

Tab 1	SB 262 by Bradley; (Similar to H 01547) Technology Transparency					
164120	A	S		CM, Bradley	Delete L.92 - 108:	03/10 12:27 PM
Tab 2	SB 1648 by Bradley; (Identical to H 01549) Public Records/Investigations by the Department of Legal Affairs					
963930	A	S		CM, Bradley	Delete L.110 - 119:	03/10 12:26 PM
Tab 3	SB 388 by Bradley; (Identical to H 00317) Resale of Tickets					
150016	A	S	RCS	CM, Bradley	Delete L.31 - 37:	03/14 04:26 PM
Tab 4	SB 946 by Grall; (Similar to CS/H 00911) Public Records/Department of State Electronically Filed Records					
Tab 5	SB 948 by Grall; (Similar to CS/H 00909) Records Electronically Filed with the Department of State					
Tab 6	SB 1068 by Collins (CO-INTRODUCERS) Boyd; (Similar to CS/H 01071) Drones					
917558	A	S	RCS	CM, Collins	btw L.62 - 63:	03/14 04:28 PM
Tab 7	SB 1150 by Ingoglia; (Identical to H 01307) Department of Agriculture and Consumer Services					
Tab 8	SB 1154 by Perry (CO-INTRODUCERS) Hutson; (Identical to H 00895) Labor Pool Act					
Tab 9	SB 552 by Hooper; (Similar to H 01437) Public Records/Broadband Opportunity Program					
636136	A	S	RCS	CM, Hooper	Delete L.22 - 64:	03/14 04:28 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Monday, March 13, 2023

TIME: 3:30—5:30 p.m.

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

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 262 Bradley (Similar H 1547, Compare H 1549, Linked S 1648)	Technology Transparency; Prohibiting officers or salaried employees of governmental entities from using their positions or state resources to make certain requests of social media platforms; prohibiting governmental entities from initiating or maintaining agreements or working relationships with social media platforms under a specified circumstance; prohibiting a controller from collecting certain consumer information without the consumer's authorization; requiring controllers that collect personal information to implement reasonable security procedures and practices to protect such information, etc. CM 03/13/2023 Not Considered JU RC	Not Considered
2	SB 1648 Bradley (Identical H 1549, Compare H 1547, Linked S 262)	Public Records/Investigations by the Department of Legal Affairs; Providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs and law enforcement agencies of certain data privacy violations; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CM 03/13/2023 Not Considered JU RC	Not Considered
3	SB 388 Bradley (Identical H 317)	Resale of Tickets; Providing requirements for websites of ticket resellers; providing for the donation, transfer, and resale of certain tickets; authorizing the original seller to request certain information from subsequent ticket holders; prohibiting the original ticket seller from taking certain actions against a person who purchases or resells a ticket; preempting regulation of the sale or resale of tickets to the state, etc. CM 03/13/2023 Fav/CS JU RC	Fav/CS Yeas 6 Nays 3

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, March 13, 2023, 3:30—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 946 Grall (Similar CS/H 911)	Public Records/Department of State Electronically Filed Records; Providing an exemption from public records requirements for e-mail addresses and secure login credentials held by the Department of State relating to electronically filed records; defining the term "secure login credentials"; providing retroactive applicability; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. CM 03/13/2023 Favorable GO RC	Favorable Yeas 10 Nays 0
5	SB 948 Grall (Similar CS/H 909, Compare CS/H 911)	Records Electronically Filed with the Department of State; Authorizing the department to implement certain systems relating to electronically filed records; providing requirements and authorizations for the department relating to such systems, etc. CM 03/13/2023 Favorable GO RC	Favorable Yeas 10 Nays 0
6	SB 1068 Collins (Similar CS/H 1071)	Drones; Prohibiting a political subdivision from taking certain actions relating to drone delivery services; exempting drone ports from the Florida Building Code, etc. CM 03/13/2023 Fav/CS CA RC	Fav/CS Yeas 9 Nays 1
7	SB 1150 Ingoglia (Identical H 1307)	Department of Agriculture and Consumer Services; Revising requirements for applicants for a Class "K" license; revising the circumstances under which the Department of Agriculture and Consumer Affairs may waive firearms training requirements; revising requirements relating to registration fees for certain charitable organizations, sponsors, and parent organizations; revising the definitions of the terms "Category I liquefied petroleum gas dealer" and "Category V LP gas installer"; providing criminal penalties for certain actions relating to retail fuel theft, etc. CM 03/13/2023 Favorable AEG FP	Favorable Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, March 13, 2023, 3:30—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1154 Perry (Identical H 895)	Labor Pool Act; Providing that a labor pool satisfies certain requirements if its facilities meet the minimum requirements in the Florida Building Code and any local amendments thereto; authorizing a labor pool to provide drinking water in a specified manner; requiring an aggrieved worker to provide specified notice to a labor pool before bringing certain civil actions; authorizing a labor pool to cure alleged violations in a specified manner, etc. CM 03/13/2023 Favorable JU RC	Favorable Yeas 10 Nays 0
9	SB 552 Hooper (Similar H 1437)	Public Records/Broadband Opportunity Program; Providing an exemption from public records requirements for certain information relating to communications services locations, project proposals, and challenges submitted to the Department of Economic Opportunity under the Broadband Opportunity Program; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CM 03/13/2023 Fav/CS GO RC	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: SB 262

INTRODUCER: Senator Bradley

SUBJECT: Technology Transparency

DATE: March 10, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

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

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

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

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

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

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

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

The Florida Department of Legal Affairs has authority to enforce the consumer data privacy provisions in section 2 of the bill.

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

The bill takes effect on July 1, 2023.

II. Present Situation:

Internet and Social Media Platforms

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

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

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

- Data monetization.⁵ This uses data that is gathered and stored on the millions of users that spend time on free content sites, including specific user location, browsing habits, buying behavior, and unique interests. This data can be used to help e-commerce companies tailor their marketing campaigns to a specific set of online consumers. Platforms that use this model are typically free for users to use.⁶
- Subscription or membership fees. This model requires users pay for a particular or unlimited use of the platform infrastructure.⁷

¹ DelValle Institute Learning Center, *Social Media Platforms*, <https://delvalle.bphc.org/mod/wiki/view.php?pageid=65> (last visited Mar. 10, 2023).

² IGI Global, *Internet Platform*, <https://www.igi-global.com/dictionary/internet-platform/15441> (last visited Mar. 10, 2023).

³ Merriam Webster, *Search Engine*, <https://www.merriam-webster.com/dictionary/search%20engine> (last visited Mar. 10, 2023).

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

⁵ The Alexander von Humboldt Institute for Internet and Society, *How do digital platforms make their money?*, July 29, 2019, <https://www.hiig.de/en/how-do-digital-platforms-make-their-money/> (last visited Mar. 10, 2023).

⁶ Investopedia, *How Do Internet Companies Profit with Free Services?*, <https://www.investopedia.com/ask/answers/040215/how-do-internet-companies-profit-if-they-give-away-their-services-free.asp#:~:text=Profit%20Through%20Advertising,content%20is%20through%20advertising%20revenue.&text=Each%20of%20these%20users%20represents,and%20services%20via%20the%20Internet> (last visited Mar. 10, 2023).

⁷ HHS, *supra* note 5.

- Transaction fees. This model allows platforms to benefit from every transaction that is enabled between two or more actors. An example is AirBnB, where users transacting on the site are charged a fee.⁸

Freedom of Speech and Internet Platforms

Section 230

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

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

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

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

Section 230 “assuaged Congressional concern regarding the outcome of two inconsistent judicial decisions,¹³ both of which “appl[ied] traditional defamation law to internet providers.”¹⁴ The first decision held that an interactive computer service provider could not be liable for a third party's defamatory statement ... but the second imposed liability where a service provider filtered content in an effort to block obscene material.”¹⁵ To provide clarity, Section 230 provides that “[n]o provider ... of an interactive computer service shall be treated as the publisher or speaker of

⁸ *Id.*

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

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

¹¹ 47 U.S.C. § 230(b)(1)–(2).

¹² 47 U.S.C. § 230(c).

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

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

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

any information provided by another information content provider.¹⁶ In light of Congress's objectives, the Circuits are in general agreement that the text of Section 230(c)(1) should be construed broadly in favor of immunity.¹⁷

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

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

Recently, the Supreme Court heard oral arguments in *Gonzalez v. Google LLC*, to determine whether online platforms should be held accountable when their algorithms prioritize or recommend certain content to its users.²³ The plaintiff in the case argues that Google aided and abetted international terrorism because its computer algorithms suggest certain content to its users based on their viewing history.²⁴ The district court granted Google's motion to dismiss based on Section 230, and the U.S. Court of Appeals for the Ninth Circuit affirmed.²⁵

Search Engines

Search engines work by crawling billions of webpages, indexing the webpages, and then providing them to the person typing a query into the search engine.²⁶ A web crawler, also known

¹⁶ 47 U.S.C. § 230(c)(1).

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

¹⁸ 47 U.S.C. § 230(e).

¹⁹ Zoe Bedell and John Major, *What's Next for Section 230? A Roundup of Proposals* Lawfare, (July 29, 2020) <https://www.lawfareblog.com/whats-next-section-230-roundup-proposals> (last visited Mar. 10, 2023).

²⁰ *Id.*; United States Department of Justice, Department of Justice's Review of Section 230 of the Communications Decency Act of 1996, <https://www.justice.gov/archives/ag/departments-justice-s-review-section-230-communications-decency-act-1996> (last visited Mar. 10, 2023); EARN IT Act of 2020, S.3398, 116th Cong. (2020).

²¹ Bedell, *supra* note 19; PACT Act, S.4066, 116th Cong. (2020); BAD ADS Act, S.4337, 116th Cong. (2020).

²² Bedell, *supra* note 19; Limiting Section 230 Immunity to Good Samaritans Act, S.3983, 116th Cong. (2020)

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

<https://www.theatlantic.com/technology/archive/2023/02/supreme-court-section-230-twitter-google-algorithm/672915/> (last visited Mar. 10, 2023).

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

²⁵ *Id.*

²⁶ See Anthony Schultes, *How Do Search Engines Work* (Sep. 9, 2021) <https://www.seerinteractive.com/insights/how-do-search-engines-work> (last visited Mar. 10, 2023).

as a bot, is a program that systematically browses the web to copy pages that are then processed by a search engine.²⁷ Next, the pages are indexed for easy retrieval.²⁸

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

Trade Secrets

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

Section 812.081, F.S., defines a “trade secret” as information³³ used in the operation of a business, which provides the business an advantage or an opportunity to obtain an advantage, over those who do not know or use it.³⁴ The test provided for in statute, and adopted by Florida courts,³⁵ requires that a trade secret be actively protected from loss or public availability to any person not selected by the secret’s owner to have access thereto, and be:

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.³⁶

Penalties

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

- Section 815.04, F.S., makes it a third degree felony³⁷ for a person to willfully, knowingly, and without authorization disclose or take data, programs, or supporting documentation that

²⁷ See Cem Dilmegani, *Web Crawler: What it is, How it works & Applications in 2023* (March 6, 2023) <https://research.aimultiple.com/web-crawler/> (last visited Mar. 10, 2023).

²⁸ *Id.*

²⁹ See Anthony Schultes, *How Do Search Engines Work* (Sep. 9, 2021) <https://www.seerinteractive.com/insights/how-do-search-engines-work> (last visited Mar. 10, 2023).

³⁰ *Id.*

³¹ *Id.*

³² See The Florida Bar, *Trade Secret* (Dec. 14, 2022) <https://www.floridabar.org/practice-areas/trade-secrets/> (last visited Mar. 10, 2023).

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

³⁴ The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof, whether tangible or intangible, and regardless of whether or how it is stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing. Section 812.081, F.S.

³⁵ See, e.g., *Seapro Corp. v. Dep’t. of Env’t. Prot.*, 839 So. 2d 781 (Fla. 1st DCA 2003).

³⁶ Section 812.081(1)(c), F.S.

³⁷ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. (ss. 775.082, 775.083, and 775.084 F.S.)

are trade secrets that reside or exist internal or external to a computer, computer system, computer network, or electronic device.³⁸

- Section 812.081, F.S., makes it a third degree felony for a person to willfully and without authorization obtain to use, or endeavor to obtain or use an article that represents a trade secret, when done with an intent to:
 - Deprive or withhold from the trade secret's owner the control of a trade secret, or
 - Appropriate a trade secret to his or her own use or to the use of another.

A number of statutes also provide non-criminal protections for trade secrets. The majority of these statutes provide public record exemptions for trade secrets,³⁹ but others provide procedural safeguards or civil remedies instead.⁴⁰

Consumer Data Privacy Overview

Around 84 percent of Americans say they feel very little or no control over the data that is collected about them by both the government and private companies.⁴¹ Business technology to collect and analyze data has grown, and companies regularly capture, store, and analyze data on their consumers.⁴² While consumers often willingly agree to terms-of-service agreements to provide their data in exchange for free services, they are unaware of the extent to which that data is then used because the agreements are lengthy, overly-complicated, or simply not read by the consumer.⁴³

Consumer data is most commonly tracked through the placement of 'cookies'—files that a website places in the user's device that allow for tracking across websites.⁴⁴ Another common tracker is a "fingerprinter," which creates a unique profile of the device, and allows the collector to gather information tied to that device.⁴⁵ These technologies allow websites to store a password that a consumer previously entered, and to follow the consumer's use patterns at other websites and to tailor their activities and advertisements to the consumer as a result of information it

³⁸ The offense is a second degree felony if committed for the purpose of creating or executing any scheme or artifice to defraud or to obtain property.

³⁹ Sections 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174, 381.83, 403.7046(2)-(3), 403.73, 499.012(g), (m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 581.199, 601.10(8)(a), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.045, F.S.

⁴⁰ Sections 721.071 and 812.035, F.S.

⁴¹ Brooke Auxier, Lee Rainie, Monica Anderson, Andrew Perrin, Madhu Kumar, and Erica Turner, PEW RESEARCH CENTER, *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over their Personal Information* at 7 (Nov. 15, 2019), https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2019/11/Pew-Research-Center_PI_2019.11.15_Privacy_FINAL.pdf (last visited Mar. 10, 2023).

⁴² Max Freedman, BUSINESS NEWS DAILY, *How Businesses are Collecting Data (and What They're Doing With It)* (Jun. 17, 2020), <https://www.businessnewsdaily.com/10625-businesses-collecting-data.html> (last visited Mar. 10, 2023).

⁴³ Jessica Guynn, USA TODAY, *What Your Need to Know Before Clicking 'I Agree' on That Terms of Service Agreement or Privacy Policy* (Jan. 28, 2020), <https://www.usatoday.com/story/tech/2020/01/28/not-reading-the-small-print-is-privacy-policy-fail/4565274002/> (last visited Mar. 10, 2023).

⁴⁴ NPR.org, *Online Trackers Follow our Digital Shadow by 'Fingerprinting' Browsers, Devices* (Sep. 26, 2016), <https://www.npr.org/sections/alltechconsidered/2016/09/26/495502526/online-trackers-follow-our-digital-shadow-by-fingerprinting-browsers-devices> (last visited Mar. 10, 2023).

⁴⁵ *Id.*

gleans.⁴⁶ Certain commercial businesses collect this information and create a consumer profile that describes possible interests or characteristics, and ultimately target ads for their products at the consumer.⁴⁷ Other companies—data brokers—collect and sell or share consumer data as their main business operation.⁴⁸

Generally, the types of consumer data that businesses collect are:⁴⁹

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

Federal and state governments have addressed data privacy and security to a certain extent, largely by targeting specific industries (e.g., healthcare and financial institutions) or types of data (such as children’s personal information).⁵⁰ However, no federal law exists that comprehensively regulates how entities across all industries collect and use consumer data.⁵¹ States have recently begun to legislate more comprehensively to protect data privacy.⁵²

General Data Protection Regulation (GDPR)—European Union

The GDPR protects individual personal data and restricts entities’ use of personal data, especially those that exercise overall control over the purpose and means of processing personal data (controllers) or that process data on behalf of, or at the instruction of controllers (processors).⁵³ A controller or processor is required to comply with the GDPR if it has activity in the European Union—even a minimal one, and regardless of where the data processing occurs.⁵⁴

⁴⁶ Wharton School of Business, University of Pennsylvania, *Your Data is Shared and Sold...What’s Being Done About It?* (Oct. 28, 2019), <https://knowledge.wharton.upenn.edu/article/data-shared-sold-whats-done/> (last visited Mar. 10, 2023).

⁴⁷ See *supra*, note 42.

⁴⁸ Lois Beckett, PROPUBLICA, *Everything We Know About What Data Brokers Know About You* (June 13, 2014), <https://www.propublica.org/article/everything-we-know-about-what-data-brokers-know-about-you> (last visited Mar. 10, 2023). See also Louise Matsakis, Wired, *The WIRED Guide to Your Personal Data (and Who is Using It)*, (Feb. 15, 2019), <https://www.wired.com/story/wired-guide-personal-data-collection/> (last visited Mar. 10, 2023).

⁴⁹ Freedman, *supra*, note 42.

⁵⁰ Stephen Mulligan, Wilson Freeman, Chris Linebaugh, Congressional Research Service, *Data Protection Law: An Overview* at 7-8 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Mar. 10, 2023).

⁵¹ Wilson Freeman, Congressional Research Service, *California Dreamin’ of Privacy Regulation: The California Consumer Privacy Act and Congress* (Nov. 1, 2018), <https://crsreports.congress.gov/product/pdf/LSB/LSB10213/3> (last visited Mar. 10, 2023).

⁵² NCSL, *2021 Consumer Data Privacy Legislation* (Dec. 27, 2021), <https://www.ncsl.org/research/telecommunications-and-information-technology/2021-consumer-data-privacy-legislation.aspx> (last visited Mar. 10, 2023).

⁵³ See generally, Stephen Mulligan, Wilson Freeman, Chris Linebaugh, CONGRESSIONAL RESEARCH SERVICE, *Data Protection Law: An Overview* p. 42 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Mar. 10, 2023).

⁵⁴ GDPR, art. 3.

Personal data is defined as any information that relates to an identified or identifiable person, and can include names, identification numbers, location data, cookies, and any other information through which an individual can be directly or indirectly identified.⁵⁵ A processor and controller must receive express consent from an individual before they can collect or process his or her personal data. The language must give a clear choice that is not based on an overbroad or overly complex question.⁵⁶

The GDPR requires entities subject to the GDPR to provide individuals with a report of their data that is processed, where it is processed, and why it is being processed.⁵⁷ This report must be provided to the individual within one month of his or her request.⁵⁸ If an individual makes a request that an entity correct or delete his or her personal data held by an entity, the entity must do so.⁵⁹

State Data Privacy Regulations

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

The CCPA (2018) defines personal information as that which identifies, relates to, describes, or is capable of being associated with or could reasonably be linked, directly or indirectly, with a particular consumer or household.⁶⁰ The CCPA grants consumers greater control over their personal information by, among other provisions, creating the following consumer rights, to:⁶¹

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

Additionally, the CCPA requires business to give consumers certain notices that explain their privacy practices and provide certain mechanisms to allow consumers to opt-out or exercise other rights regarding their personal information.

The CCPA applies to for-profit businesses that do business in California and that meet any of the following requirements:⁶²

- Have a gross annual revenue of over \$25 million;

⁵⁵ GDPR, art. 4(1). See, U.K. Information Commissioner's Office, *Guide to General Data Protection Regulation: What is Personal Data?*, <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/key-definitions/what-is-personal-data/> (last visited Mar. 10, 2023).

⁵⁶ U.K. Information Commissioner's Office, *Guide to General Data Protection Regulation: Consent*, <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/consent/> (last visited Mar. 10, 2023).

⁵⁷ Mark Kaelin, TECHREPUBLIC, *GDPR: A Cheat Sheet* (May 23, 2019), <https://www.techrepublic.com/article/the-eu-general-data-protection-regulation-gdpr-the-smart-persons-guide/> (last visited Mar. 10, 2023).

⁵⁸ GDPR, arts. 12(3), 15.

⁵⁹ U.K. Information Commissioner's Office, *Guide to General Data Protection Regulation: Right to Erasure*, [Right to Erasure | ICO](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/right-to-erasure/) (last visited Mar. 10, 2023).

⁶⁰ Cal. Civ. Code § 1798.140(v)(1).

⁶¹ California Department of Justice, Office of the Attorney General, *California Consumer Privacy Act (CCPA)*, <https://oag.ca.gov/privacy/ccpa> (last visited Mar. 10, 2023).

⁶² Cal. Civ. Code § 1798.140.

- Buy, receive, or sell the personal information of 100,000 or more California residents, households, or devices; or
- Derive 50 percent or more of their annual revenue from selling California residents' personal information.

The law is largely enforced by the Attorney General, and businesses are subject to fines for violating the law. A consumer may only bring a cause of action against a business if certain categories of personal information tied to his or her name have been stolen in a nonencrypted and nonredacted form.⁶³

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

The CPRA broadens consumers' rights by allowing them to:⁶⁴

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

The CPRA now applies to businesses that not only sell personal information, but also ones that share it. Additionally, the CPRA now prohibits sharing of data between different entities that make up a joint venture.⁶⁵

The CPRA also provides that a business that collects personal information cannot retain a consumer's personal information or sensitive personal information for longer than is reasonably necessary.⁶⁶

Virginia Consumer Data Protection Act

The Virginia Consumer Data Protection Act (Virginia Act) takes effect on January 1, 2023. The Virginia act grants consumers the right to access, correct, delete, obtain a copy of, and opt out of the processing of their personal data for the purposes of targeted advertising.⁶⁷ The Virginia Act

⁶³ Cal. Civ. Code ss. 1798.130, 1798.135.

⁶⁴ Elizabeth Shirley, *Overview of Applicability and Updated Privacy Provisions in the California Privacy Rights and Enforcement Act of 2020 (CPRA)* (Jun. 10, 2021), <https://www.jdsupra.com/legalnews/overview-of-applicability-and-updated-5551553/> (last visited Mar. 10, 2023).

⁶⁵ *Id.*

⁶⁶ Mario Meeks, JDSUPRA, *The CPRA's Storage Limitation Requirement is Coming—Practical Tips for Shoring Up Your Record Retention Practices to Comply* (Feb. 18, 2021), <https://www.jdsupra.com/legalnews/the-cpra-s-storage-limitation-9898179/> (last visited Mar. 10, 2023).

