

Tab 1	SB 214 by Burgess; (Identical to H 00221) Sales of Firearms and Ammunition						
307250	A	S	L	RS	CM, Burgess	btw L.109 - 110:	03/07 09:10 AM
103650	SA	S		RCS	CM, Burgess	Delete L.110 - 141:	03/07 09:10 AM
975730	A	S	L	WD	CM, Jones	btw L.143 - 144:	03/07 09:10 AM
Tab 2	SB 844 by Yarborough; (Identical to H 00867) Sales Tax Exemption for Renewable Natural Gas Machinery and Equipment						
Tab 3	SB 892 by Martin; (Identical to H 00917) State Minimum Wage						
Tab 4	SB 136 by Gruters; (Compare to CS/H 00179) Florida Kratom Consumer Protection Act						
196652	D	S		RCS	CM, Gruters	Delete everything after	03/07 09:14 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Monday, March 6, 2023

TIME: 3:30—5:30 p.m.

PLACE: James E. "Jim" King, Jr Committee Room, 401 Senate Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 214 Burgess (Identical H 221)	Sales of Firearms and Ammunition; Prohibiting payment settlement entities, merchant acquiring entities, or third party settlement organizations from assigning merchant category codes or otherwise classifying merchants of firearms or ammunition separately from general merchandise or sporting goods retailers; authorizing the Department of Agriculture and Consumer Services to investigate certain alleged violations and bring administrative actions, etc. BI 02/21/2023 Favorable CM 03/06/2023 Fav/CS RC	Fav/CS Yeas 7 Nays 2
2	SB 844 Yarborough (Identical H 867)	Sales Tax Exemption for Renewable Natural Gas Machinery and Equipment; Providing a sales tax exemption for the purchase of certain machinery and equipment relating to renewable natural gas; requiring purchasers of such machinery and equipment to furnish the vendor with a certain affidavit; providing an exception; providing penalties, including a criminal penalty, etc. CM 03/06/2023 Favorable FT AP	Favorable Yeas 10 Nays 0
3	SB 892 Martin (Identical H 917)	State Minimum Wage; Specifying that individuals entitled to receive the federal minimum wage under the Federal Fair Labor Standards Act, as amended, are eligible to receive the state minimum wage, etc. CM 03/06/2023 Favorable GO RC	Favorable Yeas 8 Nays 2

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, March 6, 2023, 3:30—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 136 Gruters (Compare CS/H 179)	Florida Kratom Consumer Protection Act; Creating the "Florida Kratom Consumer Protection Act"; prohibiting processors from selling, preparing, distributing, or exposing for sale certain kratom products; prohibiting processors from distributing, selling, or exposing for sale a kratom product to an individual under 21 years of age; providing civil penalties, etc. CM 03/06/2023 Fav/CS AEG FP	Fav/CS Yeas 10 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 214

INTRODUCER: Commerce and Tourism Committee and Senator Burgess

SUBJECT: Sales of Firearms and Ammunition

DATE: March 7, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Knudson	BI	Favorable
2.	McMillan	McKay	CM	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 214 revises Florida gun registry laws to prohibit certain entities from using an identifying code for purchases from firearm or ammunition retailers. The information gathered from the use of such codes could be construed as a firearm registry maintained by private entities, which current law prohibits. The bill:

- Makes Legislative findings with respect to maintaining records or tracking by nongovernmental entities of the purchase of firearms and ammunition, specifying that such records and tracking may frustrate the right to keep and bear arms and violates the reasonable privacy rights of lawful purchasers of firearms or ammunition;
- Prohibits payment settlement entities, merchant acquiring entities, third party settlement organizations, or entities involved in facilitating or processing a payment card transaction from classifying or assigning merchants with a merchant category code (“MCC”) that identifies them as sellers of firearms or ammunition;
- Amends the penalties under current law in s. 790.335, F.S., to only apply to the law prohibiting any person, public or private, from keeping a registry of privately owned firearms; and
- Authorizes the Department of Agriculture and Consumer Services (DACS) to conduct investigations of alleged violations of the new provisions on MCCs, and to bring an administrative action seeking to impose penalties for such violations.

The bill takes effect on July 1, 2023.

II. Present Situation:

The Right to Bear Arms & Firearms Regulation

The Second Amendment states: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment conferred an individual right to keep and bear arms. However, the right is not unlimited.¹

Federal Regulation of Firearms

In applying *Heller*, a United States Court of Appeals held that a requirement to register a handgun² is constitutional.³ However, the Firearm Owners’ Protection Act of 1986 (FOPA) expressly prohibits any rule or regulation from requiring any records that must be maintained under the Act from being recorded or transferred to a United States or any State owned or controlled facility, or any firearm registration system from being established.⁴

A licensed importer, manufacturer, or dealer must not transfer a firearm to any other person who is not licensed unless a national instant criminal background check is completed and the system provides the licensee with a unique identification number, or 3 days have elapsed without receiving notification that such person is ineligible to receive such firearm or that the receipt of such firearm would violate federal, state, local, or tribal law.⁵ If the background check reveals that receipt or transfer of a firearm by a person would not result in a violation of applicable laws, the national instant criminal background check system must destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.⁶ If receipt or transfer of a firearm would result in a violation of applicable laws, the Attorney General must report to local law enforcement authority certain information, such as the identity of the person.⁷

Florida Firearms Laws

The Florida Constitution guarantees “the right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state...except that the manner of bearing arms may be regulated by law.”⁸ Generally, a person does not need a license to possess or use a firearm⁹ in

¹ *District of Columbia v. Heller*, 554 U.S. 570, 595-626 (2008). 18 U.S.C. s. 922 provides that certain persons are ineligible to purchase or possess a firearm including, for instance, specified convicted criminals, fugitives from justice, illegal aliens, and persons who are adjudicated mentally defective or involuntarily committed to treatment. However, 18 U.S.C. s. 922(g)(3), relating to a person who is an unlawful user of or addicted to any controlled substance, was recently held unconstitutional. See *United States v. Harrison*, 2023 WL 1771138 (2023).

² 18 U.S.C. s. 921(30) defines “handgun” as (A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and (B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

³ *Heller v. District of Columbia*, 670 F.3d 1244, 1254-55 (D.C.Cir.2011).

⁴ 18 U.S.C. s. 926(a).

⁵ 18 U.S.C. s. 922(t).

⁶ 18 U.S.C. s. 922(t)(2).

⁷ 18 U.S.C. s. 925B(a).

⁸ Art. I, s. 8(a), Fla. Const.

⁹ Section 790.01(6), F.S., defines “firearm” as any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm

Florida. However, a person is prohibited from openly carrying a firearm on or about his or her person¹⁰ unless the person is a law enforcement officer or engaged in one of the activities listed in s. 790.25(3), F.S., such as hunting, camping, or military service. A violation of this prohibition is punishable as a second degree misdemeanor.¹¹ The open carry prohibition does not apply to a person who holds a concealed weapons license and who briefly and openly displays a firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner.¹²

Except in certain circumstances while in the act of evacuating¹³ during a state of emergency, a person who carries a concealed weapon on or about his or her person without a license commits a third degree felony.¹⁴ The Department of Agriculture and Consumer Services (DACS) must issue a concealed weapon or firearm¹⁵ license to a person who meets the specified qualifications under s. 790.06, F.S.¹⁶ Personal identifying information of an applicant or an individual who has received a concealed weapons license held by the Division of License of the DACS is confidential and exempt from public records disclosure requirements under s. 119.07(1), F.S., and s. 24(a), Art. 1 of the State Constitution.¹⁷

A person must be 21 years or older to purchase a firearm.¹⁸ Further, except for certain exclusions,¹⁹ there is a mandatory waiting period between the purchase²⁰ and delivery of a firearm. The purchaser must wait 3 days,²¹ or for the completion of the records checks required

muffler or firearm silencer; any destructive device; or any machine gun. The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of a crime.

¹⁰ Section 790.053(1), F.S.

¹¹ Section 790.053(3), F.S. A second degree misdemeanor is punishable by up to 60 days in jail, a \$500 fine, or both. Sections 775.082 and 775.083, F.S.

¹² Section 790.053(1), F.S. The open carry prohibition does not apply to necessary self-defense.

¹³ Section 790.053(3)(a), F.S., defines “in the act of evaluating” as the immediate and urgent movement of a person away from the evacuation zone within 48 hours after a mandatory evacuation is ordered.

¹⁴ Section 790.01(2) and (3)(a), F.S. A third degree felony is punishable by up to five years imprisonment, a \$5,000 fine, or both. Sections 775.082 and 775.083, F.S.

¹⁵ For purposes of Section 790.06, F.S., “concealed weapons” or “concealed firearms” are defined to include a “handgun, electronic weapon or device...but not a machine gun...” Section 790.001(9), F.S., defines “machine gun” as any firearm, as defined herein, which shoots, or is designed to shoot, automatically more than one shot, without manually reloading, by a single function of the trigger.

¹⁶ Section 790.06(2), F.S. provides for the criteria which must be met to be eligible for a license, including, but not limited to: 1) Be a resident and citizen of the United States, permanent resident alien of the United States, or consular security official that meets certain criteria; 2) Is 21 years of age or older; 3) Does not suffer from a physical infirmity which prevents the safe handling of a firearm; 4) Is not ineligible to possess a firearm due to a felony conviction; 5) Has not been found guilty or had adjudication withheld for committing certain crimes; 6) Does not chronically and habitually use alcoholic beverages or other substances; and 7) Demonstrates competence with a firearm by, for instance, completing a specified course.

¹⁷ Section 790.0601(1), F.S.

¹⁸ Section 790.065(13), F.S. A licensed importer, manufacturer, or dealer who sells or transfers or facilitates such a sale or transfer of a firearm to a person younger than 21 years of age commits a third degree felony punishable under s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.

¹⁹ Section 790.0655(2), F.S., provides that the exclusions include when a firearm is being purchased by a person who holds a concealed weapons permit, a trade-in of another firearm, to purchase a rifle or shotgun in certain circumstances.

²⁰ Section 790.0655(1), F.S., defines “purchase” as the transfer of money or other valuable consideration to the retailer, and “retailer” means and includes a licensed importer, manufacturer, or dealer engaged in the business of making firearm sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state.

²¹ Excluding weekends and legal holidays.

under s. 790.065, F.S., whichever occurs later.²² Firearm sales records must be made available for inspection by any law enforcement agency.²³

Florida Law – Records of Firearms Owners

Any records containing the information set out in s. 790.065(1), F.S., pertaining to a buyer or transferee who is not prohibited from receipt or transfer of a firearm under federal or Florida law, are deemed confidential and exempt from public disclosure pursuant to s. 119.07(1), F.S., and may not be disclosed by the Florida Department of Law Enforcement (FDLE) to any person or to another agency.²⁴ The FDLE must destroy any such records after communicating the approval or nonapproval numbers to the licensee and, in any event, no later than 48 hours after the day of the response to the licensee's request.²⁵ However, the FDLE may maintain records of National Crime Information Center transactions as required under federal law, and may keep:

- A log of dates of requests for criminal history records checks;
- Unique approval and nonapproval numbers;
- License identification numbers; and
- Transaction numbers corresponding to such dates for a period of two years or less or as otherwise required by law.²⁶

The provisions in ch. 790, F.S., do not allow Florida to maintain records containing the names of purchasers or transferees who receive unique approval numbers or to keep records of firearm transactions.²⁷ Any current or former officer or employee of the FDLE or law enforcement agency who intentionally or maliciously violates these provisions is guilty of a third degree felony.²⁸

The Florida Legislature has made findings that a list, record, or registry of lawfully owned firearms or law-abiding firearm owners is not a law enforcement tool or tool for fighting terrorism, but may be used as a “shopping list for thieves,” or as an instrument for profiling, harassing, or abusing law-abiding citizens based on their choice to exercise a constitutionally protected right to keep and bear arms. Florida law prohibits certain governmental entities, such as state agencies or local governments, or their officials, agents, or employees, or any other person from knowingly and willfully keeping any list, record, or registry of privately owned firearms or the owners of such firearms.²⁹ Any governmental entity or its designee that violates this provision commits a third degree felony,³⁰ which must be investigated and prosecuted by the

²² Section 790.0655(1), F.S.

²³ *Id.* See also s. 934.02, F.S., defines “law enforcement agency” as an agency of the State of Florida or a political subdivision thereof or of the United States if the primary responsibility of the agency is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state and if its agents and officers are empowered by law to conduct criminal investigations and to make arrests.

²⁴ Section 790.065(4)(a), F.S.

²⁵ *Id.*

²⁶ Section 790.065(4)(b), F.S.

²⁷ Section 790.065(4)(c), F.S.

²⁸ Section 790.065(4)(d), F.S.

²⁹ Section 790.335(2)(a), F.S.

³⁰ Section 790.335(4)(a), F.S. Except as provided under the U.S. and Florida Constitutions, public funds may not be used to defend the unlawful conduct of a person who is charged with such a violation unless the charges are dismissed or the person is found not guilty after a trial. Public funds, however, may be used to provide services of the office of the public defender or court-appointed conflict counsel as provided by law. Section 779.335(4)(b), F.S.

state attorney in the appropriate jurisdiction.³¹ Such entity or person may be assessed a fine of up to \$5 million if the court finds that the list, record, or registry was compiled or maintained with the management's knowledge or complicity.³² The Attorney General has authority to bring a civil cause of action to enforce such fines.³³

Use of Merchant Category Codes When Purchasing Firearms

Key Players in Credit Card Transactions

There are several key players that are involved in authorization and payment settlement of credit card transactions, as follows:

- “Participating payee” means (i) in the case of a payment card transaction,³⁴ any person who accepts a payment card³⁵ as payment; and (ii) in the case of a third party network transaction, any person who accepts payment from a third party settlement organization in settlement of such transaction.³⁶ A participating payee may be, for instance, a merchant in a credit card transaction.³⁷
- “Payment settlement entity” means: (A) in the case of a payment card transaction, the merchant acquiring entity; and (B) in the case of a third party network transaction, the third party settlement organization.³⁸ Such entities generally include banks or other organizations that process credit card transactions on behalf of a merchant and make an interbank transfer of funds to the merchant from a customer.³⁹
- “Merchant acquiring entity” means the bank or other organization which has the contractual obligation to make payment to participating payees in settlement of payment card transactions.⁴⁰ A merchant acquiring entity is typically called acquiring bank or merchant bank, and is the bank or other organization that process credit card transactions on behalf of a merchant and ultimately transfers the funds received from the customer's bank (called an “issuing bank”⁴¹) to the merchant's account.⁴²

³¹ Section 790.335(4)(d), F.S.

