

Tab 1	SB 336 by Berman ; Uniform Commercial Code
--------------	--

Tab 2	SM 174 by Pizzo ; Trade
--------------	---------------------------------------

418592 A S RCS CM, Pizzo Delete L.43 - 44: 11/03 09:30 AM

Tab 3	SB 288 by Garcia ; (Identical to H 00033) Electronic Dissemination of Commercial Recordings and Audiovisual Works
--------------	---

Tab 4	SB 434 by Hooper (CO-INTRODUCERS) Torres, Stewart ; (Similar to H 00489) Florida Tourism Marketing
--------------	--

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Tuesday, November 2, 2021
TIME: 9:00—11:30 a.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 336 Berman	Uniform Commercial Code; Providing that certain restrictions on the effectiveness of terms in specified agreements and the effectiveness of certain rules of law, statutes, or regulations related to the discharge of account debtors and certain restrictions on the assignment of promissory notes, health-care-insurance receivables, and certain general intangibles, respectively, do not apply to a security interest in an ownership interest in a general partnership, a limited partnership, or a limited liability company, etc. CM 11/02/2021 Favorable JU RC	Favorable Yeas 10 Nays 0
2	SM 174 Pizzo	Trade; Commending Congress for granting trade promotion authority to the executive branch, urging the executive branch to negotiate a comprehensive and mutually beneficial free trade agreement between the United States and the United Kingdom, and urging Congress to ratify such agreement, etc. CM 10/18/2021 Temporarily Postponed CM 11/02/2021 Fav/CS RC	Fav/CS Yeas 10 Nays 0
3	SB 288 Garcia (Identical H 33)	Electronic Dissemination of Commercial Recordings and Audiovisual Works; Revising the definition of the term "electronic dissemination", etc. CM 11/02/2021 Favorable JU RC	Favorable Yeas 10 Nays 0
4	SB 434 Hooper	Florida Tourism Marketing; Delaying the scheduled repeal of provisions governing the Florida Tourism Industry Marketing Corporation and the Division of Tourism Marketing of Enterprise Florida, Inc., respectively, etc. CM 11/02/2021 Favorable AP	Favorable Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, November 2, 2021, 9:00—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Other Related Meeting Documents		

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

336

Bill Number or Topic

11/2/21

Meeting Date

Commerce

Committee

Amendment Barcode (if applicable)

Name

Robert W. Barron

Phone

954 712 5145

Address

201 East Las Olas Blvd., S. 1500

Email

rbarron@bergersingerman.com

Street

H. Lauderdale, FL

33301

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: October 13, 2021

I respectfully request that **Senate Bill #336**, relating to Universal Commercial Code, be placed on the:

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

A handwritten signature in cursive script, appearing to read "Lori Berman", written over a horizontal line.

Senator Lori Berman
Florida Senate, District 31

cc: Senator Tom Wright, Vice Char
Todd McKay, Staff Director

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 336

INTRODUCER: Senator Berman

SUBJECT: Uniform Commercial Code

DATE: November 1, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

The model Uniform Commercial Code (UCC) was created to simplify the law that governs commercial transactions—especially contracts—and to substantially harmonize applicable law among various jurisdictions.¹ Article 9 of the UCC specifically governs transfers of property (security interests) to secure loans, but also applies to outright sales of certain personal property.

Florida’s UCC substantially reflects the model UCC. The Legislature has periodically amended Florida’s UCC in accordance with updates made to the model UCC.

SB 336 amends sections 679.4061 and 679.4081, F.S., to reflect updates recently made to Article 9 of the model UCC. These amendments simplify the interaction of a general partnership’s, a limited partnership’s, or a limited liability company’s ownership interest with that of a creditor who seeks to enforce its secured interest in the entity.

The Florida Business Law Section recommends these changes to clarify applicable law and reduce the potential for litigation over these issues.²

II. Present Situation:

UCC and Article 9

Florida’s UCC, codified in chs. 671-680, F.S., is based on the model UCC that was drafted, and is periodically updated, by a joint committee of the American Law Institute and the Uniform

¹ 47 Fla. Jur 2d Secured Transactions s. 1 (Sept. 2021), Uniform Commercial Code, generally; Article 9. *See also*, s. 671.102, F.S.

² Florida Business Law Section, *Proposed Amendments to Fla. Stat. §§679.4061 and 679.4081 Executive Summary*, p. 2, available at <http://www.flabizlaw.org/files/Summary%20and%20Materials%20-%20UCC%209-406%20and%209-408%20Amendments%20%28v2%29.pdf> (last visited Nov. 1, 2021).

Law Commission.³ The UCC governs specific contracts and commercial transactions that are based on the effect of a contract.

Article 9 of the UCC specifically governs transactions that create a security interest.⁴ For example, a transaction that creates a debt in exchange for an interest in a debtor's personal property is subject to Article 9. If the debtor in such a transaction defaults, the creditor may repossess and sell the property (collateral) to satisfy the debt. The creditor's interest, if recorded (perfected) in accordance with the protocols required by Article 9, is called a "security interest." Article 9 is codified in Florida law mainly in ch. 679, F.S., "Uniform Commercial Code—Secured Transactions."

Article 9: Anti-Assignment Override Provisions

Sections 679.4061 and 679.4081, F.S., mirror the former anti-assignment override provisions of Article 9,⁵ which voided legal or contractual provisions that restricted the transfer of ownership interests, including the grant or enforcement of security interests. The anti-assignment override provisions were drafted to ensure the transferability of property interests and other security interests subject to Article 9.

Section 679.4061, F.S., applies to restrictions created by agreement that require an account debtor's⁶ consent to transfer a security interest in a payment intangible (but not the outright sale of a payment intangible), an account, a chattel paper, and a promissory note. Section 679.1021(1)(iii), F.S., defines a payment intangible as "a general intangible under which the account debtor's principal obligation is a monetary obligation." For purposes of this legislation—a payment intangible is the economic interest portion of a member or partner's ownership interest in a general partnership, limited partnership, or a limited liability company (LLC). Stated simply—it is the monetary interest in the business entity.⁷ An important distinction in this section is that the restriction must be found in an agreement with an entity, such as the limited liability company or general partnership (the account debtor)—not an individual person, such as the co-owner.

Section 679.4081, F.S., prohibits restrictions on the transfer of general intangibles. It further invalidates laws or rules that restrict such transfers. Section 679.1021(1)(pp), F.S., defines a general intangible as "any personal property, including...payment intangibles." Therefore, s. 679.4081, F.S., prohibits specific restrictions on the following transactions:

- The outright sale of a payment intangible;

³ The American Law Institute, *Uniform Commercial Code UCC*, <https://www.ali.org/publications/show/uniform-commercial-code/> (last visited Nov. 1, 2021). Forty-nine states have adopted language based on the model UCC; Louisiana has adopted most of the model UCC, but deviates to maintain certain provisions of its civil code.

