sup> Section 212.05(1)(a)1.a, F.S.

<sup>2</sup> Section 212.04(b), F.S.

<sup>3</sup> Section 212.03(1)(a), F.S.

the time of sale.<sup>4</sup> Sales tax receipts accounted for approximately 79 percent of the state's General Revenue in Fiscal Year 2019-2020.<sup>5</sup>

Section 212.055, F.S., authorizes counties to impose local discretionary sales surtaxes in addition to the state sales tax. A surtax applies to “all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202.”<sup>6</sup> The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax rates currently levied vary by county in a range of 0.5 to 2.5 percent.<sup>7</sup>

### ***“Back-to-School” Sales Tax Holidays***

Florida has enacted a “back-to-school” sales tax holiday 18 times since 1998. The Florida Residents’ Tax Relief Act of 1998 established Florida’s first tax holiday, during which clothing purchases of \$50 or less were exempt from tax.<sup>8</sup> Backpacks were added to the tax holiday in 1999 and school supplies were added in 2001. In 2013, the Legislature expanded the exemption to include personal computers and related accessories selling for \$750 or less, purchased for noncommercial home or personal use. The duration of “back-to-school” sales tax holidays has varied from 3 to 10 days. The type and value of exempt items have also varied.<sup>9</sup>

Florida’s 75 school districts began the 2020-2021 school year between August 10 and August 31, 2020.<sup>10</sup>

### **III. Effect of Proposed Changes:**

The bill establishes a 10-day period, from July 30 to August 8, 2021, during which the following items are exempt from the state sales tax and local discretionary sales surtaxes:

- Clothing with a sales price of \$60 or less per item. “Clothing” is defined as any article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs, and all footwear, excluding skis, swim fins, in-line skates, and rollerblades;
- Wallets and bags with a sales price of \$50 or less per item, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags;
- School supplies with a sales price of \$15 or less per item. “School supplies” is defined as pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper,

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<sup>4</sup> See s. 212.07(2), F.S.

<sup>5</sup> Office of Economic and Demographic Research, *Florida Tax Handbook*, 16 (2020), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited Feb. 12, 2021).

<sup>6</sup> Section 212.054(2)(a), F.S.

<sup>7</sup> *Supra* note 5, at 231-232.

<sup>8</sup> Chapter 98-341, Laws of Fla.

<sup>9</sup> *Supra* note 5, at 159-165.

<sup>10</sup> Florida Department of Education, *PK-12 Public School Data Publications and Reports*, available at <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/index.stml> (last visited Feb. 12, 2021).

scissors, cellophane tape, glue or paste, rulers, computer disks, staplers and staples used to secure paper products, protractors, compasses, and calculators;

- Personal computers with a sales price of \$1,000 or less per item. “Personal computers” includes electronic book readers, laptops, desktops, handhelds, tablets, or tower computers and excludes cellular telephones, video game consoles, digital media receivers, or devices that are not primarily designed to process data; and
- Personal computer-related accessories with a sales price of \$1,000 or less per item. “Personal computer-related accessories” includes keyboards, mice, personal digital assistants, monitors, other peripheral devices, modems, routers, and non-recreational software regardless of whether the accessories are used in association with a personal computer base unit. The term excludes furniture or systems, devices, software, monitors with a television tuner, or peripherals that are designed or intended primarily for recreational use.

The bill allows a business to opt out of participating in the sales tax holiday if less than 5 percent of the business’s gross sales of tangible personal property in the prior calendar consisted of items that would be exempt under the bill. A business meeting this threshold must notify the Department of Revenue (DOR) in writing by July 29, 2021, of its election to collect sales tax during the holiday. The business must post a copy of that notice in a conspicuous location at its place of business.

The exemptions provided for in the bill do not apply to the following:

- Sales within a theme park or entertainment complex, as defined in s. 509.013(9), F.S.;
- Sales within a public lodging establishment, as defined in s. 509.013(4), F.S.; and
- Sales within an airport, as defined in s. 330.27(2), F.S.

The bill appropriates, for the 2021-2022 fiscal year, \$237,000 in nonrecurring funds from the General Revenue Fund to the DOR to implement the sales tax holiday. Funds remaining unexpended as of June 30, 2022, shall revert and be reappropriated for the same purpose in Fiscal Year 2022-2023.

The DOR may adopt emergency rules pursuant to s. 120.54(4), F.S., for the purpose of implementing the bill.

The bill takes effect upon becoming law.

#### **IV. Constitutional Issues:**

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

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise

revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,<sup>11, 12</sup> which is \$2.2 million or less for Fiscal Year 2021-2022.<sup>13</sup>

**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:**

The Revenue Estimating Conference has not yet met regarding the bill.

**B. Private Sector Impact:**

Persons purchasing exempted items during the sales tax holidays will realize savings.

**C. Government Sector Impact:**

The bill appropriates, for the 2021-2022 fiscal year, \$237,000 in nonrecurring funds from the General Revenue Fund to the DOR to implement the “back-to-school” sales tax holiday.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>11</sup> FLA. CONST. art. VII, s. 18(d).

<sup>12</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 12, 2021).

<sup>13</sup> Based on the Demographic Estimating Conference’s population adopted on November 13, 2020. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 12, 2021).

**VIII. Statutes Affected:**

The bill creates two undesignated sections of chapter law.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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By Senator Perry

8-00932-21

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A bill to be entitled

An act relating to a back-to-school sales tax holiday; providing exemptions from the sales and use tax on the retail sale of certain clothing, wallets, bags, school supplies, personal computers, and personal computer-related accessories during a specified timeframe; defining terms; specifying locations where the exemptions do not apply; authorizing certain dealers to opt out of participating in the tax holiday, subject to certain requirements; authorizing the Department of Revenue to adopt emergency rules; providing an appropriation; providing an effective date.

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

Section 1. Clothing, wallets, bags, school supplies, personal computers, and personal computer-related accessories; sales tax holiday.-

(1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on July 30, 2021, through 11:59 p.m. on August 8, 2021, on the retail sale of:

(a) Clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a sales price of \$60 or less per item. As used in this paragraph, the term "clothing" means:

1. Any article of wearing apparel intended to be worn on or

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about the human body, excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs; and

2. All footwear, excluding skis, swim fins, in-line skates, and roller skates.

(b) School supplies having a sales price of \$15 or less per item. As used in this paragraph, the term "school supplies" means pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, staplers and staples used to secure paper products, protractors, compasses, and calculators.

(2) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on July 30, 2021, through 11:59 p.m. on August 8, 2021, on the retail sale of personal computers or personal computer-related accessories having a sales price of \$1,000 or less per item and purchased for noncommercial home or personal use. As used in this subsection, the term:

(a) "Personal computers" includes electronic book readers, laptops, desktops, handhelds, tablets, or tower computers. The term does not include cellular telephones, video game consoles, digital media receivers, or devices that are not primarily designed to process data.

(b) "Personal computer-related accessories" includes keyboards, mice, personal digital assistants, monitors, other peripheral devices, modems, routers, and nonrecreational software, regardless of whether the accessories are used in association with a personal computer base unit. The term does

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59 not include furniture or systems, devices, software, monitors  
 60 with a television tuner, or peripherals that are designed or  
 61 intended primarily for recreational use.

62 (3) The tax exemptions provided in this section do not  
 63 apply to sales within a theme park or entertainment complex as  
 64 defined in s. 509.013(9), Florida Statutes, within a public  
 65 lodging establishment as defined in s. 509.013(4), Florida  
 66 Statutes, or within an airport as defined in s. 330.27(2),  
 67 Florida Statutes.

68 (4) The tax exemptions provided in this section may apply  
 69 at the option of a dealer if less than 5 percent of the dealer's  
 70 gross sales of tangible personal property in the prior calendar  
 71 year consisted of items that would be exempt under this section.  
 72 If a qualifying dealer chooses not to participate in the tax  
 73 holiday, the dealer must notify the Department of Revenue in  
 74 writing by July 29, 2021, of its election to collect sales tax  
 75 during the holiday and must post a copy of that notice in a  
 76 conspicuous location at its place of business.

77 (5) The Department of Revenue may, and all conditions are  
 78 deemed met to, adopt emergency rules pursuant to s. 120.54(4),  
 79 Florida Statutes, for the purpose of implementing this section.  
 80 Notwithstanding any other law, emergency rules adopted pursuant  
 81 to this subsection are effective for 6 months after adoption and  
 82 may be renewed during the pendency of procedures to adopt  
 83 permanent rules addressing the subject of the emergency rule.

84 Section 2. For the 2021-2022 fiscal year, the sum of  
 85 \$237,000 in nonrecurring funds is appropriated from the General  
 86 Revenue Fund to the Department of Revenue for the purpose of  
 87 implementing this act. Funds remaining unexpended or

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88 unencumbered from this appropriation as of June 30, 2022, shall  
 89 revert and be reappropriated for the same purpose in the 2022-  
 90 2023 fiscal year.

91 Section 3. This act shall take effect upon becoming a law.

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



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

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

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

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BILL: CS/SB 46

INTRODUCER: Regulated Industries Committee and Senator Hutson

SUBJECT: Craft Distilleries

DATE: February 12, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Reeve</u>	<u>McKay</u>	<u>CM</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 46 revises the licensing requirements for craft distilleries. The bill creates s. 565.02(12), F.S., to provide a quota license exemption for certain craft distilleries to qualify for a vendor's license if the craft distillery is located on a property within a destination entertainment venue, as defined by the bill, and open for tours during normal business hours

The bill also amends s. 565.03, F.S., to increase the production limit for distilleries to qualify as craft distilleries from 75,000 gallons per year to 250,000 gallons per year. Craft distilleries may only sell up to 75,000 gallons of branded products in gift shops or tasting rooms and may not ship products to customers. A maximum of 10 craft distilleries meeting certain requirements may share common ownership. Effective July 1, 2020, a minimum of 60 percent of a craft distillery's total finished branded products must be distilled in the state and contain one or more of Florida's agricultural products.

The bill allows craft distilleries to qualify for a permit to conduct tastings at Florida fairs, trade shows, farmers markets, expositions, and festivals.

The bill takes effect July 1, 2021.

## II. Present Situation:

### Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation administers and enforces<sup>1</sup> the Beverage Law,<sup>2</sup> which regulates the manufacture, distribution, and sale of wine, beer, and liquor.<sup>3</sup>

### Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages; the distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor (retailer) makes the ultimate sale to the consumer. Manufacturers cannot sell directly to retailers or directly to consumers.<sup>4</sup>

Generally, Florida follows the three-tier system. Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.<sup>5</sup> Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.<sup>6</sup> Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.<sup>7</sup>

### *Tied House Evil Prohibitions*

The system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.<sup>8</sup> Activities are heavily regulated to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor.

### *Three-Tier System Exceptions*

Exceptions to the three-tier regulatory system permit in-state wineries,<sup>9</sup> breweries,<sup>10</sup> and craft distilleries to sell directly to consumers.<sup>11</sup> Restaurants licensed as vendors (brew pubs) may manufacture a limited quantity of malt beverages and sell directly to consumers for consumption on the licensed premises of the restaurant.<sup>12</sup>

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<sup>1</sup> Section 561.02, F.S.

<sup>2</sup> Section 561.01(6), F.S., provides that the “Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

<sup>3</sup> See s. 561.14, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

<sup>6</sup> Section 561.22, F.S.

<sup>7</sup> Sections 563.022(14) and 561.14(1), F.S.

<sup>8</sup> Jessica C. Starns, *The Dangers of Common Ownership in an Uncommon Industry: Alcohol Policy in America and the Timeless Relevance of Tied-House Restrictions* (2017), available at <https://www.centerforalcoholpolicy.org/wp-content/uploads/2017/03/The-Dangers-of-Common-Ownership-in-an-Uncommon-Industry.pdf> (last visited Feb. 12, 2021).

<sup>9</sup> See s. 561.221(1), F.S.

<sup>10</sup> See s. 561.221(2), F.S.

<sup>11</sup> See s. 565.03, F.S.

<sup>12</sup> See s. 561.221(3), F.S.

A winery, even if licensed as a distributor,<sup>13</sup> may be licensed as a vendor for a licensed premises situated on property contiguous to the manufacturing premises of the winery. A winery may not be issued more than three vendor licenses.<sup>14</sup>

### **Quota Licenses**

Section 561.20, F.S., limits, by county, the number of alcoholic beverage licenses that may be issued to permit the sale of liquor (distilled spirits) to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as “quota” licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses can also be issued when a county initially changes from a county which does not permit the sale of intoxicating liquor to one that does permit their sale. 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. A person, firm, or corporation may not have an interest, directly or indirectly, in more than 30 percent of the number of quota licenses in a county.<sup>15</sup>

### ***Quota License Exceptions***

Current law permits certain types of businesses or persons to be licensed sell beer, wine, and liquor without any limitation on the number of such licenses which may be issued in a county, i.e., such licenses are not subject to the quota in s. 561.20, F.S. Quota license exceptions are known as “special licenses.”

Section 561.20(2), F.S., provides several exceptions to the number of licenses that permit the sale of beer, wine, and distilled spirits. The exceptions include restaurants, caterers, hotels and motels, specialty centers built on government-owned land, bowling establishments, and airports.

The Beverage Law provides a limited exception to the quota license limitation to permit the division to issue an alcoholic beverage license (for the sale of beer, wine, and liquor) to:

- An operator of railroads or sleeping cars and a vendor in railroad transit stations.<sup>16</sup>
- Operators of steamships and steamship lines, buses and bus lines, or airplanes and airlines engaged in interstate or foreign commerce or flying between fixed terminals and upon fixed schedules in this state.<sup>17</sup>
- Persons associated together as a chartered or incorporated club, if not organized for the purpose of evading license taxes and meeting certain conditions, including any golf club operated by or on behalf of any incorporated municipality in this state, and any veterans' or fraternal organization of national scope.<sup>18</sup>
- A caterer at a horse or dog racetrack or jai alai fronton.<sup>19</sup>

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<sup>13</sup> Section 561.14(1), F.S., permits manufacturers to distribute at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.

<sup>14</sup> See s. 561.221(1), F.S.

<sup>15</sup> Section 561.20(6), F.S.

<sup>16</sup> Section 565.02(2), F.S.

<sup>17</sup> Section 565.02(3), F.S.

<sup>18</sup> Section 565.02(4), F.S.

<sup>19</sup> Section 565.02(5), F.S.

- A vendor who operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex and meeting specified conditions.<sup>20</sup>
- A marine exhibition park complex meeting specified conditions.<sup>21</sup>
- A state-chartered legal entity not for profit organized principally for the purpose of supporting or managing the affairs of a symphony orchestra.<sup>22</sup>
- The operator of a passenger vessel engaged exclusively in foreign commerce.<sup>23</sup>
- A state-chartered legal entity not for profit organized principally for the purpose of operating a theater with live performances and not fewer than 100 seats.<sup>24</sup>
- The John and Mable Ringling Museum of Art direct-support organization.<sup>25</sup>

### **Distilleries and Craft Distilleries**

Section 565.01, F.S., defines the terms “liquor,” “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors” to mean “that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.”

A “distillery” is a manufacturer of distilled spirits,<sup>26</sup> and a “craft distillery” is a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. A distillery must notify the division in writing of its decision to qualify as a craft distillery.<sup>27</sup>

All distilleries engaged solely in the business of manufacturing distilled spirits, or engaged in the business of blending and rectifying distilled spirits, must pay a state license tax for each plant or branch operating in Florida. Distilleries pay \$4,000 annually for the license tax and craft distilleries pay \$1,000. Persons who engage in the business of distilling spirits may also rectify and blend spirituous liquors without paying an additional license tax.<sup>28</sup>

### **Retail Sales by Craft Distilleries**

A craft distillery is allowed to sell to consumers branded products<sup>29</sup> distilled on the licensed premises. The products must be in factory-sealed containers that are filled at the distillery and sold for off-premises consumption.<sup>30</sup> The sales must occur at the distillery’s souvenir gift shop located on private property contiguous to the licensed distillery premises.<sup>31</sup> The craft distillery is not required to obtain, in addition to its manufacturer’s license, a vendor’s license in order to sell distilled spirits to consumers.

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<sup>20</sup> Section 565.02(6), F.S.

<sup>21</sup> Section 565.02(7), F.S.

<sup>22</sup> Section 565.02(8), F.S.

<sup>23</sup> Section 565.02(9), F.S.

<sup>24</sup> Section 565.02(10), F.S.

<sup>25</sup> Section 565.02(11), F.S.

<sup>26</sup> Section 565.03(1)(c), F.S.

<sup>27</sup> Section 565.03(1)(b), F.S.

<sup>28</sup> Section 565.03(3), F.S.

<sup>29</sup> Section 565.03(1)(a), F.S., defines “branded product” to mean “any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations.”

<sup>30</sup> Section 565.03(2)(c), F.S.

<sup>31</sup> *Id.*

A craft distillery must report to the division within five business days after it has reached the 75,000-gallon production limit and cease making sales to consumers on the day after it reaches the production limit.<sup>32</sup>

A craft distillery may not ship, arrange to ship, or deliver distilled spirits to consumers, except in a face to face transaction. However, a craft distillery may ship, arrange to ship, or deliver distilled spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state and federal bonded warehouses, and exporters.<sup>33</sup>

A craft distillery may not transfer its license or any ownership interest to any individual or entity with a direct or indirect interest in another distillery licensed in any other state, territory, or country.<sup>34</sup> However, a craft distillery may be affiliated with another distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or in any other state, territory, or country.<sup>35</sup>

A craft distillery must submit beverage excise taxes on distilled spirits sold to consumers in its monthly report to the division.<sup>36</sup>

### **Declaratory Statement**

On January 19, 2018, the division issued a declaratory statement interpreting s. 565.03(2)(c), F.S., to permit a craft distillery to sell to consumers, at its souvenir gift shop, a product comprised of a blend of liquors distilled on the premises of the craft distillery and liquors distilled by other manufacturers away from the premises. The craft distillery may then, at the craft distillery, fill individual containers with the final, blended liquor product for sale at its souvenir gift shop.<sup>37</sup> However, a craft distillery may not sell to consumers a product comprised of a blend of only liquors distilled by other manufacturers away from the craft distillery's licensed premises.<sup>38</sup>

### **Deliveries by Licensees**

Section 561.57(1), F.S., permits an alcoholic beverages vendor to make deliveries away from its place of business for sales made at the licensed place of business. Telephone, electronic, or mail orders received at a vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business.

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<sup>32</sup> Section 565.03(2)(c)3., F.S.

<sup>33</sup> Section 565.03(2)(c)4., F.S.

<sup>34</sup> Section 565.03(2)(c)5., F.S.

<sup>35</sup> Section 565.03(2)(c)6., F.S.

<sup>36</sup> Section 565.03(5), F.S. Section 565.12, F.S., requires manufactures and distributors to pay an excise tax on alcoholic beverages, with the tax rate per gallon depending on the percent of alcohol by volume of the beverage. Section 565.13, F.S., requires every distributor selling spirituous beverages within the state to pay the tax to the division monthly on or before the 10th day of the following month.

<sup>37</sup> Final Order on Petition for Declaratory Statement, *In Re: Petition for Declaratory Statement Before the Division Of Alcoholic Beverages and Tobacco, On behalf of Drum Circle Distilling, LLC*, DS 2017-071 (DABT Case No. 2017-052675), January 19, 2018, (on file with Senate Committee on Regulated Industries).

<sup>38</sup> *Id.*

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 vendor, or in a third-party vehicle pursuant to a contract with a third party, including, but not limited to, common carriers.<sup>39</sup>

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.<sup>40</sup>

Common carriers<sup>41</sup> may transport alcoholic beverages.<sup>42</sup> The recipient's age and identity must be verified at the time of delivery. All deliveries by a licensee or a third-party must comply with s. 562.11, F.S., which prohibits selling, giving, serving, or permitting to be served alcoholic beverages to a person under 21 years of age.<sup>43</sup>

A "permit carrier" is a licensee authorized to make deliveries under s. 561.57, F.S.<sup>44</sup>

### **Alcoholic Beverage Tastings**

Section 563.09, F.S., permits manufacturers, distributors, and importers of beer to conduct sampling activities that include the tasting of beer on the licensed premises of vendors authorized to sell alcoholic beverages for consumption on premises and, if the licensed premises is an establishment with at least 10,000 square feet or a package store, on the licensed premises of vendors authorized to sell alcoholic beverages for consumption off premises. A vendor may also conduct a tasting on its licensed premises using beer from its own inventory.