³² Section 779.335(4)(c), F.S.

³³ *Id.*

³⁴ 26 U.S.C. s. 6050W(c)(2) defines “payment card transaction” as any transaction in which a payment card is accepted as payment.

³⁵ 26 U.S.C. s. 6050W(d)(2) defines “payment card” as any card which is issued pursuant to an agreement or arrangement which provides for (A) one or more issuers of such cards, (B) a network of persons unrelated to each other, and to the issuer, who agree to accept such cards of payment, and (C) standards and mechanisms for settling the transactions between merchant acquiring entities and the persons who agree to accept such cards as payment. The acceptance as payment of any account number or other indicia associated with a payment card shall be treated for purposes of this section in the same manner as accepting such payment card as payment.

³⁶ 26 U.S.C. s. 6050W(d)(1)(A).

³⁷ IRS, *IRC Section 6050W Frequently Asked Questions*, available at: [Frequently Asked Questions \(irs.gov\)](https://www.irs.gov/faq/6050w) (last visited March 7, 2023).

³⁸ 26 U.S.C. s. 6050W(b)(1).

³⁹ Bonner, P., *Journal of Accountancy, New, Lower Form 1099-K Threshold Prompts Cautions, Criticisms*, Mar. 10, 2022, available at: [New, lower Form 1099-K threshold prompts cautions, criticisms - Journal of Accountancy](https://www.journalofaccountancy.com/article/new-lower-form-1099-k-threshold-prompts-cautions-criticisms) (hereinafter cited as “Journal of Accountancy Article”) (last visited March 7, 2023).

⁴⁰ 26 U.S.C. s. 6050W(b)(2).

⁴¹ An issuing bank is also often referred to as “card issuer. 15 U.S.C. 1602(o) defines “card issuer” as any person who issues a credit card, or the agent of such person with respect to such card.

⁴² IRS FAQ, *supra* note 37.

- “Third party settlement organization” means the central organization which has the contractual obligation to make payment to participating payees of third party network transactions.^{43,44} The most common example of a third-party settlement organization is an online auction-payment facilitator, which operates merely as an intermediary between buyer and seller by transferring funds between accounts in settlement of an auction/purchase.⁴⁵

Merchant Category Codes

The International Organization for Standardization (ISO), a non-governmental organization that develops international standards, has established a standard which contains a list of merchant category codes (“MCC”), titled ISO 18245:2023 Retail Financial Services – Merchant Category Codes (the “ISO 2023 Standard”).⁴⁶ A MCC is a four-digit number assigned to a merchant by an acquiring bank (or processor) in compliance with card association or network rules⁴⁷ when the business opens a merchant account to classify the business by specific market segment and to allow the business to begin accepting credit cards as a form of payment.⁴⁸ Visa’s general rules for assignment of MCCs include, in summary:

- Select the MCC that most accurately describes the merchant’s primary type of business. If the merchant has more than one line of business, the merchant must either:
 - Use the MCC that describes the business with the highest sales volume to process all Visa sales; or
 - Use different MCCs for each line of business.
- Use “miscellaneous” MCCs only if there is no MCC specific to the merchant’s business.
- Merchants with multiple outlets must choose the appropriate MCC for each outlet.
- If there are different businesses operating on the same premises, each business must be assigned its own MCC if certain criteria applies.
- When applicable, use the unique merchant-specific MCC that are designated for major travel and entertainment.⁴⁹

MCCs are used for a several reasons, including to: file reports with the Internal Revenue Service (IRS), determine rewards, identify high-risk business models and prohibited business types, track

⁴³ 26 U.S.C. s. 6050W(c)(3) defines “third party network transaction” as any transaction described in subsection (d)(3)(A)(iii) which is settled through a third party payment network. 26 U.S.C. s. 6050W(d)(3) defines “third party payment network” as any agreement or arrangement (A) which involves the establishment of accounts with a central organization by a substantial number of persons who (i) are unrelated to such organization, (ii) provide goods or services, and (iii) have agreed to settle transactions for the provision of such goods or services pursuant to such agreement or arrangement, (B) which provides for the standards and mechanisms for settling such transactions, and (C) which guarantees persons providing goods or services pursuant to such agreement or arrangement that such persons will be paid for providing such goods or services. Such term shall not include any agreement or arrangement which provides for the issuance of payment cards.

⁴⁴ 26 U.S.C. s. 6050W(b)(3).

⁴⁵ IRS, *IRC Section 6050W Frequently Asked Questions*, available at: [Frequently Asked Questions \(irs.gov\)](https://www.irs.gov/faq/6050w) (last visited March 7, 2023). Third party settlement organizations include PayPal, Venmo, and CashApp.

⁴⁶ The ISO, *About Us*, available at: [ISO - About us](https://www.iso.org/iso-18245-2023-retail-financial-services-merchant-category-codes) (last visited March 7, 2023); ISO, *ISO 18245:2003 Retail financial services – Merchant category codes*, available at: [ISO - ISO 18245:2023 - Retail financial services — Merchant category codes](https://www.iso.org/iso-18245-2023-retail-financial-services-merchant-category-codes) (all sites last visited March 7, 2023).

⁴⁷ See Visa, *Visa Merchant Data Standards Manual: Visa Supplemental Requirements*, Nov. 2021, [visa-merchant-data-standards-manual.pdf](https://www.visa.com/merchant-data-standards-manual.pdf) (hereinafter cited as “Visa’s MCC Manual”) (last visited March 7, 2023).

⁴⁸ Dwyer, B., CardFellow, *Merchant Category Code: Reporting & Rates*, Apr. 6, 2020, available at: [What are Merchant Category Codes and Why Do They Matter? \(cardfellow.com\)](https://www.cardfellow.com/merchant-category-codes-and-why-do-they-matter/) (last visited March 7, 2023).

⁴⁹ See Visa’s MCC Manual.

customer spending, and establish merchant interchange rates.⁵⁰ Businesses with “high-risk” MCCs generally pay higher fees.⁵¹ A MCC is the code of the merchant where the purchase is made but it does not specify the items that were purchased.⁵²

Each credit card network has its own master list of MCCs with many of the codes being standardized and based on the ISO Standard.⁵³ Some financial organizations, third party settlement organizations, or processors also have their own MCC lists.⁵⁴ Historically, retailers who sell firearms and ammunition have been assigned a merchant category code of miscellaneous retail stores or sporting goods stores.⁵⁵ On September 7, 2022, the ISO approved an application by a New York-based bank to adopt a new MCC for firearm retailers.⁵⁶ The ISO has updated the ISO 2003 Standard for MCCs in 2023, which includes a gun code of 5723 for “gun and ammunition shops.”⁵⁷ MCCs adopted by the ISO are not required to be used,⁵⁸ but Visa Inc. (Visa), MasterCard Inc. (MasterCard), and American Express, Inc. (together, the “Card Associations”) have all agreed to use the new MCC.⁵⁹ However, Visa and MasterCard have not yet updated their lists to include a new MCC for firearm retailers.⁶⁰

Advocates for the new MCC for firearm retailers support the measure as a means for financial institutions to identify and report suspicious activity, such as unusually large purchases of weapons or ammunition.⁶¹ Critics raise concerns about the new MCC being tantamount to creating a national registry of gun owners.⁶² On September 20, 2022, twenty-four attorneys

⁵⁰ See Citi, *Merchant Category Codes*, available at: [Merchant-Category-Codes.pdf \(citibank.com\)](https://www.citibank.com/merchant-category-codes/pdf) (hereinafter cited as “Citi MCC Guide”) (last visited March 7, 2023).

⁵¹ TD Ameritrade, *Fee Changes for Merchants in High Brand Risk Categories*, available at: [Fee Changes for Merchants in High Brand Risk Categories \(td.com\)](https://www.td.com/fee-changes-for-merchants-in-high-brand-risk-categories) (last visited March 7, 2023).

⁵² Maruf, R. CNN Business. *Credit Card Companies Will Adopt New Sales Code for Gun Transactions*, Sept. 11, 2022, available at: [Credit card companies will adopt new sales code for gun transactions | CNN Business](https://www.cnn.com/2022/09/11/credit-card-companies-gun-transactions/index.html) (hereinafter cited as “The CNN Article”) (all sites last visited March 7, 2023).

⁵³ Motola, C., Merchant Maverick, *Merchant Category Codes (MCC): All You Need to Know*, May 26, 2021, available at: [The Complete Guide to Merchant Category Codes \(MCCs\) \(merchantmaverick.com\)](https://www.merchantmaverick.com/merchant-category-codes) (last visited March 7, 2023).

⁵⁴ Citi MCC Guide; Irby, L., *The Balance, If I Use My Credit Card Through PayPal, Can I Still Earn Bonus Points?*, Apr. 6, 2021, available at: [If I Use My Credit Card Through PayPal, Can I Still Earn Bonus Points? \(thebalancemoney.com\)](https://www.thebalancemoney.com/if-i-use-my-credit-card-through-paypal-can-i-still-earn-bonus-points-2846828) (last visited March 7, 2023).

⁵⁵ The CNN Article.

⁵⁶ Kerber, R., Reuters, *Global Standards Body Approves New Merchant code for Gun Sellers*, Sept. 9, 2022, available at: [Global standards body approves new merchant code for gun sellers | Reuters](https://www.reuters.com/business/global-standards-body-approves-new-merchant-code-for-gun-sellers-2022-09-09/) (last visited March 7, 2023).

⁵⁷ ISO, *ISO 18245:2023(en) Retail Financial Services – Merchant Category Codes*, available at: [ISO 18245:2023\(en\), Retail financial services — Merchant category codes](https://www.iso.org/standard/78442.html) (hereinafter cited as “ISO 2023 MCC Standard”) (last visited March 7, 2023); ISO, Electronic mail from Audrey Himmer, ISO/TC68/SC9 Committee Manager, *Re: New Merchant Category Code for Firearm Retailers*, February 20, 2023 (on file with the Senate Committee on Banking and Insurance) (attaching MerchantCategoryCodes 14092022).

⁵⁸ *Id.*

⁵⁹ Mion, L., Fox Business, *Visa, MasterCard, Amex, to Categorize Gun Store Sales Separately*, Sept. 11, 2022, available at: [Visa, Mastercard, AmEx to categorize gun store sales separately | Fox Business](https://www.foxbusiness.com/story/visa-mastercard-amex-to-categorize-gun-store-sales-separately-2022-09-11/) (last visited March 7, 2023).

⁶⁰ Visa MCC Manual; MasterCard, *Quick Reference Booklet – Merchant Edition*, Nov. 15, 2008, available at: [Quick Reference Booklet—Merchant Edition \(mastercard.us\)](https://www.mastercard.us/quick-reference-booklet-merchant-edition) (last visited March 7, 2023) (In Visa’s and MasterCard’s MCC lists, noting firearms under codes 5099 and 5999, for durable goods (not elsewhere classified) and miscellaneous and specialty retail shops, respectively).

⁶¹ CBS New York Team, CBS New York, *New York Leaders Call for Establishment of Merchant Category Code for Gun and Ammunition Stores*, Aug. 30, 2022, available at: [New York leaders call for establishment of merchant category code for gun and ammunition stores - CBS New York \(cbsnews.com\)](https://www.cbsnews.com/news/new-york-leaders-call-for-establishment-of-merchant-category-code-for-gun-and-ammunition-stores/) (last visited March 7, 2023).

⁶² The CNN Article.

general, including Florida, sent a letter to the Card Associations expressing concerns about the potential to misuse the new MCC by tracking data that could infringe upon consumers' privacy. Additionally, they asserted that isolating merchants who sell firearms may inhibit such purchases or result in "arbitrary disparate treatment" of firearm retailers and consumers.⁶³

Federal Credit Laws

The Truth in Lending Act (TILA), also known as the Consumer Protection Act, was established to ensure that consumers receive adequate disclosure of credit terms, and to "protect the consumer against inaccurate and unfair billing and credit card⁶⁴ practices."⁶⁵ The TILA includes provisions on credit card accounts that restrict: (a) penalty fees or charges that a card issuer, or issuing bank, may impose,⁶⁶ (b) modifications to the annual percentage rate,^{67,68} (c) a card issuer's discretion to open or increase any credit limit unless the card issuer considers certain information,⁶⁹ and (d) the content of advertisements in relation to specified information.⁷⁰ Before opening a credit card account, a creditor,⁷¹ which may be an issuing bank in a credit card

⁶³ Skrmetti, J. and others, Letter from Attorneys General to Card Associations regarding MCCs, *Tennessee State Government, International Organization for Standardization (ISO)* (<https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2022/pr22-36-letter.pdf>) (last visited March 7, 2023). The following five states have pending legislation that is similar to or addresses the issues identified in SB 214: Purchases from Licensed Gun Dealers, KY HB221, 2023 Regular Session, ch. 367 (2023); Second Amendment Financial Privacy Act, MS HB1110, 2023 Regular Session (2023); Notice to Consumers Regarding Firearm or Ammunition Transactions, TX HB2041, 2023-2024 88th Legislature Session (2023); Prohibiting Banks and Payment Networks from Tracking Firearm-related Data and Outlining Penalties, WV SB555, 2023 Regular Session (2023); and Banks, Banking and Finance, WY SF0171, 2023 General Session (2023). There is one state, Oklahoma, which had a Senate bill filed that is similar to SB 214 but it has failed. Oklahoma Second Amendment Financial Privacy Act, OK SB 814, 59th Legislature (2023).

⁶⁴ 15 U.S.C. s. 1602(l) defines "credit card" as any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

⁶⁵ 15 U.S.C. s. 1601(a). The TILA does not apply to certain categories of credit, such as transactions primarily for business, commercial, or agricultural purposes, or to governmental agencies. 15 U.S.C. s. 1603(1); 12 C.F.R. s. 1026.3.

⁶⁶ 15 U.S.C. s. 1665d(a).

⁶⁷ 15 U.S.C. s. 1606(a) (stating that the "annual percentage rate" as applicable to any extension of consumer credit shall be determined, in accordance with the regulations of the Bureau of Consumer Financial Protection (the "Bureau"), ... (2) in the case of any extension of credit under an open end credit plan, as the quotient (expressed as a percentage) of the total finance charge for the period to which it relates divided by the amount upon which the finance charge for that period is based, multiplied by the number of such periods in a year). 12 C.F.R. s. 1026.14(a) states that the "annual percentage rate" is a measure of the cost of credit, expressed as a yearly rate. 12 C.F.R. s. 1026.4 defines "finance charge" as the cost of consumer credit as a dollar amount and 15 U.S.C. s. 1605(a) lists examples of charges which are included in the finance charge such as interest, service or carrying charge, loan fee, finder's fee, fee for an investigation or credit report, or charge for any guarantee or insurance protecting the creditor against the obligor's default.