⁴ 47 Fla. Jur 2d Secured Transactions s. 21 *Transactions or Interests Subject to Article 9, Generally* (2021).

⁵ Sections 9-406 and 9-408 of the U.C.C.

⁶ Section 679.1021(1)(c), F.S., defines an "account debtor" as a person who is obligated on an account, chattel paper, or general intangible. For purposes of this analysis, an account debtor is usually the business entity itself, rather than a member of the LLC, or a partner in a general partnership.

⁷ Carl Bjerre, Daniel Kleinberger, Edwin Smith, and Steven Weise, *LLC and Partnership Transfer Restrictions Excluded From UCC Article 9 Overrides* (Feb. 7, 2019), <https://businesslawtoday.org/2019/02/llc-partnership-transfer-restrictions-excluded-ucc-article-9-overrides/> (last visited Nov. 1, 2021).

- The outright sale of ordinary security interests in general intangibles that are not payment intangibles (i.e., most complete ownership interests, as well as an interest in the member’s governance interest alone); and
- The outright sale of economic rights.

Again, however, s. 679.4081, F.S., applies only in transactions where the restriction comes from the account debtor—or business entity—not a co-owner or fellow partner.

In 2018, the National Conference of Commissioners on Uniform State Laws and the American Law Institute revised Article 9 to provide that the anti-assignment override provisions “do not apply to a security interest in an ownership interest in a general partnership, limited partnership, or limited liability company.” These amendments clarified potential conflicts between Article 9 and the pick your partner principle within partnership and LLC law.⁸ As of 2019, 12 states, including Delaware, Texas, North Carolina, and Virginia had at least partially adopted language similar in effect to the ALI’s 2018 Article 9 revisions.⁹

Business Organizations and the Pick Your Partner Principle

The pick your partner principle allows a co-owner of a privately held business to determine who else may serve as a co-owner, usually by requiring express permission or a related action from a co-owner or the business entity to transfer his or her ownership interest to another party.¹⁰ A partner or member’s ownership interest in the business organization consists of governance rights and economic rights.¹¹ Most LLC or partnership interests are classified as a general intangible under ch. 679, F.S. However, the economic interest portion of a member’s ownership interest is classified as a payment intangible.¹²

In conflict with ss. 679.4061 and 679.4081, F.S., Florida LLC law states that a member cannot transfer their full ownership interest in the LLC, but may transfer their economic interest. Additionally, s. 605.0502 F.S., permits co-owners of an LLC or partnership to contractually add additional restrictions to the transfer of an ownership interest, including a restriction on the transfer of any of the ownership interest. These limitations reduce the economic value of a member’s interest and help to ensure that the LLC or partnership continues to exist in its original form—a closely held business operated with a known individual or group.¹³

⁸ Florida Business Law Section, *Proposed Amendments to Fla. Stat. §§679.4061 and 679.4081 Executive Summary*, p. 2, available at <http://www.flabizlaw.org/files/Summary%20and%20Materials%20-%20UCC%209-406%20and%209-408%20Amendments%20%28v2%29.pdf> (last visited Nov. 1, 2021).

⁹ Florida Business Law Section and the Uniform Law Commission, *State Overrides of UCC Sections 9-406 and 9-408* (Dec. 11, 2019), available at <http://www.flabizlaw.org/files/Summary%20and%20Materials%20-%20UCC%209-406%20and%209-408%20Amendments%20%28v2%29.pdf> (last visited Nov. 1, 2021).

¹⁰ Bjerre, et al., *supra* note 7.

¹¹ Bjerre, et al., *supra* note 7, at 2.

¹² Florida Business Law Section, *supra* note 8, at 1.

¹³ See Hank Jackson, *Anatomy of a Business Divorce: Florida LLCs*, Fla. Bar Journal, Vol. 95, No. 3, p. 8 (May/June 2021), available at <https://www.floridabar.org/the-florida-bar-journal/anatomy-of-a-business-divorce-florida-llcs/#u6a6b> (last visited Nov. 1, 2021).

The Florida Business Law Section illustrates the conflict as follows:

Two individuals go into business together and form an LLC. Each owner is a 50/50 member in the LLC. Their operating agreement (like most operating agreements) restricts the ability of one member to convey or encumber their membership interest without the consent of the other member, in keeping with the “pick your partner” principle engrained in LLC and partnership law. If one partner unilaterally encumbered their 50% membership interest to secure a personal loan from a bank (in violation of the operating agreement), then arguably, Section 9-406 and 9-408 would “override” the restriction in the operation agreement. If the member defaulted on the loan, the lender could foreclose on its security interest in the LLC membership interest and take ownership of the membership interest. The other member would now be saddled with a bank as its new business partner, a result not contemplated or permitted by the members’ contract (the operating agreement).

Some firms attempt to transact their way out of the anti-assignment override provision by creating their ownership interests in the business entity as an investment security, which is subject to Article 8 of the model UCC instead of Article 9. However, this requires additional legal structuring at the outset, and does not shield the interest from litigation over its classification.¹⁴

III. Effect of Proposed Changes:

Sections 1 and 2 of the bill exclude ownership interests in a general partnership, a limited partnership, or an LLC from the “anti-assignment override” provisions found in ss. 679.4061 and 679.4081, F.S., respectively. Therefore, the bill gives priority to a statute or agreement that restricts the transfer of a general intangible (ownership interest) and a security interest in a payment intangible (the monetary interest portion of an ownership interest) within the context of a general partnership, limited partnership, or LLC.

SB 336 will conform Florida’s version of the UCC to reflect updates made to Article 9 of the model UCC by the National Conference of Commissioners on Uniform State Laws and the American Law Institute to void the “anti-assignment override” provisions in the context of a general partnership, a limited partnership, or a limited liability company.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁴ Bjerre, et al., *supra* note 7, at 6.

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:

This clarification may reduce transaction costs incurred when establishing specific business entities by removing the need to “opt-in” to Article 8 by defining the underlying ownership interests as a security, which is not subject to ch. 679, F.S. Additionally, this clarification may reduce litigation costs related to disputes of the character of an ownership interest in a general partnership, limited partnership, or limited liability company.¹⁵

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: 679.4061 and 679.4081.

¹⁵ Florida Business Law Section, *Proposed Amendments to Fla. Stat. §§679.4061 and 679.4081 Executive Summary*, p. 2, available at <http://www.flabizlaw.org/files/Summary%20and%20Materials%20-%20UCC%209-406%20and%209-408%20Amendments%20%28v2%29.pdf> (last visited Nov. 1, 2021).