Section 564.08, F.S., permits licensed wine distributors and vendors to conduct wine tastings at any licensed premises authorized to sell wine or spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the wine tasting is limited to and directed toward the general public of the age of legal consumption.

A certified Florida Farm Winery<sup>45</sup> may be issued a permit by the division to conduct tasting and sales of wine produced by certified Florida Farm Wineries at Florida fairs, trade shows, expositions, and festivals. The certified Florida Farm Winery must pay all entry fees and must have a winery representative present during the event. The permit is limited to the length of the event.<sup>46</sup>

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<sup>39</sup> Section 561.57(2), F.S.

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

<sup>41</sup> Section 561.01(19), F.S., defines a "common carrier" as "any person, firm, or corporation that undertakes for hire, as a regular business, the transportation of persons or commodities from place to place, offering its services to all who choose to employ it and pay its charges."

<sup>42</sup> Section 561.57(5), F.S.

<sup>43</sup> Section 561.57(6), F.S.

<sup>44</sup> Section 561.01(20), F.S.

<sup>45</sup> Section 599.004, F.S., establishes the Florida Farm Winery Program within the Department of Agriculture and Consumer Services. The requirements for certification include that a winery produce or sell less than 250,000 gallons of wine annually and that 60 percent of the wine produced is made from state agricultural products.

<sup>46</sup> Section 561.221(1)(b), F.S.

Section 565.17, F.S., permits licensed distributors of spirituous beverages and vendors to conduct spirituous beverage tastings at any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the spirituous beverage tasting is limited to and directed toward the general public of the age of legal consumption.

### **Community Redevelopment Areas**

The Community Redevelopment Act of 1969 authorizes a county or municipality to create a community redevelopment agency (CRA) as a means of redeveloping slums and blighted areas.<sup>47</sup> The act defines a “blighted area” as an area in which there are a substantial number of deteriorated structures causing economic distress or endangerment to life or property and in which two or more of the factors listed in s. 163.340(8), F.S., are present. However, an area may also be classified as blighted if one of the aforementioned factors is present and all taxing authorities with jurisdiction over the area agree that the area is blighted by interlocal agreement or by passage of a resolution by the governing bodies.<sup>48</sup>

Either a county or a municipal government may create a CRA. A county or municipality may create a CRA upon the adoption of a finding of necessity and a finding that a CRA is necessary for carrying out the community redevelopment goals embodied by the act.<sup>49</sup> A CRA created by a county may only operate within the boundaries of a municipality when the municipality has concurred by resolution with the community redevelopment plan adopted by the county. A CRA created by a municipality may not include more than 80 percent of the municipality if it was created after July 1, 2006.<sup>50</sup>

The act allows the local governing body creating a CRA to choose between two structures for the agency governing board. One option is to appoint a board of commissioners consisting of five to nine members serving four-year terms.<sup>51</sup> The second option is for the local governing body to appoint itself as the agency board of commissioners.<sup>52</sup> A community redevelopment plan must be in place before a CRA can engage in operations.<sup>53</sup>

There are currently 222 active community redevelopment agencies in Florida.<sup>54</sup>

### **III. Effect of Proposed Changes:**

**Section 1** of the bill creates s. 565.02(12), F.S., to provide a quota license exemption for certain craft distilleries to qualify for a vendor’s license for the sale of beer, wine, and liquor.

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<sup>47</sup> Chapter 163, F.S., part III.

<sup>48</sup> Section 163.340(8), F.S.

<sup>49</sup> Section 163.356(1), F.S.

<sup>50</sup> Section 163.340(10), F.S.

<sup>51</sup> Section 163.356(2), F.S.

<sup>52</sup> Section 163.357(1)(a), F.S.

<sup>53</sup> Section 163.360(1), F.S.

<sup>54</sup> Dept. of Economic Opportunity, Special District Accountability Program, Official List of Special Districts Online, available at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Feb. 12, 2021).

Under the bill, a craft distillery may be licensed as a vendor for alcoholic beverages from other manufacturers consumed on the premises if the craft distillery is located on a property within a destination entertainment venue and is in operation and open for tours during normal businesses hours at least 5 days a week.

The bill defines a destination entertainment venue (DEV) as a venue located in a designated community redevelopment area (CRA), owned by any person licensed as a craft distillery located within the venue, and served by multimodal transportation options. DEVs must also be located within a contiguous area of at least 15 acres that contains indoor and outdoor event venues with capacities of 150 and 1,000 people, respectively, and one or more licensed craft distilleries with identical ownerships.

All craft distilleries licensed as a vendor in a CRA must be located within the same DEV, share identical ownership, and distill, blend, or rectify at least 50,000 gallons of blended product per calendar year. No more than three craft distilleries may be licensed as a vendor in a CRA.

Craft distilleries licensed as a vendor are prohibited from making package sales for off-premises consumption or making deliveries or shipments of alcoholic beverages, except as authorized in s. 565.03, F.S.

Alcoholic beverages not manufactured at the craft distillery must be obtained by a licensed distributor.

**Section 2** amends the craft distillery requirements in s. 565.03, F.S.

The bill increases the production limit for distilleries to qualify as craft distilleries from 75,000 gallons per year to 250,000 gallons per year. A distillery may not operate as a craft distillery until the Division of Alcoholic Beverages and Tobacco has received notice of, and verified that, a distillery meets the production limits.

Craft distilleries may only sell up to 75,000 gallons of branded products distilled, rectified, or blended on the craft distillery's premises directly to consumers each year; such sales may only be sold by the drink for consumption on the premises or by the package in factory-sealed containers for consumption off the premises, and may only be sold in the craft distillery's souvenir gift shop or tasting room. The bill prohibits craft distilleries from shipping products to customers and clarifies that sales made directly to customers may only be face-to-face transactions. However, the bill repeals the six container limit on individual sales. Craft distilleries are responsible for submitting any excise taxes due on distilled spirits.

Effective July 1, 2026, a minimum of 60 percent of a craft distillery's total finished branded products must be distilled in the state and contain one or more of Florida's agricultural products.

The bill prohibits any one person from sharing common ownership in more than 10 craft distilleries, provided that four produce up to 250,000 gallons of distilled spirits a year each and six produce up to 50,000 gallons a year each. "Common ownership" means having a direct or indirect financial interest in two or more distilleries by the same person.



**Section 3** amends s. 565.17, F.S., to allow craft distilleries to qualify for a permit to conduct tastings at Florida fairs, trade shows, farmers markets, expositions, and festivals.

**Section 4** provides an effective date of July 1, 2021.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may increase total sales revenue for craft distilleries by 1) allowing craft distilleries to sell their branded products to consumers by the drink and by 2) repealing the six individual container limit on sales of each of the craft distillery's branded products to a consumer at a craft distillery's souvenir gift shop.

The bill would provide additional sources of revenue for craft distilleries located in a community redevelopment area that qualify for a vendor's license, as specified in the bill.

C. Government Sector Impact:

Tax revenue from the sale of craft distillery products may increase if sales to consumers increase under this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 565.02, 565.03, and 565.17.

**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 Regulated Industries on January 26, 2021:**

The committee substitute:

- Deletes the definition of common ownership in the bill and requires any craft distilleries that share ownership in the destination entertainment venue must have identical ownership.
- Requires each distillery in a destination entertainment venue to produce at least 50,000 gallons of liquor each calendar year.
- Deletes the provision providing that other licensed alcoholic vendors may lease a licensed premises within a destination entertainment venue.
- Clarifies that souvenir gift shop and tasting rooms must be located within the state.
- Reinstates current law to clarify that craft distilleries may be affiliated with other craft distilleries in this state, and in other states or countries that do not exceed the production limit at each licensed distillery location.
- Provides an effective date of July 1, 2026 for the requirement that a minimum of 60 percent of the craft distillery's total branded products must be distilled in this state and contain one or more Florida agricultural products.

**B. Amendments:**

None.



406678

LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment (with directory and title amendments)**

Between lines 252 and 253

insert:

(6) A craft distillery shall keep complete and accurate records of all alcoholic beverages received from any point within or outside the state from another manufacturer, or from a broker or sales agent or importer, including any delivery invoice or other record of the common or contract carrier of freight making the delivery of such alcoholic beverages. The



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11 records shall be kept and maintained for a period of 3 years, as  
12 required by s. 561.55.

13

14 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

15 And the directory clause is amended as follows:

16 Delete line 113

17 and insert:

18 amended and a new subsection (6) is added and present subsection  
19 (6) and (7) of that section are redesignated as (7) and (8),  
20 respectively, to read:

21

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

23 And the title is amended as follows:

24 Delete line 36

25 and insert:

26 making technical changes; requiring the keeping of  
27 records for alcoholic beverages received from  
28 specified persons; amending s. 565.17, F.S.;

By the Committee on Regulated Industries; and Senator Hutson

580-01309-21

202146c1

1 A bill to be entitled  
 2 An act relating to craft distilleries; amending s.  
 3 565.02, F.S.; defining the term "destination  
 4 entertainment venue"; authorizing craft distilleries  
 5 to be licensed as specified vendors under certain  
 6 circumstances; providing requirements for such  
 7 licenses; providing requirements for craft  
 8 distilleries for such licenses; prohibiting a licensee  
 9 from taking certain actions; requiring certain  
 10 alcoholic beverages to be obtained through a licensed  
 11 distributor; amending s. 565.03, F.S.; redefining the  
 12 terms "branded product" and "craft distillery";  
 13 prohibiting a distillery from operating as a craft  
 14 distillery until certain requirements are met;  
 15 authorizing persons to have common ownership in craft  
 16 distilleries under certain circumstances; defining the  
 17 term "common ownership"; requiring a minimum  
 18 percentage of a craft distillery's total finished  
 19 branded products to be distilled in this state and  
 20 contain one or more Florida agricultural products  
 21 after a specified date; revising the requirements and  
 22 prohibitions on the sale of branded products to  
 23 consumers by a licensed craft distillery; revising the  
 24 circumstances for which a craft distillery must report  
 25 certain information about the production of distilled  
 26 spirits to the Division of Alcoholic Beverages and  
 27 Tobacco of the Department of Business and Professional  
 28 Regulation; revising prohibitions on the shipment of  
 29 certain products by a craft distillery; revising

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30 prohibitions on the transfer of a craft distillery  
 31 license or ownership interest in such license;  
 32 revising prohibitions relating to affiliated ownership  
 33 of craft distilleries; authorizing a craft distillery  
 34 to transfer specified distilled spirits from certain  
 35 locations to its souvenir gift shop and tasting room;  
 36 making technical changes; amending s. 565.17, F.S.;  
 37 authorizing craft distilleries to conduct spirituous  
 38 beverage tastings under certain circumstances;  
 39 requiring the division to issue permits to craft  
 40 distilleries to conduct tastings and sales at certain  
 41 locations; specifying requirements for distilleries  
 42 for such permits; providing an effective date.  
 43  
 44 Be It Enacted by the Legislature of the State of Florida:  
 45  
 46 Section 1. Present subsection (12) of section 565.02,  
 47 Florida Statutes, is redesignated as subsection (13), and a new  
 48 subsection (12) is added to that section, to read:  
 49 565.02 License fees; vendors; clubs; caterers; and others.-  
 50 (12) (a) As used in this subsection, the term "destination  
 51 entertainment venue" means a venue that:  
 52 1. Is located in a designated community redevelopment area  
 53 authorized under an adopted community redevelopment plan to  
 54 support urban redevelopment and economic development;  
 55 2. Is owned by any person licensed as a craft distillery  
 56 located within the destination entertainment venue;  
 57 3. Is adjacent to and served by multimodal transportation  
 58 options, including, at a minimum, bicycle and pedestrian trails

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59 included on an adopted city or county trails map and mass  
 60 transit routes established by a city, county, or regional  
 61 transportation authority; and

62 4. Is located within a contiguous area of at least 15  
 63 acres, including associated parking and stormwater requirements  
 64 as required by local law, regulation, or ordinance, and that  
 65 contains:

66 a. At least one indoor event venue with a minimum capacity  
 67 of 150 people which is fully serviced by a connected onsite  
 68 kitchen;

69 b. At least one outdoor event venue with a minimum capacity  
 70 of 1,000 people which has regularly occurring live entertainment  
 71 on a stage that is at least 12 feet deep and 16 feet wide; and

72 c. One or more licensed craft distilleries sharing  
 73 identical ownership.

74 (b) Notwithstanding any other provisions of the Beverage  
 75 Law, upon the payment of the appropriate fees, a craft  
 76 distillery licensed in this state may be licensed as a vendor  
 77 only for consumption on the premises of alcoholic beverages  
 78 manufactured by other manufacturers and acquired through a  
 79 distributor. The issuance of a license under this paragraph is  
 80 not subject to any quota or limitation, except that the craft  
 81 distillery must be:

82 1. Located on property within a destination entertainment  
 83 venue; and

84 2. In operation and open for tours during normal business  
 85 hours at least 5 days a week.

86 (c) The vendor license may be issued only for the premises  
 87 included on the licensed premises sketch on file with the

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88 division under s. 565.03 for the craft distillery, including its  
 89 souvenir gift shop or tasting room.

90 (d) No more than three craft distilleries may be licensed  
 91 as a vendor in a community redevelopment area under this  
 92 subsection. Craft distilleries licensed as a vendor under this  
 93 subsection must be located within the same destination  
 94 entertainment venue and must share identical ownership, and each  
 95 craft distillery must distill, blend, or rectify at least 50,000  
 96 gallons of branded products per calendar year.

97 (e) Except as otherwise provided in this paragraph, a craft  
 98 distillery licensed as a vendor under this subsection shall be  
 99 treated as a vendor and is subject to all provisions relating to  
 100 such vendors licensed to sell alcoholic beverages for  
 101 consumption on premises. A craft distillery licensed as a vendor  
 102 may not make package sales for off-premises consumption or make  
 103 any delivery or shipment of alcoholic beverages away from the  
 104 destination entertainment venue or the craft distillery, unless  
 105 such shipment or delivery is authorized for a craft distillery  
 106 under s. 565.03.

107 (f) Alcoholic beverages manufactured by another licensed  
 108 manufacturer, including branded products manufactured at another  
 109 craft distillery location sharing identical ownership, must be  
 110 obtained through a licensed distributor.

111 Section 2. Paragraphs (a) and (b) of subsection (1) and  
 112 subsections (2) and (5) of section 565.03, Florida Statutes, are  
 113 amended to read:

114 565.03 License fees; manufacturers, distributors, brokers,  
 115 sales agents, and importers of alcoholic beverages; vendor  
 116 licenses and fees; distilleries and craft distilleries.-

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

118 (a) "Branded product" means any distilled spirits product

119 that:

120 1. Is owned by a craft distillery;

121 2. Contains distilled spirits that are manufactured by

122 distilling, rectifying, or blending by the craft distillery on

123 its licensed premises; and

124 3. Has ~~manufactured on site, which requires~~ a federal

125 certificate and label approval by the Federal ~~Government Alcohol~~

126 Administration Act or federal regulations.

127 (b) "Craft distillery" means a licensed distillery in this

128 state which distills, rectifies, or blends 250,000 ~~that produces~~

129 75,000 or fewer gallons or less of distilled spirits per

130 calendar year of distilled spirits on its premises and has

131 notified the division in writing of its decision to qualify as a

132 craft distillery.

133 (2) (a) A distillery may not operate as a craft distillery

134 until the distillery has provided to the division written

135 notification that it meets the criteria specified in paragraph

136 (1) (b). Upon the division's receipt of the notification and its

137 verification that the distillery meets all such criteria, the

138 division shall add the designation of craft distiller on the

139 distillery's license.

140 (b) A person may not share common ownership in more than 10

141 craft distilleries, provided that no more than:

142 1. Four of the distilleries each distill, rectify, or blend

143 250,000 gallons or less of distilled spirits per calendar year;

144 and

145 2. Six of the distilleries each distill, rectify, or blend

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146 50,000 gallons or less of distilled spirits per calendar year.

147

148 As used in this paragraph, the term "common ownership" means

149 having a direct or indirect financial interest in two or more

150 distilleries by the same person.

151 (c) Effective July 1, 2026, a minimum of 60 percent of a

152 craft distillery's total finished branded products must be

153 distilled in this state and contain one or more Florida

154 agricultural products.

155 (d) A distillery or a craft distillery authorized to do

156 business under the Beverage Law shall pay an annual state

157 license tax for each plant or branch operating in the state, as

158 follows:

159 1. A distillery engaged in the business of manufacturing

160 distilled spirits: \$4,000.

161 2. A craft distillery engaged in the business of

162 manufacturing distilled spirits: \$1,000.

163 3. A person engaged in the business of rectifying and

164 blending spirituous liquors and nothing else: \$4,000.

165 (e) ~~(b)~~ A licensed distillery or licensed craft distillery

166 may ~~Persons licensed under this section who are in the business~~

167 ~~of distilling spirituous liquors may also~~ engage in the business

168 of rectifying ~~or and~~ blending spirituous liquors without the

169 payment of an additional license tax.

170 (f) ~~(e)~~ A craft distillery ~~licensed under this section~~ may

171 sell directly to consumers up to 75,000 gallons per calendar

172 year of, ~~at its souvenir gift shop,~~ branded products that are

173 manufactured by the craft distillery distilled on its premises.

174 A craft distillery may sell branded products directly to

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175 ~~consumers by the drink for consumption on the premises or by the~~  
 176 ~~package in factory-sealed containers for consumption off the~~  
 177 ~~premises in this state in factory-sealed containers that are~~  
 178 ~~filled at the distillery for off-premises consumption.~~ Such  
 179 sales are authorized only in the craft distillery's souvenir  
 180 gift shop or tasting room located on private property contiguous  
 181 to the licensed distillery premises. Branded products sold to  
 182 consumers must have been distilled, rectified, or blended on the  
 183 distillery premises that is located contiguous to the craft  
 184 distillery's souvenir gift shop or tasting room. The souvenir  
 185 gift shop or tasting room must be in this state and included on  
 186 the sketch or diagram defining the licensed premises submitted  
 187 with the distillery's license application. All sketch or diagram  
 188 revisions by the distillery shall require the division's  
 189 approval verifying that the locations of the souvenir gift shops  
 190 and tasting rooms ~~shop location~~ operated by the licensed  
 191 distillery ~~are~~ is owned or leased by the distillery and on  
 192 property contiguous to the distillery's production building in  
 193 this state.

194 1. Except as authorized under s. 565.17(2), a craft  
 195 distillery may not sell any factory-sealed individual containers  
 196 of spirits to consumers except in face-to-face sales  
 197 transactions with such consumers at the craft distillery's  
 198 licensed premises. Such branded products must be in compliance  
 199 with the container limits under s. 565.10 and be intended for  
 200 personal consumption rather than for resale ~~who are making a~~  
 201 ~~purchase of no more than six individual containers of each~~  
 202 ~~branded product.~~

203 2. ~~Each container sold in face-to-face transactions with~~

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204 ~~consumers must comply with the container limits in s. 565.10,~~  
 205 ~~per calendar year for the consumer's personal use and not for~~  
 206 ~~resale and who are present at the distillery's licensed premises~~  
 207 ~~in this state.~~

208 ~~3.~~ A craft distillery must report to the division within 5  
 209 days after it ~~exceeds reaches~~ the production limits or is no  
 210 longer operating under the requirements or limitations provided  
 211 in paragraph (1)(b). Any retail sales of branded products by the  
 212 drink or by the package to consumers at the craft distillery's  
 213 licensed premises are prohibited beginning the day after it  
 214 ~~exceeds reaches~~ the production limitation.