⁶⁷ Va. Code Ann. § 59.1-573 (2020). *See also*, Colleen Brown, Alan Raul, Lauren Kitces, Sidley LLP, *East Coast Meet West Coast: Enter the Virginia Consumer Data Privacy Protection Act* (Mar. 5, 2021), <https://www.sidley.com/en/insights/newsupdates/2021/03/east-coast-meets-west-coast-enter-the-virginia-consumer-data-protection-act> (last visited Mar. 10, 2023).

defines “consumer” only as a natural person who is a resident of Virginia and acts only in an individual or household context.⁶⁸

Businesses are subject to the Virginia Act if they operate in Virginia and either (1) control or process personal data of 100,000 or more consumers or (2) derive over 50 percent of their gross revenue from the sale of personal data and control or process personal data of at least 25,000 consumers.⁶⁹

The Virginia Act exempts specific entities that are otherwise regulated by specific federal law, including those regulated by the GLBA and HIPAA. The Virginia Act also exempts Virginia public entities, nonprofit organizations, and higher education institutions.⁷⁰ In a similar vein, the Virginia Act exempts specific personal information, where the collection and use thereof is otherwise regulated by FCRA, FERPA, and COPPA.⁷¹

The Virginia Attorney General has exclusive authority to enforce the Virginia Act.⁷²

Colorado Privacy Act

The Colorado Privacy Act (Colorado Act) will take effect on July 1, 2023.⁷³ Generally, with regard to personal data, the Colorado Act grants a consumer the right to:⁷⁴

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

Like the CCPA and Virginia Act, the Colorado Act contains exceptions for certain types of data and information governed by federal law. It provides that the Attorney General has exclusive authority to enforce violations of the law, and does not provide a private cause of action to a consumer. The Colorado Act applies to persons conducting business in the state that either:⁷⁵

- Control or process personal data of 100,000 or more consumers during a calendar year; or

⁶⁸ Va. Code Ann. § 59.1-571 (2020).

⁶⁹ Va. Code Ann. § 59.1-572 A (2020).

⁷⁰ Va. Code Ann. § 59.1-572 B (2020).

⁷¹ Va. Code Ann. § 59.1-572 C (2020).

⁷² See generally, Kurt Hunt and Matthew Diaz, JDSUPRA, *Virginia Becomes 2nd State to Adopt a Comprehensive Consumer Data Privacy Law* (Mar. 4, 2022), <https://www.natlawreview.com/article/virginia-becomes-2nd-state-to-adopt-comprehensive-consumer-data-privacy-law> (last visited Mar. 10, 2023).

⁷³ C.R.S. 1-6-1301-1313, available at https://leg.colorado.gov/sites/default/files/2021a_190_signed.pdf (last visited Mar. 10, 2023).

⁷⁴ The National Law Review, *And Now There are Three...The Colorado Privacy Act*, July 16, 2021, <https://www.natlawreview.com/article/and-now-there-are-three-colorado-privacy-act#:~:text=Colorado%20has%20now%20joined%20California,effect%20on%20July%201%2C%202023>. (last visited Mar. 10, 2023).

⁷⁵ *Id.*

- Derive revenue or receive discounts from the sale of personal data and control or process data of at least 25,000 consumers.

The Colorado Act does not bestow a private right of action. The Colorado Attorney General has exclusive enforcement authority to prosecute violations as deceptive trade practices.⁷⁶

Utah Consumer Privacy Act

The Utah Consumer Privacy Act (UCPA) will take effect on December 31, 2023.⁷⁷ Generally, with regard to personal data, the UCPA grants a consumer the right to:

- Access data;
- Delete data;
- Obtain a copy of data;
- Opt out of the sale of data; and
- Opt out of targeted advertising.⁷⁸

Unlike the CCPA, the Colorado Act, and the Virginia Act, the UCPA does not provide consumers with the ability to correct personal data.⁷⁹ The UCPA applies to a controller or processor that conducts business in Utah or produces a product or service targeted to Utah residents, has annual revenues of \$25,000,000 or more, and satisfies at least one of the following thresholds:

- During a calendar year, controls or processes the personal data of 100,000 or more Utah residents; or
- Derives over 50% of its gross revenue from the sale of personal data, and controls or processes the personal data of 25,000 or more consumers.⁸⁰

The UCPA does not provide a private right of action. The Utah Attorney General will enforce the law.⁸¹

Florida Information Protection Act (FIPA)⁸²

FIPA is a data security measure that requires governmental entities, specific business entities, and any third-party agent that holds or processes personal information on behalf of these entities to take reasonable measures to protect a consumer's personal information. Additionally, FIPA requires covered business entities⁸³ that are subject to data breaches to attempt to remediate the breach by notification to affected consumers in Florida, and in cases where more than 500 individual's information was breached—by additional notification to the Department of Legal

⁷⁶ Weiner Brodsky Kider, PC, *Colorado Enhances Data Privacy for Consumers* (Aug. 10, 2021), <https://www.jdsupra.com/legalnews/colorado-enhances-data-privacy-for-7292123/> (last visited Mar. 10, 2023).

⁷⁷ The National Law Review, *Utah Becomes Fourth U.S. State to Enact Consumer Privacy Law* (March 24, 2022), [Utah Consumer Privacy Act Passed - UCPA Legislation \(natlawreview.com\)](https://www.natlawreview.com/article/utah-becomes-fourth-u-s-state-to-enact-consumer-privacy-law) (last visited, Mar. 10, 2023).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Section 501.171, F.S.; Chapter 2014-189, Laws of Fla. (FIPA expanded and updated Florida's data breach disclosure laws contained in s. 817.5681, F.S. (2013), which was adopted in 2005 and repealed in 2014).

⁸³ A "covered entity" is a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. Section 501.171(1)(b), F.S.

Affairs (DLA).⁸⁴ If the breach affected more than 1,000 individuals in Florida, the entity must also notify credit reporting agencies, with certain exceptions.⁸⁵

FIPA defines “personal information” as:

- Online account information, such as security questions and answers, email addresses, and passwords; and
- An individual’s first name or first initial and last name, in combination with any one or more of the following information regarding him or her:
 - A social security number;
 - A driver license or similar identity verification number issued on a government document;
 - A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual’s financial account;
 - Medical history information or health insurance identification numbers; or
 - An individual’s health insurance identification numbers.⁸⁶

Personal information does not include information:

- About an individual that a federal, state, or local governmental entity has made publicly available; or
- That is encrypted, secured, or modified to remove elements that personally identify an individual or that otherwise renders the information unusable.⁸⁷

FIPA does not provide a private cause of action, but authorizes the DLA to file charges against covered entities under Florida’s Unfair and Deceptive Trade Practices Act (FDUTPA).⁸⁸

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

Illinois Biometric Information Privacy Act

In 2008, Illinois became the first state to specifically regulate biometric data with the passage of the Biometric Information Privacy Act (BIPA). BIPA puts in place safeguards and procedures that relate to the retention, collection, disclosure, and destruction of biometric information and specifically protects the biometric information of those in Illinois.

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

⁸⁴ Florida Office of the Attorney General (OAG), *How to Protect Yourself: Data Security*, <http://myfloridalegal.com/pages.nsf/Main/53D4216591361BCD85257F77004BE16C> (last visited Mar. 10, 2023). Section 501.171(3)-(4), F.S.

⁸⁵ Section 501.171(3)-(6), F.S.

⁸⁶ Section 501.171(1)(g)1., F.S.; OAG *supra* note 73.

⁸⁷ Section 501.171(1)(g)2., F.S.

⁸⁸ Section 501.171(9), (10), F.S.; OAG *supra* note 73.

Under BIPA, a private entity:⁸⁹

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

BIPA provides a private cause of action, with relief including liquidated damages, ranging from \$1,000 to \$5,000 or actual damages (whichever is greater), attorney's fees and costs, and other relief deemed appropriate by a court.⁹⁰

The Illinois Supreme Court found that an individual does not need to allege an actual injury or adverse effect, beyond violation of their rights under BIPA, to qualify as an aggrieved party. Therefore, anyone whose biometric data is affected by a violation of BIPA may seek liquidated damages or injunctive relief under BIPA.⁹¹ Court documents also tend to support the notion that an individual in Illinois has a valid cause of action if their biometric data is taken without consent by a private entity, including out-of-state entities, but it is subject to a finding of fact.⁹²

Federal Privacy Regulations

Health Insurance Portability and Accountability Act (HIPAA)⁹³ and its Related Rules

HIPPA requires federal agencies to create national standards to protect sensitive patient health information from disclosure without the patient's consent or knowledge. HIPPA's two pertinent implementing rules are the Privacy Rule and the Security Rule.⁹⁴

The Privacy Rule addresses the use and disclosure of individual's protected health information (PHI) by covered entities.^{95, 96} PHI is information, including demographic data, that can be used to identify the individual, and that relates to the individual's:

- Past, present, or future physical or mental health or physical condition;
- Health care; or

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

⁹⁰ 740 Ill. Comp. Stat. 14/20 (2008).

⁹¹ See *Rosenbach v. Six Flags Entertainment Corporation*, 2019 IL 123186.

⁹² See *Rivera v. Google, Inc.*, 238 F.Supp.3d 1088 (N.D. Ill. 2017); See also *In re Facebook Biometric Information Privacy Litigation*, 185 F.Supp.3d 1155 (N.D. Cal. (2016).; See also *Norberg v. Shutterfly, Inc.*, 152 F.Supp.3d 1103 (N.D. Ill. 2015).

⁹³ 42 U.S.C. § 1320.

⁹⁴ See generally, Stephen Mulligan, Wilson Freeman, Chris Linebaugh, Congressional Research Service, *Data Protection Law: An Overview* pp. 10-12 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Mar. 10, 2023).

⁹⁵ 45 C.F.R. §160 and 164. See also, Department of Health and Human Services, *Summary of the HIPPA Privacy Rule*, (Jul. 26, 2013) <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html> (last visited Mar. 10, 2023).

⁹⁶ A covered entity is a health plan, health care clearinghouse, health care provider who transmits health information in electronic form, and these entities' business associates.

- Payment for past, present, or future health care.

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

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

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

The Security Rule applies to the subset of identifiable health information that a covered entity creates, receives, maintains, or transmits in electronic form called "electronic protected health information" (e-PHI).⁹⁷ The Security Rule does not apply to PHI that is transmitted orally or in writing. A covered entity must comply with the Security Rule by:

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

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

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

The Common Rule is promulgated by the U.S. Food and Drug Administration (FDA) and governs the ethical conduct of research involving human subjects.⁹⁸ Fifteen federal agencies and departments are party to this rule. The Common Rule mandates that researchers protect the privacy of subjects and maintain confidentiality of human subject data, among other requirements.⁹⁹

The FDA is a member of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use, which brings together the regulatory authorities and the pharmaceutical industry to develop guidelines for pharmaceutical trials.¹⁰⁰

⁹⁷ 45 C.F.R. §164.302-318.

⁹⁸ 21 C.F.R. §§ 50, 60.

⁹⁹ See generally, Health and Human Services, *Federal Policy for the Protection of Human Subjects ('Common Rule')* (Mar. 18, 2016), <https://www.hhs.gov/ohrp/regulations-and-policy/regulations/common-rule/index.html> (last visited Mar. 10, 2023).

¹⁰⁰ International Council for Harmonisation, <https://www.ich.org/> (last visited Mar. 10, 2023).

Fair Credit Reporting Act (FCRA)¹⁰¹

The FCRA promotes the accuracy, fairness, and privacy of information that consumer reporting agencies and their related entities collect.¹⁰² The FCRA governs the acts of credit reporting agencies (CRAs), entities that furnish information to CRAs (furnishers), and individuals who use credit reports issued by CRAs. Specifically, CRAs and their furnishers must adopt methods to ensure the information they collect and report is accurate.

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

A CRA cannot provide information in a consumer report to anyone who does not have a specified purpose in the FCRA.¹⁰³

The FTC and Consumer Finance Protection Bureau share civil enforcement authority of the FCRA. A person who willfully obtains consumer information from a CRA under false pretenses is subject to criminal prosecution. An individual may also pursue a private right of action if he or she was injured by willful or negligent actions.¹⁰⁴

Gramm-Leach Bliley Act (GLBA)¹⁰⁵

The GLBA governs financial institutions’ use and protection of nonpublic personal information (NPI).¹⁰⁶ A financial institution is any institution that engages in financial activities, such as banks, real estate appraisers and title companies, consumer-financing companies, insurance underwriters and agents, wire transfer agencies, check cashing stores, and mortgage brokers.¹⁰⁷

A financial institution cannot share (1) NPI with non-affiliated third parties unless they notify the consumer of their intent to do so and provide a chance to opt out; and (2) a consumer’s account or credit card numbers with third parties for direct marketing. The financial institution must also

¹⁰¹ 15 U.S.C. § 1681.

¹⁰² Consumer Finance Bureau, *A Summary of Your Rights Under the Fair Credit Reporting Act* (Sept. 18, 2018), 12 CFR 1022, available at [A Summary of Your Rights Under the Fair Credit Reporting Act \(ftc.gov\)](https://www.ftc.gov/summary/your-rights/fair-credit-reporting-act) (last visited Mar. 10, 2023). *See also*, Federal Trade Commission, *Fair Credit Reporting Act*, <https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act> (last visited Mar. 10, 2023).

¹⁰³ Permissible purposes include employment, insurance underwriting that involves the consumer, evaluating the consumer’s eligibility for licensure or other governmental benefit that considers the applicants financial responsibility or status, or a legitimate business need. 15 U.S.C. § 1681b(a).

¹⁰⁴ An individual may record actual damages, attorney’s fees, litigation costs, and in the case of willful violations—statutory damages ranging from \$100 to \$1,000 and punitive costs as the court deems appropriate. 15 U.S.C. § 1681n(a).

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

¹⁰⁶ The GLBA defines “nonpublic personal information” as “personally identifiable information” that is not publicly available and is either provided by the consumer to a financial institution, resulting from any transaction with the consumer or any service performed for the consumer, or otherwise obtained by the financial institution. 15 U.S.C. § 6809(9).

¹⁰⁷ Federal Trade Commission, *Financial Institutions and Customer Information: Complying with the Safeguards Rule: Who Must Comply?*, <https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying> (last visited Mar. 10, 2023).

send an annual notice to the consumer that clearly and conspicuously describes the institution's privacy policies and practices.¹⁰⁸

The financial institution must also ensure the security and confidentiality of a customer's NPI by establishing concrete security policies, and by designating an information security program coordinator and implementing a risk assessment process.¹⁰⁹

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

Children's Online Privacy Protection Act (COPPA)¹¹⁰

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

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

- A first and last name;
- A home or other physical address, e-mail address, telephone number, or any other identifier that the FCC determines could permit one to contact someone physically or online, such as a screen name;
- A social security number;
- A persistent identifier that can be used to recognize a user over time and across different websites;
- A photograph, video, or audio file that contains a child's image or voice;
- A geolocation information that is sufficient to identify the user's location; or
- Information concerning the child or parents that the operator collects from the child and combines with any other identifier described above.

A covered entity may not collect a child's (individual under the age of 13) personal information without the prior, verifiable consent of his or her parent.¹¹¹

COPPA further requires covered entities to:¹¹²

- Give parents direct notice of their privacy policies, including a description of their data collection and sharing practices;

¹⁰⁸ The notice must specifically include the categories of NPI the financial institution collects and discloses, the types of third parties with which it shares NPI, and how it protects consumers' NPI.

¹⁰⁹ See, 16 C.F.R. § 314.4

¹¹⁰ 16 C.F.R. pt. 312.

¹¹¹ 15 U.S.C. §§ 6502(a)-(b).

¹¹² See, Federal Trade Commission, *General Questions About the COPPA Rule: What is the Children's Online Privacy Protection Rule?* (Jul. 2020), <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0> (last visited Mar. 8, 2023).

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

Violations of COPPA are an unfair or deceptive act or practice and are prosecuted by the FTC. COPPA also authorizes state attorneys general to enforce violations that affect residents of their states. There is no criminal prosecution or private right of action provided for under COPPA.¹¹³

***Driver's Privacy Protection Act (DPPA)*¹¹⁴**

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

Violations of the DPPA are subject to criminal fine. Additionally, a private individual affected by the improper disclosure or use of his or her personal information may bring a private civil action against the violator.¹¹⁵

***Family Educational Rights and Privacy Act (FERPA)*¹¹⁶**

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

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

Schools must give an annual notice about rights granted by FERPA to affected parties.¹¹⁷

¹¹³ Federal Trade Commission, *General Questions About the COPPA Rule: COPPA Enforcement*, <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0> (last visited Mar. 8, 2023).

¹¹⁴ 18 U.S.C. § 2721.

¹¹⁵ 18 U.S.C. § 2724. *See generally*, Electronic Privacy Information Center, *The Drivers Privacy Protection Act (DPPA) and the Privacy of Your State Motor Vehicle Record*, [The Drivers Privacy Protection Act \(DPPA\) and the Privacy of Your State Motor Vehicle Record – EPIC – Electronic Privacy Information Center](https://www.epic.org/privacy/state-vehicle-records/) (last visited Mar. 10, 2023).

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

¹¹⁷ U.S. Department of Education, *Family Educational Rights and Privacy Act (FERPA)*, (Aug. 25, 2021) <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html> (last visited Mar. 10, 2023).

Federal Trade Commission Act (FTC Act)

The FTC protects consumer data privacy by acting under Section 5 of the FTC Act, which bars unfair and deceptive acts and practices that affect commerce.¹¹⁸ Specifically, the FTC prosecutes companies that act unfairly or deceptively when they gather, use, or disclose personal information in a manner that contradicts their posted privacy policy or other statements, or fail to implement reasonable data security safeguards.¹¹⁹

For example, the FTC prosecuted both Sears and Upromise for drafting misleading privacy policies that did not fully disclose the extent to which a consumer's online browsing would be tracked.¹²⁰

III. Effect of Proposed Changes:

Social Media Platforms

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

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

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

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

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

¹¹⁸ 15 U.S.C. § 1681. Federal Trade Commission, *Privacy and Security Enforcement*, <https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy/privacy-security-enforcement> (last visited Mar. 10, 2023).

¹¹⁹ Stephen Mulligan, Wilson Freeman, Chris Linebaugh, CONGRESSIONAL RESEARCH SERVICE, *Data Protection Law: An Overview* p. 30-35 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Mar. 10, 2023).

¹²⁰ See, e.g., Federal Trade Commission, *Membership Reward Service Upromise Penalized for Violating FTC Order* (Mar. 17, 2017) Stephen Mulligan, Wilson Freeman, Chris Linebaugh, Congressional Research Service, *Data Protection Law: An Overview* p. 42 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Mar. 10, 2023); and Complaint *In the Matter of Sears Holdings Mgmt Co.*, No. C-4264 (F.T.C. Aug. 31, 2009).

Consumer Data Privacy

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

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

A “consumer,” as defined by the bill, may exercise these rights. A consumer is any natural person who resides in, or is domiciled in Florida, and who acts in his or her personal capacity or household¹²¹ context. The bill does not contemplate individuals who act in a commercial or employment context.

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

Personal Information

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

- Identifiers such as a real name, alias, postal address, unique identifier,¹²² online identifier, internet protocol address, email address, account name, social security number, driver license number, passport number, or other similar identifiers;
- Information that identifies, relates to, or describes, or could be associated with, a particular individual, including, but not limited to, a name, signature, social security number, physical characteristics or description, address, location, telephone number, passport number, driver license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information;
- Characteristics of protected classifications under state or federal law;
- Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies;
- Biometric information;
- Internet or other electronic network activity information, including, but not limited to, browsing history, search history, and information regarding a consumer’s interaction with an Internet website, application, or advertisement;
- Geolocation data;
- Audio, electronic, visual, thermal, olfactory, or similar information; and
- Inferences drawn from any of the information used to create a profile about a consumer reflecting the consumer’s preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

¹²¹ The bill defines “household” as a natural person or a group of people in Florida who reside at the same address, share a common device or the same service provided by a controller, and are identified by a controller as sharing the same group account or unique device.

¹²² The bill defines “unique identifier” as a persistent identifier that can be used to recognize a consumer, a family, or a device that is linked to a consumer or a family, over time and across different services.

The term does not include:

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

Business Requirements

Controllers

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

- Is organized or operated for the profit or financial benefit of its shareholders or owners;
- Does business in Florida;
- Collects consumer personal information, or is the entity that directs such collection;
- Determines the purpose and means of processing personal information about consumers, alone or jointly with others;
- Makes in excess of \$1 billion in gross revenues, as adjusted in January of every odd-numbered year to reflect any increase in the Consumer Price Index; and
- Satisfies one of the following:
 - Derives 50 percent or more of its global annual revenues from providing targeted advertising¹²³ or the sale of ads online; or
 - Operates a consumer smart speaker and voice command component service with an integrated virtual assistant connected to a cloud computing service that uses hands-free verbal activation.¹²⁴

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

Processors

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

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

- Prohibit the processor from selling, sharing, retaining, using, or disclosing the personal information for any purpose that violates s. 501.173, F.S.;
- Prohibit the processor from retaining, using, or disclosing the personal information other than for the purposes specified in the contract or agreement;

¹²³ The bill defines “targeted advertising” as marketing to a consumer or displaying an advertisement to a consumer when the advertisement is selected based on personal information used to predict such consumer’s preferences or interests.

¹²⁴ The bill clarifies that a consumer smart speaker and voice command component service does not include a motor vehicle or speaker or device associated with or connected to a vehicle.

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

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

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

Third Parties

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

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

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

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

General Business Obligations

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

the personal information to the third party, and (2) transactions between a controller and third party for advertising and marketing.