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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

By Senator Berman

31-00115-22

2022336__

1 A bill to be entitled
 2 An act relating to the Uniform Commercial Code;
 3 amending ss. 679.4061 and 679.4081, F.S.; providing
 4 that certain restrictions on the effectiveness of
 5 terms in specified agreements and the effectiveness of
 6 certain rules of law, statutes, or regulations related
 7 to the discharge of account debtors and certain
 8 restrictions on the assignment of promissory notes,
 9 health-care-insurance receivables, and certain general
 10 intangibles, respectively, do not apply to a security
 11 interest in an ownership interest in a general
 12 partnership, a limited partnership, or a limited
 13 liability company; conforming provisions to changes
 14 made by the act; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Subsections (4) and (6) of section 679.4061,
 19 Florida Statutes, are amended, and subsection (12) is added to
 20 that section, to read:

21 679.4061 Discharge of account debtor; notification of
 22 assignment; identification and proof of assignment; restrictions
 23 on assignment of accounts, chattel paper, payment intangibles,
 24 and promissory notes ineffective.-

25 (4) Except as otherwise provided in subsections (5) and
 26 (12) ~~subsection (5)~~ and ss. 680.303 and 679.4071, and subject to
 27 subsection (8), a term in an agreement between an account debtor
 28 and an assignor or in a promissory note is ineffective to the
 29 extent that it:

Page 1 of 4

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

31-00115-22

2022336__

30 (a) Prohibits, restricts, or requires the consent of the
 31 account debtor or person obligated on the promissory note to the
 32 assignment or transfer of, or the creation, attachment,
 33 perfection, or enforcement of a security interest in, the
 34 account, chattel paper, payment intangible, or promissory note;
 35 or

36 (b) Provides that the assignment or transfer or the
 37 creation, attachment, perfection, or enforcement of the security
 38 interest may give rise to a default, breach, right of
 39 recoupment, claim, defense, termination, right of termination,
 40 or remedy under the account, chattel paper, payment intangible,
 41 or promissory note.

42 (6) Except as otherwise provided in subsection (12) and ss.
 43 680.303 and 679.4071, and subject to subsections (8) and (9), a
 44 rule of law, statute, or regulation that prohibits, restricts,
 45 or requires the consent of a government, governmental body or
 46 official, or account debtor to the assignment or transfer of, or
 47 creation of a security interest in, an account or chattel paper
 48 is ineffective to the extent that the rule of law, statute, or
 49 regulation:

50 (a) Prohibits, restricts, or requires the consent of the
 51 government, governmental body or official, or account debtor to
 52 the assignment or transfer of, or the creation, attachment,
 53 perfection, or enforcement of a security interest in the account
 54 or chattel paper; or

55 (b) Provides that the assignment or transfer or the
 56 creation, attachment, perfection, or enforcement of the security
 57 interest may give rise to a default, breach, right of
 58 recoupment, claim, defense, termination, right of termination,

Page 2 of 4

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

31-00115-22

2022336__

59 or remedy under the account or chattel paper.

60 (12) Subsections (4), (6), and (11) do not apply to a
 61 security interest in an ownership interest in a general
 62 partnership, a limited partnership, or a limited liability
 63 company.

64 Section 2. Subsections (1) and (3) of section 679.4081,
 65 Florida Statutes, are amended, and subsection (8) is added to
 66 that section, to read:

67 679.4081 Restrictions on assignment of promissory notes,
 68 health-care-insurance receivables, and certain general
 69 intangibles ineffective.—

70 (1) Except as otherwise provided in subsections (2) and (8)
 71 subsection (2), a term in a promissory note or in an agreement
 72 between an account debtor and a debtor which relates to a
 73 health-care-insurance receivable or a general intangible,
 74 including a contract, permit, license, or franchise, and which
 75 term prohibits, restricts, or requires the consent of the person
 76 obligated on the promissory note or the account debtor to, the
 77 assignment or transfer of, or creation, attachment, or
 78 perfection of a security interest in, the promissory note,
 79 health-care-insurance receivable, or general intangible, is
 80 ineffective to the extent that the term:

81 (a) Would impair the creation, attachment, or perfection of
 82 a security interest; or

83 (b) Provides that the assignment or transfer or the
 84 creation, attachment, or perfection of the security interest may
 85 give rise to a default, breach, right of recoupment, claim,
 86 defense, termination, right of termination, or remedy under the
 87 promissory note, health-care-insurance receivable, or general

Page 3 of 4

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

31-00115-22

2022336__

88 intangible.

89 (3) Except as otherwise provided in subsection (8), a rule
 90 of law, statute, or regulation that prohibits, restricts, or
 91 requires the consent of a government, governmental body or
 92 official, person obligated on a promissory note, or account
 93 debtor to the assignment or transfer of, or creation of a
 94 security interest in, a promissory note, health-care-insurance
 95 receivable, or general intangible, including a contract, permit,
 96 license, or franchise between an account debtor and a debtor, is
 97 ineffective to the extent that the rule of law, statute, or
 98 regulation:

99 (a) Would impair the creation, attachment, or perfection of
 100 a security interest; or

101 (b) Provides that the assignment or transfer or the
 102 creation, attachment, or perfection of the security interest may
 103 give rise to a default, breach, right of recoupment, claim,
 104 defense, termination, right of termination, or remedy under the
 105 promissory note, health-care-insurance receivable, or general
 106 intangible.

107 (8) This section does not apply to a security interest in
 108 an ownership interest in a general partnership, a limited
 109 partnership, or a limited liability company.

110 Section 3. This act shall take effect July 1, 2022.

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

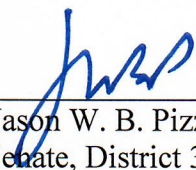
To: Senator Ed Hooper, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: September 22, 2021

I respectfully request that **SM 174**, relating to Trade, be placed on the:

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



Senator Jason W. B. Pizzo
Florida Senate, District 38

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SM 174

INTRODUCER: Commerce and Tourism Committee and Senator Pizzo

SUBJECT: Trade

DATE: November 2, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vigrass	McKay	CM	Fav/CS
2.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SM 174 urges Congress to renew Trade Promotion Authority (TPA) to the executive branch. The memorial also encourages the executive branch to negotiate a comprehensive and mutually beneficial free trade agreement between the United States and the United Kingdom, and encourages Congress to ratify such an agreement.