⁶⁸ 15 U.S.C. s. 1665c.

⁶⁹ 15 U.S.C. s. 1665e.

⁷⁰ 15 U.S.C. ss. 1662 and 1663; 12 C.F.R. s. 1026.16.

⁷¹ 15 U.S.C. s. 1602(g) defines "creditor" to mean only a person who both (1) regularly extends, whether in connection with loans, sales property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the preceding sentence, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge are creditors. For the purpose of the requirements imposed under part D of ss. 1637(a)(5) – (7), 1637(b)(1)-(3), 1637(b)(8), and 1637(b)(10) of Title 15, the term "creditor" shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Bureau shall, by

transaction, must disclose to the person to whom credit is to be extended specified information relating to, in part, finance charges and terms of the credit,⁷² and certain information relating to applications, solicitations, and opening of accounts.⁷³

Further, a creditor is also required to provide a statement for each billing cycle with specified information, such as the outstanding balance and the amount and date of each extension of credit.⁷⁴ There are special rules that apply to credit card accounts offered to college students that require a card issuer to disclose a range of balances to which each periodic rate applies for a “category of transactions”.⁷⁵ The Fair Credit Billing Act prohibits a card issuer from requiring a merchant to open an account with or procure any other service from a credit card issuer as a condition to participating in a credit card plan,⁷⁶ and limits the circumstances under which a creditor may increase specified rates, fees, and charges.⁷⁷ No provisions were identified under these acts that impose any requirements, protections, or restrictions with respect to MCCs.

Anti-money Laundering Laws

Anti-money Laundering Laws aim to detect and prevent money laundering and deter financial criminal activity.⁷⁸ One provision authorizes the Secretary of the Treasury to require any financial institution⁷⁹ or certain individuals related to financial institutions to report any suspicious transaction relevant to a possible violation of law or regulation.⁸⁰ The federal rules require banks, federally and non-federally regulated, to establish anti-money laundering programs which must meet specified requirements.⁸¹ One such requirement is to conduct ongoing monitoring to identify and report suspicious transactions.⁸² The term “suspicious

regulation, apply these requirements to such a card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans.

⁷² 15 U.S.C. s. 1637(a).

⁷³ *Id.* at (c); 12 C.F.R. s. 1026.6.

⁷⁴ 15 U.S.C. s. 1637 (b).

⁷⁵ 12 C.F.R. s. 1026.60(b)(1).

⁷⁶ 15 U.S.C. s. 1666g.

⁷⁷ 15 U.S.C. s. 1666i-1(a) and (b).

⁷⁸ 31 U.S.C. s. 5311(2) and (3).

⁷⁹ 31 U.S.C. s. 5312(a)(2) defines “financial institution” as an insured bank; a commercial bank or trust company; a private banker; an agency or branch of a foreign bank in the United States; any credit union; a thrift institution; a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); a broker or dealer in securities or commodities; an investment banker or investment company; a currency exchange, or a business engaged in the exchange of currency, funds, or value that substitutes for currency of funds; an issuer, redeemer, or cashier of travelers’ checks, checks, money orders, or similar instruments; an operator of a credit card system; an insurance company; a dealer in precious metals, stones or jewels; a pawnbroker; a loan or finance company; a travel agency; a licensed sender of money or any other person who engages as a business in the transmission of currency, funds, or value that substitutes for currency; a telegraph company; a business engaged in vehicle sales, including automobile, airplane, and boat sales; persons involved in real estate closings and settlements; the United States Postal Service; an agency of the United States Government or of a State or local government carrying out a duty or power of a business described in this paragraph; a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than \$1 million; any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation to be an activity which is similar to, or related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage; or any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.

⁸⁰ 31 U.S.C. s. 5318(g)(1).

⁸¹ 31 C.F.R. 1020.210.

⁸² 31 C.F.R. 1020.10(a)(2)(v)(B) and (b)(2)(v)(B).

activity” means “any observed behavior that may indicate pre-operational planning associated with terrorism or terrorism-related crime.”⁸³ The U.S. Department of Homeland Security website contains “Signs of Suspicious Activity,” which displays images and a description of categories for signs of suspicious activities. One such sign illustrates a firearm and suggests that weapons collection or storage of unusual amounts of weapons is suspicious activity.⁸⁴

Internal Revenue Code

Payment settlement entities are required to make an annual return to the Internal Revenue Service (IRS) which contains, amongst other information, the gross amount of the reportable payment transactions⁸⁵ with respect to each participating payee.⁸⁶ The Secretary of the Treasury by regulations has the authority to determine the time, form, and manner in which the return must be made,⁸⁷ and has designated Form 1099-K as the form to use to report such information. The form contains a box to report the MCC assigned to the participating payee for which the form is being completed. The MCC may be excluded from the form if the filing entity uses an industry classification system other than or in addition to MCCs or is a third party settlement organization.⁸⁸ Broadly speaking, the MCCs classify businesses based on whether they predominately furnish services or goods. Payments for services are reportable, but payments for goods are not reportable.⁸⁹

Florida Credit Card Laws

Relevant Florida laws that relate to credit cards⁹⁰ are contained in the Financial Institutions Code and the Consumer Protection Act. A financial institution⁹¹ is authorized to make an extension of credit to any person on a credit card and to charge interest on the outstanding amount at a certain rate.⁹² Florida’s Credit Card Bank Act provides that a credit card account between a domestic

⁸³ The United States Department of Homeland Security, *Recognize Suspicious Activity*, available at: [Recognize Suspicious Activity | Homeland Security \(dhs.gov\)](https://www.dhs.gov/recognize-suspicious-activity) (last visited March 7, 2023).

⁸⁴ *Id.*

⁸⁵ 26 U.S.C. s. 6050W(c) defines “reportable payment transaction” as any payment card transaction and any third party network transaction.

⁸⁶ 26 U.S.C. s. 6050W(a).

⁸⁷ *Id.*

⁸⁸ IRS, *Instructions for Form 1099-K (01/2022)*, Jan. 2022, available at: [Instructions for Form 1099-K \(01/2022\) | Internal Revenue Service \(irs.gov\)](https://www.irs.gov/irb/2022-01/01/irb22-01) (last visited March 7, 2023).

⁸⁹ IRS, *Rev. Proc. 2004-43*, Aug. 2, 2004, available at: [Internal Revenue Bulletin: 2004-31 | Internal Revenue Service \(irs.gov\)](https://www.irs.gov/irb/2004-31/irb2004-31) (last visited March 7, 2023).

⁹⁰ Section 658.995(2)(a), F.S., defines “credit card” as any type of arrangement or loan agreement pursuant to which a domestic lender or credit card bank gives a borrower the privilege of using the credit card or other credit confirmation or device of any type in transactions out of which debt arises, including: by the domestic lender or credit card bank honoring a draft or similar order for the payment of money created, authorized, issued, or accepted by the borrower; or by the domestic lender or credit card bank paying or agreeing to pay the borrower’s obligation.

⁹¹ Section 655.005(1)(i), F.S., defines “financial institution” as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

⁹² Section 655.954(1), F.S.

lender⁹³ or credit card bank⁹⁴ and a borrower must be governed by the laws of Florida or federal law unless otherwise expressly agreed in writing by the parties.⁹⁵ Florida consumer protection laws set out a limited number of protections relating to credit cards,⁹⁶ such as provisions relating to issuing credit cards,⁹⁷ imposing a surcharge,⁹⁸ or printing certain information on a merchant's receipt.⁹⁹ No provisions were identified that explicitly restrict or address the use of MCCs.

III. Effect of Proposed Changes:

The bill contains several “whereas” clauses as an introduction to the bill that explains its background.

The bill amends s. 790.335(1)(a), F.S., to include an additional Legislative finding which states:

The creation or maintenance of records of purchases of firearms or ammunition or the tracking of sales made by a retailer of firearms or ammunition by a nongovernmental entity, including a financial institution, without a substantial and historical business need or a requirement imposed by law, may frustrate the right to keep and bear arms and violate the reasonable privacy rights of lawful purchasers of firearms or ammunition.

The bill prohibits a payment settlement entity,¹⁰⁰ merchant acquiring entity,¹⁰¹ third party settlement organization,¹⁰² or entities involved in facilitating or processing a payment card transaction from classifying or assigning a merchant category code to or otherwise classifying a merchant that sells firearms or ammunition separately from general merchandise or sporting goods retailers.

The bill provides that the current penalties under s. 790.335, F.S.,¹⁰³ only apply to paragraph (2)(a), which prohibits any governmental agency or local government, special district, or other political subdivision or official, agent, or employee of Florida or other governmental entity or any other person, public or private from keeping a registry of privately owned firearms.

⁹³ Section 658.995(2)(d), F.S., defines “domestic lender” as any bank, savings and loan association, credit union, or other business organization organized or chartered under the laws of Florida or of the United States, which in any event is authorized by law to accept deposits and make loans and has its principal place of business in Florida.

⁹⁴ See s. 658.995(3), F.S., for the terms and conditions under which certain entities may own or control a credit card bank.

⁹⁵ Section 658.995(4), F.S. However, such writing may not supersede the interest rate provisions of s. 655.954, F.S.

⁹⁶ Ch. 501, F.S.

⁹⁷ Section 501.011(3), F.S.

⁹⁸ Section 501.0117(1), F.S., defines “surcharge” as any additional amount imposed at the time of a sale or lease transaction by the seller or lessor that increases the charge to the buyer or lessee for the privilege of using a credit card to make payment.

⁹⁹ Section 501.0118(2), F.S.

¹⁰⁰ 26 U.S.C. s. 6050W(d)(1)(A). The merchant acquiring entity or third party settlement organization.

¹⁰¹ 26 U.S.C. s. 6050W(b)(2). The bank or other entity that has the contractual obligation to pay merchants in settlement of credit card transactions.

¹⁰² 26 U.S.C. s. 6050W(b)(3). The organization which has the contractual obligation to pay merchants of third party network transactions, such as PayPal, Venmo, or CashApp.

¹⁰³ The penalty is a third degree felony. A third degree felony is punishable by up to five years imprisonment, a \$5,000 fine, or both. Sections 775.082 and 775.083, F.S.

The bill authorizes the Department of Agriculture and Consumer Services to investigate alleged violations of s. 790.335(2)(b), F.S., relating to MCCs, and upon finding a violation, to bring an administrative action seeking to impose an administrative fine for each violation of an unlawfully classified retailer. Such administrative fine imposed in the Class III category may not exceed \$10,000 for each violation.¹⁰⁴

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that any payment settlement entities, merchant acquiring entities, or third party settlement organizations violate the provisions in the bill or contest any administrative fines imposed by the DACS for such violations, the bill may result in an indeterminate fiscal impact on them.

¹⁰⁴ See s. 570.971(1)(c), F.S.

C. Government Sector Impact:

To the extent that violators contest any administrative fines through the formal administrative hearing process, the bill may result in an indeterminate fiscal impact on the DACS and the state court system.

The DACS is unable to estimate any fiscal impact the proposed bill may have on the agency.¹⁰⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 790.335 of the Florida Statutes.

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

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

CS by Commerce and Tourism on March 6, 2023:

The committee substitute prohibits an entity involved in facilitating or processing a payment card transaction from assigning or requiring a merchant to use a merchant category code that classifies the merchant as a firearms or ammunition retailer.

Additionally, the amendment provides that a merchant of firearms or ammunition may be assigned a merchant category code for general merchandise retailers or sporting goods retailers, and any agreement or contractual provision to the contrary is void in violation of the public policy of the state. The substitute amendment also clarifies that the department of Agriculture and Consumer Services has enforcement authority for a violation of the above prohibition.

B. Amendments:

None.

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

¹⁰⁵ The DACS, *Agency Analysis for SB 214*, p. 4, January 31, 2023, (on file with the Senate Committee on Banking and Insurance).



307250

LEGISLATIVE ACTION

	Senate	House
Comm: RS	.	
03/07/2023	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 109 and 110

insert:

(c) An entity involved in facilitating or processing a payment card transaction, including, but not limited to, a financial institution, an acquirer, a payment card network, or a payment card issuer, may not assign to or require a merchant to use a merchant category code that classifies the merchant as a firearms or ammunition retailer or places the merchant in a



307250

similar classification. A merchant of firearms or ammunition may be assigned or may use a merchant category code for general merchandise retailers or sporting goods retailers. Any agreement or contractual provision to the contrary is void in violation of the public policy of this state.

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

And the title is amended as follows:

Delete line 9

and insert:

sporting goods retailers; prohibiting entities involved in facilitating or processing payment card transactions from assigning to or requiring a merchant to use certain merchant category codes; authorizing a merchant of firearms or ammunition to be assigned or to use certain merchant category codes; specifying that any agreement or contractual provision to the contrary is void and in violation of the public policy of this state; authorizing the Department



103650

LEGISLATIVE ACTION

	Senate	House
Comm: RCS	.	
03/07/2023	.	
	.	
	.	

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

Senate Substitute for Amendment (307250) (with title amendment)

Delete lines 110 - 141

and insert:

(c) An entity involved in facilitating or processing a payment card transaction, including, but not limited to, a financial institution, an acquirer, a payment card network, or a payment card issuer, may not assign to or require a merchant to use a merchant category code that classifies the merchant as a



103650

firearms or ammunition retailer or places the merchant in a similar classification. A merchant of firearms or ammunition may be assigned or may use a merchant category code for general merchandise retailers or sporting goods retailers. Any agreement or contractual provision to the contrary is void in violation of the public policy of this state.

(4) PENALTIES.—

(a) Any person who, or entity that, violates paragraph (2)(a) a provision of this section commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as required by ~~the provisions of~~ s. 16, Art. I of the State Constitution or the Sixth Amendment to the United States Constitution, ~~no~~ public funds may not ~~shall~~ be used to defend the unlawful conduct of any person charged with a violation of this section, unless the charges against ~~the such~~ person are dismissed or ~~the such~~ person is determined to be not guilty at trial. Notwithstanding this paragraph, public funds may be expended to provide the services of the office of public defender or court-appointed conflict counsel as provided by law.