General Exemptions

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

The consumer data privacy provisions do not apply to personal information in the following circumstances:

- Used for transactional payments;
- Deidentified or aggregate consumer information;
- In compliance with federal, state, or local laws;
- In compliance with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities;
- In cooperation with law enforcement agencies concerning conduct reasonably believed to violate laws;
- For the purpose of exercising or defending legal rights, claims, or privileges;
- Collected through direct interactions with the consumer, which is used for advertising or marketing services to advertise or market products or services that are produced or offered directly by the controller;
- Pertaining to a job applicant, employee, owner, director, officer, contractor, volunteer, or intern of a controller, to the extent the personal information is collected and used solely within the context of the person's role or former role with the controller;
- Pertaining to protected health information for purposes of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 and related regulations;
- By a covered entity or business associate governed by the privacy, security, and breach notification rules issued by the U.S. Department of Health and Human Services in 45 C.F.R. parts 160 and 164, or a program or a qualified service program defined in 42 C.F.R. part 2;
- For purposes of research as defined in 45 C.F.R. s. 164.501, conducted in accordance with the Federal Policy for the Protection of Human Subjects for purposes of 45 C.F.R. part 46, the good clinical practice guidelines issued by the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use, or the Protection for Human Subjects for purposes of 21 C.F.R. Parts 50 and 56; or personal information used or shared in research conducted in accordance with one or more of these standards;
- For purposes of compliance with the federal Health Care Quality Improvement Act of 1986 and related regulations, or patient safety work product for purposes of 42 C.F.R. part 3, established pursuant to 42 U.S.C. s. 299b-21 through 299b-26;
- Is deidentified in accordance with 45 C.F.R. part 164 and that is derived from individually identifiable health information, as described in HIPAA, or identifiable personal information, consistent with the Federal Policy for the Protection of Human Subjects or the human subject protection requirements of the United States Food and Drug Administration;
- Used only for public health activities and purposes as described in 45 C.F.R. s. 164.512;
- That is collected, processed, sold, or disclosed pursuant to the federal Fair Credit Reporting Act, 15 U.S.C. s. 1681 and its implementing regulations;

- That is nonpublic personal information collected, processed, sold, or disclosed pursuant to the Gramm-Leach-Bliley Act, 15 U.S.C. s. 6801 et seq. and implementing regulations;
- By a financial institution, as defined in the Gramm-Leach-Bliley Act, 15 U.S.C. ss. 6801 et seq.;
- That is collected, processed, sold, or disclosed pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et. seq.;
- That consists of education information covered by the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232(g) and 34 C.F.R. part 99;
- That is collected as part of public or peer-reviewed scientific or statistical research in the public interest and which adheres to all other applicable ethics and privacy laws, if the consumer has provided informed consent;
- Disclosed for the purpose of responding to an alert of a present risk of harm to a person or property or prosecuting those responsible for such activity;
- Disclosed when a consumer uses or directs a controller to intentionally disclose information to a third party or uses the controller to intentionally interact with a third party;
- That is an identifier used for a consumer how has opted out of the sale or sharing of the consumer's personal information for the sole purpose of alerting processors and third parties that the consumer has opted out of the sale or sharing of the consumer's personal information;
- Transferred by a controller to a third party as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the controller, provided that the information is used or shared consistently;
- Necessary to fulfill the terms of a written warranty when such warranty was purchased by the consumer or the product that is warranted was purchased by the consumer;
- Necessary for a product recall for a product purchased or owned by the consumer conducted in accordance with federal law;
- Processed solely for the purposed of independently measuring or reporting advertising or content performance, reach, or frequency pursuant to a contract with a controller that collected personal information in accordance with this bill;
- Shared between a manufacturer of a tangible product and authorized third party distributors or vendors of the product, as long as such information is used solely for advertising, marketing, or servicing the product that is acquired directly through such manufacturer and such authorized third party distributors or vendors.

Online Privacy Policy

Controllers that collect personal information about a consumer must maintain a current online privacy policy that is available on the controller's homepage.¹²⁵ The privacy policy must include:

- Any Florida-specific consumer privacy rights;
- The types and categories of personal information that they collect, sell, or share, or have collected, sold, or shared in the past about consumers;

¹²⁵ The bill defines "homepage" as the introductory page of an Internet website and any Internet webpage where personal information is collected. In the case of a mobile application, the homepage is the application's platform page or download page, a link within the application, such as "About" or "Information" application configurations, or the settings page, and any other location that allows consumers to review the notice required by the bill, but not limited to, before downloading the application.

- The consumer's right to request deletion or correction of certain personal information; and
- The consumer's right to opt out of the sale or sharing of their personal information to third parties.

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

Notice of Retention of Personal Information

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

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

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

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

Data Security

A controller that collects a consumer's personal information must implement and maintain reasonable security procedures and practices to protect personal information from unauthorized

or illegal access, destruction, use, modification, or disclosure. Additionally, a controller must require any processors to implement and maintain the same or similar security procedures and practices.

Consumer Rights Based on the Sale of Personal Information

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

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

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

Verifiable Requests

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

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

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

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

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

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

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

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

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

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

Right to Delete and Correct Personal Information

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

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

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

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

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

- Provide a good or service requested by the consumer, or reasonably anticipate the request of a good or service within the context of the controller's ongoing business relationship with the consumer, or otherwise perform a contract between the controller and consumer; or

- Engage in public or peer-reviewed research that adheres to applicable ethics and privacy laws, if the deletion would likely render impossible, or seriously impair the research, and if the consumer initially provided informed consent.

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

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

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

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

Incentives for Consent to Sell or Share Personal Information

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

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

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

A controller can offer additional benefits to consumers who participate in the collection, sharing, sale, or deletion of personal information. This consent must have been granted based on a clear description of the material terms of the incentive program, and the consumer must be permitted to revoke his or her consent at any time. The discount or promotional item must be reasonably

related to the value the consumer's data provides to the business and must not be unjust, unreasonable, coercive, or usurious.

Surveillance

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

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

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

Search Engine Transparency

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

Agency Enforcement and Implementation

The Department of Legal Affairs (DLA) may prosecute on behalf of a Florida consumer any violation of the consumer data privacy provisions in section 2 of the bill as a deceptive and unfair trade practice, pursuant to the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).¹²⁶

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

The court may:

- Grant injunctive relief;¹²⁷
- Award actual damages based on the violation;¹²⁸
- Award a civil penalty of not more than \$50,000 for each violation; and

¹²⁶ For the purpose of bringing an action pursuant to this bill ss. 501.211 and 501.212, F.S., do not apply.

¹²⁷ Section 501.207(1), F.S.

¹²⁸ Section 501.207(1), F.S.

- Triple the civil penalty if the violation:
 - Involves a Florida consumer who the controller, processor, or third party has actual knowledge is 18 years of age or younger, or
 - Is based on a controller's, processor's, or third party's failure to delete or correct the consumer's personal information after receiving a verifiable request to delete or correct, unless otherwise exempt; or
 - Is based on the controller's, processor's, or third party's continued sale or sharing of the consumer's personal information after the consumer opted out.

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

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

The bill provides that there is not a private cause of action for the consumer data privacy provisions in section 2 of the bill.

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

Report by the Department of Legal Affairs

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

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

Preemption

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

processing, sharing, or sale of consumer personal information by a controller or processor is preempted to the state.

Florida Information Protection Act

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

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

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

Effective Date

The bill takes effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

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

None.

B. Private Sector Impact:

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

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

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

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

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

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



164120

LEGISLATIVE ACTION

Senate

House

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

Senate Amendment

Delete lines 92 - 108

and insert:

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

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



164120

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

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

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

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

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

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

By Senator Bradley

6-01845D-23

2023262__

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

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

6-01845D-23

2023262__

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

501.173 Consumer data privacy.—

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

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

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117 purchase of products or services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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consumer's personal information.

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

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

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

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

(bb) Personal information shared between a manufacturer of

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

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

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

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

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

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

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

(e) "Controller" means:

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

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

b. Does business in this state;

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

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

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

f. Satisfies one of the following:

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

(II) Operates a consumer smart speaker and voice command

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

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

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

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

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

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

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

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

3. Contractually obligates any recipients of the

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

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

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

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

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

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

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

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

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

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

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

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

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

397 e. Biometric information.

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

403 g. Geolocation data.

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

406 i. Inferences drawn from any of the information identified

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

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

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

b. Deidentified or aggregate consumer information.

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

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

(II) By a widely distributed media source.

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

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

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

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

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

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

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

2. Monetary transactions, nonmonetary transactions, and

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

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

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

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

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

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

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

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

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

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

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

1. Any Florida-specific consumer privacy rights.

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

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

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

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

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

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

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

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retained to do any of the following:

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

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

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

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

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

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

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

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

9. Assure the physical security of persons or property.

(4) CONSUMER RIGHT TO REQUEST COPY OF PERSONAL INFORMATION

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COLLECTED, SOLD, OR SHARED.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

j. Assure the physical security of persons or property.

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

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

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

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

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

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

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

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

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

8. Assure the physical security of persons or property.

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

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

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

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

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

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

(a) A controller shall:

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

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

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

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

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

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

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

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

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

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

(9) CONTRACTS AND ROLES.-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

963 501.171 Security of confidential personal information.—
 964 (1) DEFINITIONS.—As used in this section, the term:
 965 (g)1. "Personal information" means either of the following:
 966 a. An individual's first name or first initial and last
 967 name in combination with any one or more of the following data
 968 elements for that individual:
 969 (I) A social security number;
 970 (II) A driver license or identification card number,
 971 passport number, military identification number, or other
 972 similar number issued on a government document used to verify
 973 identity;
 974 (III) A financial account number or credit or debit card
 975 number, in combination with any required security code, access
 976 code, or password that is necessary to permit access to an
 977 individual's financial account;
 978 (IV) Any information regarding an individual's medical
 979 history, mental or physical condition, or medical treatment or
 980 diagnosis by a health care professional; ~~or~~
 981 (V) An individual's health insurance policy number or
 982 subscriber identification number and any unique identifier used
 983 by a health insurer to identify the individual;
 984 (VI) An individual's biometric information or genetic
 985 information as defined in s. 501.173(2); or
 986 (VII) Any information regarding an individual's

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987 geolocation.

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

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

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

1001 16.53 Legal Affairs Revolving Trust Fund.—

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

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

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

3/13

Meeting Date

The Florida Senate
APPEARANCE RECORD

262

Bill Number or Topic

Commerce & Tourism

Committee

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

Amendment Barcode (if applicable)

Name

Austin Stowers

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Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

CFO Jimmy Patronis

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

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

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S-001 (08/10/2021)

The Florida Senate
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 1648

INTRODUCER: Senator Bradley

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

DATE: March 10, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

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

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

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

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

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

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

II. Present Situation:

Access to Public Records - Generally

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

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

Executive Agency Records – The Public Records Act

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

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

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

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

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

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

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

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

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

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

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

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

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

Open Government Sunset Review Act

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

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

⁸ Section 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST. art. I, s. 24(c).

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

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

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

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

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

¹⁶ Section 119.15, F.S.

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

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

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

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

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

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

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

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

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

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

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

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

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

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

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

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

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

Consumer Data Privacy

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

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

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

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

III. Effect of Proposed Changes:

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

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

³⁰ Section 68.083(8), F.S.

³¹ Section 501.171(11), F.S.

³² Section 501.2065, F.S.

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

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

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

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

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

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

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

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

Public Necessity Statement

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

Breadth of Exemption

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

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 501.173(13) of the Florida Statutes.

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

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

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.



963930

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete lines 110 - 119

and insert:

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



963930

11 controller, processor, or third party. Release of such

12 information could give business competitors an unfair advantage.

By Senator Bradley

6-00671-23

20231648__

A bill to be entitled

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

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

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

501.173 Consumer data privacy.—

(13) PUBLIC RECORDS EXEMPTION.—

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

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

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

6-00671-23

20231648__

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

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

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

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

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

2. Personal information.

3. A computer forensic report.

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

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

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

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

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

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

6-00671-23

20231648

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

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

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

5. Includes:

a. Trade secrets as defined in s. 688.002.

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

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

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

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

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20231648

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

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

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

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

6-00671-23

20231648__

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

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

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 388

INTRODUCER: Commerce and Tourism Committee and Senator Bradley

SUBJECT: Resale of Tickets

DATE: March 14, 2023

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 388 provides that any tickets, other than tickets for passage or accommodations on a common carrier in Florida, multiday or multievent tickets, or event tickets originally issued by a charitable organization, may be donated, transferred, or resold via any method, or on any ticket marketplace, of the ticket holder's choosing. Additionally, the bill establishes that the original seller must have the ability to request the legal name, e-mail address, or telephone number from a subsequent ticket holder for the purpose of venue security, provided the information requested is not more extensive than that collected at the original point of sale.

The bill establishes that the original ticket seller may not penalize, discriminate against, or deny access to an event to a person who purchases or resells a ticket in an authorized manner.

The bill requires an Internet website to prominently display certain disclosures and guarantees on their homepage or ticket landing page if the Internet website wants to offer any ticket for resale or resell any ticket for more than \$1 above the admission price charged by the original ticket seller.

The bill defines the terms "original ticket seller" and "original seller" as the issuer of such ticket or a person or firm that provides distribution services or ticket sales services under a contract with such issuer.

The bill provides that regulation of the sale or resale of tickets is preempted to the state.

The bill takes effect July 1, 2023.

II. Present Situation:

Pricing of Resold Admission Tickets

The resale pricing of certain tickets is governed by Florida law. Section 817.36, F.S., provides that a person or entity that offers for resale or resells any ticket (with the exception of travel agencies under certain conditions¹) may charge only \$1 above the admission price charged by the original ticket seller, for the following:

- Passage or accommodations on any common carrier in this state;
- Multiday or multievent tickets to a park or entertainment complex, or to a concert, entertainment event, permanent exhibition, or recreational activity within such a park or complex, including an entertainment/resort complex;² and
- Event tickets originally issued by a tax-exempt charitable organization, when no more than 3,000 tickets are issued per performance. The following must be conspicuously printed on the face or back of each such ticket: *“Pursuant to s. 817.36, Florida Statutes, this ticket may not be resold for more than \$1 over the original admission price.”* This provision does not apply to tickets issued or sold by a third party ticketing service on behalf of a charitable organization, unless the statement is on the ticket.

The limitation of an additional \$1 above the original price of a ticket also applies to any tickets that are resold or offered through an Internet website (except those described above), unless the website:

- Is authorized by the original ticket seller; or
- Makes and posts the following guarantees and disclosures through Internet web pages, or links to web pages, in text to which a prospective purchaser is directed before completion of the resale transaction:
 - The website operator guarantees a full refund of the ticket price including any servicing, handling, or processing fees, if such fees are not disclosed, when:
 - The ticketed event is canceled;
 - The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser;
 - The ticket is not delivered to the purchaser as requested and pursuant to delivery guarantees made by the reseller and such failure results in the purchaser’s being unable to attend the event; and
 - The website operator discloses that it is not the issuer, original seller, or reseller of the ticket and does not control the pricing of the ticket, which may be resold for more than its original value.

¹ To qualify for this exception, travel agencies must have an established place of business in Florida and pay state, county, and city occupational license taxes. *See* s. 817.36(1)(a), F.S.

² An “Entertainment/resort complex” means a theme park comprised of at least 25 acres of land with permanent exhibitions and a variety of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owner(s)/operator(s) of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity shall include an area within a 5-mile radius of the theme park complex. *See* s. 561.01(18), F.S.

Individuals or entities are not authorized to sell or purchase tickets at any price on property where an event is being held (i.e., outside a stadium) without the prior express written consent of the owner of the property.³

Sales tax is due on resold tickets.⁴

A person who knowingly resells a ticket or tickets in violation of the requirements in s. 817.36, F.S., is liable to the state for a civil penalty equal to three times the amount of the price for which the ticket or tickets were resold.⁵

Persons who intentionally use or sell software to circumvent a security measure, an access control system, or any other control or measure on a ticket seller's Internet website which is used to ensure an equitable ticket-buying process, is liable to the state for a civil penalty equal to three times the amount for which any ticket was sold.⁶

Purchasers and resellers of tickets may also be subject to civil penalties under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).⁷ In the absence of a contract with the original ticket seller to distribute or sell tickets, a person who knowingly purchases from the original ticket seller, with the intent of resale, a quantity of event tickets which exceeds the posted⁸ maximum ticket limit per purchaser, violates FDUTPA.⁹

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.¹⁰

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹¹ Express preemption of

³ See s. 817.36(2), F.S.

⁴ See s. 817.36(3), F.S.

⁵ See s. 817.36(4), F.S.

⁶ *Id.* Section 817.36(5), F.S. See also s. 817.36(6), F.S., which defines the term "software" as "computer programs that are primarily designed or produced for the purpose of interfering with the operation of any person or entity that sells, over the Internet, tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind." Similar federal legislation was enacted in 2016 to prohibit circumvention of ticket website security or control measures and the subsequent sale of the fraudulently obtained tickets by someone who knew or should have known about the violation. See The Better Online Ticket Sales Act, at 15 U.S.C. s. 45c.

⁷ See part II of ch. 501, F.S., relating to consumer protection (ss. 501.201-501.213, F.S.).

⁸ Posting of a quantity limit occurs at the point of original sale or is printed on the tickets by or on behalf of the original ticket seller. See s. 817.357, F.S.

⁹ See s. 817.357, F.S.

¹⁰ See James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

¹¹ See *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

a field by the Legislature must be accomplished by clear language stating that intent.¹² In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.¹³

In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.¹⁴ Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.¹⁵ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.¹⁶ Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.¹⁷

III. Effect of Proposed Changes:

The bill provides that any tickets, other than tickets for passage or accommodations on a common carrier in Florida,¹⁸ multiday or multievent tickets,¹⁹ or event tickets originally issued by a charitable organization,²⁰ may be donated, transferred, or resold via any method, or on any ticket marketplace, of the ticket holder's choosing. Additionally, the bill establishes that the original seller must have the ability to request the legal name, e-mail address, or telephone number from a subsequent ticket holder for the purpose of venue security, provided the information requested is not more extensive than that collected at the original point of sale.²¹

The bill establishes that the original ticket seller may not penalize, discriminate against, or deny access to an event to a person who purchases or resells a ticket in an authorized manner.

The bill requires an Internet website to prominently display certain disclosures and guarantees on their homepage or ticket landing page if the Internet website wants to offer any ticket for resale or resell any ticket for more than \$1 above the admission price charged by the original ticket seller.

The bill defines the terms "original ticket seller" and "original seller" as the issuer of such ticket or a person or firm that provides distribution services or ticket sales services under a contract with such issuer.

¹² *Mulligan*, 934 So.2d at 1243.

¹³ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

¹⁴ *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

¹⁵ *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

¹⁶ *Id.*

¹⁷ *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

¹⁸ This does not apply to travel agencies that have an established place of business in Florida and are required to pay state, county, and city occupational license taxes.

¹⁹ More specifically, this exception pertains to multiday or multievent tickets to a park or entertainment complex or to a concert, entertainment event, permanent exhibition, or recreational activity within such a park or complex, including an entertainment/resort complex as defined in s. 561.01(18), F.S.

²⁰ More specifically, this exception pertains to event tickets originally issued by a charitable organization exempt from taxation under s. 501(c)(3) of the Internal Revenue Code for which no more than 3,000 tickets are issued per performance.

²¹ The bill provides that the collection of data from a subsequent ticket holder must not inhibit the gifting, donation, transfer, or resale of a ticket.

The bill provides that regulation of the sale or resale of tickets is preempted to the state.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 817.36 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 13, 2023:

The committee substitute clarifies that a website must prominently make certain guarantees and disclosures on its homepage or ticket landing page before the purchase of any tickets if the website wants to sell a ticket for more than \$1 above the initial ticket price charged by the original ticket seller.

- B. **Amendments:**

None.



150016

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2023	.	
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	.	

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

Senate Amendment

Delete lines 31 - 37

and insert:

(d) Any tickets, other than the tickets in paragraph (a), paragraph (b), or paragraph (c), that are resold or offered through an Internet website, unless such website is authorized by the original ticket seller or makes and posts the following guarantees and disclosures prominently on the homepage or ticket landing page before the purchase of any tickets ~~through Internet~~



150016

11 ~~web pages on which~~

By Senator Bradley

6-00392A-23

2023388__

A bill to be entitled

An act relating to resale of tickets; amending s. 817.36, F.S.; providing a definition; providing requirements for websites of ticket resellers; providing for the donation, transfer, and resale of certain tickets; authorizing the original seller to request certain information from subsequent ticket holders; prohibiting the original ticket seller from taking certain actions against a person who purchases or resells a ticket; preempting regulation of the sale or resale of tickets to the state; providing an effective date.

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

Section 1. Present subsections (1) through (6) of section 817.36, Florida Statutes, are redesignated as subsections (2) through (7), respectively, paragraph (d) of present subsection (1) and present subsection (4) are amended, and a new subsection (1) and subsections (8), (9), and (10) are added to that section, to read:

817.36 Resale of tickets.—

(1) As used in this section, the terms "original ticket seller" and "original seller" mean the issuer of such ticket or a person or firm that provides distribution services or ticket sales services under a contract with such issuer.

(2) ~~(1)~~ A person or entity that offers for resale or resells any ticket may charge only \$1 above the admission price charged therefor by the original ticket seller of the ticket for the

Page 1 of 3

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

6-00392A-23

2023388__

following transactions:

(d) The following information must be prominently displayed on the homepage or ticket landing page before the purchase of any tickets, other than the tickets in paragraph (a), paragraph (b), or paragraph (c), that are resold or offered through an Internet website, unless such website is authorized by the original ticket seller or makes and posts the following guarantees and disclosures through Internet web pages on which are visibly posted, or links to web pages on which are posted, text to which a prospective purchaser is directed before completion of the resale transaction:

1. The website operator guarantees a full refund of the amount paid for the ticket including any servicing, handling, or processing fees, if such fees are not disclosed, when:

a. The ticketed event is canceled;

b. The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser;

c. The ticket is not delivered to the purchaser in the manner requested and pursuant to any delivery guarantees made by the reseller and such failure results in the purchaser's inability to attend the ticketed event.

2. The website operator discloses that it is not the issuer, venue, original seller, or reseller of the ticket or items and does not control the pricing of the ticket or items, which may be resold for more than their original value.

(5) ~~(4)~~ A person or website operator who knowingly resells a ticket or tickets in violation of this section is liable to the state for a civil penalty equal to treble the amount of the

Page 2 of 3

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

6-00392A-23

2023388__

price for which the ticket or tickets were resold.

(8) Any tickets, other than the tickets in paragraph (2) (a), paragraph (2) (b), or paragraph (2) (c), may be donated, transferred, or resold via any method, or on any ticket marketplace, of the ticket holder's choosing. The transfer of a ticket to a subsequent ticket holder shall not inhibit the original seller's ability to request the legal name, e-mail address, or telephone number from a subsequent ticket holder for the sole purpose of venue security, provided the information requested is not more detailed or extensive than that collected at the original point of sale. The collection of data from a subsequent ticket holder shall not be used to inhibit the gifting, donation, transfer, or resale of a ticket.

(9) The original ticket seller may not penalize, discriminate against, or deny access to an event to a person who purchases or resells a ticket in a manner authorized by this section.

(10) Regulation of the sale or resale of tickets is preempted to the state. A county, municipal, or other local ordinance or other regulation may not impose requirements, restrictions, or conditions upon the sale or resale of tickets.