215 ~~3.4.~~ A craft distillery may not ship or arrange to ship any  
 216 of its branded products or any other alcoholic beverages  
 217 distilled spirits to consumers and may sell and deliver only to  
 218 consumers within the state in a face-to-face transaction at the  
 219 distillery property. However, a craft distillery distiller  
 220 licensed under this section may ship, arrange to ship, or  
 221 deliver such spirits to any manufacturers of distilled spirits,  
 222 wholesale distributors of distilled spirits, state or federal  
 223 bonded warehouses, or ~~and~~ exporters.

224 ~~4.5.~~ Except as provided in subparagraph 5. ~~subparagraph 6.,~~  
 225 it is unlawful to transfer a craft distillery license ~~for a~~  
 226 ~~distillery that produces 75,000 or fewer gallons per calendar~~  
 227 ~~year of distilled spirits on its premises or any ownership~~  
 228 ~~interest in such license to an individual or entity that has a~~  
 229 ~~direct or indirect ownership interest in any distillery that~~  
 230 distills, rectifies, or blends 250,000 gallons or more per  
 231 calendar year of distilled spirits under any license issued  
 232 licensed in this state; in another state, territory, or country;



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233 or by the United States Government to distill ~~manufacture~~,  
 234 blend, or rectify distilled spirits for beverage purposes.

235 ~~5.6-~~ Except as provided in paragraph (b), a craft  
 236 distillery may shall not have its ownership affiliated with  
 237 another distillery, unless such distillery is owned by an  
 238 individual or entity that distills, rectifies, or blends 250,000  
 239 gallons or less per calendar year of distilled spirits produces  
 240 75,000 or fewer gallons per calendar year of distilled spirits  
 241 on each of its premises in this state or in another state,  
 242 territory, or country.

243 6. A craft distillery may transfer up to 75,000 gallons per  
 244 calendar year of its branded products that it distills,  
 245 rectifies, or blends from its federal bonded space, nonbonded  
 246 space at its licensed premises, or storage areas to its souvenir  
 247 gift shop and tasting room.

248 (5) A craft distillery making sales under paragraph (2) (f)  
 249 paragraph (2) (e) is responsible for submitting any excise taxes  
 250 due to the state on distilled spirits on beverages under the  
 251 Beverage Law with in its monthly report to the division with any  
 252 tax payments due to the state.

253 Section 3. Section 565.17, Florida Statutes, is amended to  
 254 read:

255 565.17 Beverage tastings by distributors, craft  
 256 distilleries, and vendors.-

257 (1) A licensed distributor of spirituous beverages, a craft  
 258 distillery as defined in s. 565.03, or any vendor, is authorized  
 259 to conduct spirituous beverage tastings upon any licensed  
 260 premises authorized to sell spirituous beverages by package or  
 261 for consumption on premises without being in violation of s.

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262 561.42, provided that the conduct of the spirituous beverage  
 263 tasting shall be limited to and directed toward the general  
 264 public of the age of legal consumption.

265 (2) Craft distilleries may conduct tastings and sales of  
 266 distilled spirits produced by the craft distilleries at Florida  
 267 fairs, trade shows, farmers markets, expositions, and festivals.  
 268 The division shall issue permits to craft distilleries for such  
 269 tastings and sales. A craft distillery must pay all entry fees  
 270 and must have a distillery representative present during the  
 271 event. The permit is limited to the duration and physical  
 272 location of the event.

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

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

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

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

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BILL: SB 602

INTRODUCER: Senator Burgess

SUBJECT: Business Organizations

DATE: February 12, 2021

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

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

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## I. Summary:

SB 602 amends several sections of the Florida Business Corporation Act (FBCA), ch. 607, F.S., and related statutes to address concerns raised by corporations and the legal community pursuant to a complete revision of the FBCA in 2019.<sup>1</sup> Specifically, the bill:

- Narrows the circumstances under which a shareholder may assert his or her appraisal rights;
- Modifies the market out exception to accommodate privately-held corporations whose stock is not traded on an organized market, but who do have a comparable trading process;
- Addresses appraisal arbitrage, wherein disinterested parties abuse the appraisal rights afforded under Florida law to churn additional profits from the process;
- Makes clarifying and conforming changes to fix minor errors in the 2019 and 2020<sup>2</sup> FBCA legislation;
- Revises the requirements for eligible entities to use the name of a dissolved corporation; and
- Clarifies the application of corporation not-for-profit statutes in ch. 617, F.S., to the operation of condominiums, cooperatives, homeowners associations, timeshares, and mobile homeowners associations organized under chs. 718, 719, 720, 721, and 723, F.S.

## II. Present Situation:

In 2019, the Legislature substantially amended ch. 607, F.S., the Florida Business Corporation Act (FBCA), to reflect changes to the Model Business Corporation Act<sup>3</sup> and ch. 605, F.S., the Florida Revised Limited Liability Corporate Act (FRLCA). In 2020, the Legislature made several clarifying and conforming changes to the FBCA.

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<sup>1</sup> Chapter 2019-90, Laws of Fla. CS/CS/HB 1009 was signed into law on June 7, 2019, and took effect on January 1, 2020.

<sup>2</sup> Chapter 2020-32, Laws of Fla. CS/SB 828 was signed into law on June 3, 2020, and took effect immediately upon becoming law.

<sup>3</sup> American Bar Association, *Model Business Corporation Act* (2016),

[https://www.americanbar.org/content/dam/aba/administrative/business\\_law/corplaws/2016\\_mbcg.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/business_law/corplaws/2016_mbcg.authcheckdam.pdf) (last visited Feb. 12, 2021).

Since the 2019 update of the FBCA, the Florida Bar Business Law Section (Business Law Section) has identified three additional areas of concern.<sup>4</sup> This bill, drafted with input from the Business Law Section and other community stakeholders, modifies the FBCA's provisions to address perceived abuses and fairness issues.

Further discussion of the present situation is discussed below in conjunction with the Effect of Proposed Changes.

### III. Effect of Proposed Changes:

#### Appraisal Rights

Minority shareholders may dissent to corporate or majority shareholder action by asserting their appraisal rights, pursuant to ss. 607.1301-607.1340, F.S., which requires a corporation to buy the minority shareholders' stock at its "fair value."<sup>5</sup> This remedy is one of the few protections against actions that "... fundamentally change the nature of the shareholders' investments without the check and balance of informed shareholder approval, and [provide] the opportunity for dissenters to withdraw from the corporation."<sup>6</sup>

A minority shareholder may assert his or her appraisal rights only in specific instances where a fundamental corporate change occurs, including (and subject to substantial restrictions and limits) the domestication or conversion to another type of business entity, a merger or share exchange, a disposition of all or substantially all of the corporation's assets, an amendment to the corporation's articles of incorporation that creates fractional shares, and in other cases involving a corporation's articles of incorporation, bylaws, or a resolution of its board of directors.<sup>7, 8</sup>

The appraisal process is effectuated through a judicial hearing, where a court appraises the fair value of the shareholder's interests and assesses the corporation for payment of both the fair value and any accrued interest, calculated according to s. 55.03, F.S.

#### *Triggers of a Minority Shareholder's Appraisal Rights*

**Section 3** amends s. 607.1302, F.S., to narrow the instances that trigger a minority shareholder's appraisal rights. Section 607.1302(1)(g), F.S., currently entitles shareholders to assert appraisal rights where an amendment to the articles of incorporation or bylaws adversely alters or abolishes the shareholder's voting rights or other rights. The Florida Bar received input that this entitlement could lead to unnecessary and superficial filing of charter amendments that do not actually alter the fundamental corporate governance for the purpose of unjust assertion of

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<sup>4</sup> Florida Bar Business Law Section, Chapter 607 Drafting Subcommittee, *White Paper for S.B. 602 & H.B. 339: An Act Relating to Corporations and Other Entities*, 1-2 (Feb., 2021), on file with the Senate Committee on Commerce and Tourism.

<sup>5</sup> Section 607.1302(1), F.S. Section 607.1301(5), F.S., defines "fair value" as the value of the corporation's shares immediately before the effectiveness of the corporate action in question, using commonly-used valuation concepts and techniques, without discounting for lack of marketability or minority status of the shares.

<sup>6</sup> Gregory Yadley and Christina Nethero, *Florida Corporate Practice: Appraisal Rights* s. 11:1 (2020); *see also*, *South End Improvement Group, Inc. by & through Bank of New York v. Mulliken*, 602 So. 2d 1327, 1332 (Fla. 4<sup>th</sup> DCA 1992).

<sup>7</sup> Section 607.1302(1), F.S.

<sup>8</sup> Gregory Yadley and Christina Nethero, *Florida Corporate Practice: Appraisal Rights* s. 11:2.C (2020).

appraisal rights.<sup>9</sup> To prevent such frivolous charter amendments, the bill deletes the broader entitlement in s. 607.1302(1)(g), F.S.

Section 3 also amends s. 607.1302(1)(h), F.S., to allow minority shareholders who experience specific fundamental corporate changes to assert appraisal rights. This right extends only to shareholders in a corporation with 100 or fewer shareholders, whose shares were authorized on, or after October 1, 2003.

Minority shareholders may still assert their appraisal rights under several other bases enumerated in s. 607.1302(1), F.S.

### ***Market Out Exception to Appraisal Rights***

Thirty-eight states, including Florida, operate under the “market out exception,” which restricts the appraisal rights available to shareholders of stock in large or publicly traded corporations. “[P]ublic shareholders presumptively have an available market. [W]hen a public market exists..., public shareholders must employ market price instead of court-appraisal as the measure of their interests.”<sup>10</sup>

In Florida, the market out exception excludes shareholders from asserting appraisal rights if their shares are a covered security; are not a covered security, but are traded in an organized market; or are issued by an open end management investment company that is registered with the Securities and Exchange Commission.<sup>11</sup>

**Section 3** broadens the market out exception found in s. 607.1302(2), F.S., by prohibiting appraisal actions that are asserted in connection with a corporation’s merger, share exchange, or disposition of corporate assets (as permitted by the corporation’s articles of incorporation or bylaws), or those that adversely affect a shareholder of a closely held corporation or a shareholder who holds shares issued prior to October 1, 2003.

This amendment will limit a minority shareholder’s ability to assert his or her appraisal rights, if made pursuant to s. 607.1302(1)(f) or (h), F.S., if the shares can be sold on an organized market that is liquid and where the value of the shares is reasonably calculated to arrive at a price that reflects an arm’s length transaction.

Section 3 also amends the market out exception to apply where the shares held are not a covered security, and therefore are not traded in an organized market, but are subject to a “comparable trading process.” The bill defines a “comparable trading process” as one where (1) the share’s market price is determined at least quarterly based on an independent valuation and by following a formalized process that is designed to determine a value for the corporation’s shares that is comparable to the value of a comparable publicly traded company; and (2) the corporation repurchases the shares at pricing set by its board of directors based on the independent valuation and subject to established terms and conditions that have been provided to the shareholders. This

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<sup>9</sup> Florida Bar Business Law Section, Chapter 607 Drafting Subcommittee, *supra* note 4, at 3-4.

<sup>10</sup> Gil Matthews, *The “Market Exception” in Appraisal Statutes*, (Mar. 30, 2020), <https://corpgov.law.harvard.edu/2020/03/30/the-market-exception-in-appraisal-statutes/> (last visited Feb. 12, 2021).

<sup>11</sup> Section 607.1302(2)(a), F.S.

will permit companies that meet these requirements to prohibit appraisal actions by their minority shareholders, and to instead apply the market out exception.

Section 607.1302(2)(b), F.S., outlines the point in time at which a minority shareholder's right to assert appraisal rights is determined. Section 3 of the bill clarifies that, in cases in which the corporate action in question will be approved by shareholders' signed, written consent, the corporate qualities must be scrutinized at the point at which the record date was fixed to determine the shareholders entitled to sign the consent.

### **Abuse of Appraisal Rights**

The Florida Bar has perceived an abuse of the appraisal rights provisions in Florida.<sup>12</sup> Appraisal arbitrage is when activist investors buy up shares of a corporation merely for the purpose of gaining earnings on any possible upside to the corporation's shares, and asserting appraisal rights to earn interest off of the action.<sup>13</sup> This bill seeks to address the arbitrage issue by:

- Involving courts in the determination of the appropriate interest to award in appraisal matters, and giving them leeway to award no interest;
- Giving corporations the right to prepay their interest: and
- Requiring the shareholder to acquire a beneficial ownership of shares prior to the initiation of the applicable corporate action that gave rise to appraisal.

### ***Award of Accrued Interest in an Appraisal Action***

**Section 2** amends s. 607.1301, F.S., to update the definition of "accrued interest" as it applies to a shareholder's appraisal rights. Currently, interest on payments made pursuant to an assertion of one's appraisal rights is calculated at the statutory judgment interest rate as described in s. 55.03, F.S. The bill requires the parties in an appraisal action either to agree to an interest rate between themselves, or to accept a rate determined by a court to be equitable. The court's rate may not exceed the statutory judgment rate described in s. 55.03, F.S. Additionally, this section permits a court to prohibit the payment of interest where it finds that the shareholder who asserted his or her appraisal rights acted arbitrarily or not in good faith in doing so.

**Sections 6, 7, and 8** make conforming changes to ss. 607.1322, 607.1326, and 607.1330, F.S., respectively, to reflect both that the rate of interest is variable, and that a court may choose not to award accrued interest pursuant to the amended definition of the term in section 2 of the bill.

### ***Prepayment of Interest***

**Section 7** amends s. 607.1326, F.S., to give corporations the option to prepay the fair value of the shares that are subject a shareholder's appraisal action. Such prepayment shortens the amount of time during which interest can accrue, and therefore mitigates risk to the corporation. Specifically, the bill allows the corporation to prepay all, or any part of the amount, that it

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<sup>12</sup> Florida Bar Business Law Section, Chapter 607 Drafting Subcommittee, *White Paper for S.B. 602 & H.B. 339: An Act Relating to Corporations and Other Entities*, 6 (Feb., 2021), on file with the Senate Committee on Commerce and Tourism.

<sup>13</sup> American Bar Association, *Appraisal Arbitrage* (May 14, 2020), [https://www.americanbar.org/groups/business\\_law/publications/the\\_business\\_lawyer/find\\_by\\_subject/buslaw\\_tbl\\_mci\\_appraisal/#:~:text=In%20the%20controversial%20practice%20of,the%20price%20of%20the%20deal.&text=Thus%2C%20awards%20that%20are%20skewed,practices%20likely%20encourage%20appraisal%20arbitrage](https://www.americanbar.org/groups/business_law/publications/the_business_lawyer/find_by_subject/buslaw_tbl_mci_appraisal/#:~:text=In%20the%20controversial%20practice%20of,the%20price%20of%20the%20deal.&text=Thus%2C%20awards%20that%20are%20skewed,practices%20likely%20encourage%20appraisal%20arbitrage). (last visited Feb. 12, 2021).

determines is due to the shareholder. If the corporation makes the prepayment within 90 days after the appraisal notice, then the corporation may only be liable for the accrued interest on any amount above what it prepaid to the shareholder. If the corporation makes a payment after the 90-day period, but before a judicial determination of the interest due, then the corporation must prepay at the statutory judgment rate provided for in s. 55.03, F.S., and may be liable for additional interest on any excess payment due, calculated from the date the corporate action became effective.

**Section 8** makes conforming changes to s. 607.1330, F.S., to acknowledge the prepayment options provided for in section 7 of the bill.

### ***Beneficial Ownership Required by Record Date***

**Sections 4 and 5** amend ss. 607.1303 and 607.1321, F.S., respectively, to require a shareholder who wishes to assert his or her appraisal rights to have a beneficial ownership of his or her shares in the corporation by the record date established for the triggering corporate action. Additionally, the bill now requires the shareholder to assert his or her appraisal rights as to all of the shares he or she owns.

Section 5 also amends s. 607.1321, F.S., to require shareholders to have beneficially owned shares in the corporation on the date a tender offer for purchase was made pursuant to s. 607.11035, F.S.

### **Clarifying and Conforming Changes**

**Section 1** makes a non-substantive grammar change to s. 605.0410, F.S.

Sales in dissolution were transferred to ss. 607.1401-607.1410, F.S., by the 2019 FBCA legislation. **Section 3** removes a reference to a sale in dissolution from s. 607.1302(1)(d), F.S., to conform to prior changes. This section also makes a nonsubstantive grammatical change to s. 607.1302(1)(c), F.S.

SB 892 (2019) inadvertently changed the period of time that a dissolved entity's name is unavailable after the effective date of its dissolution from 120 days to 1 year. **Section 9** reverts to the 120-day period and makes a separate, non-substantive conforming change.

**Section 11** clarifies that ch. 617, F.S., regarding corporations not-for-profit, applies to ch. 718, F.S., regarding condominiums, ch. 719, F.S., regarding cooperatives, ch. 720, F.S., regarding homeowners associations, ch. 721, F.S., F.S., regarding timeshares, and ch. 723, F.S., regarding mobile homeowners associations, only to the extent that there is a conflict between the chapters. The bill further clarifies that chs. 718-721 and 723, F.S., control where a conflict arises between those chapters and ch. 617, F.S.

**Section 10** updates cross-references to correct scrivener errors.

### **Effective Date**

**Section 12** of the bill provides that the bill takes effect upon becoming law.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Several changes will impact certain shareholders negatively; this may be counteracted by the reduction of inflated payments to appraisal arbitrageurs. Additionally, corporations and shareholders will need to familiarize themselves with the changes made to their rights and responsibilities.

## C. Government Sector Impact:

The bill deletes the provision that defined the interest applicable in appraisal proceedings. As a result, courts may be called on more frequently to determine the interest rate and accrued interest due in such cases.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 605.0410, 607.1301, 607.1302, 607.1303, 607.1321, 607.1322, 607.1326, 607.1330, 607.1405, 617.0825, and 617.1703.

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

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

None.

**B. Amendments:**

None.

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

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LEGISLATIVE ACTION

Senate

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. .  
. .  
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. .

House

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

**Senate Amendment (with title amendment)**

Between lines 427 and 428

insert:

Section 10. Section 617.0725, Florida Statutes, is amended to read:

617.0725 Quorum.—An amendment to the articles of incorporation or the bylaws which adds, changes, or deletes a greater or lesser quorum or voting requirement must meet the same quorum or voting requirement and be adopted by the same



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11 vote and voting groups required to take action under the quorum  
12 and voting requirements then in effect or proposed to be  
13 adopted, whichever is greater. This section does not apply to  
14 any corporation that is an association, as defined in s.  
15 720.301(9), or any corporation regulated under chapter 718 or  
16 chapter 719.