(c) The governmental entity, or the designee of ~~the such~~ governmental entity, in whose service or employ a list, record, or registry was compiled in violation of paragraph (2)(a) this section may be assessed a fine of up to not more than \$5 million, if the court determines that the evidence shows that the list, record, or registry was compiled or maintained with the knowledge or complicity of the management of the governmental entity. The Attorney General may bring a civil cause of action to enforce the fines assessed under this paragraph.



103650

(d) The Department of Agriculture and Consumer Services may investigate alleged violations of paragraph (2)(b) or paragraph (2)(c) and, upon finding a violation, bring an administrative action seeking to impose an administrative fine pursuant to s. 570.971 in the Class III category for each violation of paragraph (2)(b) or paragraph (2)(c) for each instance of an unlawfully classified retailer.

(e) The state attorney in the appropriate jurisdiction shall investigate complaints of criminal violations of this section, except for alleged violations of paragraph (2)(b) or paragraph (2)(c), and

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

And the title is amended as follows:

Delete line 9

and insert:

sporting goods retailers; prohibiting entities involved in facilitating or processing payment card transactions from assigning to or requiring a merchant to use certain merchant category codes; authorizing a merchant of firearms or ammunition to be assigned or to use certain merchant category codes; specifying that any agreement or contractual provision to the contrary is void and in violation of the public policy of this state; authorizing the Department

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975730

LEGISLATIVE ACTION

Senate		House
Comm: WD	.	
03/07/2023	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 143 and 144

insert:

Section 2. Community Violence Task Force.

(1) The Community Violence Task Force, a task force as defined in s. 20.03(8), Florida Statutes, is created within the Department of Law Enforcement. Except as otherwise provided in this section, the task force shall comply with the requirements of s. 20.052, Florida Statutes.

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(2)(a) The task force shall be composed of 15 members as follows:

1. Four members appointed by the Governor, one of whom the Governor shall designate as the chair of the task force.

2. Four members appointed by the President of the Senate, two of whom must be members of the Legislative Black Caucus of the Senate.

3. Four members appointed by the Speaker of the House of Representatives, two of whom must be members of the Legislative Black Caucus of the House of Representatives.

4. A representative from the Florida Sheriffs Association, nominated by the executive director and appointed by the Governor.

5. A representative from the Florida Police Chiefs Association, nominated by the executive director and appointed by the Governor.

6. The Secretary of Children and Families, or his or her designee.

(b) Members must be appointed no later than August 1, 2023. Members serve at the pleasure of the officer who appointed them, and a vacancy on the task force must be filled in the same manner as the original appointment. Members of the task force shall serve without compensation but are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061, Florida Statutes.

(c) The task force shall meet at the call of the chair at a time and location in this state designated by the chair. The task force may not conduct its meetings by teleconference or other electronic means.

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(3) The task force shall review system failures and the causes of high crime rates and violence in urban core neighborhoods and communities. In addition, the task force shall develop recommendations for solutions, programs, services, and strategies for improved interagency communication between local and state governmental agencies to help facilitate the reduction of crime and violence in urban core neighborhoods and communities.

(4) The Department of Law Enforcement shall provide staffing and administrative assistance to the task force in performing its duties. The task force may call upon other state agencies for such professional assistance as may be needed in the discharge of its duties, and such agencies shall provide such assistance in a timely manner.

(5) Notwithstanding any other law to the contrary, the task force may request and shall be provided with access to any information or records that pertain to crime or violent incidents in this state's urban core neighborhoods and communities. Information or records obtained by the task force which are otherwise exempt or confidential and exempt must retain such exempt or confidential and exempt status, and the task force may not disclose any such information or records.

(6) The task force shall submit a report on its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by June 1, 2025.

(7) This section expires June 30, 2025.

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

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69 And the title is amended as follows:
70 Delete line 14
71 and insert:
72 changes; creating the Community Violence Task Force
73 within the Department of Law Enforcement; providing
74 for membership, duties, and meetings of the task
75 force; requiring state agencies to provide assistance
76 when requested; authorizing the task force to receive
77 exempt or confidential and exempt information and
78 specifying that the information maintains such status;
79 requiring the task force to submit a report to the
80 Governor and Legislature by a specified date;
81 providing for expiration of the task force; providing
82 an effective date.

By Senator Burgess

23-00608-23

2023214__

A bill to be entitled

An act relating to sales of firearms and ammunition; amending s. 790.335, F.S.; providing legislative findings; prohibiting payment settlement entities, merchant acquiring entities, or third party settlement organizations from assigning merchant category codes or otherwise classifying merchants of firearms or ammunition separately from general merchandise or sporting goods retailers; authorizing the Department of Agriculture and Consumer Services to investigate certain alleged violations and bring administrative actions; providing an exception to complaint investigations by state attorneys; making technical changes; providing an effective date.

WHEREAS, the International Standards Organization, based in Switzerland, recently approved a new merchant category code for firearm and ammunition merchants, and

WHEREAS, firearm and ammunition merchants historically have been classified as sporting goods retailers or general merchandise retailers, which has been sufficient for credit card companies' business needs, and

WHEREAS, according to advocates for the new merchant category code, the new code will allow credit card companies to flag "suspicious" transactions, ostensibly for the purpose of predicting and preventing future gun violence, and

WHEREAS, proponents indicate that the new merchant category code is a "first step" but have given no guidance as to how to distinguish suspicious activity from lawful sales, and

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

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WHEREAS, the use of either merchant category code cannot distinguish the sale of a firearm from the sale of a gun safe by a firearms and ammunition merchant, and

WHEREAS, the use of the new merchant category code to detect suspicious activities predicting future unlawful activity will likely discourage financial institutions from serving lawful retailers of firearms and ammunition and chill the lawful exercise of Second Amendment rights, and

WHEREAS, current law requires a firearm retailer to conduct a criminal history records check on a potential purchaser before delivering a firearm to the purchaser, and

WHEREAS, the new merchant category code may result in credit card companies reporting law-abiding citizens to a law enforcement agency based on overbroad definitions of suspicious activity and the creation of a de facto gun registry and watchlists of law-abiding citizens, and

WHEREAS, the use of the new merchant category code will likely make the job of law enforcement officers more difficult, as those purchasing a firearm from a firearm retailer for an unlawful purpose will likely purchase firearms with cash, cryptocurrency, or other means that are difficult or impossible to trace, and

WHEREAS, developing appropriate regulations for the sale of firearms and ammunition while protecting the right of self-defense is the role of democratically elected officials, not the role of unelected bankers and foreign organizations, NOW, THEREFORE,

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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2023214__

Section 1. Paragraph (a) of subsection (1) and subsections (2) and (4) of section 790.335, Florida Statutes, are amended to read:

790.335 Prohibition of registration of firearms; electronic records.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds and declares that:

1. The right of individuals to keep and bear arms is guaranteed under both the Second Amendment to the United States Constitution and s. 8, Art. I of the State Constitution.

2. A list, record, or registry of legally owned firearms or law-abiding firearm owners is not a law enforcement tool and can become an instrument for profiling, harassing, or abusing law-abiding citizens based on their choice to own a firearm and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution. Further, such a list, record, or registry has the potential to fall into the wrong hands and become a shopping list for thieves.

3. A list, record, or registry of legally owned firearms or law-abiding firearm owners is not a tool for fighting terrorism, but rather is an instrument that can be used as a means to profile innocent citizens and to harass and abuse American citizens based solely on their choice to own firearms and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution.

4. The creation or maintenance of records of purchases of firearms or ammunition or the tracking of sales made by a retailer of firearms or ammunition by a nongovernmental entity,

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including a financial institution, without a substantial and historical business need or a requirement imposed by law, may frustrate the right to keep and bear arms and violate the reasonable privacy rights of lawful purchasers of firearms or ammunition.

5. Law-abiding firearm owners whose names have been illegally recorded in a list, record, or registry are entitled to redress.

(2) PROHIBITIONS.—

(a) A ~~No~~ state governmental agency or local government, special district, or other political subdivision or official, agent, or employee of the ~~such~~ state or other governmental entity or any other person, public or private, may not shall knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms.

(b) A payment settlement entity, merchant acquiring entity, or third party settlement organization as those terms are defined in s. 6050W of the Internal Revenue Code may not assign a merchant category code to or otherwise classify a merchant that is a seller of firearms or ammunition separately from general merchandise retailers or sporting goods retailers.

(4) PENALTIES.—

(a) Any person who, or entity that, violates paragraph (2) ~~(a) a provision of this section~~ commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as required by ~~the provisions of~~ s. 16, Art. I of the State Constitution or the Sixth Amendment to the United States Constitution, ~~no~~ public funds may not shall be used to

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117 defend the unlawful conduct of any person charged with a
118 violation of this section, unless the charges against ~~the such~~
119 person are dismissed or ~~the such~~ person is determined to be not
120 guilty at trial. Notwithstanding this paragraph, public funds
121 may be expended to provide the services of the office of public
122 defender or court-appointed conflict counsel as provided by law.

123 (c) The governmental entity, or the designee of ~~the such~~
124 governmental entity, in whose service or employ a list, record,
125 or registry was compiled in violation of paragraph (2) (a) ~~this~~
126 ~~section~~ may be assessed a fine of up to ~~not more than~~ \$5
127 million, if the court determines that the evidence shows that
128 the list, record, or registry was compiled or maintained with
129 the knowledge or complicity of the management of the
130 governmental entity. The Attorney General may bring a civil
131 cause of action to enforce the fines assessed under this
132 paragraph.

133 (d) The Department of Agriculture and Consumer Services may
134 investigate alleged violations of paragraph (2) (b) and, upon
135 finding a violation, bring an administrative action seeking to
136 impose an administrative fine pursuant to s. 570.971 in the
137 Class III category for each violation of paragraph (2) (b) for
138 each instance of an unlawfully classified retailer.

139 (e) The state attorney in the appropriate jurisdiction
140 shall investigate complaints of criminal violations of this
141 section, except for alleged violations of paragraph (2) (b), and
142 shall prosecute violators, where evidence indicates that a
143 violation may have occurred, ~~shall prosecute violators.~~

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



FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
COMMISSIONER WILTON SIMPSON

January 31, 2023

Agency Affected: Dept. of Agriculture and Consumer Services **Telephone:** 850-617-7000

Agency Contact: Isabelle Garbarino, Legislative Affairs Director **Telephone:** 850-617-7700

Senate Bill Number: 214

Senate Bill Sponsor: Sen. Burgess

Bill Title: Sales of Firearms and Ammunition

Effective Date: July 1, 2023

Similar Bill(s): Yes ☐ No ☒

Similar Bill(s):

Identical Bill: Yes ☒ No ☐

Identical Bill: HB 221: Sales of Firearms and Ammunition by Rep. Snyder

1. SUMMARY:

Amends s. 790.335, F.S.; provides legislative findings; prohibits payment settlement entities, merchant acquiring entities, or third party settlement organizations from assigning merchant category codes or otherwise classifying merchants of firearms or ammunition separately from general merchandise or sporting goods retailers; authorizes the Florida Department of Agriculture and Consumer Services (FDACS) to investigate certain alleged violations and bring administrative actions; provides an exception to complaint investigations by state attorneys; provides an effective date.

2. PRESENT SITUATION:

Section 790.335, F.S. – Prohibition of registration of firearms; electronic records, provides:

"No state governmental agency or local government, special district, or other political subdivision or official, agent, or employee of such state or other governmental entity or any other person, public or private, shall knowingly and willfully keep or cause to be kept any list, record, or registry

of privately owned firearms or any list, record, or registry of the owners of those firearms."¹

Any violation of s. 790.335 is a felony of the third degree, punishable by up to five years in state prison.²

On September 9, 2022, the International Organization for Standardization³ (ISO) approved a Merchant Category Code⁴ (MCC) for gun retailers at the behest of gun control advocates, including U.S. Senator Elizabeth Warren and New York City Mayor Eric Adams, to detect and track "suspicious weapons purchases."⁵

While the prohibition under s. 790.335 against keeping any list, record, or registry of privately owned firearms or owners of those firearms applies to all entities public or private, it does not specifically address private entities assigning a MCC or otherwise classifying merchants of firearms or ammunition separately from general merchandise or sporting goods retailers.

3. EFFECT OF PROPOSED CHANGES:

SB 214 amends s. 790.335(2)(b), F.S., by making it unlawful for any payment settlement entity, merchant acquiring entity, or third-party settlement organization⁶ to assign a MCC or to otherwise classify a merchant that is a seller of firearms or ammunition separately from general merchandise retailers or sporting goods retailers.

S. 790.335 in its current form under subsection (4)(a) makes a violation of any provision of this section a third-degree felony. SB 214 would amend the criminal penalty in subsection (4)(a) by making it a third-degree felony only for a violation of subsection (2)(a), which makes it unlawful for any public or private entity or person to maintain a list, record, or registry of firearms or firearms owners.

Any governmental entity that compiles a list, record, or registry of firearms or firearms owners in violation of subsection (2)(a) may be assessed a fine of up to \$5 million if the evidence shows such was compiled or maintained with the knowledge or complicity of the

¹ Sec. 790.335(2), Fla. Stat. (2022).

² Sec. 775.082(3)(e), Fla. Stat. (2022).

³ The ISO is an independent, non-governmental international organization headquartered in Geneva, Switzerland, with a membership of 167 national standards bodies. The national standards bodies that comprise this worldwide federation collaborate in the development and promotion of international standards for technology, scientific testing processes, working conditions and societal issues. (<https://www.iso.org/about-us.html>)

⁴ A Merchant Category Code (MCC) is a four-digit number used by credit card companies to classify businesses and describe the merchant's primary business activities.

⁵ <https://www.reuters.com/world/exclusive-global-standards-body-approves-new-merchant-code-gun-sellers-2022-09-09/>

⁶ As these terms are defined in 26 U.S.C. § 600W of the Internal Revenue Code.

management of the governmental entity. The Florida Attorney General is empowered to bring a civil cause of action to enforce the fines assessed under this provision.

FDACS would be granted statutory authority under this bill to investigate alleged violations of the Merchant Category Code clause in subsection (2)(b). The department would also be empowered to bring an administrative action and impose a Class III administrative fine⁷ for each instance of an unlawfully classified retailer.

Should SB 214 be signed into law, the OALE Regulatory Investigations Section (RIS) would be tasked with investigating unlawfully classified retailer violations and the Office of General Counsel would be responsible for initiating and litigating administrative actions against violators.