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

SB 388

Bill Number or Topic

Amendment Barcode (if applicable)

3/13/23

Meeting Date

Commerce + Tourism

Committee

Name Laura Dooley - StubHub

Phone 202-841-9097

Address 8 # cpWork 1100 15th St, NW

Email laura.dooley@stubhub.com

Street

Washington

City

DC

State

20005

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:

StubHub

☒ 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
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SD 388

Bill Number or Topic

Amendment Barcode (if applicable)

3/13/23

Meeting Date

Commerce + Tourism

Committee

Name Chris VanDette - FAW Freedom Project

Phone 860-716-4461

Address 21 Oak Street Ste 210

Email Chris@FAWFreedom.org

Street

Hartford

City

CT

State

06106

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:

FAW Freedom Project

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

FAW Freedom Project

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

3/13/23
Meeting Date
Commerce
Committee

SB 388
Bill Number or Topic
Amendment Barcode (if applicable)

Name Michael O'Neil Phone 312.305.4329

Address 111 N. Canal St
Street
Chicago IL 60601
City State Zip

Reset Form

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

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

VIVID SEATS

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

3/13/23
Meeting Date
Commerce / Tourism
Committee

388
Bill Number or Topic
Amendment Barcode (if applicable)

Name Sal Nuzzo Phone 8503229941

Address 100 N Duval Street
Street
Tallahassee FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

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

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

3/13/23

Meeting Date

SB 388

Bill Number or Topic

Commerce & Tourism

Committee

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

Amendment Barcode (if applicable)

Name

Ron Book

Phone

850-224-3427

Address

104 West Jefferson St

Email

Ron@RLBookPA.com

Street

Tallahassee Fla 32301

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information**OR**Waive Speaking: ☐ In Support ☐ Against**PLEASE CHECK ONE OF THE FOLLOWING:**☐ I am appearing without
compensation or sponsorship.☒ I am a registered lobbyist,
representing:☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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

3/13/23

Meeting Date

Represents two firms

388

Bill Number or Topic

Commerce and Tourism

Committee

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

Amendment Barcode (if applicable)

Name

Rox Pierce

Phone

813-777-5578

Address

235 W. Brandon Blvd. Suite 640

Email

rox@teamrsa.com

Street

Brandon

FL

33511

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:

Tampa Bay Lightning

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

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

S-001 (08/10/2021)

3/13/23

Meeting Date

Commerce and Tourism

Committee

The Florida Senate
APPEARANCE RECORD

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

388

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Ron Pierce

Phone

813-777-5578

Address

235 W. Brandon Blvd, Suite 640

Email

ron@team59.com

Street

Brandon

FL

33511

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:

Straz Center

☐ 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)

3/13/23

Meeting Date

Commerce

Committee

The Florida Senate
APPEARANCE RECORD

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

SIB 388

Bill Number or Topic

Amendment Barcode (if applicable)

Name

JEFF JOHNSON

Phone

813 777-9858

Address

21748 SR 54

Email

Jeff@johnsonstewart.com

Street

Lutz

FL

33549

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:

LIVE NATION

☐ 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
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 946

INTRODUCER: Senator Grall

SUBJECT: Public Records/Department of State Electronically Filed Records

DATE: March 10, 2023

REVISED: _____

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

I. Summary:

SB 946 creates a public record exemption for email addresses collected by the Department of State (DOS) for the purposes of the electronic filing system. This exemption applies retroactively.

The bill also creates a public record exemption for secure login credentials held by the DOS for the purposes of the electronic filing system. This exemption applies before, on, or after the effective date of the bill.

The public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless reviewed and reenacted by the Legislature.

The bill provides a state of public necessity as required by the State Constitution.

The bill creates a new public records exemption and, therefore, requires a two-thirds vote of the members present and voting for final passage.

The bill may have a minimal fiscal impact on DOS for incurring costs related to the redaction of records in responding to public records requests.

The bill takes effect upon becoming law.

II. Present Situation:

Access to Public Records - Generally

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

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

Executive Agency Records – The Public Records Act

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

Section 119.011(12), F.S., defines “public records” to include:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

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

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

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

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the repeal of

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹¹ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S.

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

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

such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

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

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

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

Documents Filed with the Department of State

The Department of State (DOS) is the state's central location responsible for receiving and maintaining a number of documents as required by statute, such as service of process for legal

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

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

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

proceedings,²⁷ articles of incorporation,²⁸ or registration of fictitious names.²⁹ In receiving and filing required records under 15 different statutory chapters,³⁰ DOS may provide that such documents may be submitted electronically.³¹

Public Access to the Department of State Filing Data

All files maintained electronically by the Division of Corporations (Division) may be accessed through its website.³² Records available through this website are easily accessible and searchable, including filed records of business entities, trademarks, fictitious names, federal liens, substitute service of process, notaries, and cable franchises. The public may access and search specific records filed and maintained as required by various statutes listed in s. 15.16(3), F.S.

Using the website of the Division, corporations use a specific link to file or update their records and pay fees.³³ Information submitted in proper form through DOS's website is accepted without further inquiry. All information filed electronically with DOS may be readily changed.

III. Effect of Proposed Changes:

The bill provides that email addresses collected by the DOS pursuant to s. 15.16, F.S., are exempt from public disclosure. This exemption applies retroactively.

The bill further provides that secure login credentials held by the DOS for the purpose of allowing a person to electronically file records under s. 15.16, F.S., are exempt from public disclosure. The exemption applies to secure login credentials held by the DOS before, on, or after the effective date of the exemption. The term "secure login credentials" means information held by the DOS for purposes of authenticating a user logging into a user account on a computer, a computer system, a computer network, or an electronic device; an online user account accessible over the Internet, whether through a mobile device, a website, or any other electronic means; or information used for authentication or password recovery.

The bill provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that the unintentional publication of e-mail addresses or secure login credentials held by the DOS may subject the filer to identity theft, financial harm, or other adverse impacts. Without the public records exemption, the effective and efficient administration of the electronic filing system, which is otherwise designed to increase the ease of filing records, would be hindered.

²⁷ See, e.g., ss. 48.061, 48.062, 48.181, F.S.

²⁸ Section 607.0203, F.S.

²⁹ Section 865.09, F.S.

³⁰ Chs. 48, 55, 117, 118, 495, 605, 606, 607, 610, 617, 620, 621, 679, 713, 865, F.S.

³¹ S. 15.16(3), F.S.

³² Department of State, *Division of Corporations*, available at <https://www.dos.myflorida.com/sunbiz> (last visited March 10, 2023).

³³ Department of State, Division of Corporations, *Corporations*, available at <https://www.dos.myflorida.com/sunbiz/forms/corporations/#flcorpforms> (last visited March 10, 2023).

The bill is subject to the Open Government Sunset Review Act and will be automatically repealed on October 2, 2028, unless the Legislature reenacts the exemption.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill creates a new record exemption, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for email addresses and secure login credentials held by the DOS for purposes of the electronic filing system. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially section 15.16 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 Grall

29-01981-23

2023946__

A bill to be entitled

An act relating to public records; amending s. 15.16, F.S.; providing an exemption from public records requirements for e-mail addresses and secure login credentials held by the Department of State relating to electronically filed records; defining the term "secure login credentials"; providing retroactive applicability; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (3) of section 15.16, Florida Statutes, as amended by chapter 2022-190, Laws of Florida, is amended to read:

15.16 Reproduction of records; admissibility in evidence; electronic receipt and transmission of records; certification; acknowledgment.—

(3) (a) The Department of State may cause to be received electronically any records that are required or authorized to be filed with it pursuant to chapter 48, chapter 55, chapter 117, chapter 118, chapter 495, chapter 605, chapter 606, chapter 607, chapter 610, chapter 617, chapter 620, chapter 621, chapter 679, chapter 713, or chapter 865, through facsimile or other electronic transfers, for the purpose of filing such records. The originals of all such electronically transmitted records must be executed in the manner provided in paragraph (5) (b). The receipt of such electronic transfer constitutes delivery to the

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29-01981-23

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department as required by law. The department may use electronic transmissions for purposes of notice in the administration of chapters 48, 55, 117, 118, 495, 605, 606, 607, 610, 617, 620, 621, 679, and 713 and s. 865.09. The Department of State may collect e-mail addresses for purposes of notice and communication in the performance of its duties and may require filers and registrants to furnish such e-mail addresses when presenting documents for filing.

(b)1. E-mail addresses collected by the Department of State pursuant to this subsection are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies retroactively.

2. Secure login credentials held by the Department of State for the purpose of allowing a person to electronically file records under this subsection are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to secure login credentials held by the Department of State before, on, or after the effective date of the exemption. For purposes of this subparagraph, the term "secure login credentials" means information held by the department for purposes of authenticating a user logging into a user account on a computer, a computer system, a computer network, or an electronic device; an online user account accessible over the Internet, whether through a mobile device, a website, or any other electronic means; or information used for authentication or password recovery.

3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal

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29-01981-23

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59 through reenactment by the Legislature.

60 Section 2. The Legislature finds that it is a public
61 necessity that all e-mail addresses and secure login credentials
62 held by the Department of State relating to electronically filed
63 records be exempt from public records requirements. The
64 Legislature finds that the unintentional publication of such
65 information may subject the filer to identity theft, financial
66 harm, or other adverse impacts. Without the public records
67 exemption, the effective and efficient administration of the
68 electronic filing system, which is otherwise designed to
69 increase the ease of filing records, would be hindered. For
70 these reasons, the Legislature finds that it is a public
71 necessity to exempt such information from public records
72 requirements.

73 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: SB 948

INTRODUCER: Senator Grall

SUBJECT: Records Electronically Filed with the Department of State

DATE: March 10, 2023

REVISED: _____

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

I. Summary:

SB 948 allows the Department of State (DOS) to implement a password protected system for the electronic filing of certain records, providing greater security as required documents are filed and maintained for public access.

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

II. Present Situation:

Documents Filed with the Department of State

The DOS is the state's central location responsible for receiving and maintaining a number of a number of documents as required by statute, such as service of process for legal proceedings,¹ articles of incorporation,² and registration of fictitious names.³ In receiving and filing required records under 15 different statutory chapters, the DOS may provide that such documents may be submitted electronically.⁴ The following are brief, non-exhaustive descriptions of the 15 chapters and examples of documents required to be filed with the DOS:

- Chapter 48, Process and service of process: substitute service of process on general partnerships, limited liability companies, and non-residents doing business in Florida;⁵

¹ See, e.g., ss. 48.061, 48.062, 48.181, F.S.

² Section 607.0203, F.S.

³ Section 865.09, F.S.

⁴ Section 15.16(3), F.S.

⁵ Sections 48.061(2), 48.062(3), 48.081(1), and 48.181, F.S.

- Chapter 55, Judgments: judgement lien certificates necessary to perfect a lien in a judgment debtor's interest in personal property;⁶
- Chapters 117 and 118: requires that DOS maintain applications, proof of identity, and registrations for Notaries Public and international notaries;⁷
- Chapter 495, Registration and protection of trademarks: registration of marks, which include any trademarks, service mark, certification mark, or collective mark;⁸
- Chapter 605, Florida revised limited liability company act: limited liability companies (LLC) file with DOS a registration with their name, registered agent, and registered office location;⁹
- Chapter 606, Business coordination: DOS creates a master business index and directory of business activity;¹⁰
- Chapter 607, Florida business corporation act: corporations file their articles of incorporation, changes to their registered office or registered agent, and must file an annual report, among other documents;¹¹
- Chapter 610, Cable and video services: applicants file a "certificate of franchise authority" containing an official name, a principal place of business, and the federal employer identification number;¹²
- Chapter 617, Corporations not for profit: requires not for profit corporations to file with DOS their articles of incorporation, changes to their registered office or registered agent, and must file an annual report, among other documents;¹³
- Chapter 620, Partnership laws: limited partnerships must file a certificate of limited partnership with DOS containing the name of the limited partnership, the address, and the business address of each general partner¹⁴ as well as an annual report, among other documents.¹⁵ General partnerships must file a partnership registration statement and an annual report, among other documents.¹⁶
- Chapter 621, Professional services corporations and limited liability corporations: in addition to filing documents as may be required under ch. 605 or ch. 607, F.S., a professional corporation or limited liability company may change the purpose of rendering a professional service by filing an amendment of its certificate of organization;¹⁷
- Chapter 679, Uniform commercial code: secured transactions: requires filing of certain financing statements with DOS in order to perfect a lien in different types of personal property and for DOS to retain authority and approve forms required to be filed under the "Florida Secured Transaction Registry;"¹⁸

⁶ Section 55.202(2)(a), F.S.

⁷ Sections 117.01(2), 117.05(1), 117.225(4), F.S. *See also* s. 118.10, F.S.

⁸ Section 495.031(2), F.S.

⁹ Sections 605.0112(5), 605.113(4), and 605.113(5), F.S. *See* s. 605.0206, F.S.

¹⁰ Section 606.04(1)(a) and 606.04(1)(c), F.S.

¹¹ Sections 607.0203, F.S., 607.0502, 607.1622, F.S. *See* 607.0120(9), F.S.

¹² Sections 610.102, 610.104(2), F.S.

¹³ Sections 617.0203, 617.0502, 617.1622, F.S.

¹⁴ Sections 620.1109, 620.1201(1)(a)–(e), F.S.

¹⁵ Section 620.1210, F.S.

¹⁶ Sections 620.8105, 620.9003, F.S.

¹⁷ Section 621.13(3), F.S.

¹⁸ Sections 679.5011, 679.527(3), F. S.

- Chapter 713, Liens, generally: the Secretary of State or the Secretary's designee is the filing officer of the state for purposes of receiving, indexing, and maintaining a record of federal liens filed in this state,¹⁹ and
- Chapter 865, Violations of commercial restrictions: fictitious names for business purposes must be registered with the Division of Corporations within the DOS (Division).²⁰

Public Access to Department of State Filing Data

All files maintained electronically by the Division may be accessed through its website.²¹ Records available through this website are easily accessible and searchable, including filed records of business entities, trademarks, fictitious names, federal liens, substitute service of process, notaries, and cable franchises. The public may access and search specific records filed and maintained as required by the various chapters listed in the statute. Uniform commercial code financing statements are filed and maintained through a separate portal operated and maintained by FloridaUCC, LLC, the contract vendor for DOS.²² Access to this website is limited to registered users and certain uses may require a fee.

Using the website of the Division, corporations use a specific link to file or update their records and pay fees.²³ Information submitted in proper form through DOS's website is accepted without further inquiry. All information filed electronically with DOS may be readily changed. Provided the document submitted meets the statutory requirements and is accompanied by the correct processing or filing fee, the document is accepted by DOS.²⁴

III. Effect of Proposed Changes:

The bill authorizes the DOS to implement a password protected system for the filing of records. The DOS may request that those using the password protected system verify their identity and credentials, including their original signature.

The bill provides a starting point for currently registered businesses to create an account by using their email address that is on file with the DOS as of January 1, 2024. Through this registered email address, the DOS may require additional verification of an authorized account holder in order to file a record through the electronic system.

¹⁹ See 713.901(5), F.S.

²⁰ Section 865.09, F.S.

²¹ Available at: www.dos.myflorida.com/sunbiz (last visited March 10, 2023).

²² Available at: <https://www.floridaucc.com/uccweb/> (last visited March 10, 2023).

²³ Available at: www.dos.myflorida.com/sunbiz/forms/corporations/#flcorpforms (last visited March 10, 2023).

²⁴ Derek Gilliam, *Sarasota Rep. McFarland files bill to secure Sunbiz.org, prevent hijacking of businesses*, Herald-Tribune (Feb. 22, 2023), www.heraldtribune.com (last visited March 10, 2023).

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 15.16 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 Grall

29-01373-23

2023948__

A bill to be entitled

An act relating to records electronically filed with the Department of State; amending s. 15.16, F.S.; authorizing the department to implement certain systems relating to electronically filed records; providing requirements and authorizations for the department relating to such systems; providing an effective date.

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

Section 1. Subsection (3) of section 15.16, Florida Statutes, as amended by chapter 2022-190, Laws of Florida, is amended to read:

15.16 Reproduction of records; admissibility in evidence; electronic receipt and transmission of records; certification; acknowledgment.—

(3) (a) The Department of State may cause to be received electronically any records that are required or authorized to be filed with it pursuant to chapter 48, chapter 55, chapter 117, chapter 118, chapter 495, chapter 605, chapter 606, chapter 607, chapter 610, chapter 617, chapter 620, chapter 621, chapter 679, chapter 713, or chapter 865, through facsimile or other electronic transfers, for the purpose of filing such records. The originals of all such electronically transmitted records must be executed in the manner provided in paragraph (5) (b). The receipt of such electronic transfer constitutes delivery to the department as required by law. The department may use electronic transmissions for purposes of notice in the administration of

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

29-01373-23

2023948__

chapters 48, 55, 117, 118, 495, 605, 606, 607, 610, 617, 620, 621, 679, and 713 and s. 865.09. The Department of State may collect e-mail addresses for purposes of notice and communication in the performance of its duties and may require filers and registrants to furnish such e-mail addresses when presenting documents for filing.

(b) The department may implement a password-protected system for any record electronically received pursuant to paragraph (a) and may require filers to produce supplemental materials to use such system, including, but not limited to, an original signature of the filer and verification of credentials. The department may also implement a password-protected system that allows entities organized under the chapters specified in paragraph (a) to identify authorized account holders for the purpose of electronically filing records related to the entity. If the department implements such a system, it must send to each e-mail address on file with the Division of Corporations on January 1, 2024, a code to participate in a password-protected system. The department may require verification of the identity of an authorized account holder before the account holder is authorized to electronically file a record with the department.

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

Page 2 of 2

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1068

INTRODUCER: Commerce and Tourism Committee and Senator Collins

SUBJECT: Drones

DATE: March 14, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Baird	McKay	CM	Fav/CS
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1068 amends the Unmanned Aircraft Systems Act to define the terms “drone delivery service” and “drone port” as well as prohibit a political subdivision from withholding the issuance of a business tax receipt or enacting or enforcing an ordinance or resolution prohibiting a drone delivery service’s operation based on the location of the delivery service’s drone port.

The bill also provides that drone ports are exempt from the Florida Building Code and the Florida Fire Prevention Code, including the national codes and the Life Safety Code incorporated by reference.

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

II. Present Situation:

Drones

A drone is a powered, aerial vehicle that:

- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;
- Can be expendable or recoverable; and

- Can carry a lethal or nonlethal payload.¹

The full system comprising of a drone and its associated elements – including communication links and components used to control the drone – is called an unmanned aircraft system (UAS).²

Federal Law and Regulation

Federal law and regulation govern who may fly a drone, as well as when and where the person may do so. The Federal Aviation Administration (FAA) is responsible for regulating aircraft, including drones, that fly in the U.S. airspace.³ In February 2012, Congress passed the FAA Modernization and Reform Act of 2012, which required the FAA to safely open the nation's airspace to nongovernmental drones by September 2015.⁴

Drone Delivery Services

As technology continues to evolve, a new method of facilitating commerce has emerged in the form of drone delivery services.

In 2019, UPS started their drone delivery service and in 2020 Amazon began their commercial drone delivery operation.⁵ As of 2023, nine Walmarts located in Florida offer drone delivery services.⁶

Typically, businesses like Walmart utilize third party drone vendors to execute the deliveries and operate the drone technology. Such vendors, which employ teams of certified pilots that operate within FAA guidelines, set up delivery hubs at the participating stores and handle the physical deliveries of the parcels.⁷

One recent study found that the drone package delivery market is set for a dramatic increase from a global market size of \$988 million in 2020 to an estimated \$31 billion global market size by the year 2028.⁸

¹ Section 934.50(2)(a), F.S.

² Section 330.41(2)(c), F.S.

³ See 49 U.S.C. s. 40103(b)(1) and (2).

⁴ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, Congressional Research Service, April 3, 2013, available at <https://sgp.fas.org/crs/natsec/R42701.pdf> (last visited March 10, 2023).

⁵ Federal Aviation Administration, *Package Delivery by Drone (Part 135)*, available at: https://www.faa.gov/uas/advanced_operations/package_delivery_drone (last visited March 10, 2023).

⁶ Natalie Neysa Alund. USA Today, *Does your local Walmart offer drone delivery? See the list of 36 stores that do here:*, February 14, 2023, available at <https://www.usatoday.com/story/money/2023/02/14/walmart-drone-delivery-locations-states/11254959002/> (last visited March 10, 2023).

⁷ Jessica Bursztynsky, Fast Company, *DroneUp has partnered with Walmart to make home deliveries even faster*, November 19, 2022, available at: <https://www.fastcompany.com/90810793/droneup-has-partnered-with-walmart-to-make-home-deliveries-even-faster> (last visited March 10, 2023).

⁸ Fortune Business Insights, *Drone Package Delivery Market Size, Share & COVID-19 Impact Analysis, By Type (Fixed Wing, Rotary Wing, and Hybrid), By Package Size (Less Than 2 Kg, 2-5 Kg, and Above 5 Kg), By End-use (Restaurant & Food Supply, E-commerce, Healthcare, Retail Logistics & Transportation and Others), and Regional Forecast, 2021-2028*, available at: <https://www.fortunebusinessinsights.com/drone-package-delivery-market-104332> (last visited March 10, 2023).

Florida Building Code

The intent of the Florida Building Code is to establish unified and consistent minimum standards in the design, construction and compliance processes, and regulations for the safety, health, and general welfare of building occupants.

The Legislature has provided local governments with the power to inspect all buildings, structures, and facilities within their jurisdiction to protect the public's health, safety, and welfare.⁹

Every local government must enforce the building code and issue building permits.¹⁰ It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons that may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.¹¹

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.¹² A building official is a local government employee or a person contracted by a local government who supervises building code activities, including plan review, enforcement, and inspection to ensure work complies with the building code.¹³

Florida Fire Prevention Code

The Florida Fire Code is largely based on the National Fire Protection Association's (NFPA) Standard 1, Fire Prevention Code, along with the current edition of the NFPA's Life Safety Code, NFPA 101.¹⁴

The Florida Fire Code is the minimum fire prevention code deemed adopted by each municipality, county, and special district with firesafety responsibilities, and applies to every building and structure throughout the state with few exceptions.¹⁵ Municipalities, counties, and special districts with firesafety responsibilities may supplement the Florida Fire Code with more stringent standards adopted in accordance with s. 633.208, F.S.¹⁶

⁹ Section 553.72, F.S.

¹⁰ Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

¹¹ See Sections 125.56(4)(a) and 553.79(1), F.S.

¹² Section 202 of the Building Code, Sixth Edition.

¹³ Section 468.603(2), F.S.

¹⁴ Section 633.202(2).

¹⁵ Section 633.208, F.S., and 69A-60.002(1), F.A.C.

¹⁶ Section 633.208(3), F.S., and 69A-60.002(2), F.A.C.

III. Effect of Proposed Changes:

The bill will incorporate definitions of “drone delivery service” and “drone port” into Florida law. A “drone delivery service” is defined as a person engaged in a business or profession of delivering goods via drone, and who is governed by the Small Unmanned Aircraft Systems Rule.¹⁷ A “drone port” is defined as an area of nonresidential land or water which is used, or intended for use, by a drone delivery service for the landing and takeoff of drones.

The bill will prohibit political subdivisions from withholding the issuance of a business tax receipt, or from enacting or enforcing an ordinance or resolution prohibiting a drone delivery service’s operation based on the location of the delivery service’s drone port.

The bill will exempt drone ports from the Florida Building Code and the Florida Fire Prevention Code, including the national codes and the Life Safety Code incorporated by reference.

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 identified.