17  
18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20       Between lines 28 and 29

21 insert:

22       amending s. 617.0725, F.S.; providing applicability;

By Senator Burgess

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1 A bill to be entitled  
 2 An act relating to business organizations; amending s.  
 3 605.0410, F.S.; revising requirements relating to  
 4 inspecting certain records of limited liability  
 5 companies; amending s. 607.1301, F.S.; revising the  
 6 definition of the term "accrued interest"; amending s.  
 7 607.1302, F.S.; revising the circumstances under which  
 8 shareholders are entitled to appraisal rights and  
 9 certain payments; revising limitations relating to  
 10 such rights and payments; revising applicability;  
 11 amending s. 607.1303, F.S.; revising the circumstances  
 12 in which certain shareholders may assert specified  
 13 appraisal rights; amending s. 607.1321, F.S.; revising  
 14 requirements for shareholders who wish to assert  
 15 appraisal rights relating to specified corporate  
 16 actions; amending s. 607.1322, F.S.; making a  
 17 technical change; amending s. 607.1326, F.S.;  
 18 entitling corporations to prepay a shareholder if the  
 19 shareholder makes a demand for payment; specifying  
 20 when interest is applicable to such prepayments;  
 21 making technical changes; amending s. 607.1330, F.S.;  
 22 revising requirements for proceedings relating to  
 23 unsettled demands for payment; revising the  
 24 eligibility requirements for shareholders entitled to  
 25 the fair value of shares during court proceedings;  
 26 making technical and conforming changes; amending s.  
 27 607.1405, F.S.; revising the requirements for eligible  
 28 entities to use the name of a dissolved corporation;  
 29 amending ss. 617.0825 and 617.1703, F.S.; revising

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30 applicability; providing an effective date.  
 31  
 32 Be It Enacted by the Legislature of the State of Florida:  
 33  
 34 Section 1. Paragraph (b) of subsection (3) of section  
 35 605.0410, Florida Statutes, is amended to read:  
 36 605.0410 Records to be kept; rights of member, manager, and  
 37 person dissociated to information.—  
 38 (3) In a manager-managed limited liability company, the  
 39 following rules apply:  
 40 (b) During regular business hours and at a reasonable  
 41 location specified by the company, a member may inspect and  
 42 copy:  
 43 1. The records described in subsection (1); and  
 44 2. Full information regarding the activities, affairs,  
 45 financial condition, and other circumstances of the company as  
 46 is just and reasonable if:  
 47 a. The member seeks the information for a purpose  
 48 reasonably related to the member's interest as a member; and ~~or~~  
 49 b. The member makes a demand in a record received by the  
 50 company, describing with reasonable particularity the  
 51 information sought and the purpose for seeking the information,  
 52 and if the information sought is directly connected to the  
 53 member's purpose.  
 54 Section 2. Subsection (1) of section 607.1301, Florida  
 55 Statutes, is amended to read:  
 56 607.1301 Appraisal rights; definitions.—The following  
 57 definitions apply to ss. 607.1301-607.1340:  
 58 (1) "Accrued interest" means interest ~~from the date the~~

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59 ~~corporate action becomes effective until the date of payment, at~~  
 60 ~~the rate agreed to by the corporation and the shareholder~~  
 61 ~~asserting appraisal rights, or at the rate determined by the~~  
 62 ~~court to be equitable, which rate may not be greater than the~~  
 63 ~~rate of interest ~~of interest~~ determined for judgments pursuant~~  
 64 ~~to s. 55.03; however, if the court finds that the shareholder~~  
 65 ~~asserting appraisal rights acted arbitrarily or otherwise not in~~  
 66 ~~good faith, no interest shall be allowed by the court,~~  
 67 ~~determined as of the effective date of the corporate action.~~

68 Section 3. Subsections (1) and (2) of section 607.1302,  
 69 Florida Statutes, are amended to read:

70 607.1302 Right of shareholders to appraisal.—

71 (1) A shareholder of a domestic corporation is entitled to  
 72 appraisal rights, and to obtain payment of the fair value of  
 73 that shareholder's shares, in the event of any of the following  
 74 corporate actions:

75 (a) Consummation of a domestication or a conversion of such  
 76 corporation pursuant to s. 607.11921 or s. 607.11932, as  
 77 applicable, if shareholder approval is required for the  
 78 domestication or the conversion;

79 (b) Consummation of a merger to which such corporation is a  
 80 party:

81 1. If shareholder approval is required for the merger under  
 82 s. 607.1103 or would be required but for s. 607.11035, except  
 83 that appraisal rights shall not be available to any shareholder  
 84 of the corporation with respect to shares of any class or series  
 85 that remains outstanding after consummation of the merger where  
 86 the terms of such class or series have not been materially  
 87 altered; or

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88 2. If such corporation is a subsidiary and the merger is  
 89 governed by s. 607.1104;

90 (c) Consummation of a share exchange to which the  
 91 corporation is a party as the corporation whose shares will be  
 92 acquired, except that appraisal rights shall not be ~~are not~~  
 93 available to any shareholder of the corporation with respect to  
 94 any class or series of shares of the corporation that is not  
 95 acquired in the share exchange;

96 (d) Consummation of a disposition of assets pursuant to s.  
 97 607.1202 if the shareholder is entitled to vote on the  
 98 disposition, ~~including a sale in dissolution,~~ except that  
 99 appraisal rights shall not be available to any shareholder of  
 100 the corporation with respect to shares or any class or series  
 101 if:

102 1. Under the terms of the corporate action approved by the  
 103 shareholders there is to be distributed to shareholders in cash  
 104 the corporation's net assets, in excess of a reasonable amount  
 105 reserved to meet claims of the type described in ss. 607.1406  
 106 and 607.1407, within 1 year after the shareholders' approval of  
 107 the action and in accordance with their respective interests  
 108 determined at the time of distribution; and

109 2. The disposition of assets is not an interested  
 110 transaction;

111 (e) An amendment of the articles of incorporation with  
 112 respect to a class or series of shares which reduces the number  
 113 of shares of a class or series owned by the shareholder to a  
 114 fraction of a share if the corporation has the obligation or the  
 115 right to repurchase the fractional share so created;

116 (f) Any other merger, share exchange, disposition of

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117 assets, or amendment to the articles of incorporation, in each  
 118 case to the extent provided as of the record date by the  
 119 articles of incorporation, bylaws, or a resolution of the board  
 120 of directors providing for appraisal rights, except that no  
 121 bylaw or board resolution providing for appraisal rights may be  
 122 amended or otherwise altered except by shareholder approval;

123 ~~(g) An amendment to the articles of incorporation or bylaws~~  
 124 ~~of the corporation, the effect of which is to alter or abolish~~  
 125 ~~voting or other rights with respect to such interest in a manner~~  
 126 ~~that is adverse to the interest of such shareholder, except as~~  
 127 ~~the right may be affected by the voting or other rights of new~~  
 128 ~~shares then being authorized of a new class or series of shares;~~

129 ~~(h)~~ An amendment to the articles of incorporation or bylaws  
 130 of a corporation, the effect of which is to adversely affect the  
 131 interest of the shareholder by altering or abolishing appraisal  
 132 rights under this section;

133 (h) ~~(i)~~ With regard to a class of shares prescribed in the  
 134 articles of incorporation in any corporation as to which that  
 135 particular class of shares was in existence prior to October 1,  
 136 2003, including any shares within that class subsequently  
 137 authorized by amendment, and for classes of shares authorized on  
 138 or after October 1, 2003, in any corporation with 100 or fewer  
 139 shareholders prior to October 1, 2003, including any shares  
 140 within that class subsequently authorized by amendment, any  
 141 amendment of the articles of incorporation if the shareholder is  
 142 entitled to vote on the amendment and if such amendment would  
 143 adversely affect such shareholder by:

144 1. Altering or abolishing any preemptive rights attached to  
 145 any of his, her, or its shares;

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146 2. Altering or abolishing the voting rights pertaining to  
 147 any of his, her, or its shares, except as such rights may be  
 148 affected by the voting rights of new shares then being  
 149 authorized of any existing or new class or series of shares;

150 3. Effecting an exchange, cancellation, or reclassification  
 151 of any of his, her, or its shares, when such exchange,  
 152 cancellation, or reclassification would alter or abolish the  
 153 shareholder's voting rights or alter his, her, or its percentage  
 154 of equity in the corporation, or effecting a reduction or  
 155 cancellation of accrued dividends or other arrearages in respect  
 156 to such shares;

157 4. Reducing the stated redemption price of any of the  
 158 shareholder's redeemable shares, altering or abolishing any  
 159 provision relating to any sinking fund for the redemption or  
 160 purchase of any of his, her, or its shares, or making any of  
 161 his, her, or its shares subject to redemption when they are not  
 162 otherwise redeemable;

163 5. Making noncumulative, in whole or in part, dividends of  
 164 any of the shareholder's preferred shares which had theretofore  
 165 been cumulative;

166 6. Reducing the stated dividend preference of any of the  
 167 shareholder's preferred shares; or

168 7. Reducing any stated preferential amount payable on any  
 169 of the shareholder's preferred shares upon voluntary or  
 170 involuntary liquidation;

171 (i) ~~(j)~~ An amendment of the articles of incorporation of a  
 172 social purpose corporation to which s. 607.504 or s. 607.505  
 173 applies;

174 (j) ~~(k)~~ An amendment of the articles of incorporation of a

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175 benefit corporation to which s. 607.604 or s. 607.605 applies;

176 ~~(k)(1)~~ A merger, domestication, conversion, or share  
177 exchange of a social purpose corporation to which s. 607.504  
178 applies; or

179 ~~(l)(m)~~ A merger, domestication, conversion, or share  
180 exchange of a benefit corporation to which s. 607.604 applies.

181 (2) Notwithstanding subsection (1), the availability of  
182 appraisal rights under paragraphs (1)(a), (b), (c), (d), ~~and~~  
183 (e), (f), and (h) shall be limited in accordance with the  
184 following provisions:

185 (a) Appraisal rights shall not be available for the holders  
186 of shares of any class or series of shares which is:

187 1. A covered security under s. 18(b)(1)(A) or (B) of the  
188 Securities Act of 1933;

189 2. Not a covered security, but traded in an organized  
190 market (or subject to a comparable trading process) and has at  
191 least 2,000 shareholders and the outstanding shares of such  
192 class or series have a market value of at least \$20 million,  
193 exclusive of the value of outstanding shares held by the  
194 corporation's subsidiaries, by the corporation's senior  
195 executives, by the corporation's directors, and by the  
196 corporation's beneficial shareholders and voting trust  
197 beneficial owners owning more than 10 percent of the outstanding  
198 shares; or

199 3. Issued by an open end management investment company  
200 registered with the Securities and Exchange Commission under the  
201 Investment Company Act of 1940 and which may be redeemed at the  
202 option of the holder at net asset value.

203 (b) The applicability of paragraph (a) shall be determined

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204 as of:

205 1. The record date fixed to determine the shareholders  
206 entitled to receive notice of the meeting of shareholders to act  
207 upon the corporate action requiring appraisal rights, the record  
208 date fixed to determine the shareholders entitled to sign a  
209 written consent approving the corporate action requiring  
210 appraisal rights, or, in the case of an offer made pursuant to  
211 s. 607.11035, the date of such offer; or

212 2. If there will be no meeting of shareholders, no written  
213 consent approving the corporate action, and no offer is made  
214 pursuant to s. 607.11035, the close of business on the day  
215 before the consummation of the corporate action or the effective  
216 date of the amendment of the articles, as applicable.

217 (c) Paragraph (a) is not applicable and appraisal rights  
218 shall be available pursuant to subsection (1) for the holders of  
219 any class or series of shares where the corporate action is an  
220 interested transaction.

221 (d) For the purposes of subparagraph (a)2., a comparable  
222 trading process exists if:

223 1. The market price of the corporation's shares is  
224 determined at least quarterly based on an independent valuation  
225 and by following a formalized process that is designed to  
226 determine a value for the corporation's shares that is  
227 comparable to the value of comparable publicly traded companies;  
228 and

229 2. The corporation repurchases the shares at the price set  
230 by its board of directors based upon the independent valuation  
231 and subject to certain terms and conditions established by the  
232 corporation and provides the corporation's shareholders with a

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233 trading market comparable to that typically available had the  
 234 corporation's shares been traded in an organized market.  
 235 Section 4. Subsection (1) of section 607.1303, Florida  
 236 Statutes, is amended, and paragraph (c) is added to subsection  
 237 (2) of that section, to read:  
 238 607.1303 Assertion of rights by nominees and beneficial  
 239 owners.—  
 240 (1) A record shareholder may assert appraisal rights as to  
 241 fewer than all the shares registered in the record shareholder's  
 242 name but owned by a beneficial shareholder or a voting trust  
 243 beneficial owner only if:  
 244 (a) The record shareholder objects with respect to all  
 245 shares of the class or series owned by the beneficial  
 246 shareholder or the voting trust beneficial owner;  
 247 (b) The particular beneficial shareholder or voting trust  
 248 beneficial owner acquired all such shares before the record date  
 249 established under s. 607.1321 in connection with the applicable  
 250 corporate action; and  
 251 (c) The record shareholder ~~and~~ notifies the corporation in  
 252 writing of ~~its the~~ name and address (if the record shareholder  
 253 beneficially owns the shares as to which appraisal rights are  
 254 being asserted) or notifies the corporation in writing of the  
 255 name and address of the particular ~~of each~~ beneficial  
 256 shareholder or voting trust beneficial owner on whose behalf  
 257 appraisal rights are being asserted.  
 258  
 259 The rights of a record shareholder who asserts appraisal rights  
 260 for only part of the shares held of record in the record  
 261 shareholder's name under this subsection shall be determined as

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262 if the shares as to which the record shareholder objects and the  
 263 record shareholder's other shares were registered in the names  
 264 of different record shareholders.  
 265 (2) A beneficial shareholder and a voting trust beneficial  
 266 owner may assert appraisal rights as to shares of any class or  
 267 series held on behalf of the shareholder only if such  
 268 shareholder:  
 269 (c) Acquired all shares of the class or series before the  
 270 record date established under s. 607.1321 in connection with the  
 271 applicable corporate action.  
 272 Section 5. Subsections (1), (2), and (3) of section  
 273 607.1321, Florida Statutes, are amended to read:  
 274 607.1321 Notice of intent to demand payment.—  
 275 (1) If a proposed corporate action requiring appraisal  
 276 rights under s. 607.1302 is submitted to a vote at a  
 277 shareholders' meeting, a shareholder who wishes to assert  
 278 appraisal rights with respect to any class or series of shares:  
 279 (a) Must have beneficially owned the shares of such class  
 280 or series as of the record date for the shareholders' meeting at  
 281 which the proposed corporate action is to be submitted to a  
 282 vote;  
 283 (b) Must deliver to the corporation before the vote is  
 284 taken written notice of the shareholder's intent, if the  
 285 proposed corporate action is effectuated, to demand payment for  
 286 all shares of such class or series beneficially owned by the  
 287 shareholder as of the record date for the shareholders' meeting  
 288 at which the proposed corporate action is to be submitted to a  
 289 vote ~~if the proposed corporate action is effectuated;~~ and  
 290 (c) ~~(b)~~ Must not vote, or cause or permit to be voted, any

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291 shares of such class or series in favor of the proposed  
 292 corporate action.

293 (2) If a proposed corporate action requiring appraisal  
 294 rights under s. 607.1302 is to be approved by written consent, a  
 295 shareholder who wishes to assert appraisal rights with respect  
 296 to any class or series of shares:

297 (a) Must have beneficially owned the shares of such class  
 298 or series as of the record date established for determining who  
 299 is entitled to sign a written consent;

300 (b) Must assert such appraisal rights for all shares of  
 301 such class or series beneficially owned by the shareholder as of  
 302 the record date for determining who is entitled to sign the  
 303 written consent; and

304 (c) Must not sign a consent in favor of the proposed  
 305 corporate action with respect to that class or series of shares.

306 (3) If a proposed corporate action specified in s.  
 307 607.1302(1) does not require shareholder approval pursuant to s.  
 308 607.11035, a shareholder who wishes to assert appraisal rights  
 309 with respect to any class or series of shares:

310 (a) Must have beneficially owned the shares of such class  
 311 or series as of the date the offer to purchase is made pursuant  
 312 to s. 607.11035;

313 (b) Must deliver to the corporation before the shares are  
 314 purchased pursuant to the offer a written notice of the  
 315 shareholder's intent to demand payment if the proposed corporate  
 316 action is effected for all shares of such class or series  
 317 beneficially owned by the shareholder as of the date the offer  
 318 to purchase is made pursuant to s. 607.11035; and

319 (c) ~~(b)~~ Must not tender, or cause or permit to be tendered,

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320 any shares of such class or series in response to such offer.

321 Section 6. Paragraph (a) of subsection (2) of section  
 322 607.1322, Florida Statutes, is amended to read:

323 607.1322 Appraisal notice and form.—

324 (2) The appraisal notice must be delivered no earlier than  
 325 the date the corporate action became effective, and no later  
 326 than 10 days after such date, and must:

327 (a) Supply a form that specifies the date that the  
 328 corporate action became effective and that provides for the  
 329 shareholder to state:

330 1. The shareholder's name and address.

331 2. The number, classes, and series of shares as to which  
 332 the shareholder asserts appraisal rights.

333 3. That the shareholder did not vote for or consent to the  
 334 transaction.

335 4. Whether the shareholder accepts the corporation's offer  
 336 as stated in subparagraph (b)4.

337 5. If the offer is not accepted, the shareholder's  
 338 estimated fair value of the shares and a demand for payment of  
 339 the shareholder's estimated value plus accrued interest, if and  
 340 to the extent applicable.

341 Section 7. Section 607.1326, Florida Statutes, is amended  
 342 to read:

343 607.1326 Procedure if shareholder is dissatisfied with  
 344 offer.—

345 (1) A shareholder who is dissatisfied with the  
 346 corporation's offer as set forth pursuant to s. 607.1322(2)(b)4.  
 347 must notify the corporation on the form provided pursuant to s.  
 348 607.1322(1) of that shareholder's estimate of the fair value of



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349 the shares and demand payment of that estimate plus accrued  
350 interest, if and to the extent applicable.

351 (2) A shareholder who fails to notify the corporation in  
352 writing of that shareholder's demand to be paid the  
353 shareholder's stated estimate of the fair value plus accrued  
354 interest, if and to the extent applicable, under subsection (1)  
355 within the timeframe set forth in s. 607.1322(2)(b)2. waives the  
356 right to demand payment under this section and shall be entitled  
357 only to the payment offered by the corporation pursuant to s.  
358 607.1322(2)(b)4.

359 (3) With respect to a shareholder who properly makes demand  
360 for payment pursuant to subsection (1), at any time after the  
361 shareholder makes such demand, including during a court  
362 proceeding under s. 607.1330, the corporation shall have the  
363 right to prepay to the shareholder all or any portion of the  
364 amount that the corporation determines to be due under s.  
365 607.1322(2)(b)3. and the shareholder shall be obligated to  
366 accept such prepayment.

367 (a) If such prepayment is made within 90 days after the  
368 earlier of the date on which the appraisal notice is provided by  
369 the corporation under s. 607.1322(1) or the deadline date by  
370 which the appraisal notice is required to be provided by the  
371 corporation under s. 607.1322(2), accrued interest will be  
372 payable, if at all, to the shareholder entitled to appraisal  
373 rights, calculated and accrued from the date on which the  
374 corporate action became effective and only on amounts that are  
375 determined to be due to the shareholder and are above the amount  
376 so prepaid. Accrued interest will not be payable to the  
377 shareholder entitled to appraisal rights on the prepayment

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378 previously made to the shareholder by the corporation pursuant  
379 to this paragraph.

380 (b) If such prepayment is made more than 90 days after the  
381 earlier of the date on which the appraisal notice is provided by  
382 the corporation under s. 607.1322(1) or the deadline date by  
383 which the appraisal notice is required to be provided by the  
384 corporation under s. 607.1322(2), the prepayment must include  
385 accrued interest on the amount of the prepayment, calculated at  
386 the rate of interest determined for judgments pursuant to s.  
387 55.03 and calculated and accrued from the date that the  
388 corporate action became effective through the date of the  
389 prepayment previously made to the shareholder by the corporation  
390 pursuant to this paragraph. In addition, accrued interest will  
391 be payable to the shareholder entitled to appraisal rights on  
392 such amounts, if any, determined to be due to the shareholder in  
393 excess of the prepaid amount, calculated and accrued from the  
394 date on which the corporate action became effective.

395 Section 8. Subsections (1) and (5) of section 607.1330,  
396 Florida Statutes, are amended to read:

397 607.1330 Court action.—

398 (1) If a shareholder makes demand for payment under s.  
399 607.1326 which remains unsettled, the corporation shall commence  
400 a proceeding within 60 days after receiving the payment demand  
401 and petition the court to determine the fair value of the shares  
402 and accrued interest, if and to the extent applicable,  
403 calculated and accrued from the date the corporate action became  
404 effective and taking into account the amount of any prepayment  
405 previously made to the shareholder by the corporation pursuant  
406 to s. 607.1326(3) ~~from the date of the corporate action.~~ If the

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407 corporation does not commence the proceeding within the 60-day  
408 period, any shareholder who has made a demand pursuant to s.  
409 607.1326 may commence the proceeding in the name of the  
410 corporation.

411 (5) Each shareholder entitled to appraisal rights who is  
412 made a party to the proceeding is entitled to judgment for the  
413 amount of the fair value of such shareholder's shares as found  
414 by the court, plus accrued interest, if and to the extent  
415 applicable and as found by the court, taking into account the  
416 amount of any prepayment previously made to the shareholder by  
417 the corporation pursuant to s. 607.1326(3).