Legislative memorials are not subject to the Governor’s veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

II. Present Situation:

Trade Promotion Authority

Although the President has the authority to negotiate treaties with foreign countries, Congress has the sole authority to regulate international trade.¹ “The President shall have Power, by and with the Advice and Consent of the Senate to make Treaties, provided two thirds of the Senators present concur.”²

Since 1974, Congress has enacted TPA legislation that defines U.S. negotiating objectives and priorities for trade agreements and establishes consultation and notification requirements for the

¹ U.S. CONST. art. 1, s.8

² U.S. CONST. art. 2, s.2

President to follow throughout the negotiation process.³ TPA does not provide new power to the executive branch, but rather, TPA is a legislative procedure through which Congress defines U.S. negotiating objectives and details the oversight process used during trade negotiations.⁴

TPA is only extended for limited periods, so Congress periodically reconsiders legislation to extend it and to outline future negotiation objectives.⁵ The most recent TPA expired on July 1, 2021. This precludes the opportunity to fast track trade agreements between the United States and other countries.⁶

Free Trade Agreements

A Free Trade Agreement is an agreement between two or more countries where the parties involved agree on certain trade obligations for the purpose of reducing barriers and providing a more stable and transparent trading environment. It also allows an easier process for U.S. companies to export products or services to partner markets.⁷ All U.S. Free Trade Agreements (FTAs), except the agreement with Jordan, were considered in Congress under TPA.⁸

The U.S. currently has FTAs with 20 countries. The current U.S. FTA partner countries include: Australia; Bahrain; Canada; Chile; Colombia; Costa Rica; Dominican Republic; El Salvador; Guatemala; Honduras; Israel; Jordan; Korea; Mexico; Morocco; Nicaragua; Oman; Panama; Peru; and Singapore.⁹ In 2020, the U.S., Mexico, and Canada renegotiated the North American Free Trade Agreement and entered into force the United States-Mexico-Canada Agreement on July 1, 2020.¹⁰

US and UK Trade Negotiations

In July of 2017, the U.S. – UK Trade and Investment Working Group was established to provide commercial progress for the UK and U.S. businesses, workers, and consumers to prepare for the UK's withdrawal from the European Union. On May 5, 2020, the U.S. and UK announced the formal launch of trade agreement negotiations.¹¹

³ Office of the United States Trade Representative, *Trade Promotion Authority*, available at <https://ustr.gov/trade-topics/trade-promotion-authority> (last visited Oct. 15, 2021).

⁴ *Id.*

⁵ *Id.*

⁶ Congressional Research Service, *Brexit and Outlook for US-UK Free Trade Agreement* (Jan. 14, 2021), available at <https://fas.org/sgp/crs/row/IF11123.pdf> (last visited Oct. 15, 2021).

⁷ International Trade Administration, *U.S. Free Trade Agreements*, available at <https://2016.export.gov/FTA/index.asp> (last visited Oct. 15, 2021).

⁸ Congressional Research Service, *Major Votes on Free Trade Agreements and Trade Promotion Authority* (July 22, 2020), available at <https://fas.org/sgp/crs/row/R45846.pdf> (last visited Oct. 15, 2021).

⁹ Office of the United States Trade Representative, *Free Trade Agreements*, available at <https://ustr.gov/trade-agreements/free-trade-agreements> (last visited Oct. 15, 2021).

¹⁰ Office of the United States Trade Representative, *United States-Mexico-Canada Agreement*, available at <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement> (last visited Oct. 15, 2021).

¹¹ Office of the United States Trade Representative, *U.S.-UK Trade Agreement Negotiations*, available at <https://ustr.gov/countries-regions/europe-middle-east/europe/united-kingdom/us-uk-trade-agreement-negotiations> (last visited Oct. 15, 2021).

With total trade at over \$250 billion a year, the U.S. and the UK are each other's largest source of foreign direct investment with about \$1 trillion invested in each other's economies.¹² More than 1.25 million U.S. workers are employed by British companies in the U.S., and over 1.5 million Britons are employed by U.S. affiliates. Additionally, the UK is the United States' 7th largest trading partner and the 5th largest export destination for U.S. goods and services.¹³

Current Trade Agreements

As part of the U.S. – UK Trade and Investment Working Group, the U.S. and the UK have signed agreements on specific products that were covered by existing agreements the U.S. maintains with the EU.¹⁴ These agreements between the U.S. and UK were entered into force on December 31, 2020, to ensure that there was no disruption in trade for specific products between the U.S. and UK. These new agreements include U.S. – UK Agreement on Trade in Wine; U.S. – UK Agreement on Mutual Recognition of Certain Distilled Spirits/Spirits Drinks; Agreement on Mutual Recognition; and Agreement on the Mutual Recognition of Certificates of Conformity for Marine Equipment.¹⁵

As of January 1, 2021, EU Trade Agreements no longer apply to the UK. The UK has sought to replicate the effects of previous trade agreements to ensure continuity for UK business.¹⁶ In 2018, the Trump Administration notified Congress, under TPA, of its intent to enter comprehensive FTA negotiations with the UK. The U.S. and UK conducted five rounds of negotiations in 2020, with negotiations pending over outstanding issues.¹⁷ The most recent TPA, which was established under the Obama administration, expired on July 1, 2021.¹⁸

III. Effect of Proposed Changes:

CS/SM 174 urges Congress to renew TPA to the executive branch. The memorial also encourages the executive branch to negotiate a comprehensive and mutually beneficial free trade agreement between the U.S. and UK, and encourages Congress to ratify such an agreement.

Copies of this memorial will be dispatched to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

¹² U.S. Department of State, *U.S. Relations with the United Kingdom*. (Feb. 6, 2020), available at <https://www.state.gov/u-s-relations-with-united-kingdom/> (last visited Oct. 15, 2021).

¹³ U.S. Chamber of Commerce, *U.S.-UK Trade and Investment Ties*, available at <https://www.uschamber.com/international/europe/us-uk-business-council/us-uk-trade-and-investment-ties> (last visited Oct. 15, 2021).

¹⁴ These existing agreements have covered trade with the UK by virtue of the UK's membership in the EU. See Office of the United States Trade Representative, *U.S.-UK Trade Agreement Negotiations*, available at <https://ustr.gov/countries-regions/europe-middle-east/europe/united-kingdom/us-uk-trade-agreement-negotiations> (last visited Oct. 15, 2021).

¹⁵ *Id.*

¹⁶ Gov.UK, *UK trade agreements with non-EU countries*, available at <https://www.gov.uk/guidance/uk-trade-agreements-with-non-eu-countries> (last visited Oct. 15, 2021).

¹⁷ Congressional Research Service, *Brexit and Outlook for US-UK Free Trade Agreement* (Jan. 14, 2021), available at <https://fas.org/sgp/crs/row/IF11123.pdf> (last visited Oct. 15, 2021).

¹⁸ *Id.*

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on November 2, 2021:

This amendment corrects the Memorial to reflect current trade conditions. The amendment urges Congress to renew Trade Promotion Authority for the Executive branch.