¹⁷ See 14 C.F.R. 107.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Line 33 of the bill uses the term “political subdivision,” but does not define it.

VIII. Statutes Affected:

This bill substantially amends sections 330.41, 553.73, and 633.202 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 13, 2023:

The CS provides that drone ports are exempt from the Florida Fire Prevention Code, including the national codes and the Life Safety Code incorporated by reference.

B. Amendments:

None.



917558

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2023	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 62 and 63

insert:

Section 3. Paragraphs (a) and (b) of subsection (16) of section 633.202, Florida Statutes, are amended to read:

633.202 Florida Fire Prevention Code.—

(16) (a) As used in this subsection, the term:

1. "Agricultural pole barn" means a nonresidential farm building in which 70 percent or more of the perimeter walls are

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permanently open and allow free ingress and egress.

2. "Drone port" has the same meaning as in s. 330.41(2).

3. "Nonresidential farm building" has the same meaning as provided in s. 604.50.

(b) Notwithstanding any other provision of law:

1. A nonresidential farm building in which the occupancy is limited by the property owner to no more than 35 persons is exempt from the Florida Fire Prevention Code, including the national codes and Life Safety Code incorporated by reference.

2. An agricultural pole barn is exempt from the Florida Fire Prevention Code, including the national codes and the Life Safety Code incorporated by reference.

3. Except for an agricultural pole barn, a structure on a farm, as defined in s. 823.14(3)(c), which is used by an owner for agritourism activity, as defined in s. 570.86, for which the owner receives consideration must be classified in one of the following classes:

a. Class 1: A nonresidential farm building that is used by the owner 12 or fewer times per year for agritourism activity with up to 100 persons occupying the structure at one time. A structure in this class is subject to annual inspection for classification by the local authority having jurisdiction. This class is not subject to the Florida Fire Prevention Code but is subject to rules adopted by the State Fire Marshal pursuant to this section.

b. Class 2: A nonresidential farm building that is used by the owner for agritourism activity with up to 300 persons occupying the structure at one time. A structure in this class is subject to annual inspection for classification by the local

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authority having jurisdiction. This class is not subject to the Florida Fire Prevention Code but is subject to rules adopted by the State Fire Marshal pursuant to this section.

c. Class 3: A structure or facility that is used primarily for housing, sheltering, or otherwise accommodating members of the general public. A structure or facility in this class is subject to annual inspection for classification by the local authority having jurisdiction. This class is subject to the Florida Fire Prevention Code.

4. A drone port is exempt from the Florida Fire Prevention Code, including the national codes and the Life Safety Code incorporated by reference.

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

And the title is amended as follows:

Delete line 7

and insert:

the Florida Building Code; amending s. 633.202, F.S.; defining the term "drone port"; exempting drone ports from the Florida Fire Prevention Code and other specified codes incorporated by reference; providing an effective

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3/10/2023 8:02:17 AM

577-02395-23

By Senator Collins

14-01120-23

20231068__

A bill to be entitled

An act relating to drones; amending s. 330.41, F.S.; defining the terms "drone delivery service" and "drone port"; prohibiting a political subdivision from taking certain actions relating to drone delivery services; amending s. 553.73, F.S.; exempting drone ports from the Florida Building Code; providing an effective date.

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

Section 1. Present paragraph (c) of subsection (2) and present paragraphs (c) and (d) of subsection (3) of section 330.41, Florida Statutes, are redesignated as paragraph (e) of subsection (2) and paragraphs (d) and (e) of subsection (3), respectively, and new paragraphs (c) and (d) are added to subsection (2) and a new paragraph (c) is added to subsection (3) of that section, to read:

330.41 Unmanned Aircraft Systems Act.—

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

(c) "Drone delivery service" means a person engaged in a business or profession of delivering goods via drone and who is governed by Title 14 of the Code of Federal Regulations.

(d) "Drone port" means any area of nonresidential land or water which is used, or intended for use, by a drone delivery service for the landing and takeoff of drones.

(3) REGULATION.—

(c) Except as otherwise expressly provided, and notwithstanding part II of chapter 163 and chapter 205, a

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14-01120-23

20231068__

political subdivision may not withhold issuance of a business tax receipt or enact or enforce an ordinance or resolution that prohibits a drone delivery service's operation based on the location of the delivery service's drone port.

Section 2. Paragraph (1) is added to subsection (10) of section 553.73, Florida Statutes, to read:

553.73 Florida Building Code.—

(10) The following buildings, structures, and facilities are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the Legislature and provided by law:

(1) A drone port as defined in s. 330.41(2).

With the exception of paragraphs (a), (b), (c), and (f), in order to preserve the health, safety, and welfare of the public, the Florida Building Commission may, by rule adopted pursuant to chapter 120, provide for exceptions to the broad categories of buildings exempted in this section, including exceptions for application of specific sections of the code or standards adopted therein. The Department of Agriculture and Consumer Services shall have exclusive authority to adopt by rule, pursuant to chapter 120, exceptions to nonresidential farm buildings exempted in paragraph (c) when reasonably necessary to preserve public health, safety, and welfare. The exceptions must be based upon specific criteria, such as under-roof floor area, aggregate electrical service capacity, HVAC system capacity, or other building requirements. Further, the commission may recommend to the Legislature additional categories of buildings, structures, or facilities which should be exempted from the

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59 Florida Building Code, to be provided by law. The Florida
60 Building Code does not apply to temporary housing provided by
61 the Department of Corrections to any prisoner in the state
62 correctional system.

63 Section 3. This act shall take effect July 1, 2023.

3/13/23

The Florida Senate
APPEARANCE RECORD

1068

Meeting Date

Commerce & Tourism

Committee

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

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Jimmy Card

Phone

850-321-8896

Address

101 N. Monroe Street, Suite 750

Email

jcard@continentalstrategy.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: Drone Up

☐ 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
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 1150

INTRODUCER: Senator Ingoglia

SUBJECT: Department of Agriculture and Consumer Services

DATE: March 10, 2023

REVISED: 3/13/23

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Renner	McKay	CM	Favorable
2.			AEG	
3.			FP	

I. Summary:

SB 1150 addresses various issues related to the Department of Agriculture and Consumer Services' (department) Divisions of Licensing and Consumer Services. Specifically the bill:

- Allows Class "K" initial applicants to provide military experience as a firearms instructor, or a valid firearms instructor certificate issued by a federal law enforcement agency within the last three years, in lieu of having to obtain other firearms training through certain certifications;
- Allows Class "K" licensees renewing their license to demonstrate continued firearms qualifications by teaching at least six classes during the three-year licensure period in lieu of having to obtain certain firearm training;
- Allows a Class "G" licensee to provide proof of annual training under the Law Enforcement Officers' Safety Act to be used in lieu of four hours of annual training;
- Allows the Division of Licensing to set or waive license renewal late fees by administrative rule;
- Authorizes the department to post online licensure newsletters and pamphlets in lieu of using a paper format;
- Removes the applicant's requirement to complete the application under oath;
- Reduces the registration fees from \$75 per year to \$10 per year for certain charities receiving \$50,000 or less in contributions, as well as exempts from registration certain charities receiving \$50,000 or less in total annual revenues;
- Clarifies the definition for a "Category I liquefied petroleum gas dealer" to provide that a dealer is any person who designs the apparatus, piping, tubing, appliances, and equipment for the use of liquefied petroleum or natural gas; and
- Creates criminal penalties for the possession, installation, use, or aiding in the use of contaminant devices inserted into retail fuel dispensers from its standard operation or impeding standard functionality. The bill also creates criminal penalties for possessing or using an auxiliary fuel tank to commit retail fuel theft.

The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds) on criminal penalties for retail fuel theft. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

The present situation for each issue is described below in Section III, Effect of Proposed Changes.

III. Effect of Proposed Changes:

The mission of the department is to support and promote Florida agriculture, protect the environment, safeguard consumers, and ensure the safety and wholesomeness of food.¹

This bill modifies licensing and consumer services provisions under the department's jurisdiction.

Division of Licensing (Sections 1, 2, 3, 4, & 5)

Present Situation

The Division of Licensing within the department is responsible for investigating and issuing licenses for private security industries including Class "G" Statewide Firearm licenses and Class "K" firearms instructors.²

Class "G" Statewide Firearm License

A Class "G" license is a supplemental license that permits specific licensees to carry a firearm during the course of their licensed, employment-related activity. A Class "G" license is available only to individuals who currently hold one of the following licenses:

- Private investigator (Class "C");
- Private investigator intern (Class "CC");
- Security officer (Class "D");
- Private investigative or security agency manager (Class "M");
- Private investigative agency manager (Class "MA"); or
- Security agency manager (Class "MB").³

Application and Training Requirements for Class "G" Licensees

An initial applicant for a Class "G" license must complete firearm training, which must include at least 28 hours of range and classroom training either by in-person instruction, or via live instruction through a secure website, with no more than eight hours consisting of in-person range

¹ Department of Agriculture and Consumer Services, *About Us*, available at <https://www.fdacs.gov/About-Us> (last visited March 10, 2023).

² Chapter 493, F.S.

³ Section 493.6115(2), F.S.

training which must include safe handling and storage of firearms. The training must be administered and taught by a Class “K” licensee who verifies the identity and attendance of the applicant.⁴

The Class “G” applicant must submit a training certificate to the department upon completion of the training. Additionally, the Class “K” licensee who provided the training must submit results directly to the department’s Division of Licensing and provide a copy of the training results to the trainee.⁵ An applicant who was discharged within the last 12 months from service as a military officer, and has completed specific military courses is deemed to have completed a substantially similar training, and is exempt from the 28 hours of range and classroom training required for a Class “G” initial license.⁶

The “Class G” license must be renewed every two years.⁷ Class “G” licensees must annually complete four hours of firearms requalification training for each caliber of firearm that he or she carries in the course of his or her duties.⁸ The department may waive the firearms training requirement if:

- Proof is provided showing the applicant is currently certified as a law enforcement officer or correctional officer under the Criminal Justice Standards and Training Commission and has completed law enforcement firearms requalification training annually during the previous two years of the licensure period;
- The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the previous two years of the licensure period; or
- The applicant submits one of the valid firearm certificates required for a Class “K” initial license and provides proof of having completed requalification training during the previous two years of the licensure period.⁹

A Class “G” licensee who fails to file a renewal application on or before its expiration must renew the license by fulfilling all renewal application requirements and pay a late fee equal to the amount of the Class “G” license fee.¹⁰

Application and Training Requirements for Class “K” Firearms Instructor Licensees

Class “K” Firearms Instructor Licensees provide classroom or range instruction to applicants for a Class “G” license.¹¹ The initial applicant for a Class “K” license must submit one of the following certificates to demonstrate continued firearms qualifications:

- The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that the applicant possesses an active firearms certificate.

⁴ Section 493.6105(5), F.S. *See also* Fla. Admin. Code R. 5N-1.132(1)(a).

⁵ *Id.*

⁶ Fla. Admin Code R 5N-1.119

⁷ Section 493.6113(1), F.S.

⁸ Section 493.6113(3)(b), F.S.

⁹ *Id.*

¹⁰ Section 493.6113(4), F.S.

¹¹ Sections 493.6101(14) and 493.6115(7), F.S.

- A valid National Rifle Association Private Security Firearm Instructor Certificate issued not more than three years before the submission of the application.
- A valid firearms instructor certificate issued by a federal law enforcement agency issued not more than three years before the submission of the application.¹²

The initial applicant must also pay the fee for and pass an examination administered by the department.¹³

Class “K” instructors must renew their license every three years¹⁴ and submit one of the certificates, listed above, as proof that he or she remains certified to provide firearms instruction.¹⁵ A Class “K” licensee who fails to file a renewal application on or before its expiration must renew the license by fulfilling all renewal application requirements and pay a late fee equal to the amount of the Class “K” license fee.¹⁶

Recovery agent and security officer school or training facility

Any school, training facility, or instructor who offers training for recovery agents or security officers must file an application with the department which requires the application to be signed and verified by the applicant under oath.¹⁷

Department Publication to the Industry¹⁸

The department periodically publishes newsletters and pamphlets advising licensees of certain information that is of interest to the industry as well as the legal authority, rights, and obligations for various classes of licensure. The newsletter also contains administrative complaints against licensed or unlicensed persons or agencies. The newsletter must be published between two to four times annually, while the pamphlet must be updated every two years as necessary.

Effect of Proposed Changes

Section 1. The bill amends s. 493.6105, F.S., to add a valid DD Form 214 to the list of certificates an initial applicant for a Class K” license may provide. The DD Form 214 cannot be issued more than three years before the submission of the Class “K” application, and must state that the applicant has been honorably discharged and served no less than three years in the military as a firearms instructor.

Section 2. The bill amends s. 493.6113, F.S., to provide that the department may waive the four-hour annual firearms training requirement for a Class “G” license renewal if the applicant provides proof that he or she has completed annual firearms training in accordance with the requirements of the federal Law Enforcement Officers Safety Act.¹⁹

¹² Section 493.6105(6)(a), F.S.

¹³ Section 493.6105(6)(b), F.S.

¹⁴ Section 493.6113(1), F.S.

¹⁵ Section 493.6113(3)(d), F.S.

¹⁶ Section 493.6113(4), F.S.

¹⁷ Sections 493.6304(2) and 493.6406(2), F.S.

¹⁸ Section 493.6123(1), F.S.

¹⁹ See 18 U.S.C., ss. 926B-926C.

The bill provides that a Class “K” licensee renewing their license to demonstrate continued firearms qualifications can provide proof of having taught at least six 28-hour firearms instruction courses to Class “G” applicants during the previous 3-year license period in lieu of having to obtain other firearms training through either a valid Florida Criminal Justice Standards and Training Commission Instructor Certificate, a valid National Rifle Association Private Security Firearm Certificate, or a valid firearms instructor certificate issued by a federal law enforcement agency issued within the last three years.

Pertaining to the failure to renew an application on or before the expiration date of the license, the bill allows the division to set or waive a license renewal late fee by administrative rule. The late fee may not exceed the amount of the license fee.

Section 3. The bill amends s. 493.6123, F.S., to authorize the department to publish licensure newsletters and pamphlets online in lieu of using a paper format.

Sections 4 and 5. The bill amends ss. 493.6304 and 493.6406, F.S., to remove the applicant’s requirement to complete the application under oath.

Charitable Organization Fees (Sections 6 & 7)

Present Situation

Organizations that intent to solicit donations in Florida are required to register with the department pursuant to the Solicitation of Contributions Act.²⁰ The Act contains basic registration, financial disclosures, and notification requirements for charitable organizations and sponsors, fundraising consultants, and solicitors.

Every charitable organization, sponsor,²¹ or parent organization²² must pay a single registration fee as follows:

- Ten dollars if the contributions received for the last fiscal year were less than \$5,000; or
 - Ten dollars if the contributions actually raised or received from the public during the immediately preceding fiscal year by the organization or sponsor are no more than \$25,000 and the fundraising activities are carried on by certain entities who are not compensated;
- Seventy-five dollars if the contributions received for the last fiscal year were \$5,000 or more, but less than \$100,000;
- One hundred twenty-five dollars if the contributions received for the last fiscal year were \$100,000 or more but less than \$200,000;

²⁰ Section 496.401, F.S.

²¹ Section 496.404(25), F.S., defines a “sponsor” as a group or person who holds herself or himself out to be soliciting contributions by the use of a name that implies the group or person is in any way affiliated with or organized for the benefit of emergency service employees or law enforcement officers and the group or person is not a charitable organization.

²² Section 496.404(18), F.S. defines a “parent organization” as part of a charitable organization or sponsor that coordinates, supervises, or exercises control over policy, fundraising, and expenditures or assists or advises one or more of the organization’s chapters, branches, or affiliates in Florida.

- Two hundred dollars if the contributions received for the last fiscal year were \$200,000 or more but less than \$500,000;
- Three hundred dollars if the contributions received for the last fiscal year were \$500,000 or more but less than \$1 million;
- Three hundred fifty dollars if the contributions received for the last fiscal year were \$1 million or more but less than \$10 million; and
- Four hundred dollars if the contributions received for the last fiscal year were \$10 million or more.²³

Certain persons and organizations are exempt from these registration fees and requirements including a charitable organization that has less than \$25,000 in total revenue so long as they did not employ professional solicitors or have paid employees.²⁴

Effect of Proposed Changes

Section 6. The bill amends s. 496.405, F.S., to reduce the registration fees from \$75 per year to \$10 per year for certain charities receiving \$50,000 or less in contributions. Currently, the threshold is \$25,000.

Section 7. The bill amends s. 496.406, F.S., to exempt from registration certain charities receiving \$50,000 or less in total annual revenues. Currently, the threshold is \$25,000.

Liquefied Petroleum Gas (Section 8)

Present Situation

The department regulates the licensing, inspection and training requirements relating to the liquefied petroleum gas (LPG) industry.²⁵ Section 527.01, F.S., provides definitions for numerous LPG license categories.

Effect of Proposed Changes

Section 8. The bill amends s. 527.01, F.S. to clarify that a “Category I liquefied petroleum gas dealer” includes any person who designs the apparatus, piping, tubing, appliances, and equipment for the use of liquefied petroleum or natural gas.

The term “Category V LP gas installer” is also revised to include a person whose services include the design of apparatus, piping, tubing, tanks, and equipment for the use of liquefied petroleum or natural gas.

²³ Section 496.405(4)(a), F.S.

²⁴ Section 496.406(1)(d), F.S.

²⁵ Chapter 527, F.S.

Retail Fuel Theft (Section 9)

Present Situation

The department regularly inspects petroleum distribution systems and samples of petroleum products to ensure consistency as well as retail gas stations to ensure fuel dispensers are working safety and properly.²⁶

A fuel pulser is a plastic device connected to the fuel pump dispenser meter housed within the fuel pump. The pulse converts the mechanical movement of the fuel meter, and then sends electrical pulses to control the dispenser's electronic display.²⁷

The pulsers can be replaced by an altered pulser that interrupts the electrical signal.²⁸ This enables the ability to obtain large amounts of gas for a small percentage of the cost. In Hillsborough County, \$60,000 worth of gasoline was stolen from two different gas stations by individuals using the pulsar manipulation devices.²⁹ In Lakeland, two individuals were caught while filling up a large gas tank in the back of a pickup truck after accessing the inside of the fuel pump.³⁰

The use of these devices is not just an issue in Florida. It is happening in other states as well. In Arizona, the Senate is considering a bill that would make the possession of a pulsar manipulation device a class 3 felony.³¹

Currently, law enforcement relies on s. 316.80, F.S., for fuel theft crimes; however, the statute does not address fuel pulsers and only penalizes the use of conveyances or vehicles equipped with auxiliary fuel tanks or bladders which do not comply with applicable federal regulation.³²

Retail Theft

Section 812.014(1), F.S., provides that a person commits “theft” if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently

- Deprive the other person of a right to the property or a benefit from the property; or

²⁶ Florida Department of Agriculture and Consumer Services, *Petroleum Inspection*, available at <https://www.fdacs.gov/Business-Services/Petroleum-Inspection> (last visited March 10, 2023).

²⁷ Florida Department of Agriculture and Consumer Services, *SB 1150 Analysis*. On file with the Senate Commerce and Tourism Committee.

²⁸ *Id.*

²⁹ Matthew Impelli, *Fuel Thieves Used ‘Homemade Device’ to Steal \$60,000 in Gas, Police Say*, Newsweek, April 4, 2022, available at <https://www.newsweek.com/fuel-thieves-used-homemade-device-steal-60000-gas-police-say-1694856> (last visited March 10, 2023).

³⁰ Catherine Hawley, *Florida men accused of tampering with gas pumps, stealing fuel in Bay area*, Fox 13 News, March 17, 2022, available at <https://www.fox13news.com/news/florida-men-accused-of-tampering-with-gas-pumps-stealing-fuel-in-bay-area> (last visited March 10, 2023).

³¹ Morgan Loew, *Arizona Senate committee votes to outlaw fuel theft devices*, 3TV/CBS 5, Feb. 3, 2023, available at <https://www.azfamily.com/2023/02/03/arizona-senate-committee-votes-outlaw-fuel-theft-devices/> (last visited March 10, 2023).

³² Supra note 27.

- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

The statute punishes “grand theft” and “petit theft”. Grand theft is more severe than petit theft penalties and is typically theft of property valued at \$750 or more. Petit theft is generally theft of property valued at less than \$750.

While theft is generally punished in s. 812.014, F.S., and thefts from retailers can be punished under that statute, s. 812.015, F.S., is specifically directed at punishing “retail theft,” which the statute defines as “the taking possession of or carrying away of merchandise,³³ property, money, or negotiable documents; altering or removing a label, universal product code, or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant³⁴ of possession, use, benefit, or full retail value.”³⁵

Section 812.015(8), F.S., provides that it is a third degree felony³⁶ to commit retail theft, if the property stolen is valued at \$750 or more, and the person:

- Individually commits retail theft, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense, which may occur through multiple acts of retail theft, in which the amount of each individual theft is aggregated within a 30-day period to determine the value of the property stolen;
- Conspires with another person to commit retail theft with the intent to sell the stolen property for monetary or other gain, and subsequently takes or causes such property to be placed in the control of another person in exchange for consideration, in which the stolen property taken or placed within a 30-day period is aggregated to determine the value of the stolen property;
- Individually, or in concert with one or more other persons, commits theft from more than one location within a 30-day period, in which the amount of each individual theft is aggregated to determine the value of the property stolen;
- Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant’s employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense; or
- Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.

Seized or Forfeited Property

The Florida Contraband Forfeiture Act (act)³⁷ provides for the seizure and civil forfeiture of property related to criminal and non-criminal violations of the law.³⁸ Contraband and other

³³ “Merchandise” means “any personal property, capable of manual delivery, displayed, held, or offered for retail sale by a merchant.” Section 812.015(1)(a), F.S.

³⁴ “Merchant” means “an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise.” Section 812.015(1)(b), F.S.

³⁵ Section 812.015(1)(d), F.S.

³⁶ 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.

³⁷ See ss. 932.701-932.7062, F.S.

³⁸ Section 932.701(1), F.S.

property may be seized when utilized during a violation of, or for the purpose of violating, the act. Property constituting a “contraband article” includes, but is not limited to, motor fuel upon which the motor fuel tax has not been paid as required by law; vehicles of any kind which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony; and personal property including equipment, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony.³⁹

Currently, any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the act, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and forfeited subject to the act.⁴⁰

If the court finds that the seizure occurred lawfully⁴¹ and that probable cause exists for the seizure, the forfeiture may proceed as set forth in the act.⁴²

Effect of Proposed Changes

Section 9. The bill creates s. 812.0151, F.S. relating to retail fuel theft. The bill provides for criminal penalties for the possession, installation, use, or aiding in the use of contaminant devices insert into retail fuel dispensers for the purpose of fraudulently altering, manipulating, or interrupting a retail fuel dispenser from its standard operation or impeding standard functionality.