418 Section 9. Subsection (5) of section 607.1405, Florida  
419 Statutes, is amended to read:

420 607.1405 Effect of dissolution.—

421 (5) Except as provided in s. 607.1422(4), the name of a  
422 dissolved corporation is not available for assumption or use by  
423 another eligible entity until 120 days ~~1 year~~ after the  
424 effective date of dissolution unless the dissolved corporation  
425 provides the department with a record, signed as required by s.  
426 607.0120, permitting the immediate assumption or use of the name  
427 by another eligible entity.

428 Section 10. Subsection (9) of section 617.0825, Florida  
429 Statutes, is amended to read:

430 617.0825 Board committees and advisory committees.—

431 (9) This section does not apply to a committee established  
432 under chapter 718, chapter 719, or chapter 720 to perform the  
433 functions set forth in s. 718.303(3), s. 719.303(3), s.  
434 720.305(2), ~~s. 720.303(2), or~~ s. 720.3035(1), or s. 720.405,  
435 respectively.

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436 Section 11. Section 617.1703, Florida Statutes, is amended  
437 to read:

438 617.1703 Application of chapter.—

439 (1) (a) This chapter is applicable to a corporation that is  
440 an association as defined in and regulated by any of chapter 718  
441 regarding condominiums, chapter 719 regarding cooperatives,  
442 chapter 720 regarding homeowners' associations, chapter 721  
443 regarding timeshares, or chapter 723 regarding mobile  
444 homeowners' associations, except:

445 1. For ~~in the event of~~ any conflict between the provisions  
446 of this chapter and chapter 718 ~~regarding condominiums,~~ chapter  
447 719 ~~regarding cooperatives,~~ chapter 720 ~~regarding homeowners'~~  
448 associations, chapter 721 ~~regarding timeshares,~~ or chapter 723;  
449 or

450 2. As otherwise provided for in chapter 718, chapter 719,  
451 chapter 720, chapter 721, or chapter 723.

452 (b) If subparagraph (a)1. or subparagraph (a)2. applies  
453 regarding mobile home owners' associations, the applicable  
454 provisions of such other respective chapters shall apply.

455 (2) The provisions of ss. 617.0605-617.0608 do not apply to  
456 corporations regulated by any of the foregoing chapters or to  
457 any other corporation where membership in the corporation is  
458 required pursuant to a document recorded in the county property  
459 records.

460 Section 12. 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.)

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

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BILL: SB 704

INTRODUCER: Senator Gruters and others

SUBJECT: Entertainment Industry

DATE: February 12, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	<b>Pre-meeting</b>
2.			ATD	
3.			AP	

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**I. Summary:**

SB 704 creates the Film, Television, and Digital Media Targeted Rebate Program (program) within the Department of Economic Opportunity in order to broaden the entertainment industry's impact, enhance tourism, and encourage more family-friendly productions to be produced in Florida.

The program gives rebates on qualified expenditures to film, television, and digital media production projects that, among other requirements, employ a crew of which at least 60 percent are Florida residents and spend at least 70 percent of their production days in Florida. A project may only receive a rebate after it has completed production and its expenditures have been verified by the Office of Film and Entertainment.

The program is subject to legislative appropriation, but the bill does not contain any appropriation of state funds.

The bill takes effect upon becoming law.

**II. Present Situation:**

The Florida Office of Film and Entertainment (OFE) within the Department of Economic Opportunity (DEO) develops, markets, promotes, and provides services to the state's entertainment industry.<sup>1</sup> The Florida Film and Entertainment Advisory Council (council) serves as an advisory body to the DEO and OFE to provide industry insight and expertise related to the state's entertainment industry.<sup>2</sup>

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<sup>1</sup> Section 288.1251, F.S.

<sup>2</sup> Section 288.1252, F.S.

## Entertainment Industry Sales Tax Exemption

The Entertainment Industry Sales Tax Exemption (tax exemption program), administered by the OFE, offers a sales and use tax certificate of exemption to production companies that create qualified productions in Florida.<sup>3</sup> The tax exemption program offers exemptions from taxes levied under ch. 212, F.S., for the following:

- Lease or rental of real property used as an integral part of the performance of qualified production services, including photography, casting, location scouting, stage support, and wardrobe;<sup>4</sup>
- Fabrication labor when a producer is using his or her own equipment and personnel to produce a qualified motion picture;<sup>5</sup>
- Purchase or lease of motion picture or video equipment and sound recording equipment used in Florida for motion picture or television production or for the production of master tapes and master records;<sup>6</sup> and
- Purchase, lease, storage, or use of blank master tapes, records, films, or video tapes.<sup>7</sup>

To qualify for these tax exemptions, production companies must submit an application to the Department of Revenue (DOR) which must then be approved by the OFE. If a company has operated a business in Florida at a permanent address for at least 12 consecutive months, it is eligible for a one-year certificate of exemption. Companies that do not qualify for a one-year certificate are eligible for a 90-day certificate of exemption.

The OFE has estimated that qualified production companies have received \$46.3 million in exemptions between Fiscal Years 2016-2017 and 2018-2019.<sup>8</sup>

## Entertainment Industry Financial Incentive Program

The Entertainment Industry Financial Incentive Program (incentive program) was created to encourage the use of Florida as a site for filming, for the digital production of films, and to develop and sustain the workforce and infrastructure for film, digital media, and entertainment production.<sup>9</sup> The incentive program offered transferrable tax credits for qualified expenditures relating to filming and media production activities in Florida, including wages, equipment, rentals, and other expenditures made to Florida vendors for qualified entertainment industry productions. Qualified productions that completed their projects and had their expenses verified by the OFE could receive between 20 and 30 percent of their qualified expenditures in tax credits, capped at \$8 million in tax credits awarded per project.<sup>10</sup> Recipients were permitted to

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<sup>3</sup> Section 288.1258, F.S.

<sup>4</sup> Section 212.039(1)(a)9., F.S.

<sup>5</sup> Section 212.06(1)(b), F.S.

<sup>6</sup> Section 212.08(5)(f), F.S.

<sup>7</sup> Section 212.08(12)(a), F.S.

<sup>8</sup> Office of Economic and Demographic Research, *Return on Investment for the Entertainment Industry Incentive Programs*, 7 (2021), available at <http://edr.state.fl.us/Content/returnoninvestment/EntertainmentIndustryIncentivePrograms2021.pdf> (last visited Feb. 12, 2021).

<sup>9</sup> Section 288.1254(2), F.S.

<sup>10</sup> Florida Office of Film and Entertainment, *Fiscal Year 2017-2018 Annual Report 5* (2018), available at [https://filminflorida.com/wp-content/uploads/2018/11/Office-of-Film-and-Entertainment-Annual-Report-FY-2017-2018\\_FINAL.pdf](https://filminflorida.com/wp-content/uploads/2018/11/Office-of-Film-and-Entertainment-Annual-Report-FY-2017-2018_FINAL.pdf) (last visited Feb. 12, 2021).

apply their tax credits to their corporate income taxes, sales taxes, or both; alternately, recipients could sell their tax credits on the market or back to the state at a reduced rate.<sup>11</sup>

The incentive program began on July 1, 2010, and sunset on June 30, 2016.<sup>12</sup>

### **Local Incentive Programs**

Several local governments in Florida offer their own film and entertainment production incentives, including:<sup>13</sup>

- Miami-Dade County's TV, Film, and Entertainment Production Incentive, a performance-based program that grants up to \$100,000 to productions that spend at least \$1 million in the county if at least 70 percent of the hired vendors are county registered businesses;
- Hillsborough County's rebate program, which offers a rebate of up to 10% on expenditures within the county in excess of \$100,000; and
- Duval County's Jacksonville Film and Television Job and Business Creation Program, a performance-based program that offers a 10% rebate upon spending at least \$50,000 on qualified expenditures and hiring Duval County residents.

### **Other States' Incentives**

The popularity of entertainment industry incentives has decreased among state legislatures. In 2009, 44 states offered some form of incentive, compared to only 31 states that offered an incentive in 2018.<sup>14</sup> Of states considered competitive to Florida, Georgia offers one of the most generous incentive programs; the state continues to fund its tax credit program at the level of demand by placing no cap on tax credits that can be earned.<sup>15</sup>

## **III. Effect of Proposed Changes:**

The bill creates the Film, Television, and Digital Media Targeted Rebate Program (program) within the DEO, to be supervised by the Commissioner of Film and Entertainment (commissioner). The program gives rebates to film, television, and digital media production projects that provide high returns on investment and economic benefit to the state in order to broaden the entertainment industry's impact, enhance tourism, and encourage more family-friendly productions to be produced in Florida.

Upon completion, a project is eligible to receive a rebate of up to 23 percent of its qualified expenditures, or \$2 million, whichever is less. A project's qualified expenditures must be verified before the project may receive a rebate, and rebates are subject to repayment if a project submits fraudulent information.

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<sup>11</sup> *Supra* note 8, at 5 and 6.

<sup>12</sup> *Id.*

<sup>13</sup> Film Florida, *Local Incentive Programs*, available at <https://filmflorida.org/state-resources/> (last visited Feb. 12, 2021).

<sup>14</sup> National Conference of State Legislatures, *State Film Production Incentives and Programs* (February 2018), available at <https://www.ncsl.org/research/fiscal-policy/state-film-production-incentives-and-programs.aspx> (last visited Feb. 12, 2021).

<sup>15</sup> Georgia Department of Economic Development, *Film, Television, and Digital Entertainment Tax Credit*, available at <https://www.georgia.org/industries/film-entertainment/georgia-film-tv-production/production-incentives> (last visited Feb. 12, 2021).

## **General Requirements**

A project is eligible for a rebate under the program if it:

- Is a film, television, or digital media project that is not obscene, as defined in s. 847.001, F.S.;
- Has projected qualified expenditures of at least \$1.5 million if the project is a film or digital media project, or at least \$500,000 per episode if the project is a television show;
- Employs a crew of which at least 60 percent are Florida residents and at least one is a military veteran;
- Is projected to spend at least 70 percent of its total production days in the state;
- Will not receive a sales tax exemption through the Florida entertainment sales tax exemption established under s. 288.1258, F.S.;
- Makes a good faith effort to use existing Florida providers of infrastructure or equipment and to employ cast and crew who are Florida residents;
- Agrees to include marketing that promotes Florida tourism or Florida's film and entertainment industry on its project, including, at minimum, placing a "Filmed in Florida" or "Produced in Florida" logo in its end credits;
- Permits the commissioner or an affiliate and at least two guests to visit the project's production site; and
- Provides at least five photos of the production to the commissioner for use in promoting Florida as a film, television, or digital media production location or tourist destination.

## **Application Process**

To become a qualified project that is eligible to receive a rebate, an applicant must submit an application to the commissioner. There are two application windows for the rebate program per fiscal year, the start date of which will be determined by the commissioner. The first window may begin before, and must end no later than 5 business days after, July 1. The second window must end no later than 5 business days after December 1.

An applicant may submit an application for no more than five projects in any one fiscal year. Except in the case of a television pilot and the television series the pilot is based on being certified in the same fiscal year, however, only one project per applicant may be certified within a fiscal year. A proposed project must begin production within 6 months of July 1 if applying in the first application window, or within 6 months of January 1, if applying in the second window.

## ***Application***

In addition to an affidavit signed by the applicant that the information on the application is correct and the applicant's Florida tax identification number, applications must include a film, television, or digital media project's:

- Proof of funding;
- Employment information, including employment numbers for Florida residents;
- Line-item budget and detailed qualified expenditures budget;
- Distribution plan to assist in determining the project's potential economic impact in the state;
- Expected total qualified expenditures for wages paid to Florida residents;
- Expected total qualified and nonqualified expenditures in the state;

- Latest script, a production schedule, a Day Out of Days report, and a list of the expected shooting locations, if the project is a film or a pilot episode of a television project;
- Latest scripts for at least two episodes, a production schedule, a Day Out of Days report, and a list of the expected shooting locations, if the project is a television project; and
- Game design document, including a production schedule, if the project is a digital media project.

### *Scoring Criteria*

The commissioner and the council must devise, before the first application window opens, a priority order and scoring system that qualified projects will be evaluated based on. In addition to other criteria the council may deem necessary, the scoring system must include consideration of a project's:

- Overall qualified expenditures;
- Full-time equivalent jobs created;
- Length of employment and wages paid to Florida residents, in addition to pension, health, and welfare benefits;
- Estimated direct and indirect tourism benefit;
- Production in an underutilized area;
- Status as a family-friendly production;
- Employment of a Florida resident as a writer, producer, or star;
- Use of a Florida film, television, or digital media school's assistance;
- Leadership team's track record;
- Employment of veterans who are residents of Florida; and
- Employment of graduates of Florida film schools.

### *Review*

Within a reasonable period of time after an application window's last day, the commissioner must complete a review of the applications. The commissioner must then submit to the council a package detailing each applicant's:

- Eligibility for the rebate program;
- Expected qualified expenditures;
- Maximum rebate amount;
- Status as a family friendly project;<sup>16</sup>
- Percent of production proposed to occur in an underutilized area,<sup>17</sup> if any; and
- Registration as a corporation in the state.

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<sup>16</sup> The bill defines "family friendly" as having cross-generational appeal; being appropriate in theme, content, and language for a broad family audience; embodying a responsible resolution of issues; not containing any act of drunkenness, illicit drug use, sex, nudity, gratuitous violence, or vulgar or profane language; and not portraying smoking any substance in a positive light.

<sup>17</sup> The bill defines "underutilized area" as any county within the state other than Broward, Miami-Dade, Orange, or Seminole County.

The commissioner may contact each applicant with questions and gather any additional information as necessary and must notify the council of the date and time the council must convene to score each qualified project.<sup>18</sup> The council may meet in person or by conference call.

Using its scoring system, the council will determine a score for each qualified project; the highest scores must be applied to projects determined to provide the best economic impact and return on investment to the state. The commissioner makes the final decision on certifying or rejecting each qualified project.

### **Award of Rebates and Verification of Expenditures**

After the council scores a project, the commissioner must make a determination on whether to certify or reject each project and send a notice of the decision to each applicant. The commissioner must include in a certified project's notice the specific percentage of qualified expenditures for which it is eligible and the maximum rebate it may receive.

The commissioner must also give the DEO a list of certified projects<sup>19</sup> and each project's maximum allowance in order for the DEO to set aside enough money to fund the total maximum rebates that may be awarded. However, when setting aside funds for applications submitted and certified during the first application window, the DEO may not use more than 60 percent of the funds appropriated to the program or rolled-over from any fiscal year. Any funds not set aside for the first application window roll over for use in the next application window. If all funds are set aside for certified projects, additional applications cannot be accepted until more funds become available. Funds appropriated to the rebate program are not subject to reversion.

### ***Rebate Allowances***

Under the bill, qualified projects may receive a rebate of up to 20 percent of its verified qualified expenditures. A project may receive an additional 3 percent rebate if 75 percent of the project's production takes place in an underutilized area or of its content is deemed family friendly. A project may not receive more than one bonus, and rebates may not exceed \$2 million.

The bill defines "qualified expenditures" to mean expenditures made in the state made solely for preproduction, production, or postproduction of a qualified project, including:

- Rented or leased goods or services provided by a vendor that is registered with the Department of State or the Department of Revenue, has a physical address in the state other than a post office box, and employs one or more Florida residents on a full-time basis;
- Salaries and wages of up to \$200,000 for Florida residents;
- Rented or leased cars, trucks, and trailers;
- Catered meals and on-set craft service supplies;
- Personal protective equipment from in-state vendors for use on set in order to mitigate the transmission of viruses, including masks, gloves, test kits, and hand sanitizer; and
- Rented hotel rooms or other accommodations.

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<sup>18</sup> A film, television, or media project for which a complete application has been submitted to the commissioner and accepted for consideration and scoring is considered a "qualified project"

<sup>19</sup> A qualified project is considered to be a "certified project" after it has been scored, has been determined to meet or exceed the desired criteria, and has rebate funds allocated to it based on its estimated qualified expenditures.



Qualified expenditures exclude expenditures made before a qualification for the program; expenditures made via Internet transaction; expenditures for airfare; or any costs related to development, marketing, or distribution.

### ***Verification***

The commissioner must develop a process to verify a certified project's actual qualified expenditures and rebate bonus eligibility after a certified project has completed its work in the state. The process must require the submission by a project within 120 days after making its last qualified expenditure, but no later than 1 year after its production start date, of:

- Data substantiating each qualified expenditure, as verified by an independent certified public accountant (CPA) licensed by the state;
- Documents verifying the Florida residency of persons represented as such;
- The project's final script;
- The project's most recent production board and shooting schedule;
- The project's most recent credit list, which shows where the required marketing logo will appear;
- The project's cast list and final crew list with contact information;
- Verification that at least one person employed by the project is a military veteran; and
- An affidavit or written declaration signed under the penalty of perjury that states that all salaries, wages, and other compensation submitted as qualified expenditures are in compliance with the program's requirements.

The verification process must also require a compliance audit, conducted by an independent CPA at the project's expense, to substantiate a project's qualified expenditures. The audit and a report of the audit's findings must be submitted to the commissioner within a reasonable period of time after the commissioner's initial receipt of records from the project.

The commissioner must report to the DEO the final verified amount of actual qualified expenditures a project made and the amount of the rebate, including any bonus, owed to a project. The DEO must then approve the final rebate amount and issue the rebate within a reasonable period of time.

### ***Disqualification***

A certified project may be disqualified and may not receive a rebate if it:

- Does not begin principal photography within 30 days before or 90 days after the project's start date;
- Does not abide by the policies, procedures, deadlines, or requirements of the program's verification process;
- Changes the project's start date without notifying the commissioner;
- Submits fraudulent information; or
- Uses the entertainment industry sales tax exemption established under s. 288.1258, F.S.

Applicants that submit fraudulent information are liable for reimbursement of the costs associated with the review, processing, investigation, and prosecution of the fraudulent submission, in addition to a penalty double the rebate amount and any criminal penalty assessed.

**Other Provisions**

The DEO is granted rulemaking authority to administer the rebate program.

The commissioner must provide an annual report on the program each November 1 identifying the return on investment and economic benefits attributable to the program for the previous fiscal year.

The Film, Television, and Digital Media Rebate Program expires on June 30, 2025, at which point any funds appropriated to the program not earmarked and set aside for certified projects will revert back to the General Revenue Fund. All other remaining funds must revert back to the General Revenue Fund no later than October 31, 2026.

The bill takes effect upon becoming law.

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**

None.

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

The Revenue Estimating Conference has not yet met regarding the bill.

**B. Private Sector Impact:**

Qualified film, television, or digital media projects that make qualified expenditures under the rebate program may have their expenses offset by a rebate at the culmination of the project. Because qualified expenditures are required, to a certain extent, to be made to Florida vendors, businesses, and residents, these parties may see a positive financial

impact. However, this impact depends on the availability of funds appropriated to the program.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates an undesignated section 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.