4. FISCAL IMPACT ON FDACS

Currently, the Florida Department of Agriculture and Consumer Services is unable to estimate a fiscal impact, if any, the proposed bill may have on the department.

5. IS THERE AN ESTIMATED FISCAL IMPACT ON LOCAL GOVERNMENT(S)?

Unknown.

6. IS THERE AN ESTIMATED FISCAL IMPACT ON THE PRIVATE SECTOR?

Unknown.

7. ARE THERE ESTIMATED TAXES, FEES, OR FINES ASSOCIATED WITH THE PROPOSED BILL? (If yes, please explain the impact in A and/or B below)

No.

A. Does the proposed bill create new or increase existing taxes, fees, or fines? If so, please explain.

B. Does the proposed bill repeal or decrease existing taxes, fees, or fines? If so, please explain.

C. DOES THE BILL DIRECT OR ALLOW THE DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?

a. Yes: ☒ No: ☐

b. If yes please explain: Passage of SB 214 could result in policy creation for the OALE Regulatory Investigations Section.

8. DOES THE PROPOSED BILL REQUIRE THE DEPARTMENT TO PARTICIPATE IN OR PRODUCE ANY REPORTS OR STUDIES?

⁷ A Class III administrative fine is a fine not exceeding \$10,000. Sec. 570.971(1)(c), Fla. Stat. (2022).

a. Yes: ☐ No: ☒

b. If yes please explain:

9. ARE THERE ANY APPOINTMENTS, CREATION OF, OR CHANGES TO ANY BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. THAT WILL IMPACT THE DEPARTMENT?

a. Yes: ☐ No: ☒

b. If yes please explain:

LEGAL ISSUES

10. Does the proposed bill conflict with existing federal law or regulations that impact the department? If so, what laws and/or regulations? No.

11. Does the proposed bill raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts) that impacts the department? No.

12. Is the proposed bill likely to generate litigation for the department and, if so, from what interest groups or parties?

The intended level of compliance is currently unknown. This legislation may produce violators contesting administrative complaints and fines through the formal administrative hearing process.

COMMENTS:

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 844

INTRODUCER: Senator Yarborough

SUBJECT: Sales Tax Exemption for Renewable Natural Gas Machinery and Equipment

DATE: March 3, 2023

REVISED: 3/6/23

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

I. Summary:

SB 844 exempts machinery and equipment used at a fixed location for the production, storage, transportation, compression, or blending of renewable natural gas from the sales and use tax.

The bill provides that purchasers of machinery and equipment qualifying for the exemption must furnish the vendor with an affidavit stating that the item to be exempted will be used for purposes specified in the exemption, unless the purchaser has self-accrual authority. The bill incorporates existing penalties for submitting a fraudulent claim.

The Revenue Estimating Conference determined the bill will reduce General Revenue Fund receipts by \$1.5 million in Fiscal Year 2023-2024, with a recurring impact of \$700,000. The bill will reduce local revenues by \$400,000 in Fiscal Year 2023-2024, with a recurring impact of \$200,000.

The bill takes effect July 1, 2023.

II. Present Situation:

Florida Sales and Use Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,¹ admissions,² transient rentals,³ 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.

¹ Section 212.05(1)(a)1.a., F.S.

² Section 212.04(1)(b), F.S.

³ Section 212.03(1)(a), F.S.

Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.⁴

Counties are authorized to impose local discretionary sales surtaxes in addition to the state sales tax.⁵ 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.”⁶ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax rates currently levied vary by county in a range of 0.5 to 1.5 percent.⁷

Current law provides numerous exemptions from sales and use tax for machinery and equipment at a fixed location for uses such as the production of electrical or steam energy, spaceport activities, and for machines and equipment used under federal procurement contracts.⁸ Currently, there is no sales and use tax exemption for machinery and equipment used for the production, storage, transportation, compression or blending of renewable natural gas.

Renewable Natural Gas⁹

Renewable natural gas is essentially made from biogas (the gaseous product of the decomposition of organic matter) that has been processed to purity standards and can be used as transportation fuel or liquefied natural gas. However, to fuel vehicles, the biogas must be processed to a higher purity standard resulting in the renewable gas having a higher content of methane than raw biogas, which makes it comparable to conventional natural gas. This makes the renewable natural gas suitable in applications that require pipeline-quality gas such as vehicles.

Three main sources of biogas are landfills, livestock operations and wastewater treatment sites. In landfills, the digestion process takes place in the ground rather than in an anaerobic digester, which is a series of processes in which microorganisms break down biodegradable material in the absence of oxygen. As of 2021, there were 548 operational landfill gas projects in the country. At livestock operations, animal manure is collected and run through an anaerobic digester to stabilize and optimize methane production. The result is biogas that can be processed into renewable natural gas and used to fuel gas vehicles or produce electricity. As of 2022, there are 331 livestock farms utilizing anaerobic digester systems in the country, including three in Florida.¹⁰ At wastewater treatment plants, biogas is produced by digesting the solids removed in the wastewater treatment process. Approximately 1,300 wastewater treatment plants in the country have anaerobic digesters.

⁴ Section 212.07(2), F.S.

⁵ Section 212.055, F.S.

⁶ Section 212.054(2)(a), F.S.

⁷ Florida Department of Revenue, *Discretionary Sales Surtax Information for Calendar Year 2023*, at https://floridarevenue.com/Forms_library/current/dr15dss.pdf (last visited March 3, 2023).

⁸ See s. 212.08(5), F.S.

⁹ United States Department of Energy, Alternative Fuels Data Center, *Renewable Natural Gas Production*, at https://afdc.energy.gov/fuels/natural_gas_renewable.html. (last visited March 3, 2023).

¹⁰ United States Environmental Protection Agency, *Livestock Anaerobic Digester Database*, at <https://www.epa.gov/agstar/livestock-anaerobic-digester-database> (last visited March 3, 2023).

III. Effect of Proposed Changes:

The bill exempts machinery and equipment used at a fixed location for the production, storage, transportation, compression, or blending of renewable natural gas from the sales and use tax.

The bill defines “renewable natural gas” as an anaerobically generated biogas, landfill, gas, or wastewater treatment gas refined to a methane content of 90 percent or greater, which may be used as transportation fuel or for electric generation or is of a quality capable of being injected into a natural gas pipeline. The bill specifies that any reference to natural gas in Ch. 212, F.S., includes renewable natural gas.

The bill provides that purchasers of machinery and equipment qualifying for this exemption must furnish the vendor with an affidavit stating that the item or items to be exempted are for the production, storage, transportation, compression, or blending of renewable natural gas. Purchasers with self-accrual authority¹¹ are not required to provide an affidavit; however, the purchaser must maintain all documentation necessary to prove the exempt status of purchases.

A person furnishing a false affidavit to the vendor in order to evade payment of the sales tax is liable for payment of the tax plus a mandatory penalty of 200 percent of the tax. A violation of this section is a third degree felony.¹²

The bill provides rulemaking authority to the Department of Revenue.

The bill takes effect July 1, 2023.

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 Art. VII, s. 18 of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the

¹¹ Section 212.183, F.S. The Department of Revenue is authorized to provide by rule for self-accrual of the sales tax under one or more of the following seven circumstances: where authorized by law for holders of direct pay permits; where tangible personal property is subject to tax on a prorated basis, and the proration factor is based upon characteristics of the purchaser; where the taxable status of types of tangible personal property will be known only upon use; for commercial renters where the purchaser rents from a number of independent property owners who, apart from rentals to the purchaser in question, would otherwise not be obligated to register as dealers; where the purchaser makes purchases in excess of \$10 million per year of tangible personal property in any county; when the purchaser makes purchases of promotional materials defined in s. 212.06(11), F.S., and at the time of purchase, the purchaser does not know whether the materials will be exported outside the state; and for commercial rentals where the purchaser, who is required to remit sales tax electronically pursuant to s. 213.755, F.S., rents from a number of independent property owners.

¹² Section 212.085, F.S. A third degree felony is generally punishable by not more than five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

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.^{13,14} which is \$2.3 million or less for Fiscal Year 2023-2024.¹⁵

The Revenue Estimating Conference determined that the bill will reduce the authority that counties have to raise revenue from the local option sales tax by \$400,000 in Fiscal Year 2023-2024. Therefore, the mandates provision may not apply as the impact is insignificant.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Section 19 of Article VII, Florida Constitution requires increased taxes or fees to be passed in a separate bill and by two-thirds vote of the membership of each house of the Legislature. This bill does not increase any taxes or fees; therefore, the increased tax or fee requirements do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined the bill will reduce General Revenue Fund receipts by \$1.5 million in Fiscal Year 2023-2024, with a recurring impact of \$700,000. The bill will reduce local revenues by \$400,000 in Fiscal Year 2023-2024, with a recurring impact of \$200,000.

¹³ FLA. CONST. art. VII, s. 18(d).

¹⁴ 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 March 3, 2023).

¹⁵ Based on the Demographic Estimating Conference's estimated population adopted on July 18, 2022. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited March 3, 2023).

B. Private Sector Impact:

The private sector will experience reduced costs associated with machinery and equipment used for the production, storage, transportation, compression, or blending of renewable natural gas due to the sales and use tax exemption provided in this legislation.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.08 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 Yarborough

4-00698-23

2023844__

A bill to be entitled

An act relating to a sales tax exemption for renewable natural gas machinery and equipment; amending s. 212.08, F.S.; defining the term "renewable natural gas"; providing a sales tax exemption for the purchase of certain machinery and equipment relating to renewable natural gas; requiring purchasers of such machinery and equipment to furnish the vendor with a certain affidavit; providing an exception; providing penalties, including a criminal penalty; authorizing the Department of Revenue to adopt rules; providing an effective date.

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

Section 1. Paragraph (v) is added to subsection (5) of section 212.08, Florida Statutes, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(v) Renewable natural gas machinery and equipment.—

1. As used in this paragraph, the term "renewable natural gas" means anaerobically generated biogas, landfill gas, or wastewater treatment gas refined to a methane content of 90 percent or greater, which may be used as transportation fuel or

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

4-00698-23

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for electric generation or is of a quality capable of being injected into a natural gas pipeline. For purposes of this chapter, any reference to natural gas includes renewable natural gas.

2. The purchase of machinery and equipment that is primarily used in the production, storage, transportation, compression, or blending of renewable natural gas and that is used at a fixed location is exempt from the tax imposed by this chapter.

3. Purchasers of machinery and equipment qualifying for the exemption provided in this paragraph must furnish the vendor with an affidavit stating that the item or items to be exempted are for the use designated herein. Purchasers with self-accrual authority pursuant to s. 212.183 are not required to provide this affidavit, but shall maintain all documentation necessary to prove the exempt status of purchases.

4. A person furnishing a false affidavit to the vendor for the purpose of evading payment of the tax imposed under this chapter is subject to the penalty set forth in s. 212.085 and as otherwise provided by law.

5. The department may adopt rules to administer this paragraph.

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

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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.)

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

BILL: SB 892

INTRODUCER: Senator Martin

SUBJECT: State Minimum Wage

DATE: March 3, 2023

REVISED: 3/6/23

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Baird	McKay	CM	Favorable
2.			GO	
3.			RC	

I. Summary:

SB 892 amends the Florida Minimum Wage Act to incorporate amendments to the federal Fair Labor Standards Act. Two classes of employees have been exempted from the FLSA minimum wage requirements since the 2005 passing of the Florida Minimum Wage Act: border patrol agents and salaried baseball players.

The bill provides that it is intended to clarify existing law.

The bill takes effect upon becoming law.

II. Present Situation:

Federal Minimum Wage

In 1938, the United States Congress enacted the federal Fair Labor Standards Act (FLSA) which prescribes standards for minimum wages, overtime pay, recordkeeping, and child labor.¹ The minimum wage for all covered, nonexempt employees has remained at \$7.25 per hour since 2009.²

The Wage and Hour Division of the United States Department of Labor enforces the federal Fair Labor Standards Act, including the federal minimum wage. It is a violation of FLSA to fire or in

¹ 29 U.S.C. 201, et seq. See generally U.S. Department of Labor, Wage and Hour Division,, *Compliance Assistance – Fair Labor Standards Act (FLSA)*, available at: <http://www.dol.gov/whd/flsa/index.htm> (last visited March 3, 2023).

² U.S. Department of Labor, Minimum Wage, available at: <https://www.dol.gov/general/topic/wages/minimumwage> (last visited March 1, 2023).

any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under the FLSA.³

The FLSA includes several exemptions from the federal minimum hourly wage, that are not legally required to be paid at the minimum hourly wage rate, including:⁴

- Executive, administrative and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations;
- Employees in certain seasonal amusement or recreational establishments, employees in certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery;
- Farm workers employed by anyone who used no more than 500 “man-days” of farm labor in any calendar quarter of the preceding calendar year;
- Causal babysitters and persons employed as companions for the elderly or infirm;
- Border patrol agents; and
- Baseball players who are compensated pursuant to a contract that provides for a weekly salary for services performed during the league’s championship season at a rate that is not less than a weekly salary equal to the minimum wage.

The United States Congress intended for all employees in America to be protected by the FLSA unless they are expressly exempted.

Since its initial passing in 1938, the United States Congress has subsequently amended the FLSA over 20 times, including most recently in 2018.⁵

Florida Minimum Wage

Florida Constitution

On November 2, 2004, Floridians voted to amend the Florida Constitution by adding a minimum wage provision that established the state minimum wage.⁶

Under the State Constitution, all working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer funded public services in order to avoid economic hardship.⁷ The amount of the minimum wage and the procedure for calculating increases in the minimum wage are established in the State Constitution.⁸ The State Constitution references the FLSA and its implementing regulations to

³ U.S. Department of Labor, Wage and Hour Division, *Fact Sheet #77A: Prohibiting Retaliation Under the Fair Labor Standards Act (FLSA)*, available at: <http://www.dol.gov/whd/regs/compliance/whdfs77a.pdf> (last visited March 1, 2023).

⁴ 29 U.S.C. § 213.

⁵ U.S. Department of Labor, *History of Changes to the Minimum Wage Law*, available at <https://www.dol.gov/agencies/whd/minimum-wage/history> (last visited March 3, 2023).

⁶ FLA. CONST. art. X, s. 24.

⁷ FLA. CONST. art. X, s. 24(a).