Specifically, a person commits a third degree felony when the person:

- Intentionally breaches, causes to be breached, or gains access without authorization to any internal portion of a retail fuel dispenser;
- Uses any form of electronic communication from a device such as a wireless remote, computer, or other device which alters, tricks, or manipulates a retail fuel dispenser;
- Obtains fuel as a result of a violation of this section;
- Aids, abets, or assists in a violation of this section;
- Has possession of any item used to hold fuel which was not fitted to a vehicle or conveyance⁴³ at the time of manufacture with the intent to use the item, or allow the item to be used; or
- Modifies a vehicle’s factory installed fuel tank for the purpose of committing, attempting to commit, or aiding, abetting, or assisting someone.

Additionally, a person commits a second degree felony⁴⁴ when the person:

- Tampers with, manipulates, removes, replaces, or interrupts any mechanical or electronic component located within a retail fuel dispenser for the purpose of devising or executing any scheme or artifice to defraud or obtain property; or

³⁹ Section 932.701(2)(a)4, 5, and 7, F.S.,

⁴⁰ Section 932.703(1)(a), F.S.

⁴¹ Section 932.703(1)(a), F.S., sets forth the circumstances that permit for a lawful seizure of property.

⁴² Section 932.703(2)(c), F.S.

⁴³ Section 810.011(3), F.S., defines “conveyance” to mean any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and “to enter a conveyance” includes taking apart any portion of the conveyance.

⁴⁴ A second degree felony is generally punishable by not more than 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

- Possesses, uses, or installs any device constructed for the purpose of fraudulently altering, manipulating, or interrupting a retail fuel dispenser from standard operation or impeding the retail fuel dispenser's functionality *while* using any form of electronic communication from a device such as a wireless remote, computer, or other device that alters, tricks, or manipulates a retail fuel dispenser.

The bill provides that any conveyances, vehicles, fuel tanks, and other equipment used or intended to be used in a violation of this section, and any fuel acquired in a violation of this section, is subject to seizure and forfeiture under the Florida Contraband Forfeiture Act. Law enforcement that seizes fuel must remove and reclaim, recycle, or dispose of all the fuel as soon as practicable in a safe and proper manner.

Upon conviction of a person arrested for violating this section, the bill requires a judge to issue an order adjudging and declaring that all conveyances, vehicles, fuel tanks, and other equipment used or intended to be used in a violation of this section are forfeited and directing their destruction, with the exception of the conveyance or vehicle.

The bill specifies that, if convicted, a person is responsible for the following costs and payments:

- All reasonable costs incurred by the investigating law enforcement agency, including, but not limited to, the costs for the towing and storage of the conveyance or vehicle, the removal and disposal of the fuel, and the storage and destruction of all fuel tanks and other equipment used or intended to be used in violation of this section; and
- Payment to the party from whom it was fraudulently obtained for the retail value of any associated fuel at the time of the underlying act.

This section does not apply to the following persons who are lawfully engaged in an activity that would otherwise be a violation of this section:

- Inspectors and investigators of the department;
- Persons registered with the department under ch. 525, F.S., relating to oil and gas inspections;
- Employees or owners of fuel stations;
- Law enforcement officers; and
- Firefighters or other necessary public safety personnel.

Lastly, the bill defines “fuel” to mean any of the following:⁴⁵

- Alternative fuel⁴⁶
- Aviation fuel⁴⁷
- Diesel fuel⁴⁸
- Gas⁴⁹
- Motor fuel⁵⁰

⁴⁵ Section 163.3206(2), F.S.

⁴⁶ See s. 525.01, F.S.

⁴⁷ See s. 206.9815, F.S.

⁴⁸ See s. 206.86, F.S.

⁴⁹ See s. 206.9925, F.S.

⁵⁰ See s. 206.01, F.S.

- Natural gas fuel⁵¹
- Oil⁵²
- Petroleum fuel⁵³
- Petroleum product⁵⁴

Miscellaneous Effect of Proposed Changes

Sections 10 and 11 are reenacted to incorporate the amendments made by this act to s. 527.01, F.S. in **Section 8**.

The bill takes effect July 1, 2023.

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 identified.

⁵¹ See s. 206.9951, F.S.

⁵² See s. 206.9925, F.S.

⁵³ See s. 525.01, F.S.

⁵⁴ See s. 206.9925, F.S.

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

None.

B. Private Sector Impact:

Class “G” may see a cost savings by applying their law enforcement training to their license renewal requirements. Class “K” licensee renewing their license to demonstrate continued firearms qualifications may see a cost savings by providing proof of having taught at least six 28-hour firearms instruction courses to Class “G” applicants during the previous 3-year license period in lieu of having to obtain certain certifications.

C. Government Sector Impact:

The department may see a cost savings by providing newsletters and pamphlets online instead of a paper format.

The Criminal Justice Impact Conference, which provides the final, official estimate of prison bed impact of legislation, if any, has not yet reviewed the bill. However, EDR preliminarily estimates that the bill will have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds). Additionally, the EDR provided the following information regarding its estimate:

While these felonies are newly created, other felonies currently exist where fuel theft offenses might be prosecuted, such as retail theft, grand theft, petit theft, and accessory after the fact. Per [Department of Corrections], there were 40 new commitments to prison in FY 18-19 for retail theft offenses, and 23 new commitments in FY 19-20. There were 22 new commitments in FY 20-21, and 14 new commitments in FY 21-22. For grand theft, there were 1,511 new commitments in FY 18-19, and 1,069 new commitments in FY 19-20. In FY 20-21, there were 698 new commitments, and in FY 21-22, there were 785 new commitments. While a large proportion of the grand theft commitments include a third conviction for petit theft, there are also a large number of misdemeanor petit theft convictions each year for those on their first or second conviction. Per FDLE, in FY 21-22, there were 9,524 guilty/convicted charges and 2,939 adjudication withheld charges. These misdemeanors could be elevated to felonies under this new language, though it is not known how many of these involved the theft of fuel. Finally, the aiding and abetting parts of this new language could potentially be under the current accessory after the fact felonies, where there were 41 new commitments in FY 18-19, and 36 new commitments in FY 19-20. In FY 20-21, there were 26 new commitments, and there were 38 new commitments in FY 21-22. Per FDLE, for misdemeanor accessory after the fact, there was one guilty/convicted charge and 2 adjudication withheld charges in FY 21-22.⁵⁵

⁵⁵ SB 1150 – *Department of Agriculture and Consumer Services* (Identical to HB 1307). On file with the Senate Commerce and Tourism Committee.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 493.6105, 493.6113, 493.6123, 493.6304, 493.6406, 496.405, 496.406, 527.01, 366.032, and 489.105 of the Florida Statutes.

This bill creates section 812.0151 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 Ingoglia

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1 A bill to be entitled
 2 An act relating to the Department of Agriculture and
 3 Consumer Services; amending s. 493.6105, F.S.; making
 4 a technical change; revising requirements for
 5 applicants for a Class "K" license; amending s.
 6 493.6113, F.S.; revising the circumstances under which
 7 the Department of Agriculture and Consumer Affairs may
 8 waive firearms training requirements; revising
 9 requirements for applicants for a Class "K" license;
 10 requiring the Division of Licensing of the department
 11 to establish a specified late fee by rule; amending s.
 12 493.6123, F.S.; authorizing the department to publish
 13 certain information online in lieu of using a paper
 14 format; amending ss. 493.6304 and 493.6406, F.S.;
 15 making technical changes; amending s. 496.405, F.S.;
 16 revising requirements relating to registration fees
 17 for certain charitable organizations, sponsors, and
 18 parent organizations; amending s. 496.406, F.S.;
 19 conforming provisions to changes made by the act;
 20 amending s. 527.01, F.S.; revising the definitions of
 21 the terms "Category I liquefied petroleum gas dealer"
 22 and "Category V LP gas installer"; creating s.
 23 812.0151, F.S.; defining the term "fuel"; providing
 24 criminal penalties for certain actions relating to
 25 retail fuel theft; requiring law enforcement agencies
 26 to remove and reclaim, recycle, or dispose of fuel in
 27 a specified manner; requiring judges to enter a
 28 specified order for persons convicted of violating
 29 specified provisions; specifying that convicted

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30 persons are responsible for certain costs and
 31 payments; providing applicability; reenacting ss.
 32 366.032(1)(e) and 489.105(3)(m), F.S., relating to
 33 preemption over utility service restrictions and
 34 definitions, respectively, to incorporate the
 35 amendments made by this act to s. 527.01, F.S., in
 36 references thereto; providing an effective date.
 37
 38 Be It Enacted by the Legislature of the State of Florida:
 39
 40 Section 1. Subsection (2) and paragraph (a) of subsection
 41 (6) of section 493.6105, Florida Statutes, are amended to read:
 42 493.6105 Initial application for license.—
 43 (2) Each application must be signed and verified by the
 44 applicant ~~individual under oath~~ as provided in s. 92.525.
 45 (6) In addition to the requirements under subsection (3),
 46 an applicant for a Class "K" license must:
 47 (a) Submit one of the following:
 48 1. The Florida Criminal Justice Standards and Training
 49 Commission Instructor Certificate and written confirmation by
 50 the commission that the applicant possesses an active firearms
 51 certification.
 52 2. A valid National Rifle Association Private Security
 53 Firearm Instructor Certificate issued not more than 3 years
 54 before the submission of the applicant's Class "K" application.
 55 3. A valid firearms instructor certificate issued by a
 56 federal law enforcement agency issued not more than 3 years
 57 before the submission of the applicant's Class "K" application.
 58 4. A valid DD Form 214 issued not more than 3 years before

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the submission of the applicant's Class "K" application,
 indicating that the applicant has been honorably discharged and
 served no less than 3 years in the military as a firearms
 instructor.

Section 2. Paragraphs (b) and (d) of subsection (3) and
 subsection (4) of section 493.6113, Florida Statutes, are
 amended to read:

493.6113 Renewal application for licensure.—

(3) Each licensee is responsible for renewing his or her
 license on or before its expiration by filing with the
 department an application for renewal accompanied by payment of
 the renewal fee and the fingerprint retention fee to cover the
 cost of ongoing retention in the statewide automated biometric
 identification system established in s. 943.05(2)(b). Upon the
 first renewal of a license issued under this chapter before
 January 1, 2017, the licensee shall submit a full set of
 fingerprints and fingerprint processing fees to cover the cost
 of entering the fingerprints into the statewide automated
 biometric identification system pursuant to s. 493.6108(4)(a)
 and the cost of enrollment in the Federal Bureau of
 Investigation's national retained print arrest notification
 program. Subsequent renewals may be completed without submission
 of a new set of fingerprints.

(b) Each Class "G" licensee shall additionally submit proof
 that he or she has received during each year of the license
 period a minimum of 4 hours of firearms requalification training
 taught by a Class "K" licensee and has complied with such other
 health and training requirements that the department shall adopt
 by rule. Proof of completion of firearms requalification

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training shall be submitted to the department upon completion of
 the training. A Class "G" licensee must successfully complete
 this requalification training for each type and caliber of
 firearm carried in the course of performing his or her regulated
 duties. If the licensee fails to complete the required 4 hours
 of annual training during the first year of the 2-year term of
 the license, the license shall be automatically suspended. The
 licensee must complete the minimum number of hours of range and
 classroom training required at the time of initial licensure and
 submit proof of completion of such training to the department
 before the license may be reinstated. If the licensee fails to
 complete the required 4 hours of annual training during the
 second year of the 2-year term of the license, the licensee must
 complete the minimum number of hours of range and classroom
 training required at the time of initial licensure and submit
 proof of completion of such training to the department before
 the license may be renewed. The department may waive the
 firearms training requirement if:

1. The applicant provides proof that he or she is currently
 certified as a law enforcement officer or correctional officer
 under the Criminal Justice Standards and Training Commission and
 has completed law enforcement firearms requalification training
 annually during the previous 2 years of the licensure period;

2. The applicant provides proof that he or she is currently
 certified as a federal law enforcement officer and has received
 law enforcement firearms training administered by a federal law
 enforcement agency annually during the previous 2 years of the
 licensure period; ~~or~~

3. The applicant submits a valid firearm certificate among

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those specified in s. 493.6105(6)(a) and provides proof of having completed requalification training during the previous 2 years of the licensure period; or

4. The applicant provides proof that he or she has completed annual firearms training in accordance with the requirements of the federal Law Enforcement Officers Safety Act under 18 U.S.C. ss. 926B-926C.

(d) Each Class "K" licensee shall additionally submit:

1. One of the certificates specified under s. 493.6105(6) as proof that he or she remains certified to provide firearms instruction; or

2. Proof of having taught at least six 28-hour firearms instruction courses to Class "G" applicants during the previous 3-year license period.

(4) A licensee who fails to file a renewal application on or before its expiration must renew his or her license by fulfilling the applicable requirements of subsection (3) and may be required to pay by paying a late fee equal to the amount of the license fee. The division shall establish the amount of the late fee authorized under this subsection by rule; however, such late fee may not exceed the amount of the license fee.

Section 3. Subsection (3) is added to section 493.6123, Florida Statutes, to read:

493.6123 Publication to industry.—

(3) The department may publish all information required by this section online in lieu of using a paper format.

Section 4. Subsection (2) of section 493.6304, Florida Statutes, is amended to read:

493.6304 Security officer school or training facility.—

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(2) The application must ~~shall~~ be signed and verified by the applicant ~~under oath~~ as provided in s. 92.525 and must contain, at a minimum, the following information:

(a) The name and address of the school or training facility and, if the applicant is an individual, her or his name, address, and social security or alien registration number.

(b) The street address of the place at which the training is to be conducted.

(c) A copy of the training curriculum and final examination to be administered.

Section 5. Subsection (2) of section 493.6406, Florida Statutes, is amended to read:

493.6406 Recovery agent school or training facility.—

(2) The application must be signed and verified by the applicant ~~under oath~~ as provided in s. 92.525 and must ~~shall~~ contain, at a minimum, the following information:

(a) The name and address of the school or training facility and, if the applicant is an individual, his or her name, address, and social security or alien registration number.

(b) The street address of the place at which the training is to be conducted or the street address of the Class "RS" school offering Internet-based or correspondence training.

(c) A copy of the training curriculum and final examination to be administered.

Section 6. Paragraph (a) of subsection (4) of section 496.405, Florida Statutes, is amended to read:

496.405 Registration statements by charitable organizations and sponsors.—

(4)(a) Every charitable organization, sponsor, or parent

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organization filing on behalf of one or more chapters, branches, or affiliates that is required to register under this section must pay a single registration fee. A parent organization filing on behalf of one or more chapters, branches, or affiliates shall total all contributions received by the chapters, branches, or affiliates included in the registration statement to determine registration fees. Fees shall be assessed as follows:

1.a. Ten dollars, if the contributions received for the last fiscal or calendar year were less than \$5,000; or

b. Ten dollars, if the contributions actually raised or received from the public during the immediately preceding fiscal year by such organization or sponsor are no more than \$50,000 ~~\$25,000~~ and the fundraising activities of such organization or sponsor are carried on by volunteers, members, officers, or permanent employees, who are not compensated, primarily to solicit such contributions, provided no part of the assets or income of such organization or sponsor inures to the benefit of or is paid to any officer or member of such organization or sponsor or to any professional fundraising consultant, professional solicitor, or commercial co-venturer;

2. Seventy-five dollars, if the contributions received for the last fiscal year were \$5,000 or more, but less than \$100,000;

3. One hundred twenty-five dollars, if the contributions received for the last fiscal year were \$100,000 or more, but less than \$200,000;

4. Two hundred dollars, if the contributions received for the last fiscal year were \$200,000 or more, but less than \$500,000;

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5. Three hundred dollars, if the contributions received for the last fiscal year were \$500,000 or more, but less than \$1 million;

6. Three hundred fifty dollars, if the contributions received for the last fiscal year were \$1 million or more, but less than \$10 million;

7. Four hundred dollars, if the contributions received for the last fiscal year were \$10 million or more.

Section 7. Paragraph (d) of subsection (1) of section 496.406, Florida Statutes, is amended to read:

496.406 Exemption from registration.—

(1) The following charitable organizations and sponsors are exempt from the requirements of s. 496.405:

(d) A charitable organization or sponsor that has less than \$50,000 ~~\$25,000~~ in total revenue during a fiscal year if the fundraising activities of such organization or sponsor are carried on by volunteers, members, or officers who are not compensated and no part of the assets or income of such organization or sponsor inures to the benefit of or is paid to any officer or member of such organization or sponsor or to any professional fundraising consultant, professional solicitor, or commercial co-venturer. If a charitable organization or sponsor that has less than \$50,000 ~~\$25,000~~ in total revenue during a fiscal year actually acquires total revenue equal to or in excess of \$50,000 ~~\$25,000~~, the charitable organization or sponsor must register with the department as required by s. 496.405 within 30 days after the date the revenue reaches \$50,000 ~~\$25,000~~.

Section 8. Subsections (6) and (10) of section 527.01,

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Florida Statutes, are amended to read:

527.01 Definitions.—As used in this chapter:

(6) "Category I liquefied petroleum gas dealer" means any person selling or offering to sell by delivery or at a stationary location any liquefied petroleum gas to the consumer for industrial, commercial, or domestic use; any person leasing or offering to lease, or exchanging or offering to exchange, any apparatus, appliances, and equipment for the use of liquefied petroleum gas; any person designing, installing, servicing, altering, or modifying apparatus, piping, tubing, appliances, and equipment for the use of liquefied petroleum or natural gas; any person installing carburetion equipment; or any person requalifying cylinders.

(10) "Category V LP gas installer" means any person who is engaged in the liquefied petroleum gas business and whose services include the design, installation, servicing, altering, or modifying of apparatus, piping, tubing, tanks, and equipment for the use of liquefied petroleum or natural gas and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum or natural gas.

Section 9. Section 812.0151, Florida Statutes, is created to read:

812.0151 Retail fuel theft.—

(1) As used in this section, the term "fuel" has the same meaning as in s. 163.3206(2).

(2) Any person who:

(a) Intentionally breaches, causes to be breached, or gains access without authorization to any internal portion of a retail

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fuel dispenser commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Tamper with, manipulates, removes, replaces, or interrupts any mechanical or electronic component located within a retail fuel dispenser for the purpose of devising or executing any scheme or artifice to defraud or obtain property commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Uses any form of electronic communication from a device such as a wireless remote, computer, or other device which alters, tricks, or manipulates a retail fuel dispenser commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Possesses, uses, or installs any device constructed for the purpose of fraudulently altering, manipulating, or interrupting a retail fuel dispenser from standard operation or impeding the retail fuel dispenser's functionality while violating paragraph (c) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) Obtains fuel as a result of a violation of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(f) Aids, abets, or assists in a violation of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(g) Has in his or her possession any item used to hold fuel which was not fitted to a vehicle or conveyance at the time of manufacture with the intent to use such item, or allow such item to be used, in a violation of this section commits a felony of

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291 the third degree, punishable as provided in s. 775.082, s.
 292 775.083, or s. 775.084.
 293 (h) Any person who modifies a vehicle's factory installed
 294 fuel tank for the purpose of committing, attempting to commit,
 295 or aiding, abetting, or assisting someone in a violation of this
 296 section commits a felony of the third degree, punishable as
 297 provided in s. 775.082, s. 775.083, or s. 775.084.
 298 (3) Any conveyances, vehicles, fuel tanks, and other
 299 equipment used or intended to be used in a violation of this
 300 section, and any fuel acquired in a violation of this section,
 301 is subject to seizure and forfeiture as provided by the Florida
 302 Contraband Forfeiture Act.
 303 (4) A law enforcement agency that seizes fuel under this
 304 section must remove and reclaim, recycle, or dispose of all the
 305 fuel as soon as practicable in a safe and proper manner.
 306 (5) Upon conviction of a person arrested for a violation of
 307 this section, the judge must issue an order adjudging and
 308 declaring that all conveyances, vehicles, fuel tanks, and other
 309 equipment used or intended to be used in a violation of this
 310 section are forfeited and directing their destruction, with the
 311 exception of the conveyance or vehicle.
 312 (6) Any person convicted of a violation of this section is
 313 responsible for both of the following:
 314 (a) All reasonable costs incurred by the investigating law
 315 enforcement agency, including, but not limited to, the costs for
 316 the towing and storage of the conveyance or vehicle, the removal
 317 and disposal of the fuel, and the storage and destruction of all
 318 fuel tanks and other equipment described and used or intended to
 319 be used in a violation of this section.

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320 (b) Payment, to the party from whom it was fraudulently
 321 obtained, for the retail value of any associated fuel at the
 322 time of the underlying act.
 323 (7) This section does not apply to the following persons
 324 who are lawfully engaged in an activity that would otherwise be
 325 a violation of this section:
 326 (a) Inspectors and investigators of the Department of
 327 Agriculture and Consumer Services;
 328 (b) Persons registered with the Department of Agriculture
 329 and Consumer Services under chapter 525;
 330 (c) Employees or owners of fuel stations;
 331 (d) Law enforcement officers; and
 332 (e) Firefighters or other necessary public safety
 333 personnel.
 334 Section 10. For the purpose of incorporating the amendments
 335 made by this act to section 527.01, Florida Statutes, in a
 336 reference thereto, paragraph (e) of subsection (1) of section
 337 366.032, Florida Statutes, is reenacted to read:
 338 366.032 Preemption over utility service restrictions.—
 339 (1) A municipality, county, special district, or other
 340 political subdivision of the state may not enact or enforce a
 341 resolution, ordinance, rule, code, or policy or take any action
 342 that restricts or prohibits or has the effect of restricting or
 343 prohibiting the types or fuel sources of energy production which
 344 may be used, delivered, converted, or supplied by the following
 345 entities to serve customers that such entities are authorized to
 346 serve:
 347 (e) A Category I liquefied petroleum gas dealer or Category
 348 II liquefied petroleum gas dispenser or Category III liquefied

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petroleum gas cylinder exchange operator as defined in s.
527.01.