By Senator Gruters

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1 A bill to be entitled  
 2 An act relating to the entertainment industry;  
 3 creating the Film, Television, and Digital Media  
 4 Targeted Rebate Program within the Department of  
 5 Economic Opportunity under the supervision of the  
 6 Commissioner of Film and Entertainment; providing  
 7 purposes for the program; defining terms; requiring  
 8 that film, television, and digital media projects  
 9 being produced in this state meet specified criteria  
 10 for rebate eligibility; authorizing applicants to  
 11 receive rebates up to a specified amount, including  
 12 bonuses; requiring an applicant that receives funding  
 13 to make a good faith effort to use existing providers  
 14 of infrastructure or equipment in this state and to  
 15 employ residents of this state; requiring the  
 16 commissioner to set application windows for the  
 17 rebate; providing requirements for the department  
 18 relating to earmarking and setting aside rebate funds;  
 19 providing procedures and requirements for applicants  
 20 applying for the rebate; requiring the commissioner to  
 21 take specified action within a reasonable period of  
 22 time; requiring the Florida Film and Entertainment  
 23 Advisory Council to determine a score for each  
 24 qualified project using specified criteria; requiring  
 25 the commissioner to determine the priority order and  
 26 scoring system of the specified criteria with  
 27 assistance from the council and certain other persons;  
 28 requiring the council to use certain criteria;  
 29 requiring the commissioner to take certain actions

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30 relating to the certification or rejection of  
 31 qualified projects in a timely manner; requiring the  
 32 department to earmark and set aside funding necessary  
 33 to fund the total maximum that may be awarded to the  
 34 certified projects, if funds are available; requiring  
 35 the commissioner to develop a process to verify the  
 36 actual qualified expenditures and rebate bonus  
 37 eligibility of a certified project after the project's  
 38 work in this state is complete; providing requirements  
 39 for the verification process; requiring that the  
 40 rebate be issued within a reasonable period of time  
 41 upon approval of the final rebate amount by the  
 42 department; requiring that certain marketing be  
 43 included with a project; requiring certified projects  
 44 to allow certain persons to visit the production site  
 45 upon request of the commissioner and after providing  
 46 the commissioner with reasonable notice; specifying  
 47 that the commissioner or his or her affiliate is not  
 48 required to visit the production site; requiring the  
 49 department to disqualify a project under certain  
 50 circumstances; providing for liability and imposing  
 51 civil and criminal penalties for an applicant that  
 52 submits fraudulent information; providing for  
 53 rulemaking; requiring the commissioner to provide an  
 54 annual report to the Governor and the Legislature on a  
 55 specified date; providing that certain appropriated  
 56 funds are not subject to reversion; providing for the  
 57 expiration of the program; providing an effective  
 58 date.

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

62 Section 1. Film, Television, and Digital Media Targeted  
63 Rebate Program.—

64 (1) CREATION AND PURPOSES OF PROGRAM.—The Film, Television,  
65 and Digital Media Targeted Rebate Program is created within the  
66 Department of Economic Opportunity under the supervision of the  
67 Commissioner of Film and Entertainment.

68 (a) The purpose of the program is to boost this state's  
69 economic prosperity by:

70 1. Creating high-paying jobs;

71 2. Broadening the film, television, and digital media  
72 industry's impact on the state by giving a modest bonus for  
73 projects that take place in underutilized areas;

74 3. Enhancing tourism by choosing projects that encourage  
75 tourists to visit this state; and

76 4. Encouraging more family-friendly productions to be  
77 produced in this state.

78 (b) This purpose shall be accomplished by providing a  
79 limited rebate to projects that provide the highest return on  
80 investment and economic benefit to the state, as determined  
81 after a project has made its expenditures in the state.

82 (2) DEFINITIONS.—As used in this act, unless the context  
83 otherwise requires, the term:

84 (a) "Certified project" means a qualified project that has  
85 been scored by the council, has been determined by the  
86 commissioner to meet or exceed the desired economic impact and  
87 other criteria of the program, and has rebate funds allocated to

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88 it based on the project's estimated qualified expenditures.

89 (b) "Commissioner" means the Commissioner of Film and  
90 Entertainment as described in s. 288.1251(1)(b), Florida  
91 Statutes.

92 (c) "Council" means the Florida Film and Entertainment  
93 Advisory Council.

94 (d) "Department" means the Department of Economic  
95 Opportunity.

96 (e) "Digital media project" means a commercial video game,  
97 including an educational video game, which includes at least 30  
98 minutes of game play time. The term does not include a project  
99 that may be considered obscene, as defined in s. 847.001,  
100 Florida Statutes.

101 (f) "Family friendly" means having cross-generational  
102 appeal; being appropriate in theme, content, and language for a  
103 broad family audience; embodying a responsible resolution of  
104 issues; not containing any act of drunkenness, illicit drug use,  
105 sex, nudity, gratuitous violence, or vulgar or profane language;  
106 and not portraying smoking any substance in a positive light.

107 (g) "Film project" means a theatrical, direct-to-video,  
108 television, cable, Internet, streaming service, or animated  
109 narrative motion picture at least 75 minutes in length. The term  
110 does not include a project deemed by the office to have content  
111 that is obscene, as defined in s. 847.001, Florida Statutes.

112 (h) "Florida resident" means a person who has a valid  
113 Florida driver license or Florida identification card issued  
114 under s. 322.051, Florida Statutes, and has signed an affidavit  
115 confirming residency.

116 (i) "Office" means the Office of Film and Entertainment

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117 within the department.

118 (j) "Principal photography" means, for a film project or  
 119 television project, the filming of major or significant  
 120 components of the project which involve lead actors, or, for a  
 121 digital media project, the period of time during which the work  
 122 of the majority of the crew is dedicated solely to the project.

123 (k) "Production start date" means:

124 1. For film and television projects, the start date of  
 125 principal photography, as listed in the project's application.

126 2. For digital media projects, the start date of final  
 127 storyboards or a later date as specified in the project's  
 128 application.

129 (l)1. "Qualified expenditures" means expenditures made in  
 130 this state and paid to residents of this state or to businesses  
 131 registered in this state and made solely for preproduction,  
 132 production, or postproduction of the qualified project,  
 133 including the following:

134 a. Rented or leased goods or services provided by a vendor  
 135 or supplier in this state which is registered with the  
 136 Department of State or the Department of Revenue; which has a  
 137 physical address in this state other than a post office box; and  
 138 which employs one or more Florida residents on a full-time  
 139 basis. The term does not include rebilled goods or services  
 140 provided by an in-state company from out-of-state vendors or  
 141 suppliers. When services provided by the vendor or supplier  
 142 include personal services or labor, only personal services or  
 143 labor provided by Florida residents qualifies.

144 b. Payments to Florida residents in the form of salary or  
 145 wages up to a maximum of \$200,000 per resident, including

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146 amounts paid per diem to a worker who is a Florida resident and  
 147 amounts paid through payroll service companies, and benefits  
 148 such as pension, health, and welfare payments for technical and  
 149 production crews, directors, producers, and performers. For  
 150 purposes of this sub-subparagraph, payments do not include wages  
 151 for executives, legal staff, or other corporate staff who are  
 152 not employed to work solely on the project.

153 c. Rented or leased cars, trucks, and trailers if the  
 154 vehicles or trailers are registered with the Florida Department  
 155 of Highway Safety and Motor Vehicles.

156 d. Purchases of catered meals and on-set craft service  
 157 supplies.

158 e. Purchases of personal protective equipment from in-state  
 159 vendors or suppliers for use on set, in the production office,  
 160 or with other activities directly related to production, such as  
 161 providing off-set truck drivers with personal protective  
 162 equipment, in order to mitigate the transmission of viruses.  
 163 Such purchases are limited to items for personal use only, such  
 164 as masks, gloves, test kits, and hand sanitizer.

165 f. Rented hotel rooms or other accommodations for cast or  
 166 crew.

167 2. The term does not include expenditures not expressly  
 168 identified in subparagraph 1., expenditures made before  
 169 qualification for the program, expenditures made via Internet  
 170 transactions, expenditures for airfare, or any costs associated  
 171 with development, marketing, or distribution.

172 3. For the purposes of a digital media project, the term  
 173 includes only those qualified expenditures made within 9 months  
 174 after the project's first qualified expenditure.

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175 (m) "Qualified project" means a film project, television  
 176 project, or digital media project that meets the application  
 177 requirements and for which a complete application for the  
 178 program has been submitted to the commissioner and accepted for  
 179 consideration by the office. The term does not include a weather  
 180 or market program; a sporting event or a sporting event  
 181 broadcast; a gala; an awards show; a production that solicits  
 182 funds; a home shopping program; a political program; a gambling-  
 183 related project or production; a concert production; a news or  
 184 current events show; a sports or sports recap show; a  
 185 pornographic production; or any production deemed obscene under  
 186 chapter 847, Florida Statutes.

187 (n) "Television project" means a television pilot program  
 188 or a television series that:

- 189 1. Is a scripted drama, comedy, animation, or reality show;  
 190 2. Has a runtime to fit, at minimum, a 30-minute program  
 191 slot, but no longer than required to fit a 60-minute program  
 192 slot; and  
 193 3. If the television project is a television series, has a  
 194 minimum of 7 episodes; or, if the television project is a  
 195 reality program or series, at least 10 episodes.

196 The term does not include a project deemed by the office to have  
 197 content that is obscene, as defined in s. 847.001, Florida  
 198 Statutes.

200 (o) "Underutilized area" means any county in this state  
 201 other than Broward County, Miami-Dade County, Orange County, or  
 202 Seminole County.

203 (3) REBATE ELIGIBILITY.—

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204 (a) To be eligible for a rebate, an applicant must be  
 205 registered to do business in this state and must be producing a  
 206 project that:

- 207 1. Has projected qualified expenditures of:  
 208 a. For a film project, at least \$1.5 million;  
 209 b. For a television project, at least \$500,000 per episode;

210 or

- 211 c. For a digital media project, at least \$1.5 million;  
 212 2. Is projected to employ a crew, including cast and stand-  
 213 ins, but not including extras, also known as background  
 214 performers, of which at least 60 percent will be residents of  
 215 this state and at least one member will be a military veteran;  
 216 3. Is projected to spend at least 70 percent of its total  
 217 production days in this state; and  
 218 4. Will not receive a sales tax certificate of exemption  
 219 pursuant to s. 288.1258, Florida Statutes, for the project.

220 (b) A project may receive a rebate in the amount of up to  
 221 20 percent of its verified qualified expenditures. A bonus may  
 222 be earned in the amount of an additional 3 percentage points if  
 223 75 percent of the project's production in this state will take  
 224 place in an underutilized area or if its content is deemed  
 225 family friendly. A certified project may not receive more than  
 226 one bonus, and the total that may be awarded under any rebate  
 227 may not exceed 23 percent of its verified qualified expenditures  
 228 or \$2 million, whichever is less.

229 (c) A certified project must make a good faith effort to  
 230 use existing providers of infrastructure or equipment in this  
 231 state, when available, including providers of camera gear, grip  
 232 and lighting equipment, vehicles, and postproduction services,

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233 and to employ cast and crew who are residents of this state.

234 (4) APPLICATION WINDOWS.—Applications must be accepted for

235 the program during two application windows each fiscal year. The

236 commissioner shall set a start date for both application

237 windows. However, the first application window may begin before

238 the start of the fiscal year and must end no later than 5

239 business days after July 1, and the second application window

240 must end no later than 5 business days after December 1.

241 (a) The department may not earmark or set aside more than

242 60 percent of any appropriated or rolled-over rebate funds for

243 any given fiscal year for applications submitted during the

244 first application window. Rebate funds not earmarked and set

245 aside for applicants applying during one application window roll

246 over for use in the next application window.

247 (b) If all rebate funds are earmarked and set aside for

248 certified projects, additional applications may not be accepted

249 until more funds become available for the program.

250 (5) APPLICATION PROCESS.—

251 (a) A company that plans to produce a film, television, or

252 digital project in this state may submit an application to the

253 commissioner during one of the two application windows. Each

254 fiscal year, a project must have a production start date that is

255 within 6 months after July 1 if applying in the first window or

256 within 6 months after January 1 if applying in the second

257 window.

258 (b) An applicant or its parent company may submit an

259 application for no more than five projects in any single fiscal

260 year. However, except in the case of a television pilot and the

261 television series the pilot is based on being certified within

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262 the same fiscal year, only one project per applicant may be

263 certified within a fiscal year.

264 (c) The application must include:

265 1. Proof of funding;

266 2. Project-related employment information, including

267 employment numbers for residents of this state;

268 3. A full line-item budget and a detailed qualified

269 expenditures budget;

270 4. A detailed distribution plan to assist with determining

271 the potential economic impact of the project in this state;

272 5. The applicant's expected total qualified expenditures

273 for wages paid to residents of this state;

274 6. The applicant's expected total qualified expenditures

275 and nonqualified expenditures in this state;

276 7. For a film project, the latest script, a production

277 schedule, a Day Out of Days report, and a list of the expected

278 shooting locations;

279 8. For a digital media project, a detailed game design

280 document, including a production schedule;

281 9. For a television project that is a pilot, a final

282 script, a production schedule, a Day Out of Days report, and a

283 list of the expected shooting locations;

284 10. For a television project that is a series, the latest

285 scripts for at least two episodes and a production schedule, a

286 Day Out of Days report, and a list of the expected shooting

287 locations for the first episode;

288 11. An affirmation signed by the applicant that the

289 information on the application is correct;

290 12. The applicant's Florida tax identification number.



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291 (d) Within a reasonable period of time after the last  
 292 business day of each application window, the commissioner shall:

293 1. Review all applications submitted during the application  
 294 window and determine the eligibility of each applicant;

295 2. Determine each applicant's expected qualified  
 296 expenditures;

297 3. Determine the maximum rebate amount that each eligible  
 298 applicant may be awarded;

299 4. Determine whether an eligible applicant's project is  
 300 deemed family friendly;

301 5. Determine the percentage of the applicant's production,  
 302 if any, which is proposed to occur in an underutilized area;

303 6. Determine whether each eligible applicant is a  
 304 corporation registered in this state;

305 7. Contact each applicant with any questions, as necessary;

306 8. Gather any additional information needed to address the  
 307 criteria specified under subsection (6);

308 9. Assemble a package containing the details of each  
 309 eligible applicant's project and deliver it to each council  
 310 member; and

311 10. Give notice to the council of the date and time when  
 312 the council must convene to assess each qualified project. The  
 313 council may meet in person or by conference call.

314 (e) The council shall determine a score for each qualified  
 315 project using the criteria specified under subsection (6), with  
 316 the highest scores going to projects determined to provide the  
 317 best economic impact and return on investment to this state.

318 (6) CRITERIA FOR DETERMINING PROJECT SCORES.—

319 (a) The priority order and scoring system of the criteria

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320 specified in paragraph (b) must be determined by the  
 321 commissioner, with assistance from the council and other  
 322 persons, as determined by the commissioner, before the first  
 323 application window.

324 (b) The council shall use, at a minimum, the following  
 325 criteria in determining a qualified project's score:

326 1. The amount of the project's overall qualified  
 327 expenditures.

328 2. The amount of the project's Florida-resident wages.

329 3. The number of full-time-equivalent jobs created by the  
 330 project.

331 4. Whether the project provides pension, health, and  
 332 welfare benefits to its workforce in this state.

333 5. The estimated direct and indirect tourism benefit of the  
 334 project, based on the submitted distribution plan.

335 6. The duration of Florida-resident employment for the  
 336 project.

337 7. What percentage of the project, if any, is being made in  
 338 an underutilized area.

339 8. Whether the project is family friendly.

340 9. Whether the project has a Florida-resident writer,  
 341 producer, or star.

342 10. Whether a Florida film, television, or digital media  
 343 school will assist with the production of the project.

344 11. Whether the project leadership team has a successful  
 345 track record.

346 12. The number of Florida-resident veterans the project  
 347 will hire.

348 13. The number of Florida film school graduates the project

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349 will hire as cast or crew.

350 (7) NOTIFICATION OF DECISION.—

351 (a) After the council determines a project's score, the  
352 commissioner shall, in a timely manner:

353 1. Make a final determination on certifying or rejecting  
354 each qualified project, giving consideration to the council's  
355 scoring.

356 2. Provide a list of certified projects to the department  
357 which includes the associated maximum rebate amounts that the  
358 respective applicants may receive.

359 3. Notify each certified project of the specified  
360 percentage of qualified expenditures for which it is eligible  
361 and the maximum rebate amount that it may receive.

362 4. Provide a notice of rejection to each rejected  
363 applicant; however, the failure to notify an applicant of its  
364 rejection does not deem the applicant's project a certified  
365 project.

366 (b) Based on the final determination of the commissioner,  
367 the department shall earmark and set aside the amount necessary  
368 to fund the total maximum that may be awarded for the certified  
369 projects, if funds are available.

370 (8) VERIFICATION PROCESS.—

371 (a) The commissioner shall develop a process to verify the  
372 actual qualified expenditures and rebate bonus eligibility of a  
373 certified project after the project's work in this state is  
374 complete. The process must require all of the following:

375 1. Submission to the commissioner of at least all of the  
376 following information, electronically or in hard copy, or both,  
377 by each certified project:

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378 a. Data substantiating each qualified expenditure which has  
379 been audited by an independent certified public accountant  
380 licensed in this state, as required under subparagraph 4.;

381 b. Copies of documents verifying residency of persons  
382 represented as being residents of this state;

383 c. The final script;

384 d. The most recent production board and shooting schedule;

385 e. The most recent credit list showing where the credits  
386 required under subsection (9) will appear;

387 f. A cast list and a final crew list with contact  
388 information;

389 g. For any veterans employed by the project, a copy of at  
390 least one of the veterans' DD Form 214, as issued by the United  
391 States Department of Defense, or another acceptable form of  
392 identification as specified by the Department of Veterans'  
393 Affairs; and

394 h. Any other information determined necessary by the  
395 commissioner.

396 2. Signing, and submission to the commissioner, by the lead  
397 producer or studio executive in charge of the certified project,  
398 of an affidavit or written declaration signed under the penalty  
399 of perjury as specified in s. 92.525, Florida Statutes, stating  
400 that all salaries, wages, and other compensation submitted as  
401 qualified expenditures are in compliance with this section.

402 3. The information and affidavit required by subparagraphs  
403 1. and 2. must be received by the commissioner within 120 days  
404 after the certified project has made its last qualified  
405 expenditure, but no later than 1 year after its production start  
406 date. Pursuant to the rules adopted by the department, the

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407 commissioner may, upon a showing of good cause, grant a one-time  
 408 extension of this deadline.

409 4. The conducting of a compliance audit, at the certified  
 410 project's expense, by an independent certified public accountant  
 411 who is a resident of this state to substantiate the qualified  
 412 expenditures, and submission of a report of the audit findings,  
 413 including substantiating data, to the commissioner within a  
 414 reasonable period of time after the initial receipt of records  
 415 from the certified project.

416 (b) The commissioner shall review the report and data  
 417 required under paragraph (a) within a reasonable period of time  
 418 after receipt of the report and data and shall report to the  
 419 department the final verified amount of actual qualified  
 420 expenditures the certified project made and the amount of the  
 421 rebate, including any bonus, due the project.

422 (c) Upon approval by the department of the final rebate  
 423 amount, which may not exceed the maximum specified in the notice  
 424 provided under subparagraph (7)(a)3., the rebate must be issued  
 425 within a reasonable period of time.

426 (9) MARKETING AND TOURISM REQUIREMENT.—

427 (a) The commissioner shall ensure, as a condition of  
 428 receiving a rebate under this section, that a certified project  
 429 includes marketing promoting this state as a tourist destination  
 430 or film and entertainment production destination. At a minimum,  
 431 the marketing must include placement in the end credits of a  
 432 "Filmed in Florida" or "Produced in Florida" logo with size and  
 433 placement commensurate to other logos included in the end  
 434 credits or, if no logos are used, the statement "Filmed in  
 435 Florida" or "Produced in Florida" or a similar statement

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436 approved by the commissioner and the logo of the local film  
 437 office, if applicable. A digital media project must also supply  
 438 a 5-second or longer animated logo with "Produced in Florida" or  
 439 other text, including the logo of the local digital media  
 440 office, if applicable, as preapproved by the commissioner, in a  
 441 manner easily seen by a consumer of the digital media project.  
 442 The commissioner shall provide the logos for the purposes  
 443 specified in this paragraph, not including the logo for a local  
 444 office, which must be provided by the applicable office.

445 (b) A certified project must allow the commissioner, or an  
 446 affiliate, and a minimum of two guests to visit the production  
 447 site upon the request of the commissioner. Upon such request,  
 448 the certified project must give the commissioner reasonable  
 449 notice of a visit date and time that is acceptable to the  
 450 production. The commissioner or an affiliate is not required to  
 451 make a visit to the set.

452 (c) A certified project must provide at least five  
 453 preapproved photos of the production to the commissioner and  
 454 grant the commissioner free use of the photos in promoting this  
 455 state as a film, television, or digital media production  
 456 location or tourist destination.