⁸ FLA. CONST. art. X, s. 24(c).

determine the meaning⁹ of the terms “Employer,” “Employee” and “Wage,”¹⁰ and states that “[i]t is intended that case law, administrative interpretations, and other guiding standards developed under the federal FLSA shall guide the construction of this amendment and any implementing statutes or regulations.”¹¹

On November 3, 2020, Florida voters approved Amendment 2, which amended the State Constitution to gradually increase the state’s minimum wage to \$15.00 an hour by the year 2026.¹² Pursuant to the passage of Amendment 2, on September 30, 2021, Florida’s minimum wage increased to \$10.00 per hour. Each year, thereafter, Florida’s minimum wage will increase by \$1.00 until the minimum wage reaches \$15.00 per hour on September 30, 2026.¹³ Beginning in 2027, the minimum wage will be adjusted annually for inflation, as it has been since 2005.

Florida Statute

The Florida Minimum Wage Act (Act) was enacted in 2005 to implement the constitutional provisions that were approved by voters in 2004.¹⁴ The Act establishes procedures with respect to civil actions alleging violations of its provisions. The Florida minimum wage provisions may be enforced by the bringing of a civil suit by an aggrieved person¹⁵ or by the Attorney General.¹⁶

Section 448.110(3), F.S., provides that the Act is limited to “[o]nly those individuals entitled to receive the federal minimum wage under the federal Fair Labor Standards Act and its implementing regulations.” In addition, the Act provides that “[t]he provisions of ss. 213 and ss. 214 of the Federal Fair Labor Standards Act...are incorporated herein.”¹⁷

Post 2005 FLSA Exemption Amendments

In 2005, the FLSA included 17 subsections within subsection (a) of ss. 213-Exemptions.

In 2014, Congress amended the FLSA to add subsection 18 which states that “any employee who is a border patrol agent, as defined in section 5550(a) of title 5.” This language was implemented along with the intention that border patrol agents’ wages would instead be governed by the Border Patrol Agent Pay Reform Act of 2014.¹⁸

⁹ *In re Advisory Opinion to the Atty. Gen. re Fla. Minimum Wage Amend.*, 880 So. 2d 636, 641–42 (Fla. 2004) (“the proposed amendment does not state that it is adopting the FLSA’s *definition* of the term “employee,” but provides that it is adopting the *meaning* of the term “employee,” which is a much broader concept.”).

¹⁰ FLA. CONST. art. X, s. 24(b).

¹¹ FLA. CONST. art. X, s. 24(f).

¹² United States Department of State, *Notice of Increase to State of Florida’s Minimum Wage*, available at <https://www.state.gov/wp-content/uploads/2021/01/2021-01-29-Notice-FL-Minimum-Wage-Increase.pdf> (last visited March 3, 2023).

¹³ Department of Economic Opportunity, *Florida’s Minimum Wage*, available at https://floridajobs.org/docs/defaultsource/business-growth-and-partnerships/for-employers/posters-and-required-notices/2021-minimum-wage/september2021/florida-minimum-wage-september-2021-announcement.pdf?sfvrsn=c12151b0_4 (last visited March 3, 2023).

¹⁴ Chapter 2005-353, L.O.F.

¹⁵ Section 448.110(6), F.S.

¹⁶ Section 448.110(7), F.S.

¹⁷ Section 448.110(3), F.S.

¹⁸ S.1691 – 113th Congress (2013-2014): Border Patrol Agent Pay Reform Act of 2014, S.1691, 113th Cong. (2014).

In 2018, Congress again amended the FLSA to include subsection (a)(19), which states:

“any employee employed to play baseball who is compensated pursuant to a contract that provides for a weekly salary for services performed during the league's championship season (but not spring training or the off season) at a rate that is not less than a weekly salary equal to the minimum wage under section 206(a) of this title for a workweek of 40 hours, irrespective of the number of hours the employee devotes to baseball related activities.”

The 2018 amendment exempted minor league baseball players as long as players were paid at least \$290 per week during the 2018 championship season, then they would not be entitled to any additional compensation (overtime or otherwise) even when working more than forty hours in a single week.¹⁹

Currently in Florida, there are 12 minor league baseball teams that are affiliated with Major League Baseball (MLB). There are approximately 500 players currently rostered, employed, and being paid by the 12 Florida Minor League Baseball teams.²⁰ Additionally, 15 MLB teams conduct major and minor league spring training in Florida at thirteen different spring training facilities.

These two amendments were the only amendments made to ss. 213 of the FLSA since Florida passed its minimum wage law in 2005.²¹

III. Effect of Proposed Changes:

The bill amends s. 448.110, F.S., to incorporate subsequent amendments to the FLSA, aligning Florida's minimum wage exemptions with federal exemptions.

The bill takes effect upon becoming law.

¹⁹ See Levi Weaver, On Minor-League Pay, *MLB's Stance Doesn't Line Up with the Facts*, ATHLETIC (Apr. 4, 2018), <https://www.theathletic.com/293189/%202018/04/04/on-minor-league-pay-mlbs-stance-doesnt-line-up-with-the-facts/> (last visited March 1, 2023) (recounting salary scale per level of minor league baseball, while noting that the “federally-recognized poverty line is \$12,140 per year for single-individual households”). A not-insignificant percentage of minor league players are able to subsidize their relatively meager monthly salaries by drawing upon the signing bonuses they received from their MLB clubs when first entering the professional ranks, bonuses that can range anywhere from \$10,000 to several million dollars. See *id.* (reporting that “[t]he top 64 picks [in the MLB draft] last year all received a bonus of over \$1,000,000 before taxes, but roughly 40% of players . . . signed for one-time bonuses of \$10,000 or less”).

²⁰ See Michael Avallone, *Then and now: Florida State League*, MiLB.com, <https://www.milb.com/news/florida-state-league-overview> (last visited March 3, 2023).

²¹ Section 448.110, F.S., expressly references ss. 214 of the FLSA (in addition to ss. 213) however, ss. 214 has not been amended since 1989.

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

Article VII, section 18 of the Florida Constitution requires a two-thirds vote of the membership of each house of the Legislature to pass legislation requiring counties and municipalities to spend funds, limiting their ability to raise revenue, or reducing the percentage of a state tax shared with them. This bill does not require counties or municipalities to spend funds, limit their authority to raise revenue, or reduce the percentage of a state tax shared with them as specified in Article VII, section 18 of the Florida Constitution. Therefore, the provisions of Article VII, section 18 of the Florida Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise a state tax or fee. Therefore, the requirements of Art. VII, s. 19 of the Florida Constitution do not apply.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

The owners of minor league baseball teams could potentially see a savings in paid salaries to players.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill is intended to clarify section 448.110 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Martin

33-01071A-23

2023892__

A bill to be entitled

An act relating to the state minimum wage; amending s. 448.110, F.S.; specifying that individuals entitled to receive the federal minimum wage under the Federal Fair Labor Standards Act, as amended, are eligible to receive the state minimum wage; deleting obsolete language; providing construction; providing an effective date.

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

Section 1. Subsection (3) of section 448.110, Florida Statutes, is amended to read:

448.110 State minimum wage; annual wage adjustment; enforcement.—

(3) ~~Effective May 2, 2005,~~ Employers shall pay employees a minimum wage at an hourly rate of \$6.15 for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage under the federal Fair Labor Standards Act, as amended, and its implementing regulations shall be eligible to receive the state minimum wage pursuant to s. 24, Art. X of the State Constitution and this section. The provisions of ss. 213 and 214 of the federal Fair Labor Standards Act, as interpreted by applicable federal regulations and implemented by the Secretary of Labor, are incorporated herein.

Section 2. The change to s. 448.110, Florida Statutes, made by this act is intended to clarify existing law.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 136

INTRODUCER: Commerce and Tourism Committee and Senator Gruters

SUBJECT: Florida Kratom Consumer Protection Act

DATE: March 7, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Fav/CS
2.			AEG	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 136 creates the Florida Kratom Consumer Protection Act, and provides that a processor, which is a person who sells, prepares, manufactures, distributes, or maintains kratom products, may not sell, prepare, or distribute a kratom product that:

- Is adulterated to such a degree that it may injure a consumer;
- Contains a poisonous or otherwise harmful non-kratom ingredient;
- Contains a level of 7-hydroxymitragynine in the alkaloid fraction which is greater than 1 percent of the alkaloid composition of the product;
- Contains a synthetic alkaloid;
- Does not include directions for the safe and effective use of the product; or
- Has a label that contains any claim that the product is intended to diagnose, treat, cure, or prevent any medical condition or disease.

The bill establishes that a processor may not sell, prepare, or distribute kratom extract that contains levels of residual solvents higher than the standards set forth in United States Pharmacopeia and the National Formulary (USP-NF) chapter 467. Additionally, a processor may not distribute, sell, or expose for sale a kratom product to an individual under 21 years of age.

The bill requires a processor to annually register any kratom product it intends to sell with the Department of Agriculture and Consumer Services (DACS), and keep its registration up to date. Additionally, a processor who receives notice of an adverse event related to its kratom product,

must submit a copy of the adverse event to the DACS. A processor who violates requirements related to product standards, registration, or reporting is subject to an administrative fine.

The DACS may revoke the product registration of a processor who fails to timely provide an updated product registration, or fails to report an adverse event, and the DACS is required to adopt rules to administer the provisions of the Act.

The bill takes effect July 1, 2023.

II. Present Situation:

Kratom

Kratom is a tropical tree native to Southeast Asia that contains mitragynine and 7-hydroxymitragynine in its leaves, which are two major psychoactive ingredients.¹ The leaves are crushed and then smoked, brewed with tea, or placed into gel capsules.² Consumption of kratom leaves can produce stimulant and sedative effects, and may also lead to psychotic symptoms.³

Some research finds that kratom can be used as a substitute for opiate users to combat withdrawal symptoms, as well as to treat muscle ache, fatigue, and other conditions.⁴ Low doses of kratom are said to produce a stimulant effect, while higher doses may produce an opioid-like effect.⁵ Additionally, research points to the potential for further development of mitragynine and the use of kratom as a harm reduction agent.⁶ Even so, the toxicity of kratom remains a topic of discussion, as well as its potential to cause herb-drug interactions and even be involved in fatalities.⁷

Currently, kratom is not listed as a controlled substance under federal law or Florida law. However, in 2014, Sarasota County banned kratom, labeling it as a designer drug.⁸ With the exception of Sarasota County, in Florida, all parts of the plant and its extracts are legal to cultivate, buy, possess, and distribute without a license or prescription. Kratom is illegal in

¹ Drug Enforcement Administration, *Kratom* (April 2020), available at https://www.dea.gov/sites/default/files/2020-06/Kratom-2020_0.pdf (last visited March 7, 2023).

² *Id.*

³ *Id.*

⁴ See Dimy Fluyau and Neelambika Revedigar, *Biochemical Benefits, Diagnosis, and Clinical Risks Evaluation of Kratom*, *Frontiers in Psychiatry Journal* Volume 8 (April 24, 2017) available at <https://www.frontiersin.org/articles/10.3389/fpsy.2017.00062/full> (last visited March 7, 2023).

⁵ *Id.*

⁶ See Charles Veltri and Oliver Grundmann, *Current Perspectives on the Impact of Kratom Use*, *Substance Abuse and Rehabilitation Journal* Volume 10 23-31 (July 1, 2019) available at <https://pubmed.ncbi.nlm.nih.gov/31308789/> (last visited March 7, 2023).

⁷ *Id.* See also *Drugs Identified in Deceased Persons by Florida Medical Examiners*, FDLE (May 2022), available at <https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2021-Interim-Drug-Report-FINAL.aspx> (last visited March 7, 2023). In May of 2022 the Florida Department of Law Enforcement published its 2021 Interim Report, which found a 36% rise in kratom-involved deaths over the first half of 2021.

⁸ See Sarasota, FL., Code of Ordinances, Sec. 62-351 (2014).

Alabama,⁹ Arkansas,¹⁰ Indiana,¹¹ Rhode Island,¹² Vermont,¹³ and Wisconsin.¹⁴ In 12 other states the possession, sale, manufacture, and distribution of kratom products is regulated.¹⁵

Following an updated import alert that provides information to U.S. Food and Drug Administration (FDA) field staff about detaining without physical examination imported dietary supplements and bulk dietary ingredients that are or contain kratom,¹⁶ in May of 2021, the FDA announced the seizure of around 37,500 tons of adulterated kratom in Florida, worth an estimated \$1.3 million.¹⁷ The FDA's Associate Commissioner for Regulatory Affairs stated that there is substantial concern regarding the safety of kratom and the risk it may pose to public health, and indicated that there are currently no FDA-approved uses for kratom.¹⁸

The U.S. Department of Justice, on behalf of the FDA, filed a complaint in the U.S. District Court for the Middle District of Florida alleging that kratom is a new dietary ingredient for which there is inadequate information to provide reasonable assurance that it does not present a significant or unreasonable risk of illness or injury.¹⁹ Additionally, the FDA stated that dietary supplements and bulk dietary ingredients that are or contain kratom are adulterated under the Federal Food, Drug, and Cosmetic Act.²⁰ On October 26, 2021, a consent decree of condemnation and destruction against the articles seized by the FDA in May of 2021 was entered, which requires the claimants to pay a penal bond and destroy all seized articles.²¹

The Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (department) safeguards the public and supports Florida's agricultural economy by ensuring the safety and wholesomeness of food and

⁹ See Alabama Public Health, *Controlled Substance List* (Jan. 20, 2021), available at <https://www.alabamapublichealth.gov/blog/assets/controlledsubstanceslist.pdf> (last visited March 7, 2023).

¹⁰ See Arkansas Department of Health, *List of Controlled Substances*, available at http://secureservercdn.net/166.62.109.105/e17.085.myftpupload.com/wp-content/uploads/2016/02/arkansas-controlled_substances_list.pdf (last visited March 7, 2023).

¹¹ See IC 35-31.5-2-321.

¹² See Rhode Island Dept. of Health, *Notice of Designation of Controlled Substance* (May 31, 2017), available at https://docs.wixstatic.com/ugd/9ba5da_9836ace2b9f04a30b55fe480fe3c6ff4.pdf (last visited March 7, 2023).

¹³ See Vt. Admin. Code 12-5-23:4.0.

¹⁴ See W.S.A. 961.14.

¹⁵ See Regulation of Kratom in America: Update (September 2022), available at [Kratom Fact Sheet \(legislativeanalysis.org\)](https://www.kratomfactsheet.org/) (last visited March 7, 2023).