- B. **Amendments:**

None.

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



418592

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/03/2021	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 43 - 44

and insert:

That the Congress of the United States is urged to expeditiously renew trade promotion authority for the executive branch, the

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

And the title is amended as follows:



418592

11 Delete lines 3 - 4
12 and insert:
13 the President of the United States urging Congress to
14 expeditiously renew trade promotion authority for the

By Senator Pizzo

38-00171-22

2022174__

Senate Memorial

A memorial to the Congress of the United States and the President of the United States commending Congress for granting trade promotion authority to the executive branch, urging the executive branch to negotiate a comprehensive and mutually beneficial free trade agreement between the United States and the United Kingdom, and urging Congress to ratify such agreement.

WHEREAS, the United States is the United Kingdom's largest single-country trade partner, with a relationship valued at more than \$200 billion; the two countries are each other's largest foreign direct investors, having approximately \$1 trillion invested in their counterpart's economy; and the UK-US Trade and Investment Working Group has been laying the groundwork to strengthen trade and investment ties between the two countries, including through the use of a free trade agreement, and

WHEREAS, the expansion of global trade, especially with the United Kingdom, is of vital importance to the growth of the United States' economy, small business participation in the international marketplace, and job creation, and

WHEREAS, this state would benefit greatly from the ratification of a comprehensive free trade agreement, which, since the United Kingdom is currently the largest foreign direct employer in this state and is the second largest market for tourism, would create employment opportunities for residents of this state as a direct result of reducing and removing barriers to trade and free markets, and

Page 1 of 2

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

38-00171-22

2022174__

WHEREAS, the successful implementation of a free trade agreement will increase exports to the United Kingdom from this state, and

WHEREAS, the United States Constitution grants the United States Congress exclusive authority to regulate commerce with foreign nations, and

WHEREAS, the negotiation of a successful free trade agreement between the United States and the United Kingdom will require bipartisan cooperation between state, federal, and foreign governments, NOW, THEREFORE,

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

That the Congress of the United States is commended for granting trade promotion authority to the executive branch, the executive branch is urged to complete a timely and successful negotiation of a comprehensive and mutually beneficial free trade agreement between the United States and the United Kingdom, and the Congress of the United States is urged to ratify such agreement.

BE IT FURTHER RESOLVED that the Secretary of State dispatch copies of this memorial to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

Page 2 of 2

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

11/2/2021

Meeting Date

Commerce and Tourism

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

288

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Edgar Castro**

Phone **(305) 421-6304**

Address **9155 S. Dadeland Blvd. Suite 1604**

Email **castro@thesoutherngroup.com**

Street

Miami

City

FL

State

33156

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Recording Industry Association of America

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: October 18, 2021

I respectfully request that **288**, relating to Electronic Dissemination of Commercial Recordings and Audiovisual Works, be placed on the:

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

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

Senator Hearn Garcia
Florida Senate, District 37

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 288

INTRODUCER: Senator Garcia

SUBJECT: Electronic Dissemination of Commercial Recordings and Audiovisual Works

DATE: November 1, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Favorable
2.			JU	
3.			RC	

I. Summary:

SB 288 subjects websites that electronically transmit, make available, or offer a commercial recording or audiovisual work for distribution, *display or performance* to the Florida True Origin of Digital Goods Act. These websites will therefore be required to post their operator's or owner's contact information and will be subject to injunction for failure to do so.

The bill takes effect on July 1, 2022.

II. Present Situation:

Florida True Origin of Digital Goods Act

The True Origin of Digital Goods Act (Act)¹ requires the owners or operators of websites that electronically disseminate commercial recordings or audiovisual works to Florida consumers to clearly post their true and correct name(s), physical address, and telephone number or e-mail address on their website.

A website electronically disseminates a commercial recording or audiovisual work by initiating the transmission of, making available, or otherwise offering it for distribution through the internet or another digital network. Any website that electronically disseminates such works must therefore post the above specific contact information.

An owner, assignee, authorized agent, or licensee of a commercial recording or audiovisual work that appears on a website that lacks its owner's or operator's contact information may bring a private cause of action to obtain a declaratory judgment that the owner or operator's failure violates the Act. The owner, assignee, authorized agent, or licensee of the copyrighted work may

¹ Section 501.155, F.S.

also request an injunction to compel the website to comply with the Act. Prior to bringing a civil action, however, the aggrieved party must first make reasonable efforts to place the website's owner or operator on notice that they are violating the Act and that his or her failure to cure the violation within 14 days may result in the filing of a civil action.

Federal Copyright Law

The owner of original, copyrighted material has the exclusive rights to do and authorize any of the following:

- Reproduce the copyrighted work;
- Prepare derivative works based on the copyrighted work;
- Distribute copies of the copyrighted work to the public by sale, rental, lease, or lending;
- Publicly perform (or control the public performance of) the copyrighted work if it is a literary, musical, dramatic, choreographic, pantomime, motion picture, or other audiovisual copyrighted work;
- Publicly display (or control the public display of) the copyrighted work, if it is a literary, musical, dramatic, choreographic, pantomime, pictorial, graphic, or sculptural work—including individual images of a motion picture or audiovisual work; and
- Publicly perform sound recordings by means of a digital audio transmission.²

A display or performance is publicly available when it is (1) open or transmitted to the public or to any place where a substantial number of persons outside of a family and its friends are gathered, or (2) transmitted or communicated to the public through a device or process—whether or not the viewers view it in the same place or time.³

To display a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process. To perform a work means to recite, render, play, dance, or act it, either directly or by means of any device or process.⁴ Generally, the only distinction between a performance and a display of copyrighted material on the internet is that a performance occurs in a sequential, ongoing manner, while a display is static.⁵

Technological advances, such as faster internet connection and more powerful computer processors, have resulted the proliferation of streaming services, which in turn have made the public performance and display of copyrighted works over the internet more prevalent.⁶ Streaming copyrighted material over the internet has clearly been interpreted to constitute a

² 17 U.S.C. §§ 106-122, Copyrights. *See also*, U.S. Copyright Office, *Circular 1: Copyright Basics*, pp. 1-2 (Sept. 2021), <https://www.copyright.gov/circls/circ01.pdf> (last visited Nov. 1, 2021).

³ 17 U.S.C. § 101. *See also*, John Kennedy, Mary Rasenberger, Lorraine Ford and Joseph Fazio, *Internet Law and Practice- Intellectual Property Issues: Copyright: Public Performance and Display*, §12:13 (Nov. 2021).

⁴ 17 U.S.C. § 101. *See also*, *Information Law- Digital Copyright and Cyberspace- Network and Internet Issues, Public Display and Performance*, ch. 4 § 4:82 (May 2021).