Section 11. For the purpose of incorporating the amendments made by this act to section 527.01, Florida Statutes, in a reference thereto, paragraph (m) of subsection (3) of section 489.105, Florida Statutes, is reenacted to read:

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(m) "Plumbing contractor" means a contractor whose services are unlimited in the plumbing trade and includes contracting business consisting of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, if not prohibited by law,

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design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, if not prohibited by law, design the following without obtaining an additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities, water and sewer plants and substations, venting systems, public or private water supply systems, septic tanks, drainage and supply wells, swimming pool piping, irrigation systems, and solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines. The scope of work of the plumbing contractor also includes the design, if not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers if authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in a manner that complies with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor applies to private property and public property, including any excavation work incidental thereto, and includes the work of the specialty plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified as being the work of a trade other than that of a plumbing contractor. This

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407 definition does not limit the scope of work of any specialty
408 contractor certified pursuant to s. 489.113(6) and does not
409 require certification or registration under this part as a
410 category I liquefied petroleum gas dealer, or category V LP gas
411 installer, as defined in s. 527.01, who is licensed under
412 chapter 527 or an authorized employee of a public natural gas
413 utility or of a private natural gas utility regulated by the
414 Public Service Commission when disconnecting and reconnecting
415 water lines in the servicing or replacement of an existing water
416 heater. A plumbing contractor may perform drain cleaning and
417 clearing and install or repair rainwater catchment systems;
418 however, a mandatory licensing requirement is not established
419 for the performance of these specific services.
420 Section 12. This act shall take effect July 1, 2023.

3/13/23

The Florida Senate APPEARANCE RECORD

1150

Meeting Date
Commerce & Tourism

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

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name **Alex Haley**Phone **(850) 617-7700**Address **400 S. Monroe St. - PL 10**Email **alex.haley@fdacs.gov**

Street

Tallahassee**FL****32399**

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

**Florida Department of Agriculture
& Consumer Services**

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

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

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

S-001 (08/10/2021)

OFFICE OF THE COMMISSIONER
(850) 617-7700



THE CAPITOL
400 SOUTH MONROE STREET
TALLAHASSEE, FLORIDA 32399-0800

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
COMMISSIONER WILTON SIMPSON

March 8, 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: 1150

Senate Bill Sponsor: Sen. Ingoglia

Bill Title: Department of Agriculture and Consumer Services

Effective Date: July 1, 2023

Similar Bill(s): Yes ☐ No ☒

Similar Bill(s):

Identical Bill: Yes ☒ No ☐

Identical Bill: HB 1307 – by Rep. McClure

1. SUMMARY

This bill amends, clarifies, and/or adds language affecting the Florida Department of Agriculture and Consumer Services' (FDACS) Division of Licensing (DOL) and the Division of Consumer Services (CS).

Within DOL, this bill amends s. 493.6105(2); 493.6304(2) and 493.6406(2), F.S., to clarify that a signed declaration is sufficient for verification purposes on application forms, consistent with the language of s. 92.525, F.S.

It amends s. 493.6105(6)(a), F.S., to allow Class "K" firearms instructor applicants to provide military experience as a firearms instructor in lieu of having to obtain other firearms training through either a valid Florida Criminal Justice Standards and Training Commission Instructor Certificate, a valid National Rifle Association Private Security Firearm Certificate, or a valid firearms instructor certificate issued by federal law enforcement agency issued within the last 3 years.

It adds s. 493.6113(3)(b)4., F.S., to allow Class "G" statewide firearms licensees to provide proof of annual training under the Law Enforcement Officers' Safety Act in lieu of the 4 hours of annual training currently required.

It amends s. 493.6113(3)(d) , F.S., to allow Class "K" licensees renewing their license to demonstrate continued firearms qualification by teaching at least six (6) classes during the three-year licensure period in lieu of having to obtain other firearms training through either a valid Florida Criminal Justice Standards and Training Commission Instructor Certificate, a valid National Rifle Association Private Security Firearm Certificate, or a valid firearms instructor certificate issued by federal law enforcement agency issued within the last 3 years.

It amends s. 493.6113(4) , F.S., to allow the division to set or waive license renewal late fees by administrative rule.

It amends s. 493.6123, F.S., to allow the department to post online the newsletters and pamphlets it is required to provide the public.

Within CS, the bill would make statutory changes to Ch. 496, F.S., to expand the number of charitable organizations and sponsors (charities) that qualify for reduced registration fees or that are exempt from registration. Specifically, s. 496.405, , F.S., would be amended to reduce registration fees from \$75 to \$10 for certain applicants receiving \$50,000 or less in contributions per year; and amend s. 496.406 to exempt from registration certain charities with less than \$50,000 in yearly revenue. Both thresholds are currently set at \$25,000.

The bill amends definitions in Ch. 527, F.S., to be consistent with the authority in s. 527.06(2), F.S., which allows the department to set standards for the design of liquefied petroleum (LP) gas storage systems. NFPA 58, which is adopted by CS rule, contemplates that liquefied petroleum professionals can design such systems within their expertise. The proposed change clarifies that the definitions of *category I liquefied petroleum gas dealer* and *category V LP gas installer* include aspects of design consistent with NFPA 58.

Finally, the bill creates s. 812.0151, F.S., Retail Fuel Theft, which was recommended by FDACS Office of Agriculture and Law Enforcement (OALE) and the US Secret Service. This legislation would create criminal penalties for the possession, installation, use, or aiding in the use of contaminant devices inserted into retail fuel dispensers for the purpose of fraudulently altering, manipulating, or interrupting a retail fuel dispenser from standard operation or impeding standard functionality. Additionally, it would create criminal penalties for the possession or use of an auxiliary fuel tank used to commit retail fuel theft. The bill also provides for the forfeiture of conveyances or vehicles, fuel tanks, related fuel, and other equipment associated with retail fuel theft; and requires any person convicted of retail fuel theft to be responsible for the reasonable costs of the investigating law enforcement agency and compensation to the victim for the retail value of the fuel.

2. PRESENT SITUATION

- Currently, the law requires that a Ch. 493, F.S., application for licensure contain the signature and verification of the applicant "under oath." The statute directly references s. 92.525, which governs the various methods of document verification under Florida law.

- Currently, s. 493.6105(6)(a) requires Class "K" firearms instructor applicants to provide firearms training through either a valid Florida Criminal Justice Standards and Training Commission Instructor Certificate, a valid National Rifle Association Private Security Firearm Certificate, or a valid firearms instructor certificate issued by a federal law enforcement agency within the last 3 years. DOL Rule 5N-1.119, F.A.C., allows credit for relevant military training and education, but does not specifically address these requirements for Class "K" applicants.
- Currently, Class "G" license holders who are retired law enforcement officers are not able to use their annual requalification authorized by federal law in the Law Enforcement Officers' Safety Act in lieu of 4 hours of annual training required by Ch. 493.
- Currently, Ch. 493, F.S., requires Class "K" firearms instructors to show proficiency training for each 3-year license period after initial licensure. The three current options are a valid Florida Criminal Justice Standards and Training Commission Instructor Certificate, a valid National Rifle Association Private Security Firearm Certificate, and a valid firearms instructor certificate issued by federal law enforcement agency issued within the last 3 years. Some military firearms instructors who qualify for initial Class "K" licensure through military experience cannot obtain any of the three certification options and are unable to renew as Class "K" instructors.
- Currently, Ch. 493, F.S., requires a licensee who fails to file a renewal application on or before its expiration date to pay an additional late fee equal to the amount of the renewal fee.
- Currently, Ch. 493, F.S., requires the department to publish pamphlets for licensees and a semi-annual newsletter. The language requiring pamphlets does not allow for the department to move to digital publication.
- Ch. 496, F.S., requires charitable organizations and sponsors (charities) to pay registration fees based upon contributions (a term defined in s. 496.404(5), F.S.) collected in the immediately preceding fiscal year. The registration fee is \$10 per year for charities that do not pay for the services of professional solicitors, that are run entirely by unpaid volunteers, and that do not receive more than \$25,000 in contributions.
- The law provides exemptions from registration for specified entities, including charities that do not pay for the services of professional solicitors, that are run entirely by unpaid volunteers, and that have less than \$25,000 in total revenue during a fiscal year. Though these charities are not required to register, they must still provide certain information, including financial information, on an annual basis.
- Currently, the definitions of category I liquefied petroleum gas dealer and category V LP gas installer found in s. 527.01, F.S., omit the words designing and design, respectively, when describing the various liquefied petroleum services that fall under these categories.
- A fuel pulser is a plastic device connected to the fuel pump dispenser meter housed within the fuel pump. The pulser converts the mechanical movement of the fuel meter, and then sends electrical pulses to control the dispenser's electronic display. These pulsers can be replaced by an altered pulser that interrupts the electrical signal thus allowing large quantities of fuel to be dispensed without being charged. Stolen fuel is then sold at discounted rates on the black market. Currently, possession of an altered fuel pulser produced to facilitate fuel theft is legal in Florida.
- Multiple law enforcement agencies throughout Florida continue to report fuel pulser compromises at fuel stations in their jurisdictions. Some incidents ended with arrests, and subsequently made national news. These arrests were made for the theft of fuel.

Often, perpetrators are found in the possession of fuel pulsers and modified fuel tanks used in these crimes. Currently, law enforcement does not have the authority to file charges based on the possession of these devices that have the sole purpose of being used to commit fuel theft. Recent information from the US Secret Service indicates that each fuel puster represents a potential economic loss of \$2-3 million per year. These losses contribute to price increases consumers pay for fuel.

- Law enforcement currently relies on s. 316.80, F.S., for fuel theft crimes; however, the statute does not address the issue of fuel pulsers. Further, the statute only penalizes the use of conveyances or vehicles equipped with auxiliary fuel tanks or bladders which do not comply with applicable federal regulation. Since federal regulations allow any non-leaking container to be used to transport diesel fuel, the statute is unenforceable in such situations.

3. EFFECT OF PROPOSED CHANGES

- The language in ss. 493.6105(2), 493.6304(2), and 493.6406(2), F.S., is clarified to allow a signed declaration without an oath for verification purposes. Chapter 493, F.S., requirements will now comport with the added efficiency of s. 95.525, F.S., and applicants will be spared the time and potential expense of notarization.
- The proposed legislation would make explicit that Class "K" applicants are able to provide military experience as a firearms instructor in lieu of having to obtain other firearms training through either a valid Florida Criminal Justice Standards and Training Commission Instructor Certificate, a valid National Rifle Association Private Security Firearm Certificate, or a valid firearms instructor certificate issued by a federal law enforcement agency within the last 3 years. This will allow qualified former military firearms instructors another method of demonstrating firearms instructor proficiency.
- The proposed legislation will allow Class "G" license holders who are retired law enforcement officers to use their annual requalification authorized by federal law in the Law Enforcement Officers' Safety Act in lieu of the 4-hour annual training currently required. This eliminates the cost and administrative burden on retired law enforcement officers who receive annual training under LEOSA from having to complete additional training.
- Modifying the renewal requirements for "K" licenses allows Class "K" instructors to demonstrate their continued proficiency by teaching at least six (6) classes during the three-year licensure period in lieu of providing a valid Florida Criminal Justice Standards and Training Commission Instructor Certificate, a valid National Rifle Association Private Security Firearm Certificate, or a valid firearms instructor certificate issued by federal law enforcement agency within the last 3 years. This recognizes that Class "K" licensees retain proficiency by performing multiple classes during their licensure period. This showing of proficiency is similar to the Criminal Justice Standards & Training Commission (CJSTC) requirement that instructors provide proof of teaching one course during a four-year cycle as part of maintaining their certification (Rule 11B-20.0017, Florida Administrative Code). This eliminates an administrative burden that prevents some military veterans from renewing their Class "K" license.
- Granting DOL the authority to modify late fee assessment provisions for renewal applications by administrative rule would allow the division to limit late fees or waive late fees in situations where doing so is necessary in the interest of fairness.
- Adding online publication authority would modernize the method DOL uses to disseminate information that to share with the public. This would also result in a

potential cost-savings by reducing the amount of printing, warehousing, postage and supplies costs. Licensees would be able to access up-to-date material online rather than potentially outdated printed material and DOL would retain the ability to mail hard copies of the information when appropriate.

- Increase solicitation of contributions thresholds to reduce fees and registration for charitable organization applications. It will reduce registration fees from \$75 per year to \$10 per year for certain charities receiving \$50,000 or less in contributions. Exempts from registration certain charities with less than \$50,000 in annual revenues. Currently, both thresholds are set at \$25,000.
- Clarifies that a category I liquefied petroleum gas dealer includes persons who design liquefied petroleum gas apparatus and equipment and clarifies that a category V LP gas installer includes persons whose services include designing LP gas apparatus and equipment.
- The proposed legislation creates s. 812.0151, F.S., Retail Fuel Theft, which provides criminal penalties for the possession, installation, use, or aiding in the use of any device inserted into retail fuel dispensers for the purpose of fraudulently altering, manipulating, or interrupting a retail fuel dispenser from standard operation or impeding standard functionality; as well for the possession of an auxiliary fuel tank, or any item used to hold fuel, or modification of a factory fuel tank in connection with retail fuel theft. The bill also provides for forfeiture of conveyances or vehicles, fuel tanks, related fuel, and other equipment associated with retail fuel theft. Anyone convicted under the new section will be responsible for the reasonable costs of the investigating law enforcement agency as well as paying the victim the retail value of the fuel.

4. FISCAL IMPACT ON FDACS

The majority of the provisions in this bill pose a negligible fiscal impact to the department based on the waiver and exemption of fees proposed.

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

None identified.

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

Class "K" firearms instructors could see a reduction in demand for their services for the annual training required for a renewing Class G licensee. It is difficult to quantify exactly what this impact might be.

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)

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

No.

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

The DOL statute currently sets the renewal late fee at the amount equal to the licensee fee. The revisions will all DOL to adopt a new late fee by rule at a lower amount.

By changing the thresholds for reduced registration fees and exemptions, the bill would lower registration fees from \$75 to \$10 per year for certain charities and would increase the number of charities exempt from registration.

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

- a. Yes
- b. If yes please explain: DOL will promulgate reasonable late fee requirements by administrative rule.

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

- a. 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. 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?

None identified.

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?

None identified.

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

None anticipated.

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 1154

INTRODUCER: Senator Perry

SUBJECT: Labor Pool Act

DATE: March 10, 2023

REVISED: _____

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

I. Summary:

SB 1154 amends the Labor Pool Act to provide that a labor pool satisfies the statutory requirements related to provision of restroom facilities, drinking water, and sufficient seating if its labor hall facility complies with all minimum requirements for public restrooms, drinking fountains, and seating in the Florida Building Code.

The bill also requires that a worker aggrieved by a violation of the above requirements must provide written notice of the alleged violation and give the labor pool a reasonable opportunity to cure the alleged violation, before bringing a civil action. A civil action must be commenced within one year after the date that the aggrieved worker serves the written notice of alleged violation.

The bill provides that the remedies specified in the Labor Pool Act are the exclusive remedies for violations.

The bill takes effect July 1, 2023.

II. Present Situation:

The Labor Pool Act

Part II of ch. 448, F.S., also known as the Labor Pool Act,¹ was enacted in 1995 to protect the health, safety, and well-being of day laborers throughout the state. A labor pool is defined as a business entity that operates a labor hall² by one or more of the following methods:

- Contracting with third-party users to supply day laborers to them on a temporary basis;

¹ Chapter 95-332, L.O.F.

² Section 448.22(3), F.S., defines a “labor hall” as a central location maintained by a labor pool where day laborers assemble and are dispatched to work for a third-party user.

- Hiring, employing, recruiting, or contracting with workers to fulfill these contracts for temporary labor; or
- Fulfilling any contracts for day labor in accordance with the act, even if the entity also conducts other business.³

The act also outlines uniform standards of conduct and practice for labor pools.

A labor pool must not:

- Charge a day laborer:⁴
 - For safety equipment, clothing, accessories, or any other items required by the nature of the work;
 - More than a reasonable amount to transport a worker to or from the designated worksite; or
 - For directly or indirectly cashing a worker's check.⁵
- Request or require that any day laborer sign any document waiving statutory protections.⁶
- Charge more than the actual cost of providing lunch, if the labor pool provides lunch at the worksite.⁷
- Restrict a day laborer's right to accept a permanent position with a third-party user to whom the laborer is referred for temporary work, or to restrict the right of such a third-party user to offer such employment to an employee of the labor pool.⁸

A labor pool must:

- If operating a labor hall, provide the following facilities for a worker waiting at the hall for a job assignment:
 - Restroom facilities;
 - Drinking water; and
 - Sufficient seating.⁹
- Select one of the following methods to pay a day laborer for work performed:
 - Cash;
 - Commonly accepted negotiable instruments that are payable in cash, on demand at a financial institution, and without discount;
 - Payroll debit card; or
 - Electronic fund transfer.¹⁰
- Notify a day laborer of the payment method that the labor pool intends to use and the day laborer's options to elect a different payment method.¹¹

³ Section 448.22(1), F.S. The act also specifically excludes certain businesses from its provisions: businesses registered as farm labor contractors; employee leasing companies; temporary help services that solely provide white collar employees, secretarial employees, clerical employees, or skilled laborers; labor union hiring halls; or labor bureau or employment offices operated by a business entity for the sole purpose of employing an individual for its own use. *See* s. 448.23, F.S.

⁴ "Day labor" means temporary labor or employment that is occasional or irregular for which the worker is employed for not longer than the time period required to complete the temporary assignment for which the individual worker was hired, although an individual may be eligible for additional temporary assignments when available. *See* s. 448.22(2), F.S.

⁵ Section 448.24(1), F.S.

⁶ Section 448.24(3), F.S.

⁷ Section 448.24(4), F.S.

⁸ Section 448.24(6), F.S.

⁹ Section 448.24(5), F.S.

¹⁰ Section 448.24(2), F.S.

¹¹ *Id.*

- If selecting to pay a day laborer by payroll debit card:
 - Offer the day laborer the option to elect payment by electronic fund transfer; and
 - Provide the day laborer with a list, including the address, of a nearby business that does not charge a fee to withdraw the debit card's contents.¹²
- Compensate day laborers at or above the minimum wage.¹³
- Comply with the Workers' Compensation Law in ch. 440, F.S.¹⁴
- Insure any motor vehicle owned or operated by the labor pool and used for worker transportation.¹⁵
- Furnish each worker with a written itemized statement showing in detail each wage deduction.
- Give each worker an annual earnings statement summary.¹⁶

Remedies

Any worker aggrieved by a violation of the provisions relating to labor pool duties in s. 448.24, F.S., has the right to bring a civil action in a court of competent jurisdiction against the labor pool. In any such action, the worker is entitled to recover actual and consequential damages, or \$1,000, whichever is greater, for each violation, and costs. These remedies are not exclusive and do not preclude the worker from pursuing any other remedy at law or equity available to the worker.¹⁷

Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.¹⁸

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 448.25, F.S.

¹⁸ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, available at http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited March 10, 2023).

local codes on March 1, 2002.¹⁹ The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.²⁰

Chapter 553, part IV, F.S., is known as the “Florida Building Codes Act” (act). The purpose and intent of the act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.²¹

The Florida Building Commission was statutorily created to implement the Building Code. The commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The commission reviews several International Codes published by the International Code Council,²² the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.²³

Local Amendments to the Building Code

Local governments may adopt amendments to the building code that are more stringent than the building code that are limited to the local government’s jurisdiction. Amendments by local governments expire upon the adoption of the newest edition of the building code, and, thus, the local government would need to go through the amendment process every three years in order to maintain a local amendment to the building code.²⁴

Water Closets and Drinking Fountains in the Florida Building Code

Section 403 of the Building Code sets standards for minimum plumbing facilities; the requirement varies based upon the actual use of the building or space. For the “Business” classification, the Water Closet requirement is 1 per 25 for the first 50 and 1 per 50 for the remainder exceeding 50, and the Drinking Fountain requirement is 1 per 100.²⁵

III. Effect of Proposed Changes:

The bill amends the labor pool duties in s. 448.24(5), F.S., to provide that a labor pool satisfies the requirements related to restroom facilities, drinking water, and sufficient seating if its labor

¹⁹ *Id.*; DBPR, *Building Code Information System*, available at: <https://floridabuilding.org/c/default.aspx#> (last visited March 10, 2023).

²⁰ *Id.*

²¹ Section 553.72(1), F.S.

²² The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to “construct safe, sustainable, affordable and resilient structures.” International Code Council, *About the ICC*, available at <https://www.iccsafe.org/about/who-we-are/> (last visited March 10, 2023).

²³ Sections 553.73, and 553.74, F.S.

²⁴ Section 553.73(4), F.S.

²⁵ 2020 Florida Building Code, Plumbing, 7th Edition, available at: <https://codes.iccsafe.org/content/FLPC2020P1/chapter-4-fixtures-faucets-and-fixture-fittings#:~:text=403.3Required%20public%20toilet%20facilities,be%20provided%20with%20toilet%20facilities> (last visited March 10, 2023).

hall facilities comply with all minimum requirements for public restrooms, drinking fountains, and seating in the Florida Building Code, and any local amendments thereto. A labor pool may also provide drinking water through a water cooler dispenser, by offering bottled water, or by any other similar means.

The bill amends the remedies provisions to provide that before bringing a civil action pursuant to s. 448.25, F.S., an aggrieved worker must give the labor pool a reasonable opportunity to cure the alleged violation. The aggrieved worker must serve the labor pool in accordance with s. 48.081, F.S.,²⁶ with written notice of the alleged violation. The notice must include a statement that failure by the labor pool to cure the alleged violation within 60 days after receipt of the notice may result in a civil action being filed against it in court. A labor pool may cure a violation relating to its labor hall facilities by modifying the alleged violation to comply with the requirements.

A civil action brought under the provisions relating to labor pool duties must be filed within one year after the date the aggrieved worker serves written notice of the alleged violation on the labor pool.

The bill also provides that the remedies provided by Part II of ch. 448, F.S., are exclusive and preclude the aggrieved worker from pursuing any other remedy at law or equity which the worker may have.

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.

²⁶ Section 48.081, F.S., specifies the procedures to be followed in serving process on a corporation.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear if the limitation on remedies provided in lines 58-60 is intended to apply only to violations of s. 448.24, F.S. If the limitation is intended to be broader, it may potentially run afoul of the Florida Constitution, art. I, s. 21, which provides that “[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.”

VIII. Statutes Affected:

This bill substantially amends section 448.24 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 Perry

9-01931C-23

20231154

A bill to be entitled

An act relating to the Labor Pool Act; amending s. 448.24, F.S.; providing that a labor pool satisfies certain requirements if its facilities meet the minimum requirements in the Florida Building Code and any local amendments thereto; authorizing a labor pool to provide drinking water in a specified manner; amending s. 448.25, F.S.; requiring an aggrieved worker to provide specified notice to a labor pool before bringing certain civil actions; authorizing a labor pool to cure alleged violations in a specified manner; requiring that a civil action be brought within a certain time period; specifying that certain remedies are exclusive; providing an effective date.

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

Section 1. Subsection (5) of section 448.24, Florida Statutes, is amended to read:

448.24 Duties and rights.—

(5) A labor pool that operates a labor hall must provide facilities for a worker waiting at the labor hall for a job assignment that include—

~~(a)~~ restroom facilities,

~~(b)~~ drinking water, and

~~(c)~~ sufficient seating. A labor pool satisfies this

subsection if its labor hall facilities comply with all minimum requirements for public restrooms, drinking fountains, and seating in the Florida Building Code and any local amendments

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20231154

thereto. A labor pool may also provide drinking water through a water cooler dispenser, by offering bottled water, or by any other similar means.