¹⁶ The import alert labels kratom as an adulterating ingredient. See Food and Drug Administration, Import Alert 54-15, Import Alert 54-15 (fda.gov) (last visited March 3, 2023) The FDA labeled kratom as adulterating based on the absence of a history of use or other evidence of safety establishing that kratom will reasonably be expected to be safe as a dietary ingredient, kratom and kratom-containing dietary supplements and bulk dietary ingredients are adulterated because they contain a new dietary ingredient for which there is inadequate information to provide reasonable assurance that such ingredient does not present a significant or unreasonable risk of illness or injury.

¹⁷ U.S. Food and Drug Administration, *FDA Announces Seizure of Adulterated Dietary Supplements Containing Kratom* (May 21, 2021), available at <https://www.fda.gov/news-events/press-announcements/fda-announces-seizure-adulterated-dietary-supplements-containing-kratom> (last visited March 7, 2023).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

other consumer products through inspection and testing programs.²² In particular, the Division of Food Safety (division) is responsible for assuring Floridians have a safe and properly represented food supply.²³

Florida Food Safety Act

The division regulates food products under the Florida Food Safety Act (FFSA), which includes articles used for food or drink for human consumption, as well as dietary supplements.²⁴ Under the FFSA, individuals may not sell food that is adulterated, adulterate food, or receive food in commerce that is adulterated or misbranded.²⁵

The following are examples of when food is deemed adulterated:

- Food that bears or contains any poisonous or deleterious substance which may render it injurious to health;
- Food that bears or contains any added poisonous or added deleterious substance; a food additive; or a color additive, which is unsafe;
- Food that is or bears or contains any food additive which is unsafe;
- Food whose container is composed, in whole or in part, of any poisonous or deleterious substance;
- Food where any substance has been substituted wholly or in part therefor;
- Food where damage or inferiority has been concealed in any manner; and
- A dietary supplement or its ingredients that present a significant risk of illness or injury due to certain labeling and ingredient requirements.²⁶

If a food is offered for sale and its label or labeling does not comply with the requirements of 21 U.S.C. s. 343(r) pertaining to nutritional content claims and health claims, it is considered to be misbranded. Labels for supplements may not claim to diagnose, mitigate, treat, cure, or prevent a specific disease or class of diseases.²⁷

The DACS may take the following actions:

- Inspect food that may be adulterated or misbranded;²⁸
- Seize food that is adulterated or misbranded;²⁹
- Suspend permits of those who sell food that is adulterated or misbranded, adulterate or misbrand food, or receive food in commerce that is adulterated or misbranded;³⁰ and

²² See The Florida Department of Agriculture and Consumer Services, *About Us*, available at [About Us / Home - Florida Department of Agriculture & Consumer Services \(fdacs.gov\)](https://www.fdacs.gov/About-Us/Home-Florida-Department-of-Agriculture-&-Consumer-Services) (last visited March 7, 2023).

²³ See The Florida Department of Agriculture and Consumer Services, *Division of Food Safety*, available at [Food Safety / Divisions & Offices / Home - Florida Department of Agriculture & Consumer Services \(fdacs.gov\)](https://www.fdacs.gov/Food-Safety/Divisions-&Offices/Home-Florida-Department-of-Agriculture-&Consumer-Services) (last visited March 7, 2023).

²⁴ See ch. 500, F.S.

²⁵ Section 500.04, F.S. These prohibitions are similar to Federal law. See also 21 U.S.C. 331.

²⁶ Section 500.10, F.S.

²⁷ Section 500.11(1)(n), F.S.; See also 21 U.S.C. s. 343 (r)(6)(C).

²⁸ Section 500.147(1), F.S.

²⁹ Section 500.173, F.S.

³⁰ Section 500.12(4), F.S.

- Impose a fine for adulterated or misbranded food, not to exceed \$5,000³¹ per violation.³²

III. Effect of Proposed Changes:

The bill creates the Florida Kratom Consumer Protection Act in s. 501.9745, F.S., and establishes the following definitions:

- “Kratom extract” means a food product or dietary ingredient that contains any part of the leaf of the plant *Mitragyna speciosa* which has been extracted and concentrated to provide more standardized dosing;
- “Kratom product” means a food product, food ingredient, dietary ingredient, dietary supplement, or beverage intended for human consumption which contains any part of the leaf of the plant *Mitragyna speciosa* or an extract of such plant and is manufactured as a powder, capsule, pill, beverage, or other edible form; and
- “Processor” means a person who sells, prepares, manufactures, distributes, or maintains kratom products.

The bill provides that a processor may not sell, prepare, distribute, or expose for sale a kratom product that:

- Is adulterated with a dangerous non-kratom substance that affects the quality or strength of the kratom product to such a degree that it may injure a consumer;
- Contains a poisonous or otherwise harmful non-kratom ingredient, including, but not limited to, any substance listed in s. 893.03, F.S.;
- Contains a level of 7-hydroxymitragynine in the alkaloid fraction which is greater than 1 percent of the alkaloid composition of the product;
- Contains a synthetic alkaloid, including, but not limited to, synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other synthetically derived compound of the plant *Mitragyna speciosa*;
- Does not include directions for the safe and effective use of the product, including, but not limited to, a suggested serving size, on the product’s packaging or label; or
- Has a label that contains any claim that the product is intended to diagnose, treat, cure, or prevent any medical condition or disease.

The bill establishes that a processor may not sell, prepare, distribute, or expose for sale kratom extract that contains levels of residual solvents higher than the standards set forth in USP-NF³³ chapter 467.³⁴ Additionally, a processor may not distribute, sell, or expose for sale a kratom product to an individual under 21 years of age.

³¹ Section 570.971(1)(b), F.S.

³² Section 500.121, F.S.

³³ The United States Pharmacopeia (USP) and the National Formulary (NF) contains standards for medicines, dosage forms, drug substances, excipients, biologics, compounded preparations, medical devices, dietary supplements, and other therapeutics. The current version of USP-NF standards deemed official by USP are enforceable by the U.S. Food and Drug Administration for medicines manufactured and marketed in the United States.

³⁴ Residual solvents in pharmaceuticals are defined as organic volatile chemicals that are used or produced in the manufacture of drug substances or excipients, or in the preparation of drug products. The residual solvents are not completely removed by practical manufacturing techniques. Drug products should contain no higher levels of residual solvents than can be supported by safety data. Solvents that are known to cause unacceptable toxicities, “Class 1,” should be avoided in the production of drug substances, excipients, or drug products unless their use can be strongly justified in a risk-benefit assessment. Solvents associated with less severe toxicity, “Class 2,” should be limited in order to protect patients from potential adverse effects.

The bill requires a processor to annually register with the Department of Agriculture and Consumer Services (DACS) any kratom product it intends to sell, which must include a certificate of analysis from an independent certified third-party laboratory.

The bill requires the DACS to have a processor produce an updated certificate of analysis if the DACS receives a report that any kratom product offered for sale in Florida is not in compliance with the requirements in the Florida Kratom Consumer Protection Act. Additionally, if a processor receives notice of an adverse event related to its kratom product, the processor must submit a copy of the adverse event to the DACS.³⁵

The bill authorizes the DACS to revoke a processor's kratom product registration if the processor fails to keep their registration up to date within the specified timeframe or fails to report an adverse event.

The bill provides that a processor who violates the kratom product standards provisions is subject to an administrative fine of not more than \$500 for the first offense and not more than \$1000 for the second or subsequent offense. However, a processor selling kratom products at retail does not violate the kratom product standards provisions if it is shown by a preponderance of the evidence that the processor relied in good faith upon the representations of a manufacturer, processor, packer, or distributor of the kratom product.

The DACS is required to adopt rules to administer s. 501.9745, F.S.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

Less toxic solvents, "Class 3," should be used where practical. *See* The United States Pharmacopeia and the National Formulary, *Residual Solvents*, available at https://www.uspnf.com/sites/default/files/usp_pdf/EN/USPNF/generalChapter467Current.pdf (last visited March 7, 2023).

³⁵ The bill provides that the copy of the adverse event must be sent via certified mail and follow the reporting requirements under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 379aa-1 (b)(1).

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Processors of kratom products will be required to adhere to the regulations set forth in the Florida Kratom Consumer Protection Act, which may benefit consumers.

C. Government Sector Impact:

There will potentially be an increase in administrative fines collected by the DACS. Additionally, the DACS will likely see an increase in regulatory costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not provide enforcement authority relating to the age restriction.

VIII. Statutes Affected:

This bill creates section 501.9745 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Commerce and Tourism on March 6, 2023:

The committee substitute makes the following changes:

- Provides that a processor may not sell, prepare, or distribute, a kratom product that contains a level 7-hydroxymitragynine in the alkaloid fraction which is greater than 1 percent of the alkaloid composition of the product;
- Requires a processor to annually register any kratom product it intends to offer for sale with the Department of Agriculture and Consumer Services (DACCS), which must include a certificate of analysis from an independent certified third-party laboratory;
- Provides that a processor must update its registration if the DACCS receives a report that any kratom product is not in compliance with the registration requirement;
- Establishes that a processor who receives notice of an adverse event related to its kratom product, must submit a copy of the adverse event to the DACCS;

- Provides that the DACS may revoke a processor's kratom product registration under certain circumstances; and
- Requires the DACS to adopt rules.

B. Amendments:

None.

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



196652

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2023	.	
	.	
	.	

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. Section 501.9745, Florida Statutes, is created
to read:

501.9745 Kratom products; processor prohibitions;
registration; fines.-

(1) SHORT TITLE.-This section may be cited as the "Florida
Kratom Consumer Protection Act."



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

(a) "Kratom extract" means a food product or dietary
ingredient that contains any part of the leaf of the plant
Mitragyna speciosa which has been extracted and concentrated to
provide more standardized dosing.

(b) "Kratom product" means a food product, food ingredient,
dietary ingredient, dietary supplement, or beverage intended for
human consumption which contains any part of the leaf of the
plant *Mitragyna speciosa* or an extract of such plant and is
manufactured as a powder, capsule, pill, or beverage or any
other edible form.

(c) "Processor" means a person who sells, prepares,
manufactures, distributes, or maintains kratom products.

(3) PROHIBITIONS.-

(a) A processor may not sell, prepare, distribute, or
expose for sale:

1. A kratom product that:

a. Is adulterated with a dangerous non-kratom substance
that affects the quality or strength of the kratom product to
such a degree that it may injure a consumer.

b. Contains a poisonous or otherwise harmful non-kratom
ingredient, including, but not limited to, any substance listed
in s. 893.03.

c. Contains a level of 7-hydroxymitragynine in the alkaloid
fraction which is greater than 1 percent of the alkaloid
composition of the product.

d. Contains a synthetic alkaloid, including, but not
limited to, synthetic mitragynine, synthetic 7-
hydroxymitragynine, or any other synthetically derived compound



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of the plant *Mitragyna speciosa*.

e. Does not include directions for the safe and effective
use of the product, including, but not limited to, a suggested
serving size, on the product's packaging or label.

f. Has a label that contains any claim that the product is
intended to diagnose, treat, cure, or prevent any medical
condition or disease.

2. Kratom extract that contains levels of residual solvents
higher than the standards set forth in USP-NF chapter 467.

(b) A processor may not sell, distribute, or expose for
sale a kratom product to an individual under 21 years of age.

(4) REGISTRATION.-A processor shall annually register with
the department any kratom product it intends to offer for sale
to an end consumer in this state which is in an approved kratom
delivery form. The registration must include a certificate of
analysis from an independent certified third-party laboratory
which shows that the kratom product is in compliance with the
requirements of this section for safe kratom products.

(5) REPORTING REQUIREMENTS.-

(a) If the department receives a report that any kratom
product offered for sale in this state is not in compliance with
the requirements of this section for safe kratom products, the
department must require the processor to produce an updated
certificate of analysis in a reasonable timeframe from an
independent certified third-party laboratory which shows that
the kratom product is in compliance with the requirements of
this section for safe kratom products.

(b) If a processor receives notice of an adverse event
related to its kratom product, the processor must submit via



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certified mail to the department a copy of the adverse event
report required to be submitted to the United States Food and
Drug Administration under the Federal Food, Drug, and Cosmetic
Act, 21 U.S.C. s. 379aa-1(b)(1).

(c) If a processor fails to provide the department with an
updated certificate of analysis within the specified timeframe
or fails to report an adverse event to the department as
required by this subsection, the department may revoke the
processor's kratom product registration.

(6) VIOLATIONS.-

(a) A processor who violates paragraph (3)(a), subsection
(4), or subsection (5) is subject to an administrative fine of
not more than \$500 for the first offense and not more than
\$1,000 for the second or subsequent offense.

(b) A processor that sells kratom products at retail does
not violate this section if it is shown by a preponderance of
the evidence that the processor relied in good faith upon the
representations of a manufacturer, processor, packer, or
distributor of food represented to be a kratom product.

(7) RULES.-The department shall adopt rules to administer
this section.

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

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to the Florida Kratom Consumer



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98 Protection Act; creating s. 501.9745, F.S.; providing
99 a short title; defining terms; prohibiting processors
100 from selling, preparing, distributing, or exposing for
101 sale certain kratom products; prohibiting processors
102 from distributing, selling, or exposing for sale a
103 kratom product to an individual under 21 years of age;
104 requiring processors to annually register kratom
105 products with the Department of Agriculture and
106 Consumer Services; providing requirements for such
107 registration; requiring processors to report certain
108 violations and adverse events to the department;
109 providing for the revocation of a processor's kratom
110 product registration under certain circumstances;
111 providing civil penalties; providing an exception;
112 requiring the department to adopt rules; providing an
113 effective date.

By Senator Gruters

22-00189-23

2023136__

A bill to be entitled

An act relating to the Florida Kratom Consumer Protection Act; creating s. 501.9745, F.S.; providing a short title; defining terms; prohibiting processors from selling, preparing, distributing, or exposing for sale certain kratom products; prohibiting processors from distributing, selling, or exposing for sale a kratom product to an individual under 21 years of age; providing civil penalties; providing an exception; requiring the Department of Agriculture and Consumer Services to adopt rules; providing an effective date.

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

Section 1. Section 501.9745, Florida Statutes, is created to read:

501.9745 Kratom products; processor prohibitions; fines.—

(1) This section may be cited as the "Florida Kratom Consumer Protection Act."

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

(a) "Kratom extract" means a food product or dietary ingredient that contains any part of the leaf of the plant *Mitragyna speciosa* which has been extracted and concentrated to provide more standardized dosing.