⁵ *Id.*

⁶ U.S. Department of Commerce Internet Policy Task Force, *White Paper on Remixes, First Sale, and Statutory Damages: Copyright Policy, Creativity, and Innovation in the Digital Economy*, pp. 40-43 (Jan. 2016), <https://www.uspto.gov/sites/default/files/documents/copyrightwhitepaper.pdf> (last visited Nov. 1, 2021). *See also*, Congressional Research Service, *Illegal Internet Streaming of Copyrighted Content: Legislation in the 112th Congress* (Aug. 29, 2011), <https://www.everycrsreport.com/reports/R41975.html#fn19> (last visited Nov. 1, 2021).

public performance by courts throughout the U.S., but if done with proper authorization to distribute or perform the material from the copyright holder, is permissible under copyright law.⁷

Federal Digital Millennium Copyright Act

The Digital Millennium Copyright Act (DMCA) updated federal copyright law to address the relationship between copyrighted material and the internet. To provide certainty regarding liability for copyright infringement while balancing the rights of copyright holders, the DMCA created the notice-and-takedown system.⁸ This system requires online service providers to expeditiously remove infringing content after receipt of notice from a copyright holder.⁹ As the internet, related consumer activity, and specifically third party posting of copyrighted content continues to grow, so have takedown notices.¹⁰ For example, Google received take down notices for approximately three million URLs in 2013, as of October 21, 2021, it received notices identifying 5.3 billion URLs to be taken down.¹¹

The DMCA also requires online service providers to designate an agent to receive copyright owners' notices, and provide the agent's contact information on their websites.

Protecting Lawful Streaming Act

The Consolidated Appropriations Act of 2021 created the Protecting Lawful Streaming Act (PLSA),¹² which increases the federal penalty for illegal streaming from a misdemeanor to a felony. The act of offering copyrighted material for download without specific license or authorization is separately classified a felony under the No Electronic Theft (NET) Act, but this provision did not cover streaming copyrighted material.¹³

Specifically, the PLSA targets individuals who act (1) willfully, (2) for purposes of commercial advantage or private financial gain, and (3) offer or provide to the public a digital transmission service. Additionally, their digital transmission service must:¹⁴

⁷ See, e.g., *Warner Bros. Entertainment Inc. v. WTV Systems, Inc.*, 824 F. Supp.2d 1003, 1010-1011 (C.D. Cal. 2011). *A&M Records, Inc. v. Napster, Inc.*, 114 F. Supp.2d 896 (N.D. Cal. 2000), *aff'd in relevant part*, 239 F.3d 1004 (9th Cir. 2001).

⁸ 17 U.S.C. § 512 (2)(b)-(d). U.S. Copyright Office, *The Digital Millennium Copyright Act: Section 1202- Copyright Management Information Protection*, <https://www.copyright.gov/dmca/> (last visited Nov. 1, 2021). See also, U.S. Copyright Office, *Section 512 Report*, pp. 1, 8 (May 2020), available at <https://www.copyright.gov/policy/section512/section-512-full-report.pdf> (last visited Nov. 1, 2021).

⁹ U.S. Copyright Office, *Section 512 of Title 17: Resources on Online Service Provider Safe Harbors and Notice-and-Takedown System* (May 21, 2020), <https://www.copyright.gov/512/> (last visited Nov. 1, 2021). See also, 17 U.S.C. §§512(b)-(d)

¹⁰ See also, U.S. Copyright Office, *Section 512 Report*, pp. 10 (May 2020), available at <https://www.copyright.gov/policy/section512/section-512-full-report.pdf> (last visited Nov. 1, 2021).

¹¹ *Id.* at 31-32, citing Google, *How Google Fights Piracy* (2018), https://www.blog.google/documents/25/GO806_Google_FightsPiracy_eReader_final.pdf (last visited Nov. 1, 2021). See also, *Google Transparency Report*, available at <https://transparencyreport.google.com/copyright/overview> (last visited Nov. 1, 2021).

¹² 18 U.S.C. 2319C, "Illicit Digital Transmission Services."

¹³ 17 U.S.C. 506. See also, Michael Antonucci, *New Legislation: CASE Act and Protecting Lawful Streaming Act* (Mar. 18, 2021), <https://www.mondaq.com/unitedstates/trademark/1047506/new-legislation-case-act-and-protecting-lawful-streaming-act> (last visited Nov. 1, 2021).

¹⁴ See generally, Kevin Madigan, Copyright Alliance, *Protecting Lawful Streaming Act Signed Into Law: What you Need to Know* (Jan. 12, 2021), <https://copyrightalliance.org/protecting-lawful-streaming-act-signed/> (last visited Nov. 1, 2021).

- Be primarily designed or provided for the purpose of publicly performing copyright-protected works by digital transmission without the copyright owner’s authority;
- Have no commercially-significant purpose or use other than to publicly perform copyright-protected work by an unauthorized digital transmission; or
- Be intentionally marketed by or at the direction of a person to promote its use in publicly performing copyright-protected works by means of an unauthorized digital transmission.

III. Effect of Proposed Changes:

Section 1 amends s. 501.155, F.S., to expand the definition of “electronic dissemination” to include transmitting, making available, or otherwise offering a commercial recording or audiovisual work for distribution, *display, or performance*. As a result, any website that electronically transmits, makes available, or offers a display or performance must post the website operator’s or owner’s contact information and is subject to injunction and other judgments under the Florida True Origin of Digital Goods Act.

The terms “display” and “performance” are not defined by Florida law.

Section 2 provides that the bill takes effect on July 1, 2022.

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:

For a court to exercise jurisdiction over a respondent, it must have subject matter jurisdiction and personal jurisdiction. State courts have general jurisdiction, and therefore a claim made under a state statute meets the subject matter jurisdiction requirement.¹⁵ Personal jurisdiction is a constitutional requirement that a respondent have minimum contacts with the state in which the court sits so that the court may exercise power over the respondent.¹⁶ A non-resident respondent may have sufficient contacts with Florida if

¹⁵ *Caiazza v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).

¹⁶ *Id.*

he or she commits acts expressly enumerated in Florida's long-arm statute.¹⁷ Alternately, the non-resident respondent may be subject to a Florida court's personal jurisdiction because he or she has minimum contacts with the state that are otherwise unrelated to matter that brings him or her into court.¹⁸ Examples of sufficient minimum contacts include frequent business travel to the state, owning a company with a Florida office branch, or subjecting oneself to the court's jurisdiction by presenting oneself in the Florida court.¹⁹ These jurisdictional requirements ensure that a respondent has sufficient notice and due process afforded to him or her under the U.S. Constitution before his or her rights are subjected to the court.²⁰

Whether a non-resident internet company that electronically disseminates commercial recordings or audiovisual works into Florida has sufficient minimum contacts with the state is a fact-specific question that would likely need to be addressed on a case-by-case basis by a court.²¹

Content-neutral regulations are legitimate if they advance important governmental interests that are not related to suppression of free speech, and do not substantially burden more speech than necessary to further those interests.²² However, a law may be determined to be overbroad if a "substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep."²³

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Parties involved in the litigation provided for under the Act will incur costs related to bringing or defending the action.