Section 2. Section 448.25, Florida Statutes, is amended to read:

448.25 Remedies; damages; costs.—

(1) (a) Any worker aggrieved by a violation of s. 448.24 has ~~shall have~~ the right to bring a civil action in a court of competent jurisdiction against the labor pool responsible for such violation.

(b) Before bringing a civil action pursuant to this section, an aggrieved worker must give the labor pool a reasonable opportunity to cure the alleged violation. The aggrieved worker must serve the labor pool in accordance with s. 48.081 with written notice of the alleged violation. Such notice must include a statement that failure by the labor pool to cure the alleged violation within 60 days after receipt of the notice may result in a civil action being filed against it in a court of competent jurisdiction. A labor pool may cure a violation relating to its labor hall facilities by modifying the alleged violation to comply with s. 448.24(5).

(c) In any action commenced pursuant to this ~~section part~~, the aggrieved worker is ~~shall be~~ entitled to recover actual and consequential damages, or \$1,000, whichever is greater, for each violation of s. 448.24 ~~this part~~, and costs.

(2) A civil action brought under s. 448.24 must be filed within 1 year after the date the aggrieved worker serves written notice of the alleged violation on the labor pool.

(3) The remedies provided by this part are ~~not~~ exclusive

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59 and ~~shall not~~ preclude the aggrieved worker from pursuing any
60 other remedy at law or equity which the worker may have.

61 Section 3. This act shall take effect July 1, 2023.

03/13/23

Meeting Date

Commerce & Tourism

Committee

The Florida Senate
APPEARANCE RECORD

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

1154

Bill Number or Topic

Amendment Barcode (if applicable)

Name Kelly Mallette

Phone (850) 224-3427

Address 104 West Jefferson St

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Street

Tallahassee FL 32301

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☐ Against

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S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 552

INTRODUCER: Commerce and Tourism Committee and Senator Hooper

SUBJECT: Public Records/Broadband Opportunity Program

DATE: March 14, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Renner	McKay	CM	FAV/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 552 makes confidential and exempt from public record inspection and copying requirements for certain information relating to communications services locations, project proposals, and challenges submitted to the Department of Economic Opportunity (department) under the Broadband Opportunity Program, or pursuant to a federal broadband access grant program implemented by the department.

The bill provides that that the exemption does not apply to the department's requirement to publish a description of proposed unserved areas to be served and proposed broadband Internet speeds of the areas to be served on the department's website.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless reviewed and reenacted by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

The bill creates a new public records exemption and, therefore, requires a two-thirds vote of the members present and voting for final passage.

The bill may have a minimal fiscal impact on the department for incurring costs related to the redaction of records in responding to public records requests.

The bill takes effect July 1, 2023.

II. Present Situation:

Access to Public Records - Generally

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

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

Executive Agency Records – The Public Records Act

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

Section 119.011(12), F.S., defines “public records” to include:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2022-2024)

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

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

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the repeal of

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹¹ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S.

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

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

such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

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

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

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

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

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

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

Broadband Internet Deployment

High-speed broadband can be essential to innovation, economic opportunity, healthcare, and civic engagement.²⁷ Access to a sufficient internet connection has only grown more important during the COVID-19 pandemic, which required many Americans to connect to their family and friends, schooling, work, and even medical appointments over the internet.²⁸

Broadband internet is a high speed internet that is faster than dial-up access and is always on; in 2015, the Federal Communications Commission (FCC) defined broadband as 25/3 megabits per second (Mbps), i.e., 25 Mbps (download rate) and 3 Mbps (upload rate).²⁹ Consumers can receive Broadband internet through several different technologies, including a digital subscriber line (DSL), a cable modem, fiber, wireless, satellite, and broadband over power lines.³⁰

While Florida's urban areas are served at a fixed broadband coverage rate of 96 percent, its rural areas are served at a rate of 78.6 percent.³¹ This disparity is caused primarily by high per-unit construction costs required to build broadband infrastructure across larger swaths of rural geographic areas.³²

Florida's Office of Broadband

In 2020 the Legislature created the Florida Office of Broadband (Office) within the department.³³ The Office is tasked with developing, marketing, and promoting broadband Internet service in the state.³⁴

Specifically, the Office must:³⁵

- Create a strategic plan for increasing the availability and use of broadband Internet service in Florida which must incorporate federal broadband initiatives and also include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state;

²⁷ U.S. Federal Communications Commission (FCC), *2020 Broadband Deployment Report*, at 1 (April 24, 2020), <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2020-broadband-deployment-report> (last visited March 10, 2023).

²⁸ FCC, *Emergency Broadband Benefit Report and Order*, at 2-3 (Feb. 26, 2021), <https://docs.fcc.gov/public/attachments/FCC-21-29A1.pdf> (last visited March 10, 2023).

²⁹ Congressional Research Service (CRS), *State Broadband Initiatives: Selected State and Local Approaches as Potential Models for Federal Initiatives to Address the Digital Divide*, at 2-3 (Apr. 6, 2020), <https://crsreports.congress.gov/product/pdf/R/R46307> (last visited March 10, 2023).

³⁰ CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 1 (Oct. 25, 2019), <https://fas.org/sgp/crs/misc/RL30719.pdf> (last visited March 10, 2023).

³¹ FCC, *2021 Broadband Deployment Report*, at 58 (Jan. 19, 2021), <https://www.fcc.gov/document/fcc-annual-broadband-report-shows-digital-divide-rapidly-closing> (last visited March 10, 2023). For purposes of this data, "fixed broadband services" are measured at 25 megabits per second downstream and 3 megabits per second upstream.

³² National Telecommunications and Information Administration, American Broadband Initiative, *Milestones Report*, at 11 (Feb. 13, 2019), <https://www.ntia.doc.gov/report/2019/american-broadband-initiative-milestones-report> (last visited March 10, 2023). See also CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 7.

³³ Chapter 2020-26, Laws of Fla.

³⁴ Section 288.9961(4), F.S. See also, Florida Department of Economic Opportunity, Office of Broadband, *About Us*, <https://floridajobs.org/community-planning-and-development/broadband/office-of-broadband> (last visited March 10, 2023).

³⁵ Section 288.9961(4), F.S.

- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture in order to identify needs and resources to reduce barriers to the deployment of broadband Internet services;
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved areas of the state through grant programs;³⁶
- Monitor, participate in, and provide input in proceedings of the FCC and other federal agencies related to the geographic availability and deployment of broadband Internet service as necessary to ensure that Florida’s rural, unserved, and underserved areas are best positioned to benefit from federal and state broadband deployment programs; and
- Administer Florida’s Broadband Opportunity Program.

The department may apply for and accept federal grant funds, enter into necessary or useful contracts, and establish any committee or workgroup to further the above goals. Additionally, the department has rulemaking authority to implement sections 288.9961-288.9963, F.S., relating to the Office.³⁷

In November 2022, the Office received \$247.8 million from the U.S. Treasury for the Capital Projects Fund Broadband Infrastructure Program. The Office was also awarded \$2.4 million for their Digital Equity Planning Grant, and \$5 million for the BEAD 5-year action plan.³⁸

Broadband Opportunity Program

The Office administers the Broadband Opportunity Program to award grants in order to expand broadband Internet service to unserved areas of Florida.³⁹ Grant funds may not be used to provide broadband Internet service to a geographic area where broadband Internet is already deployed by at least one provider.⁴⁰ Applicants eligible for grant awards include corporations, limited liability companies, general partnerships, limited partnerships, political subdivisions, and Indian tribes.⁴¹ To operate the program, the Florida Legislature appropriated \$400 million in federally funded State and Local Fiscal Recovery Funds (SLERF) to increase Floridians’ access to reliable, affordable, and high-speed internet service.⁴²

An eligible applicant may submit a grant application to the Office which must include the following:

- A description of the project area;

³⁶ Section 288.9961(2)(f), F.S., defines the term “underserved” to mean a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 100 Mbps downstream and at least 10 Mbps upstream. Section 288.9961(2)(g), F.S., defines the term “unserved” as a geographic area in which there is no broadband Internet service provider.

³⁷ Section 288.9961(5), F.S.

³⁸ Florida Department of Economic Opportunity, Office of Broadband, *About Us*, <https://floridajobs.org/community-planning-and-development/broadband/office-of-broadband> (last visited March 10, 2023).

³⁹ Section 288.9962(1), F.S.

⁴⁰ Section 288.9962(2), F.S.

⁴¹ Section 288.9962(3), F.S.

⁴² Florida Department of Economic Opportunity, *Broadband Opportunity Program*, <https://www.floridajobs.org/community-planning-and-development/broadband/broadband-opportunity-program> (last visited March 10, 2023).

- A description of the kind and amount of broadband Internet service infrastructure that is proposed to be deployed;
- Evidence demonstrating the unserved nature of the project area;
- The number of households and businesses that would have access to broadband Internet service as a result of the grant;
- A list of significant community institutions that would benefit from the grant;
- The total cost of the project and the timeframe in which it would be completed;
- A list identifying sources of funding or in-kind contributions that would supplement any awarded grant; and
- Any other information required by the Office.⁴³

At least 30 days before the first day grant applications may be submitted each fiscal year, the Office must publish on its website the specific criteria and quantitative scoring system it will use to evaluate or rank grant applications.⁴⁴ Within three business days after the close of the grant application process, the Office must publish on its website, from each grant application submitted, the proposed unserved areas to be served as well as the proposed broadband Internet speeds of the areas to be served, and a service map of the proposed project areas.⁴⁵

A broadband Internet service provider that provides existing service in or adjacent to a proposed project area may submit to the Office, within 45 days after publication of the information, a written challenge to an application.⁴⁶ The Office must evaluate each challenge and if the Office determines that the provider currently provides, has begun construction to provide, or commits to provide broadband Internet service in the proposed project area, the Office may not fund the challenged project.⁴⁷

III. Effect of Proposed Changes:

The bill creates a public record exemption for certain information relating to communications services locations, project proposals, and challenges submitted to the department under the Broadband Opportunity Program, or pursuant to a federal broadband access grant program implemented by the department.

Specifically, the bill provides certain information is confidential and exempt if such information is not otherwise publicly available and the release of such information would reveal:

- The location or capacity of communications network facilities;
- Communications network areas, including geographical maps indicating actual or proposed locations of network infrastructure or facilities;
- The features, functions, and capabilities of communications network infrastructures and facilities;
- Security, including cybersecurity, of the design, construction, and operation of the communications network and associated services and products;

⁴³ Section 288.9962(5), F.S.

⁴⁴ Section 299.9962(6)(a), F.S.

⁴⁵ Section 288.9962(6)(b), F.S. See also Rule 73C-50.004(1), F.A.C.

⁴⁶ Section 288.9962(6)(c), F.S.

⁴⁷ Section 288.9962(6)(e), F.S.

- Specific customer locations; or
- Sources of funding or in-kind contributions for a project.

The bill provides that that the exemption does not apply to the department's requirement to publish a description of proposed unserved areas to be served and proposed broadband Internet speeds of the areas to be served on the department's website.

The bill provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that the disclosure of sensitive information relating to the location, capacity, features, functions, and security of communications services providers could result in the identification of vulnerabilities in such networks and allow a security breach that could damage the networks or disrupt the networks' safe and reliable operation, adversely impacting the public health and safety of the state.

The bill is subject to the Open Government Sunset Review Act and will be automatically repealed on October 2, 2028, unless the Legislature reenacts the exemption.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill creates a new record exemption; thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

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

Breadth of Exemption

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

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a minimal fiscal impact on the department for incurring costs related to the redaction of records in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 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 13, 2023:

The amendment provides that information submitted to the department pursuant to a federal broadband access grant program is exempt from public records. The amendment further provides that the exemption does not apply to the department's requirement to publish a description of proposed unserved areas to be served and proposed broadband Internet speeds of the areas to be served on the department's website.

- B. **Amendments:**

None.



636136

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2023	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 22 - 64

and insert:

Department of Economic Opportunity under s. 288.9962 or pursuant to a federal broadband access grant program implemented by the Department of Economic Opportunity is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if such information is not otherwise publicly available and the release of such information would reveal:



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a. The location or capacity of communications network facilities;
b. Communications network areas, including geographical maps indicating actual or proposed locations of network infrastructure or facilities;
c. The features, functions, and capabilities of communications network infrastructure and facilities;
d. Security, including cybersecurity, of the design, construction, and operation of the communications network and associated services and products;
e. Specific customer locations; or
f. Sources of funding or in-kind contributions for a project.
2. This exemption does not apply to any required functions of the department under s. 288.9962 relating to publishing a description of the proposed unserved areas to be served and the proposed broadband Internet speeds of the areas to be served as provided by the applicant and approved by the department.
3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.
Section 2. The Legislature finds that it is a public necessity that certain information relating to communications services locations, project proposals, and challenges submitted to the Department of Economic Opportunity under the Broadband Opportunity Program or pursuant to a federal broadband access grant program implemented by the department be made confidential and exempt from public records requirements. Such information



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contains security information and proprietary business information of communications services providers. The disclosure of sensitive information relating to the location, capacity, features, functions, and security of these networks could result in the identification of vulnerabilities in such networks and allow a security breach that could damage the networks or disrupt the networks' safe and reliable operation, adversely impacting the public health and safety of this state. Further, the disclosure of such information would adversely affect the business interests and compromise the network security of the communications services providers and their networks. Therefore, the Legislature finds that it is a public necessity that certain information relating to communications services locations, project proposals, and challenges submitted to the Department of Economic Opportunity under the Broadband Opportunity Program or pursuant to a federal broadband access grant program implemented by the department be

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

And the title is amended as follows:

Delete line 8

and insert:

Opportunity Program or pursuant to a federal broadband access grant program implemented by the department; providing applicability; providing for future legislative

By Senator Hooper

21-01650-23

2023552__

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for certain information relating to communications services locations, project proposals, and challenges submitted to the Department of Economic Opportunity under the Broadband Opportunity Program; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (h) is added to subsection (1) of section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of public records.—

(1) AGENCY ADMINISTRATION.—

(h)1. Information relating to communications services locations, project proposals, and challenges submitted to the Department of Economic Opportunity under s. 288.9962 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if such information is not otherwise publicly available and the release of such information would reveal:

a. The location or capacity of communications network facilities;

b. Communications network coverage areas, including

Page 1 of 3

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

21-01650-23

2023552__

geographical maps indicating actual or proposed locations of network infrastructure, facilities, or coverage;

c. The features, functions, and capabilities of communications network infrastructure and facilities;

d. Security, including cybersecurity, of the design, construction, and operation of the communications network and associated services and products;

e. Specific customer locations; or

f. Sources of funding or in-kind contributions for a project.

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

Section 2. The Legislature finds that it is a public necessity that certain information relating to communications services locations, project proposals, and challenges submitted to the Department of Economic Opportunity under the Broadband Opportunity Program be made confidential and exempt from public records requirements. Such information contains security information and proprietary business information of communications services providers. The disclosure of sensitive information relating to the location, capacity, features, functions, and security of these networks could result in the identification of vulnerabilities in such networks and allow a security breach that could damage the networks or disrupt the networks' safe and reliable operation, adversely impacting the public health and safety of this state. Further, the disclosure of such information would adversely affect the business

Page 2 of 3

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

21-01650-23

2023552__

59 interests and compromise the network security of the
60 communications services providers and their networks. Therefore,
61 the Legislature finds that it is a public necessity that certain
62 information relating to communications services locations,
63 project proposals, and challenges submitted to the Department of
64 Economic Opportunity under the Broadband Opportunity Program be
65 held confidential and exempt from disclosure under s. 119.07(1),
66 Florida Statutes, and s. 24(a), Article I of the State
67 Constitution.
68 Section 3. This act shall take effect July 1, 2023.

3/13/23

The Florida Senate
APPEARANCE RECORD

552

Meeting Date

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

Bill Number or Topic

Commerce
Committee

Amendment Barcode (if applicable)

Name

Phone

Address

Email

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 Internet & Comm Telecom. Assoc.

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)

3/13/23

The Florida Senate
APPEARANCE RECORD

552

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S. Commerce & Tourism
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AT+T

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

S-001 (08/10/2021)

(Duplicate / Completed 1st form)
quicken

CourtSmart Tag Report

Room: SB 110 Case No.:
Caption: Commerce and Tourism Committee 110 SB Type:
Judge:

Started: 3/13/2023 3:30:46 PM
Ends: 3/13/2023 4:13:02 PM Length: 00:42:17

3:30:45 PM Chairman Trumbull calls meeting to order
3:30:53 PM Roll call
3:31:00 PM A quorum is present
3:31:00 PM Chair gives committee meeting instructions
3:31:00 PM
3:31:00 PM Chair states SB 262 and SB 1648 will not be considered
3:31:00 PM Tab 9 - SB 552
3:31:59 PM
3:32:02 PM Sen. Hooper explains bill
3:33:03 PM Sen. Hooper explains Amendment 636136
3:33:34 PM No questions, no debate on amendment
3:33:43 PM Amendment is adopted
3:33:51 PM No questions on bill as amended
3:34:11 PM Appearance Cards:
3:34:12 PM Charles Dudley, Florida Internet & Telecom Assoc., waives in support
3:34:17 PM Karen Dearden, AT&T, waives in support
3:34:23 PM No debate
3:34:28 PM Sen. Hooper waives to close
3:34:30 PM Vote
3:34:39 PM Bill passes; Reported favorably
3:35:12 PM Tab 7 - SB 1150
3:35:19 PM Sen. Hutson presents bill for Sen. Ingoglia
3:36:04 PM No questions
3:36:07 PM Appearance Cards:
3:36:09 PM Alex Haley, Fla. Dept. of Agriculture & Consumer Services, waives in support
3:36:15 PM Sen. Stewart in debate
3:37:15 PM Sen. Hutson waives to close
3:37:22 PM Bill passes; Reported favorably
3:37:49 PM Tab 8 - SB 1154
3:37:53 PM Sen. Hutson presents bill for Sen. Perry
3:38:42 PM Questions?
3:38:45 PM Sen. Torres has question
3:39:00 PM Sen. Hutson responds
3:39:25 PM Sen. Torres follow up
3:39:32 PM Sen. Hutson responds
3:40:09 PM No other questions
3:40:10 PM Appearance Cards:
3:40:18 PM Kelly Mallette, representing Pacesetter Personnel Services, waives in support
3:40:24 PM No debate
3:40:31 PM Sen. Hutson waives to close
3:40:36 PM Vote
3:40:40 PM Bill passes; Reported favorably
3:41:09 PM Tab 6 - SB 1068
3:41:12 PM Sen. Collins explains bill
3:41:36 PM Sen. Collins asks if chair would like him to do the amendment first
3:41:51 PM Chair requests he explain bill first
3:42:04 PM Sen. Collins explains bill
3:43:04 PM
3:43:19 PM Sen. Collins explains Amendment 917558
3:43:31 PM Questions?
3:43:35 PM Sen. Stewart question
3:43:49 PM Sen. Collins responds
3:44:46 PM No other questions

3:44:51 PM No debate
3:44:55 PM Sen. Collins waives to close on amendment
3:44:58 PM Amendment is adopted
3:45:06 PM Sen. Torres has question on bill as amended
3:45:21 PM Sen. Collins responds
3:45:53 PM Sen. Torres has follow up
3:45:59 PM Sen. Collins responds
3:46:08 PM Appearance Cards:
3:46:09 PM Jimmy Card, representing Drone Up, waives in support
3:46:15 PM Debate?
3:46:23 PM Sen. Torres in debate
3:47:08 PM No other debate
3:47:18 PM Sen. Collins to close
3:47:43 PM Vote
3:47:47 PM Bill passes; Reported favorably
3:48:23 PM Tab 4 - SB 946
3:48:26 PM Sen. Grall explains that this is the public records component to SB 948
3:48:56 PM Chair requests to take up SB 948 first as it is the principal bill
3:49:00 PM Tab 5 - SB 948
3:49:13 PM Sen. Grall explains the bill
3:49:30 PM No questions
3:49:34 PM No debate
3:49:39 PM Sen. Grall waives to close
3:49:42 PM Vote
3:49:46 PM Bill passes; Reported favorably
3:50:13 PM Tab 4 - SB 946
3:50:15 PM Sen Grall explains SB 946, the public record exemption for SB 948
3:50:26 PM No questions
3:50:29 PM No debate
3:50:32 PM Sen. Grall waives to close
3:50:33 PM Vote
3:50:36 PM Bill passes, Reported favorably
3:51:08 PM Recording Paused
3:51:12 PM Recording Resumed
3:51:18 PM Sen. Bradley arrives to present bill
3:52:19 PM Chair calls meeting back to order; quorum remains
3:52:24 PM Tab 3 - SB 388
3:52:32 PM Sen Bradley explains the bill
3:54:04 PM Chair requests Sen. Bradley explain Amendment 150016
3:54:16 PM Sen. Bradley explains amendment
3:54:30 PM No questions on amendment
3:54:36 PM No debate
3:54:39 PM Sen. Bradley waives close
3:54:43 PM Amendment adopted
3:54:49 PM Questions on amended bill?
3:54:57 PM Sen. Stewart question
3:55:13 PM Chair comments
3:55:21 PM Sen. Stewart responds
3:55:27 PM Sen. Bradley responds
3:55:52 PM Sen. Jones question
3:56:26 PM Sen. Bradley responds
3:56:52 PM Sen. Jones follow up
3:56:59 PM Sen. Bradley responds
3:58:16 PM Sen. Jones follow up
3:58:20 PM Sen. Bradley responds
3:59:14 PM No other questions
3:59:16 PM Appearance Cards:
3:59:22 PM Chris Van De Hoef, Fan Freedom Project, speaks in support of the bill
4:01:14 PM Michael O'Neil speaks in support of the bill
4:02:55 PM Ron Book, Ronald L. Book P.A., speaks against the bill
4:05:17 PM Ron Pierce representing Tampa Bay Lightning and the Straz Center, waives in opposition
4:05:38 PM Jeff Johnston, representing Live Nation, waives in opposition

4:05:47 PM Sal Nuzzo waives in opposition
4:05:57 PM Laura Dooley, StubHub, speaks in support
4:08:08 PM Debate?
4:08:10 PM Sen. Stewart in debate
4:09:11 PM Sen. Jones in debate
4:09:52 PM Sen. Torres in debate
4:10:30 PM Sen. Bradley to close
4:11:44 PM Vote
4:11:50 PM Bill passes; Reported favorably
4:12:20 PM Chair comments
4:12:24 PM Sen. Gruters vote after motion
4:12:41 PM No opposition
4:12:46 PM Sen. DiCeglie moves to adjourn
4:12:51 PM Meeting adjourned