(b) "Kratom product" means a food product, food ingredient, dietary ingredient, dietary supplement, or beverage intended for human consumption which contains any part of the leaf of the plant *Mitragyna speciosa* or an extract of such plant and is manufactured as a powder, capsule, pill, or beverage or any

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other edible form.

(c) "Processor" means a person who sells, prepares, manufactures, distributes, or maintains kratom products.

(3) A processor may not sell, prepare, distribute, or expose for sale:

(a) A kratom product that:

1. Is adulterated with a dangerous non-kratom substance that affects the quality or strength of the kratom product to such a degree that it may injure a consumer.

2. Contains a poisonous or otherwise harmful non-kratom ingredient, including, but not limited to, any substance listed in s. 893.03.

3. Contains a level of 7-hydroxymitragynine in the alkaloid fraction which is greater than 2 percent of the alkaloid composition of the product.

4. Contains a synthetic alkaloid, including, but not limited to, synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other synthetically derived compound of the plant *Mitragyna speciosa*.

5. Does not include directions for the safe and effective use of the product, including, but not limited to, a suggested serving size, on the product's packaging or label.

6. Has a label that contains any claim that the product is intended to diagnose, treat, cure, or prevent any medical condition or disease.

(b) Kratom extract that contains levels of residual solvents higher than the standards set forth in USP-NF chapter 467.

(4) A processor may not sell, distribute, or expose for

22-00189-23

2023136

59 sale a kratom product to an individual under 21 years of age.

60 (5) A processor who violates subsection (3) is subject to
61 an administrative fine of not more than \$500 for the first
62 offense and not more than \$1,000 for the second or subsequent
63 offense. A processor selling kratom products at retail does not
64 violate subsection (3) if it is shown by a preponderance of the
65 evidence that the processor relied in good faith upon the
66 representations of a manufacturer, processor, packer, or
67 distributor of the kratom product.

68 (6) The Department of Agriculture and Consumer Services
69 shall adopt rules to administer and enforce this section.

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

The Florida Senate

APPEARANCE RECORD

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

3.6.23

Meeting Date

Commerce

Committee

136

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Barney Bishop III

Phone

850.510.9922

Address

1454 Vieux Carre Dr.

Email

barney@barneybishop.com

Street

Tall

City

FL

State

32308

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:

Fla. Smart Justice Alliance

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

3/6/2023

Meeting Date

Commerce & Tourism

Committee

SB 214

Bill Number or Topic

103650

Amendment Barcode (if applicable)

Name

Isabelle Garbaino

Phone

407-412-4405

Address

404 S Monroe St, PL-10

Email

isabelle.garbaino@fdacs.gov

Street

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.☒ I am a registered lobbyist, representing:

FDACS

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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3/6/2023

Meeting Date

Commerce & Tourism

Committee

Name

Nancy Lawther (Florida PTA)

Phone

407 855-7604

Address

1747 Orlando Central Pkwy

Street

Orlando

City

FL

State

32809

Zip

Email

legislation@florida
pta.org

Bill Number or Topic

975730

Amendment Barcode (if applicable)

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.☐ I am a registered lobbyist,
representing:☒ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Florida PTA

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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3.6.23

Meeting Date

Commerce

Committee

Name

Barney Bishop III

Phone

850.510.9922

Address

1454 View Carre Drive

Street

Tall

City

FL

State

32308

Zip

Email

barney@barneybishop.com

214

Bill Number or Topic

Amendment Barcode (if applicable)

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.☒ I am a registered lobbyist,
representing:Fla. Smart Justice
Alliance☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

3/6/2023
Meeting Date
Commerce & Tourism
Committee

The Florida Senate
APPEARANCE RECORD

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

SB 214
Bill Number or Topic
Amendment Barcode (if applicable)

Name Isabelle Garbarino Phone 407-412-4405
Address 404 S Monroe St, PL-10 Email isabelle.garbarino@fdacs.gov
Street
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

FDACS

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

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

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S-001 (08/10/2021)

3/6/2023
Meeting Date
Commerce & Tourism
Committee

The Florida Senate
APPEARANCE RECORD

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

SB 214
Bill Number or Topic
Amendment Barcode (if applicable)

Name Nancy Lawther, Ph.D. Phone 407 855-7604
Address 1747 Orlando Central Pkwy Email legislation@floridapta.org
Street
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

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

Florida PTA

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

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

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

3/6/23

Meeting Date

Commerce & Tourism

Committee

844

Bill Number or Topic

Amendment Barcode (if applicable)

Name Carolyn Johnson

Phone 521-1200

Address 186 S Bronough St

Street

Email cjohnson@flchamber.com

Tallahassee

City

FL

State

32301

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

FL 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 \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

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

3/6/23

Meeting Date

Commerce & Tourism

Committee

SB 844

Bill Number or Topic

Amendment Barcode (if applicable)

Name Victoria Price

Phone 850-382-4153

Address 1428 N. Bronough Street

Street

Email vprice@chpk.com

Tallahassee

City

FL

State

32303

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

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

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

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S-001 (08/10/2021)

3/6/2023
Meeting Date
Commerce + Tourism
Committee

The Florida Senate
APPEARANCE RECORD

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

844

Bill Number or Topic

Amendment Barcode (if applicable)

Name Erin Ballas Phone 850 728 0387
Address 730 E. Park Ave. Email erinballas@pqconsultants.com
Street
Tallahassee FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

- ☐ I am appearing without compensation or sponsorship. ☒ I am a registered lobbyist, representing: Brightmark ☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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

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S-001 (08/10/2021)

March 6, 2023
Meeting Date
Commerce and Tourism
Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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DUPLICATE

844

Bill Number or Topic

Amendment Barcode (if applicable)

Name Dale Calhoun Phone 8506810496
Address 201 S Monroe St Unit A Email dale.calhoun@floridagas.org
Street
Tallahassee FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

- ☐ I am appearing without compensation or sponsorship. ☒ I am a registered lobbyist, representing: Florida Natural Gas Association ☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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

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

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

3-6-23

Meeting Date

844

Bill Number or Topic

Com & Tour

Committee

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

Amendment Barcode (if applicable)

Name DAVID CULLEN

Phone 941-323-2404

Address 2838 LITTLE DEAL RD

Email cullenasea@gmail.com

Street

LLH

City

FL

State

32308

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:

SIERRA CLUB FLORIDA

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

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

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

3-6-23

Meeting Date

892

Bill Number or Topic

COMMITTEE

Committee

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

Amendment Barcode (if applicable)

Name JAMES INGLE

Phone 901-483-4800

Address 3509 NW 22nd Dr

Email

Street

Gainesville

City

FL

State

32605

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:

IBEW 1205

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)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

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

3.6.23
Meeting Date
Commerce & Tourism
Committee

892
Bill Number or Topic
Amendment Barcode (if applicable)

Name Aaron Carmella Phone 850.224.6926
Address 135 S Monroe St Email acarmella@flapl.io.org
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
AFL-CIO

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

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

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

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

3/6/23
Meeting Date
Commerce and Tourism
Committee

SB 892
Bill Number or Topic
Amendment Barcode (if applicable)

Name Wayne Lukash Phone 407 432 6030
Address 2415 Drake Dr Email _____
Orlando FL 32810
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

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

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

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

3/6/23

Meeting Date

Commerce

Committee

892

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Brett Farnell

Phone

352-615-4986

Address

504 SW Buddi Glen

Street

Email

Fort White

City

FL

State

32038

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

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

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

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

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

Meeting Date

COMMERCE

Committee

892

Bill Number or Topic

Amendment Barcode (if applicable)

Name

David A. Dosey Sr.

Phone

352-502-5247

Address

6790 E Hwy 31B

Street

Email

DDosey@gmail.com

Citra

City

FL

State

32113

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

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

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

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

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

3-6-2023

Meeting Date

Sh 842

Bill Number or Topic

Commerce

Committee

Amendment Barcode (if applicable)

Name Elazar Balbuena

Phone 863-521-3300

Address 509 S 14th St

Street

Email EJbalb@gmail.com

Haines City

City

FL

State

33844

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

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

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

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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3-6-23

Meeting Date

892

Bill Number or Topic

Amendment Barcode (if applicable)

Commerce

Committee

Name Brandon Perez

Phone (954) 336-8374

Address 3904 NW 21st Ter

Street

Email BrandonPerez1992@gmail.com

Gainesville

City

FL

State

32605

Zip

Speaking: ☐ For ☒ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

S 892

Bill Number or Topic

3-6-23

Meeting Date

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

Commerce + Tourism
Committee

Amendment Barcode (if applicable)

Name Nick Mangoni

Phone 941 932 3913

Address 320 SE 3rd St Apt D12

Email NickMangoni@gmail.com

Street

Gainesville

FL

32601

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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

S-001 (08/10/2021)

CourtSmart Tag Report

Room: SB 401 Case No.: Type:
Caption: Senate Committee on Commerce and Tourism Judge:

Started: 3/6/2023 3:32:31 PM
Ends: 3/6/2023 4:16:45 PM Length: 00:44:15

3:32:32 PM Chair Trumbull calls meeting to order
3:32:39 PM CAA calls roll
3:32:47 PM Quorum present
3:33:10 PM Chair Trumbull in opening comments
3:33:23 PM Tab 2 SB 844, Sales Tax Exemption for Renewable Natural Gas Machinery and Equipment by Senator Yarborough
3:33:35 PM Senator Yarborough explains bill
3:34:42 PM Questions:
3:34:51 PM No questions
3:34:54 PM Dave Cullen, Sierra Club FL speaking in opposition
3:36:52 PM Dale Calhoun, FL Natural Gas Association, waives in support
3:37:02 PM Erin Ballas, Brightmark, waives in support
3:37:08 PM Victoria Price, waives in support
3:37:13 PM Carolyn Johnson, FL Chamber of Commerce, waives in support
3:37:19 PM Debate:
3:37:21 PM No debate
3:37:24 PM Senator Yarborough closes on bill
3:37:52 PM Roll Call
3:38:13 PM SB 844 reported favorably
3:38:33 PM Tab 4 SB 136 Florida Kratom Consumer Protection Act by Senator Gruters
3:38:43 PM Senator Gruters on strike all amendment 196652
3:38:51 PM Senator Gruters explains strike all amendment number 196652
3:39:59 PM Questions on amendment:
3:40:05 PM Senator Stewart
3:40:20 PM Senator Gruters
3:41:06 PM Senator Stewart
3:41:22 PM Senator Gruters
3:41:50 PM Appearance forms on amendment:
3:41:55 PM Barney Bishop, FL Smart Justice Alliance, waives in support
3:42:01 PM Debate on Amendment- no debate
3:42:06 PM Amendment adopted
3:42:11 PM Back on bill as amended
3:42:15 PM No questions
3:42:20 PM No appearance forms
3:42:26 PM Debate:
3:42:28 PM Senator Stewart
3:43:12 PM Senator Gruters closes on bill
3:43:42 PM Roll call
3:44:00 PM CS/SB 136 reported favorably
3:44:20 PM Tab 3 SB 892, State Minimum Wage by Senator Martin
3:44:27 PM Senator Martin explains bill
3:45:28 PM Questions:
3:45:29 PM Senator Torres
3:45:40 PM Senator Martin
3:45:46 PM Senator Torres
3:45:49 PM Senator Martin
3:45:58 PM Back and forth in questions
3:50:55 PM Appearance Forms:
3:51:01 PM Wayne LuKash waives against
3:51:04 PM Brett Farrell waives in opposition
3:51:08 PM David Dorey Sr. waives in opposition
3:51:13 PM Elcazar Balbuena waives in opposition

3:51:18 PM Brandon Perez waives in opposition
3:51:22 PM James Ingle waives in opposition
3:51:26 PM Nick Mangoni speaks against
3:51:54 PM Senator Hutson with question
3:52:00 PM Nick Mangoni speaks against
3:52:31 PM Aaron Carmella, FL AFL-CIO, speaks against
3:53:53 PM Debate:
3:54:16 PM No debate
3:54:19 PM Senator Martin closes on bill
3:55:51 PM Roll call
3:56:21 PM SB 892 reported favorably
3:56:29 PM Tab 1 SB 214 Sales of Firearms and Ammunition by Senator Burgess
3:56:45 PM Senator Burgess explains bill
3:57:22 PM Take up amendment 1 late-filed amendment 307250
3:57:35 PM Senator Burgess to explain amendment
3:57:47 PM Chair Trumbull moves to take up substitute amendment 103650
3:57:58 PM Senator Burgess explains substitute amendment 103650
3:58:44 PM Questions on substitute amendment:
3:58:49 PM No questions
3:58:51 PM Appearance forms:
3:58:54 PM Isabelle Garbarino, FDACS, waives in support
3:59:00 PM Debate on substitute amendment:
3:59:04 PM No debate
3:59:06 PM Senator Burgess waives close
3:59:11 PM Amendment adopted
3:59:27 PM Amendment 975730 withdrawn
3:59:37 PM Questions:
3:59:41 PM Senator Jones
3:59:53 PM Senator Burgess
4:00:27 PM Senator Jones
4:00:37 PM Senator Burgess
4:01:22 PM Senator Jones
4:01:43 PM Senator Burgess
4:02:19 PM Back and forth in questions
4:04:03 PM Senator Stewart
4:04:19 PM Senator Burgess
4:04:59 PM Senator Stewart
4:05:06 PM Senator Burgess
4:06:22 PM Chair Trumbull
4:06:46 PM Senator Burgess
4:07:31 PM Senator Torres
4:08:07 PM Senator Burgess
4:08:57 PM Senator Torres
4:09:16 PM Chair Trumbull
4:09:22 PM Senator Torres
4:10:00 PM Senator Burgess
4:10:37 PM Senator Torres
4:10:52 PM Back and forth in questions
4:12:00 PM Senator Torres moves to temporarily postpone bill
4:12:10 PM Second by Senator Stewart
4:12:23 PM Motion not adopted
4:12:28 PM Back on bill
4:12:34 PM Appearance forms:
4:12:40 PM Nancy Lawther, FL PTA, waives in opposition
4:12:45 PM Isabella Garbarino, FDACS, waives in support
4:12:55 PM Barney Bishop, FL Smart Justice Alliance, waives in support
4:13:04 PM Debate:
4:13:13 PM Senator Torres
4:15:12 PM Senator Burgess closes on bill
4:15:19 PM Roll call
4:15:41 PM CS/SB 214 reported favorably
4:16:07 PM Senator DiCeglie vote after on SB 136 and SB 844

4:16:23 PM Senator Stewart moves to adjourn
4:16:37 PM Meeting adjourned