C. Government Sector Impact:

Florida courts may see an increase in case filings under this law.

VI. Technical Deficiencies:

None.

¹⁷ *Id.*; § 48.193, F.S.

¹⁸ *Caiazza v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).

¹⁹ *Id.*

²⁰ *Id.* at 250-251.

²¹ *See Caiazza v. American Royal Arts Corp.*, 73 So. 3d 245, (Fla. 4th DCA 2011); *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).

²² *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180,189 (U.S. 1997).

²³ *U.S. v. Stevens*, 559 U.S. 460 (2010), quoting, *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449, n. 6, (2008).

VII. Related Issues:

It is unclear whether Florida could assert jurisdiction over foreign websites should an aggrieved party attempt to enforce the disclosure requirements of this bill against a website owner or operator located outside of Florida. It can be assumed that website owners or operators located outside of Florida are not expected to respond to lawsuits or submit willingly to jurisdiction in Florida courts. As such, any proceedings against owners or operators of websites located outside of Florida would be expected to end in default judgments.

Following a default or other declaratory judgment, the aggrieved party could proceed with third party injunctions to discourage Internet service providers, hosting services, payment services, or other Internet website services from working with websites that fail to disclose their personal information required by this bill. For example, ISP Terms of Service Agreements frequently forbid the user website from engaging in illegal activity.

This legislation captures a wide array of behaviors due to the broad definitions of the terms “commercial recording or audiovisual work,” “electronic dissemination,” “performance,” and “display” used. As a result, many, if not all, private individuals having a website may be required to disclose their true and correct name, physical address, and telephone number or e-mail address. For example, under these definitions, a teenager who creates her own website for the purpose of posting self-produced recordings or audiovisual works would be required to provide the identifying information. Moreover, the true target for the injunction and further consequences apparently are those websites that do not provide the identifying information.

An individual may be able to display or perform a commercial recording or audiovisual work for distribution to a sufficiently narrow group so that the act does not constitute a “public” display or performance under federal copyright law. However, this bill does not discern between a public or private display or performance.

VIII. Statutes Affected:

This bill substantially amends section 501.155 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 Garcia

37-00471-22

2022288__

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

A bill to be entitled

An act relating to electronic dissemination of commercial recordings and audiovisual works; amending s. 501.155, F.S.; revising the definition of the term "electronic dissemination"; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 501.155, Florida Statutes, is amended to read:

501.155 Electronic dissemination of commercial recordings or audiovisual works; required disclosures; injunctive relief.-

(3) DEFINITIONS.-As used in this section, the term:

(b) "Electronic dissemination" means initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution, display, or performance through the Internet or other digital network, regardless of whether another person has previously electronically disseminated the same commercial recording or audiovisual work.

Section 2. This act shall take effect July 1, 2022.

Nov. 2, 2021

Meeting Date

Commerce

Committee

Name

Samantha Padgett

Address

230 South Adams St.

Street

Tallahassee

City

FL

State

32301

Zip

Phone

850 -

224-2250

Email

spadgett@frla.org

434
Bill Number or Topic

Amendment Barcode (if applicable)

The Florida Senate APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

Florida Restaurant &
Lodging Association

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

11/2/21

Meeting Date

Commerce & Tourism

Committee

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

434

Bill Number or Topic

Name **Chris Carmody**

Phone **407-843-8880**

Amendment Barcode (if applicable)

Address **301 E. Pine Street, Suite 1400**

Email **ccarmody@gray-robinson.com**

Orlando

FL

32801

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Central Florida Hotel & Lodging Association

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/2/21

Meeting Date

434

Bill Number (if applicable)

Topic Florida Tourism Marketing

Name Phillip Suderman

Job Title Policy Director

Address Street

Phone

City State Zip

Email

Speaking: For [] Against [x] Information []

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

Representing Americans for Prosperity

Appearing at request of Chair: Yes [] No [x]

Lobbyist registered with Legislature: Yes [x] No []

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

11/2/21

Meeting Date

Commerce & Tourism

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 434

Bill Number or Topic

Name Carolyn Johnson

Phone 850-521-1200

Amendment Barcode (if applicable)

Address 136 S Bronough St

Street

Email cjohnson@flchamber.com

Tallahassee

FL

32301

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Chamber of Commerce

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2 NOV 2024

Meeting Date

TOURISM + E.D.E.U.

Committee

SB 434

Bill Number or Topic

Name JACK HEBERT

Amendment Barcode (if applicable)

Phone 727-560-3323

Address 235 APOLLO BEACH BLVD #139

Street

Email JACK@THEMALLARDGROUP.COM

APOLLO BEACH FL 33572
3375

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

AMERICAN ADVERTISING FEDERATION

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022-Joint-Rules.pdf)

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 434

INTRODUCER: Senator Hooper

SUBJECT: Florida Tourism Marketing

DATE: November 1, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Renner	McKay	CM	Favorable
2.			AP	

I. Summary:

SB 434 extends the scheduled repeal date for the Florida Tourism Industry Marketing Corporation, doing business as VISIT FLORIDA, and the Division of Tourism Marketing within Enterprise Florida, Inc., until October 1, 2031.

Without the bill, the statutory provisions for these entities will be repealed on October 1, 2023.

The five-year average of appropriations to VISIT FLORIDA is \$65.4 million. If VISIT FLORIDA is repealed on October 1, 2023, the dissolved entity's assets, after all legal liabilities and obligations have been paid or adequate provision for them have been made, will revert to the state.

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.¹

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;

¹ Sections 288.901(1) and (2), F.S.

- Minority business development; and
- Sports industry development.²

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.³ 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.⁴ 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.⁵

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.⁶

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."⁷ 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.⁸

² Section 288.92(1), F.S.

³ Section 288.1226, F.S. The fictitious name is registered with the Florida Department of State, registration no. G18000088414.

⁴ Section 288.923(5), F.S.

⁵ 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 Nov. 1, 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 Nov. 1, 2021).

⁶ Section 288.923(4)(c), F.S.

⁷ *Supra* note 5 at 12.

⁸ Section 288.1226(4), F.S.