457 (10) DISQUALIFICATION.—The department shall disqualify a  
 458 certified project and may not issue a rebate to the project if  
 459 the project:

460 (a) Does not begin principal photography in this state  
 461 within the period beginning 30 days before and ending 90 days  
 462 after the project's listed production start date. Pursuant to  
 463 department rule, the commissioner may, upon a showing of good  
 464 cause, grant a one-time extension of this deadline;

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465 (b) Does not abide by the policies, procedures, deadlines,  
 466 or requirements of the application verification process;  
 467 (c) Does not notify the commissioner of any change in the  
 468 production start date before commencing production;  
 469 (d) Submits fraudulent information; or  
 470 (e) Uses the state sales tax exemption established under s.  
 471 288.1258, Florida Statutes.  
 472 (11) FRAUD.—An applicant that submits fraudulent  
 473 information under this section is liable for reimbursement of  
 474 the reasonable costs and fees associated with the review,  
 475 processing, investigation, and prosecution of the fraudulent  
 476 submission. An applicant that obtains a rebate under this  
 477 section through a claim that is fraudulent shall reimburse the  
 478 program for the rebate awarded and reasonable costs and fees  
 479 associated with the review, processing, investigation, and  
 480 prosecution of the fraudulent claim and shall pay a civil  
 481 penalty in an amount equal to double the rebate amount and any  
 482 criminal penalty assessed against the applicant.  
 483 (12) RULES; POLICIES; PROCEDURES.—The department may adopt  
 484 rules and shall develop policies and procedures to administer  
 485 this section, including, but not limited to, rules specifying  
 486 requirements for the application and approval process and the  
 487 determination of qualified expenditures.  
 488 (13) ANNUAL REPORT.—Each November 1, the commissioner shall  
 489 provide an annual report on the program for the previous fiscal  
 490 year to the Governor, the President of the Senate, and the  
 491 Speaker of the House of Representatives. The report must  
 492 identify the return on investment associated with, and economic  
 493 benefits to this state attributable to, the program.

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494 (14) FUNDS NOT SUBJECT TO REVERSION.—Notwithstanding s.  
 495 216.301, Florida Statutes, funds appropriated for this purpose  
 496 shall not be subject to reversion.  
 497 (15) EXPIRATION.—The Film, Television, and Digital Media  
 498 Targeted Rebate Program expires June 30, 2025, at which point  
 499 all remaining appropriated funds not earmarked and set aside for  
 500 certified projects must revert to the General Revenue Fund. All  
 501 remaining appropriated funds must revert to the General Revenue  
 502 Fund no later than October 31, 2026.  
 503 Section 2. This act shall take effect upon becoming a law.

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

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

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

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

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BILL: SB 734

INTRODUCER: Senator Gruters

SUBJECT: Sales Tax Holiday for Disaster Preparedness Supplies

DATE: February 12, 2021

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

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	<b>Pre-meeting</b>
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

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**I. Summary:**

SB 734 establishes a 17-day “disaster preparedness” sales tax holiday, from Friday, May 28, to Sunday, June 13, 2021, for certain disaster preparedness supplies.

The bill appropriates \$70,072 in nonrecurring funds from the General Revenue Fund to the Department of Revenue in Fiscal Year 2020-2021.

The Revenue Estimating Conference has not yet estimated the revenue impact of the bill.

The bill takes effect upon becoming law.

**II. Present Situation:**

**Florida Sales Tax**

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,<sup>1</sup> admissions,<sup>2</sup> transient rentals,<sup>3</sup> and a limited number of services. Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida’s sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.<sup>4</sup> Sales tax receipts accounted for approximately 79 percent of the state’s General Revenue in Fiscal Year 2019-2020.<sup>5</sup>

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<sup>1</sup> Section 212.05(1)(a)1.a, F.S.

<sup>2</sup> Section 212.04(b), F.S.

<sup>3</sup> Section 212.03(1)(a), F.S.

<sup>4</sup> See s. 212.07(2), F.S.

<sup>5</sup> Office of Economic and Demographic Research, *Florida Tax Handbook*, 16 (2020), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited Feb. 12, 2021).

Section 212.055, F.S., authorizes counties to impose local discretionary sales surtaxes in addition to the state sales tax. A surtax applies to “all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202.”<sup>6</sup> The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax rates currently levied vary by county in a range of 0.5 to 2.5 percent.<sup>7</sup>

### ***“Disaster Preparedness” Sales Tax Holidays***

Florida has enacted a “disaster preparedness” sales tax holiday eight times since 2005, exempting specified items in preparation for the Atlantic hurricane season that officially begins June 1 of each year. The types and values of exempted items have varied, and length of the exemption periods has varied from 3 to 18 days.<sup>8</sup>

The Florida Division of Emergency Management recommends having a disaster supply kit with items such as a battery operated radio, flashlight, batteries, and first-aid kit to last for a minimum of 7 days.<sup>9</sup>

### **III. Effect of Proposed Changes:**

The bill establishes a 17-day period, from Friday, May 28, to Sunday, June 13, 2021, during which the following items are exempt from the state sales tax and local discretionary sales surtaxes:

- Portable self-powered light sources selling for \$20 or less;
- Portable self-powered radios, two-way radios, or weather-band radios selling for \$50 or less;
- Tarpaulins or other flexible waterproof sheeting selling for \$50 or less;
- Any items normally sold as, or generally advertised as, ground anchor systems or tie-down kits selling for \$50 or less;
- Gas or diesel fuel tanks selling for \$25 or less;
- Packages of AA-cell, AAA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less;
- Nonelectric food storage coolers selling for \$30 or less;
- Portable generators used to provide light or communications or to preserve food selling for \$750 or less;
- Reusable ice selling for \$10 or less;
- Impact-resistant windows, when sold in units of 20 or fewer; and
- Impact-resistant doors and impact-resistant garage doors, when sold in units of 10 or fewer.

The exemptions for impact-resistant windows, doors, and garage doors apply to purchases made by an owner of residential real property where the impact-resistant windows, doors, or garage

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<sup>6</sup> Section 212.054(2)(a), F.S.

<sup>7</sup> *Supra* note 5, at 231-232.

<sup>8</sup> *Id.* at 163.

<sup>9</sup> Florida Division of Emergency Management, *Plan & Prepare: Disaster Supply Kit Checklist*, available at <https://www.floridadisaster.org/planprepare/hurricane-supply-checklist/> (last visited Feb. 12, 2021).

doors will be installed. The bill defines “impact-resistant” to mean that the window, door, or garage door complies with the standards for protection of openings and for windborne debris protection in the Florida Building Code, 7<sup>th</sup> Edition (2020) Residential, or in the Florida Building Code, 7<sup>th</sup> Edition (2020) Building. The purchaser must furnish to the selling dealer an affidavit stating that the impact-resistant items are to be used on residential property owned by the purchaser. The affidavit must include the name of the owner and the address of the residential property where the items will be installed. If a person furnishes a false affidavit in order to evade payment of the sales tax, the purchaser is subject to repayment of the tax plus a mandatory penalty of 200 percent of the tax in addition to a fine and punishment as provided by law for a conviction of a felony of the third degree.<sup>10</sup>

The exemptions provided for in the bill do not apply to the following:

- Sales within a theme park or entertainment complex, as defined in s. 509.013(9), F.S.;
- Sales within a public lodging establishment, as defined in s. 509.013(4), F.S.; and
- Sales within an airport, as defined in s. 330.27(2), F.S.

The bill appropriates \$70,072 in nonrecurring funds in Fiscal Year 2020-2021 from the General Revenue Fund to the Department of Revenue (DOR) for the purpose of implementing the sales tax holiday. Funds remaining unexpended as of June 30, 2021, shall revert and be re-appropriated for the same purpose in the 2021-2022 fiscal year.

The DOR may adopt emergency rules pursuant to s. 120.54(4), F.S., for the purpose of implementing the bill.

The bill takes effect upon becoming law.

#### **IV. Constitutional Issues:**

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

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the

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<sup>10</sup> S. 212.085, F.S.

mandates requirements do not apply to laws having an insignificant impact,<sup>11, 12</sup> which is \$2.1 million or less for Fiscal Year 2020-2021.<sup>13</sup>

**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:**

The Revenue Estimating Conference has not yet met regarding the bill.

**B. Private Sector Impact:**

Persons purchasing items from stores participating in the sales tax holiday will realize savings.

**C. Government Sector Impact:**

The bill appropriates \$70,072 in nonrecurring funds from the General Revenue Fund to the Department of Revenue in Fiscal Year 2020-2021 to administer the sales tax holiday.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>11</sup> FLA. CONST. art. VII, s. 18(d).

<sup>12</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 12, 2021).

<sup>13</sup> Based on the Demographic Estimating Conference's population adopted on November 13, 2020. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 12, 2021).



**VIII. Statutes Affected:**

The bill creates two undesignated sections of chapter law.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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906656

LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Present subsection (2) of section 201.25,  
Florida Statutes, is redesignated as subsection (3), and a new  
subsection (2) is added to that section, to read:

201.25 Tax exemptions for certain loans.—There shall be  
exempt from all taxes imposed by this chapter:

(2) Any federal loan made in response to a state of



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11 emergency declared by executive order or proclamation of the  
12 Governor under s. 252.36.

13 Section 2. Disaster preparedness supplies; sales tax  
14 holiday.-

15 (1) The tax levied under chapter 212, Florida Statutes, may  
16 not be collected during the period from 12:01 a.m. on May 28,  
17 2021, through 11:59 p.m. on June 13, 2021, on the sale of:

18 (a) A portable self-powered light source selling for \$20 or  
19 less.

20 (b) A portable self-powered radio, two-way radio, or  
21 weather-band radio selling for \$50 or less.

22 (c) A tarpaulin or other flexible waterproof sheeting  
23 selling for \$50 or less.

24 (d) An item normally sold as, or generally advertised as, a  
25 ground anchor system or tie-down kit selling for \$50 or less.

26 (e) A gas or diesel fuel tank selling for \$25 or less.

27 (f) A package of AA-cell, AAA-cell, C-cell, D-cell, 6-volt,  
28 or 9-volt batteries, excluding automobile and boat batteries,  
29 selling for \$30 or less.

30 (g) A nonelectric food storage cooler selling for \$30 or  
31 less.

32 (h) A portable generator used to provide light or  
33 communications or preserve food in the event of a power outage  
34 selling for \$750 or less.

35 (i) Reusable ice selling for \$10 or less.

36 (j) Impact-resistant windows, when sold in units of 20 or  
37 fewer.

38 (k) Impact-resistant doors and impact-resistant garage  
39 doors, when sold in units of 10 or fewer.



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40  
41 The exemptions under paragraphs (j) and (k) apply to purchases  
42 made by an owner of residential real property where the impact-  
43 resistant windows, impact-resistant doors, or impact-resistant  
44 garage doors will be installed. For the purposes of this  
45 section, the term "impact-resistant" means that the window,  
46 door, or garage door complies with the standards for protection  
47 of openings and for windborne debris protection in the Florida  
48 Building Code, 7th Edition (2020) Residential, or in the Florida  
49 Building Code, 7th Edition (2020) Building. The purchaser must  
50 furnish to the selling dealer an affidavit stating that the  
51 impact-resistant windows, impact-resistant doors, or impact-  
52 resistant garage doors to be exempted are for the exclusive use  
53 designated herein and must include the name of the owner making  
54 the purchase and the address of the residential real property  
55 where the items will be installed. Any person furnishing a false  
56 affidavit to such effect for the purpose of evading payment of  
57 any tax imposed under chapter 212, Florida Statutes, is subject  
58 to the penalties set forth in s. 212.085, Florida Statutes, and  
59 as otherwise provided by law.

60 (2) The tax exemptions provided in this section do not  
61 apply to sales within a theme park or entertainment complex as  
62 defined in s. 509.013(9), Florida Statutes, within a public  
63 lodging establishment as defined in s. 509.013(4), Florida  
64 Statutes, or within an airport as defined in s. 330.27(2),  
65 Florida Statutes.

66 (3) The Department of Revenue may, and all conditions are  
67 deemed met to, adopt emergency rules pursuant to s. 120.54(4),  
68 Florida Statutes, for the purpose of implementing this section.



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69 Notwithstanding any other law, emergency rules adopted pursuant  
70 to this subsection are effective for 6 months after adoption and  
71 may be renewed during the pendency of procedures to adopt  
72 permanent rules addressing the subject of the emergency rule.

73 (4) For the 2020-2021 fiscal year, the sum of \$70,072 in  
74 nonrecurring funds is appropriated from the General Revenue Fund  
75 to the Department of Revenue for the purpose of implementing  
76 this section. Funds remaining unexpended or unencumbered from  
77 this appropriation as of June 30, 2021, shall revert and be  
78 reappropriated for the same purpose in the 2021-2022 fiscal  
79 year.

80 (5) This section shall take effect upon becoming a law.

81 Section 3. Except as otherwise expressly provided in this  
82 act, and except for this section, which shall take effect upon  
83 this act becoming a law, this act shall take effect July 1,  
84 2021.

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

86 And the title is amended as follows:

87 Delete everything before the enacting clause  
88 and insert:

89 A bill to be entitled

90 An act relating to tax exemptions; amending s. 201.25,  
91 F.S.; exempting federal loans made in response to a  
92 state of emergency from the excise tax imposed on  
93 documents; providing exemptions from the sales and use  
94 tax for specified disaster preparedness supplies  
95 during a specified timeframe; providing applicability  
96 for certain exemptions; defining the term "impact-  
97 resistant"; requiring purchasers of certain items to



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98 furnish a specified affidavit and information to the  
99 selling dealer; providing a criminal penalty for  
100 furnishing a false affidavit with certain intent;  
101 specifying locations where the exemptions do not  
102 apply; authorizing the Department of Revenue to adopt  
103 emergency rules; providing an appropriation; providing  
104 effective dates.

By Senator Gruters

23-00711A-21

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A bill to be entitled

An act relating to a sales tax holiday for disaster preparedness supplies; providing exemptions from the sales and use tax for specified disaster preparedness supplies during a specified timeframe; providing applicability for certain exemptions; defining the term "impact-resistant"; requiring purchasers of certain items to furnish a specified affidavit and information to the selling dealer; providing a criminal penalty for furnishing a false affidavit with certain intent; specifying locations where the exemptions do not apply; authorizing the Department of Revenue to adopt emergency rules; providing an appropriation; providing an effective date.

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

Section 1. Disaster preparedness supplies; sales tax holiday.-

(1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on May 28, 2021, through 11:59 p.m. on June 13, 2021, on the sale of:

(a) A portable self-powered light source selling for \$20 or less.

(b) A portable self-powered radio, two-way radio, or weather-band radio selling for \$50 or less.

(c) A tarpaulin or other flexible waterproof sheeting selling for \$50 or less.

(d) An item normally sold as, or generally advertised as, a

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ground anchor system or tie-down kit selling for \$50 or less.

(e) A gas or diesel fuel tank selling for \$25 or less.

(f) A package of AA-cell, AAA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less.

(g) A nonelectric food storage cooler selling for \$30 or less.

(h) A portable generator used to provide light or communications or preserve food in the event of a power outage selling for \$750 or less.

(i) Reusable ice selling for \$10 or less.

(j) Impact-resistant windows, when sold in units of 20 or fewer.

(k) Impact-resistant doors and impact-resistant garage doors, when sold in units of 10 or fewer.

The exemptions under paragraphs (j) and (k) apply to purchases made by an owner of residential real property where the impact-resistant windows, impact-resistant doors, or impact-resistant garage doors will be installed. For the purposes of this section, the term "impact-resistant" means that the window, door, or garage door complies with the standards for protection of openings and for windborne debris protection in the Florida Building Code, 7th Edition (2020) Residential, or in the Florida Building Code, 7th Edition (2020) Building. The purchaser must furnish to the selling dealer an affidavit stating that the impact-resistant windows, impact-resistant doors, or impact-resistant garage doors to be exempted are for the exclusive use designated herein and must include the name of the owner making

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59 the purchase and the address of the residential real property  
60 where the items will be installed. Any person furnishing a false  
61 affidavit to such effect for the purpose of evading payment of  
62 any tax imposed under chapter 212, Florida Statutes, is subject  
63 to the penalties set forth in s. 212.085, Florida Statutes, and  
64 as otherwise provided by law.

65 (2) The tax exemptions provided in this section do not  
66 apply to sales within a theme park or entertainment complex as  
67 defined in s. 509.013(9), Florida Statutes, within a public  
68 lodging establishment as defined in s. 509.013(4), Florida  
69 Statutes, or within an airport as defined in s. 330.27(2),  
70 Florida Statutes.

71 (3) The Department of Revenue may, and all conditions are  
72 deemed met to, adopt emergency rules pursuant to s. 120.54(4),  
73 Florida Statutes, for the purpose of implementing this section.  
74 Notwithstanding any other law, emergency rules adopted pursuant  
75 to this subsection are effective for 6 months after adoption and  
76 may be renewed during the pendency of procedures to adopt  
77 permanent rules addressing the subject of the emergency rule.

78 Section 2. For the 2020-2021 fiscal year, the sum of  
79 \$70,072 in nonrecurring funds is appropriated from the General  
80 Revenue Fund to the Department of Revenue for the purpose of  
81 implementing this act. Funds remaining unexpended or  
82 unencumbered from this appropriation as of June 30, 2021, shall  
83 revert and be reappropriated for the same purpose in the 2021-  
84 2022 fiscal year.

85 Section 3. This act shall take effect upon becoming a law.



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

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

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

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BILL: SB 778

INTRODUCER: Senator Hooper

SUBJECT: Florida Tourism Marketing

DATE: February 12, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	<b>Pre-meeting</b>
2.			ATD	
3.			AP	

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**I. Summary:**

SB 778 permits VISIT FLORIDA to carry forward any unexpended state appropriations into succeeding fiscal years.

The bill also removes the scheduled repeal date of October 1, 2023, for both VISIT FLORIDA and the Division of Tourism Marketing within Enterprise Florida, Inc.

The bill takes effect upon becoming law.

**II. Present Situation:**

**Enterprise Florida, Inc., and VISIT FLORIDA**

Enterprise Florida, Inc., (EFI) is a non-profit corporation created to act as the state's economic development organization, using expertise from both the private and public sectors. EFI is not a unit of state government.<sup>1</sup>

EFI is statutorily required to maintain at least five divisions related to the following areas:

- International trade and business development;
- Business retention and recruitment;
- Tourism marketing;
- Minority business development; and
- Sports industry development.<sup>2</sup>

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<sup>1</sup> Sections 288.901(1) and (2), F.S.

<sup>2</sup> Section 288.92, F.S.

EFI's Division of Tourism Marketing is the mechanism created in statute through which EFI interacts and contracts with its direct support organization, VISIT FLORIDA. VISIT FLORIDA is the fictitious name for the Florida Tourism Industry Marketing Corporation, a non-profit corporation that serves as Florida's statewide destination marketing organization and represents the state's tourism industry.<sup>3</sup> In practice, VISIT FLORIDA is EFI's tourism marketing division. The division is staffed by VISIT FLORIDA, but that staff is not employed by EFI.<sup>4</sup> VISIT FLORIDA's primary responsibilities include:

- Administering domestic and international advertising campaigns;
- Conducting research on tourism and travel trends;
- Coordinating domestic and international marketing activities; and
- Managing the state's four welcome centers.<sup>5</sup>

VISIT FLORIDA is required to develop a four-year marketing plan for the state that addresses issues such as continuation of tourism growth in Florida, expansion to new or underrepresented markets, coordination with local and private sector partners on tourism advertising, and addressing emergency responses to disasters from a marketing standpoint.<sup>6</sup>

EFI, in conjunction with the Department of Economic Opportunity (DEO), appoints VISIT FLORIDA's 31-member board of directors. The board provides guidance, input, and insight into the evolution and development of VISIT FLORIDA programs, processes, and messages; acts as a steering council for various committees; and works directly with VISIT FLORIDA executive staff to guide strategy.<sup>7</sup> VISIT FLORIDA's board of directors is composed of 16 regional members, with at least two representing each of the six statutorily designated geographic areas of the state, and 15 additional tourism industry related members, including:

- One from the statewide rental car industry;
- Seven from tourist-related statewide associations;
- Three from county destination marketing organizations;
- One from the cruise industry;
- One from an automobile and travel services membership organization;
- One from the airline industry; and
- One from the space tourism industry.<sup>8</sup>

Both VISIT FLORIDA and EFI's division of tourism marketing will sunset on October 1, 2023, unless reviewed and saved from repeal by the Legislature.<sup>9</sup>

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<sup>3</sup> Section 288.1226, F.S. The fictitious name is registered with the Department of State, registration no. G18000088414.