For the 2021-2022 fiscal year, VISIT FLORIDA received an appropriation of \$75 million.⁹ 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.¹⁰

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.¹¹

Economic Development Programs Evaluations

Pursuant to s. 288.0001(2)(b), F.S., the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA) must provide a detailed analysis of certain economic development programs according to a recurring schedule established in law. The OPPAGA's most recent evaluation of VISIT FLORIDA was completed in December 2020, while EDR's most recent evaluation of VISIT FLORIDA was completed in January 2021 and covered Fiscal Years 2015-2016, 2017-2018, and 2018-2019.

OPPAGA Review

The 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.¹²

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;
- 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.¹³

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.¹⁴ On average, VISIT FLORIDA spends 59 percent of its annual budget on media and industry cooperative advertising efforts; most of

⁹ Chapter 2021-036, s. 152, Specific Appropriation 2251, Laws of Fla.

¹⁰ See *Funding Agreement SB22-003 – Agreement between the Department of Economic Opportunity, Enterprise Florida, Inc., and the Florida Tourism Industry Marketing Corporation*, executed October 4, 2021, available at <https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=400000&ContractId=S0165&Tab=4> (last visited Nov. 1, 2021).

¹¹ Sections 288.1226(14) and 288.923(6), F.S. See ch. 2020-16, Laws of Fla.

¹² *Supra* note 5, at 11

¹³ Section 288.1226(6), F.S.

¹⁴ *Supra* note 5, at 14

the remaining expenditures are comprised of fees and services and salaries and benefits.¹⁵ Certain contracts are subject to several reporting and transparency requirements.¹⁶

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.¹⁷ 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.¹⁸

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, and from the investments made by VISIT FLORIDA's marketing partners, as VISIT FLORIDA's total share of marketing spend was lower than in previous years.¹⁹

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 approximates that, over the review period, the agency was responsible for approximately 9.05 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.²⁰

¹⁵ *Id.*

¹⁶ 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.

¹⁷ Section 288.005(1), F.S.

¹⁸ 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 Nov. 1, 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.

¹⁹ *Id.* at 30-31

²⁰ *Id.* at 24. This label is used to distinguish tourists from those who visited Florida due to other influences, such as visiting family and friends or participating in a specific hobby or pastime.

III. Effect of Proposed Changes:

The bill extends the scheduled repeal date for the Florida Tourism Industry Marketing Corporation, known as VISIT FLORIDA, and the Division of Tourism Marketing within Enterprise Florida, Inc., until October 1, 2031. Without the bill, the statutory authorizations for these entities would be repealed 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.

C. Government Sector Impact:

The five-year average of appropriations to VISIT FLORIDA is \$65.4 million.²¹ If VISIT FLORIDA is repealed on October 1, 2023, the dissolved entity's assets, after all legal liabilities and obligations have been paid or adequate provisions have been made, will revert to the state.

²¹ Chapter 2021-036, s. 152, Specific Appropriation 2251, Laws of Fla.; Ch. 2020-111, SA 2294, s. 6, Laws of Fla.; Ch. 2019-115, SA 2328, s. 6, Laws of Fla.; Ch. 2018-9, SA 2239, s. 6, Laws of Fla.; Ch. 2017-233, s. 26, Laws of Fla.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 288.1226 and 288.923 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 Hooper

16-00588-22

2022434__

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

A bill to be entitled

An act relating to Florida tourism marketing; amending ss. 288.1226 and 288.923, F.S.; delaying the scheduled repeal of provisions governing the Florida Tourism Industry Marketing Corporation and the Division of Tourism Marketing of Enterprise Florida, Inc., respectively; providing an effective date.

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

Section 1. Subsection (14) 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.—

(14) REPEAL.—This section is repealed October 1, 2031 ~~2023~~, unless reviewed and saved from repeal by the Legislature.

Section 2. Subsection (6) of section 288.923, Florida Statutes, is amended to read:

288.923 Division of Tourism Marketing; definitions; responsibilities.—

(6) This section is repealed October 1, 2031 ~~2023~~, unless reviewed and saved from repeal by the Legislature.

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

CourtSmart Tag Report

Room: SB 110
Caption: Commerce Committee

Case No.:
Judge:

Type:

Started: 11/2/2021 9:01:15 AM

Ends: 11/2/2021 9:24:23 AM

Length: 00:23:09

9:01:14 AM Chair calls meeting to order
9:01:15 AM Roll Call; quorum present
9:01:44 AM Chair gives opening comments
9:02:24 AM Tab 1, SB 336 by Sen. Berman
9:03:43 AM Robert Barron waives in support of bill
9:04:17 AM Sen. Berman waives close
9:04:25 AM Roll call on SB 336
9:04:38 AM SB 366 passes favorably
9:04:56 AM Tab 2, SM 174 by Sen. Pizzo
9:05:22 AM Amendment 418592
9:05:42 AM Amendment 418592 is adopted
9:06:02 AM Sen. Pizzo closes on bill as amended
9:06:24 AM Roll call on CS/SM 174
9:06:32 AM CS/SM 174 passes favorably
9:06:46 AM Tab 3, SB 288 by Sen. Garcia
9:08:17 AM Edgar Castro, Recording Industry Association of America, waives in support of bill
9:08:31 AM Sen. Garcia waives close on bill
9:08:42 AM Roll call on SB 288
9:08:50 AM SB 288 passes favorably
9:08:55 AM Chair passes to Sen Wright
9:09:01 AM Tab 4, SB 434 by Sen Hooper
9:09:48 AM Sen. Hooper explains bill
9:10:08 AM Jack Hebert, American Advertising Federation, waives in support
9:10:20 AM Carolyn Johnson, FL Chamber of Commerce, waives in support
9:10:37 AM Phillip Suderman, Americans for Prosperity, speaking against bill
9:12:47 AM Sen. Pizzo, question to speaker
9:13:48 AM Mr. Suderman responds
9:14:30 AM Sen. Pizzo follow up question
9:14:56 AM Response of Speaker
9:15:51 AM Chris Carmody, Central Florida Hotel and Lodging Association, waives in support
9:16:00 AM Samantha Padgett, FL Restaurant & Lodging Assoc., speaking in support of bill
9:17:23 AM Sen. Torres in debate
9:18:09 AM Sen. Hutson comments
9:18:47 AM Sen. Pizzo comments
9:19:07 AM Chair Wright comments
9:20:01 AM Sen. Hooper closes on SB 434
9:22:52 AM Roll call on SB 434
9:23:00 AM SB 434 passes favorably
9:23:30 AM Sen. Gruters motions to votes affirmative on SB 336 & SM 174. No objection. Motions accepted.
9:23:57 AM Sen. Pizzo motions adjournment
9:24:08 AM Meeting is adjourned