<sup>4</sup> Section 288.923(5), F.S.

<sup>5</sup> Office of Program Policy Analysis and Government Accountability, *Florida Economic Development Program Evaluations – Year 8*, 13 (December 2020), available at <https://oppaga.fl.gov/Documents/Reports/20-08.pdf> (last visited Feb. 12, 2021). Pursuant to s. 288.12265, F.S., VISIT FLORIDA contracts with the Department of Transportation through EFI to employ staff and operate the welcome centers. See also VISIT FLORIDA, *Florida Welcome Centers*, available at <https://www.visitflorida.com/en-us/visitor-services/florida-welcome-centers.html> (last visited Feb. 12, 2021).

<sup>6</sup> Section 288.923(4)(c), F.S.

<sup>7</sup> *Supra* note 5, at 12.

<sup>8</sup> Section 288.1226(4), F.S.

<sup>9</sup> Sections 288.1226(14) and 288.923(6), F.S. SB 362 (Reg. Sess. 2020) extended the repeal date of both VISIT FLORIDA and EFI's Division of Tourism Marketing from July 1, 2020 to October 1, 2023. See ss. 1-2, ch. 2020-16, Laws of Fla.

### ***Appropriations***

For the 2020-2021 fiscal year, VISIT FLORIDA received an appropriation of \$50 million.<sup>10</sup> Payments are made to VISIT FLORIDA through EFI from the DEO. VISIT FLORIDA enters into a funding agreement with EFI and the DEO and an operating agreement with EFI.<sup>11</sup>

Generally, any funds appropriated to agencies that have not been disbursed and not identified as incurred obligations by June 30 of each year revert back to the fund from which it was appropriated;<sup>12</sup> funds for incurred obligations carry over to the next fiscal year and revert back if left undisbursed by September 30.<sup>13</sup> VISIT FLORIDA reverted a total of \$5,535.17 to the Tourism Promotional Trust Fund in Fiscal Years 2015-2016 through 2019-2020.<sup>14</sup>

Section 288.9015(2)(e), F.S., permits EFI to carry forward any unexpended state appropriations into succeeding fiscal years.

### **Economic Development Programs Evaluations**

Pursuant to s. 288.0001(2)(b), F.S., the Office of Program Policy Analysis and Government Accountability (OPPAGA) and the Office of Economic and Demographic Research (EDR) must provide a detailed analysis of certain economic development programs according to a recurring schedule established in law. VISIT FLORIDA's most recent evaluation was completed in January 2021 and covered Fiscal Years 2016-2017, 2017-2018, and 2018-2019.

### ***OPPAGA Review***

OPPAGA is required to evaluate programs for effectiveness and value to the state taxpayers and to provide recommendations for consideration by the Legislature. The review determined that Florida is outpacing several other states in tourism growth and has a significant competitive advantage compared to other states with strong tourism industries, such as California, Nevada, New York, and Texas.<sup>15</sup>

As a public-private partnership, VISIT FLORIDA is required to obtain private sector contributions to match public contributions. Eligible matching contributions come from four categories:

- Direct cash contributions;
- Fees for services;

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<sup>10</sup> Specific Appropriation 2294, s. 6, ch. 2020-111, L.O.F.

<sup>11</sup> See *Funding Agreement SB20-003 – Agreement between the Department of Economic Opportunity, Enterprise Florida, Inc., and the Florida Tourism Industry Marketing Corporation*, executed September 13, 2019, available at <https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=400000&ContractId=S0118&Tab=1> (last visited Feb. 12, 2021).

<sup>12</sup> Section 216.301(1)(a), F.S.

<sup>13</sup> Section 216.301(1)(b), F.S. Section 216.011(1)(tt), F.S., defines an “incurred obligation” as a legal obligation for goods or services that have been contracted for or received or incurred by the state and referred to as a payable in the state’s financial system.

<sup>14</sup> Transparency Florida, *Department of Economic Opportunity Division of Strategic Business Development Reversion History*, available at <http://www.transparencyflorida.gov/Reports/ReversionHistoryReport.aspx?FY=&RT=RV> (last visited Feb. 12, 2021).

<sup>15</sup> *Supra* note 5, at 11.

- Cooperative advertising, which is limited to partner expenditures for paid media placement and actual market value of contributed products, air time, and print space; and
- In-kind contributions, which is limited to the actual market value of promotional contributions of partner-supplied benefits or of nonpartner-supplied airtime or print space.<sup>16</sup>

VISIT FLORIDA has continually met the statutorily required one-to-one match of public and private funding. Over the review period, 83 percent of private sector contributions were in the form of industry-contributed promotional value.<sup>17</sup> On average, VISIT FLORIDA spends 59 percent of its annual budget on media and industry cooperative advertising efforts; most of the remaining expenditures are comprised of fees and services and salaries and benefits.<sup>18</sup> Certain contracts are subject to several reporting and transparency requirements.<sup>19</sup>

VISIT FLORIDA's paying partners, which include members of the hospitality, entertainment, and outdoor recreation industries, have expressed overall support for the agency's mission and services.

### ***EDR Review***

The EDR is required to analyze the economic benefits of the programs included in the OPPAGA's program evaluation. Economic benefit is defined as the direct, indirect, and induced gains in state revenues as a percentage of the state's investment, including state grants, tax exemptions, tax refunds, tax credits, and other state incentives.<sup>20</sup> The EDR uses the terms economic benefit and return on investment (ROI) synonymously; these terms do not address the overall effectiveness or benefit of a program and instead focus on tangible financial gains or losses to state revenues.<sup>21</sup>

In its most recent review period, VISIT FLORIDA generated a positive ROI of 3.27. For every dollar spent on VISIT FLORIDA's marketing efforts, the state received \$3.27 back in tax revenue. From the state's investment of \$228 million over the review period, VISIT FLORIDA contributed approximately \$15.85 billion to Florida's GDP and \$744.64 million in state revenue. VISIT FLORIDA's positive ROI benefited from both the aggregate amount of spending and the types of purchases made by tourists, the majority of which are subject to state sales and use tax.<sup>22</sup>

Though it is difficult to determine VISIT FLORIDA's precise influence on the state's tourism industry compared to that of other marketing efforts due to the many determinants of tourism demand, the EDR used the agency's Direct Influencer Study to approximate that, over the review

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<sup>16</sup> Section 288.1226(6), F.S.

<sup>17</sup> *Supra* note 5, at 14.

<sup>18</sup> *Id.* at 15.

<sup>19</sup> Chapter 2017-233, s. 17, Laws of Fla., created reporting and transparency requirements for contracts valued at \$500,000 or more as well as new provisions for private sector contributions. *See* s. 288.1226(6) and (13), F.S.

<sup>20</sup> Section 288.005(1), F.S.

<sup>21</sup> Office of Economic and Demographic Research, *Return on Investment for VISIT FLORIDA*, 1 (January 2021), available at <http://edr.state.fl.us/Content/returnoninvestment/Tourism2021.pdf> (last visited Feb. 12, 2021). ROI is calculated by summing state revenues generated by a program less state expenditures invested in the program, and dividing that amount by the state's investment. EDR uses the Statewide Model, a model that simulates Florida's economy and captures the indirect and induced economic activity resulting from direct program effects, to calculate these numbers.

<sup>22</sup> *Id.* at 30.

period, the agency was responsible for approximately 9.1 percent of all marketing-influenced tourists. This amounts to an estimated 17.57 million domestic out-of-state tourists and 2.35 million international tourists attributable to VISIT FLORIDA's marketing efforts.<sup>23</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 288.1226, F.S., to permit VISIT FLORIDA to carry forward any unexpended state appropriations into succeeding fiscal years.

The bill also removes the scheduled repeal date for both VISIT FLORIDA and the Division of Tourism Marketing within Enterprise Florida, Inc. Without the bill, the statutory authorizations for these entities will expire on October 1, 2023.

The bill takes effect upon becoming law.

### **IV. Constitutional Issues:**

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

None.

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

None.

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

None.

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

None.

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

None.

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

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

None.

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

None.

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<sup>23</sup> *Id.* at 24. This label is used to distinguished tourists from those who visited Florida due to other influences, such as visiting family and friends or participating in a specific hobby or pastime.

C. **Government Sector Impact:**

Unexpended appropriations carried forward by VISIT FLORIDA will not be available for reappropriation by the Legislature.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 288.1226 and 288.923.

**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.

By Senator Hooper

16-00901A-21

2021778\_\_

1 A bill to be entitled  
 2 An act relating to Florida tourism marketing; amending  
 3 s. 288.1226, F.S.; authorizing the Florida Tourism  
 4 Industry Marketing Corporation to carry forward  
 5 unexpended state appropriations into succeeding fiscal  
 6 years; removing the scheduled repeal of the  
 7 corporation; amending s. 288.923, F.S.; removing the  
 8 scheduled repeal of the Division of Tourism Marketing  
 9 within Enterprise Florida, Inc.; providing an  
 10 effective date.

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

13  
 14 Section 1. Subsection (14) of section 288.1226, Florida  
 15 Statutes, is amended, and paragraph (q) is added to subsection  
 16 (5) of that section, to read:

17 288.1226 Florida Tourism Industry Marketing Corporation;  
 18 use of property; board of directors; duties; audit.-

19 (5) POWERS AND DUTIES.-The corporation, in the performance  
 20 of its duties:

21 (q) May carry forward any unexpended state appropriations  
 22 into succeeding fiscal years.

23 ~~(14) REPEAL.-This section is repealed October 1, 2023,~~  
 24 ~~unless reviewed and saved from repeal by the Legislature.~~

25 Section 2. Subsection (6) of section 288.923, Florida  
 26 Statutes, is amended to read:

27 288.923 Division of Tourism Marketing; definitions;  
 28 responsibilities.-

29 ~~(6) This section is repealed October 1, 2023, unless~~

Page 1 of 2

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

16-00901A-21

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30 ~~reviewed and saved from repeal by the Legislature.~~

31 Section 3. This act shall take effect upon becoming a law.

Page 2 of 2

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

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

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

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

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BILL: SPB 7020

INTRODUCER: For consideration by the Commerce and Tourism Committee

SUBJECT: OGSR/County Tourism Promotion Agencies/Florida Tourism Industry Marketing Corporation

DATE: February 12, 2021      REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Reeve</u>	<u>McKay</u>	_____	<b><u>Pre-meeting</u></b>

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**I. Summary:**

SPB 7020 saves from repeal the public records exemption relating to trade secrets held by a county tourism promotion agency. The bill also saves from repeal the public records exemption for the identity of any person who responds to a marketing or advertising research project conducted by the Florida Tourism Industry Marketing Corporation, doing business as VISIT FLORIDA, or trade secrets obtained pursuant to such activities.

Unless saved from repeal by the Legislature, both exemptions are scheduled to sunset on October 2, 2021.

The bill takes effect October 1, 2021.

**II. Present Situation:**

**Access to Public Records - Generally**

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

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



rules of each house of the legislature.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

### **Executive Agency Records – The Public Records Act**

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

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

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

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

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

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

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

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

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

<sup>8</sup> Section 119.07(1)(a), F.S.

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

<sup>10</sup> FLA. CONST. art. I, s. 24(c).

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

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

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

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>16</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>19</sup>

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>20</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

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

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

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

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

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

<sup>16</sup> Section 119.15, F.S.

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

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

<sup>19</sup> Section 119.15(3), F.S.

<sup>20</sup> Section 119.15(6)(b), F.S.

<sup>21</sup> Section 119.15(6)(b)1., F.S.

<sup>22</sup> Section 119.15(6)(b)2., F.S.

<sup>23</sup> Section 119.15(6)(b)3., F.S.

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

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

### **Trade Secrets**

Section 812.081, F.S., defines a “trade secret” as information used in the operation of a business which provides the business an advantage or an opportunity to obtain an advantage over those who do not know it. The term includes scientific, technical, commercial, and financial information.<sup>27</sup> Irrespective of the field to which the trade secret pertains, a trade secret is considered to be secret; of value; for use or in use by the business; and of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know it or use it.<sup>28</sup>

Florida law contains a variety of provisions that make trade secret information exempt or confidential and exempt from public records requirements. Some exemptions only protect trade secrets, while others protect “proprietary business information” and define that term to specifically include trade secrets.

### **Public Records Exemption for Trade Secrets Held by a County Tourism Promotion Agency**

Section 125.0104(9)(d)3., F.S., provides a public records exemption for trade secrets, as defined in s. 812.081, F.S., held by a county tourism promotion agency. In 2016, the Legislature expanded the definition of a trade secret in s. 812.081, F.S., to include financial information.<sup>29</sup> Thus, all public records exemptions for trade secrets were considered to have been substantially amended and subject to the Open Government Sunset Review Act. The public records exemption

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

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

<sup>25</sup> See generally s. 119.15, F.S.

<sup>26</sup> Section 119.15(7), F.S.

<sup>27</sup> Section 812.081(1)(c), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> Chapter 2016-6, s. 21, Laws of Fla., provides a public necessity statement with a rationale for expanding the public records exemption for trade secrets. The statement recognized that businesses are often required to provide financial information to public entities for regulatory or other purposes and that the disclosure of such information to competitors would be detrimental to businesses.

for trade secrets in s. 125.0104(9)(d)3., F.S., is scheduled to be repealed on October 2, 2021, unless it is reviewed and saved from repeal by the Legislature.

***Open Government Sunset Review of s. 125.0104, F.S.***

In September 2020, the Senate Committee on Commerce and Tourism and the House Oversight, Transparency, and Public Management Subcommittee sent an Open Government Sunset Review questionnaire to the county tourism promotion agencies operating within the state regarding the scheduled repeal of the public records exemption and the need to maintain said exemption.

Agencies were asked about the types of records held, how records that contain trade secrets are reviewed, public records requests, and various other questions related to how agencies work with public records that contain trade secrets. The surveyed agencies reported holding public records containing trade secrets that include contracts, financial and budget information, consumer trend data, marketing initiatives and research, visitor center and convention center data, business leads, industry partner contacts, consumer databases, administrative records, funding requests, purchased data, and paid research. Agencies cited the need to remain competitive and effectively market their counties as the general purposes of using trade secret information. Of the agencies that responded to the questionnaire, 13 reported receiving a public records request for a records containing trade secrets within the last 4 years. The questionnaire also asked agencies whether they recommend that the Legislature repeal or reenact the public record exemption, the majority of which recommended reenacting the exemption as it is written.

**Public Records Exemption for VISIT FLORIDA**

Section 288.1226(9), F.S., provides a public records exemption for the identity of any person who responds to a marketing or advertising research project conducted by VISIT FLORIDA, or trade secrets as defined by s. 812.081, F.S., obtained through such activities. In 2016, the Legislature expanded the definition of a trade secret in s. 812.081, F.S., to include financial information.<sup>30</sup> Thus, all public records exemptions for trade secrets were considered to have been substantially amended and subject to the Open Government Sunset Review Act. The public records exemption for information and trade secrets in s. 288.1226(9), F.S., is scheduled to be repealed on October 2, 2021, unless it is reviewed and saved from repeal by the Legislature.

***Open Government Sunset Review of s. 288.1226, F.S.***

In August 2020, the Senate Committee on Commerce and Tourism and the House Oversight, Transparency, and Public Management Subcommittee held a meeting with a representative from VISIT FLORIDA to discuss marketing projects or advertising research projects and how records associated with those projects are handled, the types of records that include trade secret information, and how VISIT FLORIDA addresses public record requests for such records.

Representatives from VISIT FLORIDA stated that they rely on the ability to protect trade secrets gathered from marketing projects in order to remain competitive. Specifically, VISIT FLORIDA tends to apply the exemption to data gathered from marketing projects and research that will be used to further develop other marketing strategies. Because VISIT FLORIDA is subject to several reporting and transparency requirements necessitating making contracts and other

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<sup>30</sup> *Id.*

documents available to the public, VISIT FLORIDA relies on the exemption found in s. 288.1226(9), F.S., to protect information found in the publicly available contracts and documents, such as the timing and distribution locations of marketing activities before the activities take place and financial information relating to the marketing activities, from use by competing destinations.

VISIT FLORIDA recommended the Legislature reenact the exemption as written in order to remain at a competitive advantage.

### **III. Effect of Proposed Changes:**

SPB 7020 amends s. 125.0104, F.S., to remove the scheduled repeal of the public records exemption for trade secrets held by a county tourism promotion agency. The bill also amends s. 288.1226, F.S., to remove the scheduled repeal of the public records exemption for the identity of any person who responds to a marketing or advertising research project conducted by the Florida Tourism Industry Marketing Corporation, doing business as VISIT FLORIDA, or trade secrets obtained through such activities.

Under the bill trade secrets held by a county tourism promotion agency, as well as information and trade secrets obtained by VISIT FLORIDA, will continue to be exempt from public disclosure beyond October 2, 2021.

The bill takes effect October 1, 2021.

### **IV. Constitutional Issues:**

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

None.

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

##### ***Vote Requirement***

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. The bill continues current public records exemptions beyond their scheduled repeal dates. Thus, the bill does not require an extraordinary vote for enactment.

##### ***Public Necessity Statement***

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues current public records exemptions without substantial amendment. Thus, a statement of public necessity is not required.

***Breadth of Exemption***

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the identity of any person who responds to a marketing or advertising research project conducted by VISIT FLORIDA, or trade secrets as defined by s. 812.081, F.S., obtained through such activities, and to protect trade secrets, as defined in s. 812.081, F.S., held by a county tourism promotion agency. This bill continues the public records exemption for information and trade secrets held by VISIT FLORIDA and for trade secrets held by a county tourism promotion agency. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 125.0104 and 288.1226.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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FOR CONSIDERATION By the Committee on Commerce and Tourism

577-00918A-21

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A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 125.0104, F.S., which provides an exemption from public records requirements for trade secrets held by county tourism promotion agencies; removing the scheduled repeal of the exemption; amending s. 288.1226, F.S., which provides an exemption from public records requirements for the identity of a person who responds to a marketing or advertising research project conducted by the Florida Tourism Industry Marketing Corporation and for certain trade secrets; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (d) of subsection (9) of section 125.0104, Florida Statutes, is amended to read:

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—

(9) COUNTY TOURISM PROMOTION AGENCIES.—In addition to any other powers and duties provided for agencies created for the purpose of tourism promotion by a county levying the tourist development tax, such agencies are authorized and empowered to:

(d) Undertake marketing research and advertising research studies and provide reservations services and convention and meetings booking services consistent with the authorized uses of revenue as set forth in subsection (5).

1. Information given to a county tourism promotion agency

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

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which, if released, would reveal the identity of persons or entities who provide data or other information as a response to a sales promotion effort, an advertisement, or a research project or whose names, addresses, meeting or convention plan information or accommodations or other visitation needs become booking or reservation list data, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. The following information, when held by a county tourism promotion agency, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Booking business records, as defined in s. 255.047.

b. Trade secrets and commercial or financial information gathered from a person and privileged or confidential, as defined and interpreted under 5 U.S.C. s. 552(b)(4), or any amendments thereto.

3. A trade secret, as defined in s. 812.081, held by a county tourism promotion agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. Subsection (9) of section 288.1226, Florida Statutes, is amended to read:

288.1226 Florida Tourism Industry Marketing Corporation; use of property; board of directors; duties; audit.—

(9) PUBLIC RECORDS EXEMPTION.—The identity of any person who responds to a marketing project or advertising research project conducted by the corporation in the performance of its

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59 duties on behalf of Enterprise Florida, Inc., or trade secrets  
60 as defined by s. 812.081 obtained pursuant to such activities,  
61 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
62 Constitution. ~~This subsection is subject to the Open Government~~  
63 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~  
64 ~~repealed on October 2, 2021, unless reviewed and saved from~~  
65 ~~repeal through reenactment by the Legislature.~~

66 Section 3. This act shall take effect October 1, 2021.