

Tab 1	CS/SB 734 by CM, Gruters ; Tax Exemptions						
954384	A	S	RCS	FT, Gruters	Delete L.25 - 94:	03/11 09:52 AM	

Tab 2	CS/SB 598 by CM, Perry ; Back-to-school Sales Tax Holiday						
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Tab 3	SB 866 by Hooper (CO-INTRODUCERS) Rouson ; (Identical to H 00789) H. Lee Moffitt Cancer Center and Research Institute						
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Tab 4	SB 688 by Berman ; (Similar to H 00715) Waivers of Exemptions of Applicable Assets						
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Tab 5	SB 258 by Jones ; (Similar to H 00531) Internship Tax Credit Program						
779720	D	S	RCS	FT, Jones	Delete everything after	03/11 09:52 AM	

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

FINANCE AND TAX
Senator Rodriguez, Chair
Senator Cruz, Vice Chair

MEETING DATE: Thursday, March 11, 2021
TIME: 9:00—11:00 a.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Building

MEMBERS: Senator Rodriguez, Chair; Senator Cruz, Vice Chair; Senators Berman, Harrell, Hooper, Jones, Rodrigues, and Wright

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

1	CS/SB 734 Commerce and Tourism / Gruters	Tax Exemptions; Exempting federal loans made in response to a state of emergency from the excise tax imposed on documents; providing exemptions from the sales and use tax for specified disaster preparedness supplies during a specified timeframe; requiring purchasers of certain items to furnish a specified affidavit and information to the selling dealer; providing a criminal penalty for furnishing a false affidavit with certain intent; authorizing the Department of Revenue to adopt emergency rules, etc. CM 02/15/2021 Fav/CS FT 03/11/2021 Fav/CS AP	Fav/CS Yeas 8 Nays 0
2	CS/SB 598 Commerce and Tourism / Perry	Back-to-school Sales Tax Holiday; Providing exemptions from the sales and use tax on the retail sale of certain clothing, wallets, bags, school supplies, personal computers, and personal computer-related accessories during a specified timeframe; defining terms; specifying locations where the exemptions do not apply; authorizing certain dealers to opt out of participating in the tax holiday, subject to certain requirements, etc. CM 02/15/2021 Fav/CS FT 03/11/2021 Favorable AP	Favorable Yeas 8 Nays 0
3	SB 866 Hooper (Identical H 789)	H. Lee Moffitt Cancer Center and Research Institute; Increasing, at specified timeframes, the percentage of cigarette tax proceeds paid to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute for certain purposes, etc. HP 02/17/2021 Favorable FT 03/11/2021 Favorable AP	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Finance and Tax

Thursday, March 11, 2021, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 688 Berman (Similar H 715)	Waivers of Exemptions of Applicable Assets; Providing that certain exemptions of certain assets may not be waived unless certain conditions are met; specifying references that are insufficient to pledge a security interest in certain assets or to waive certain protections; providing that a description of certain accounts and entitlements by certain type of collateral is insufficient, etc. CA 03/03/2021 Favorable FT 03/11/2021 Favorable AP	Favorable Yeas 8 Nays 0
5	SB 258 Jones (Similar H 531)	Internship Tax Credit Program; Designating the "Florida Internship Tax Credit Program"; providing a corporate income tax credit for qualified businesses employing degree-seeking student interns if certain criteria are met; specifying the amount of the credit a qualified business may claim per student intern, etc. ED 02/16/2021 Favorable FT 03/11/2021 Fav/CS AP	Fav/CS Yeas 8 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 Finance and Tax

BILL: CS/CS/SB 734

INTRODUCER: Finance and Tax Committee; Commerce and Tourism Committee; and Senator Gruters

SUBJECT: Tax Exemptions

DATE: March 12, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	Fav/CS
2.	Bruno	Babin	FT	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 734 establishes a 17-day “disaster preparedness” sales tax holiday, from Friday, May 28, 2021, to Sunday, June 13, 2021, during which time certain items purchased for disaster preparedness and protection are exempt from the sales and use tax.

The bill creates a documentary stamp tax exemption for federal loans made in response to a state of emergency declared by executive order or proclamation of the Governor.

The bill allows the Department of Revenue (department) to adopt emergency rules to implement the tax holiday.

The Revenue Estimating Conference estimates

- The exemption of certain federal loans from the Documentary Stamp Tax will reduce General Revenue Fund receipts and State Trust Fund receipts by an indeterminate amount in Fiscal Year 2021-2022 and each year thereafter.
- The sales tax holiday will reduce General Revenue Fund receipts by \$20 million and will reduce local revenues by \$6 million in Fiscal Year 2021-2022.

Except as otherwise expressly provided, the bill takes effect July 1, 2021.

II. Present Situation:

Florida Sales Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,¹ admissions,² transient rentals,³ and a limited number of services. Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.⁴ Sales tax receipts accounted for approximately 79 percent of the state's General Revenue in Fiscal Year 2019-2020.⁵

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

"Disaster Preparedness" Sales Tax Holidays

Florida has enacted a "disaster preparedness" sales tax holiday seven times since 2005, exempting specified items in preparation for the Atlantic hurricane season that officially begins June 1 of each year.⁸ The types and values of exempted items have varied, and length of the exemption periods has varied from 3 to 12 days.⁹

The Florida Division of Emergency Management recommends having a disaster supply kit with items such as a battery operated radio, flashlight, batteries, and first-aid kit to last for a minimum of 7 days.¹⁰

Documentary Stamp Tax

Florida levies a documentary stamp tax on certain documents, which is comprised of two taxes imposed on different bases at different rates. The tax on deeds and other documents related to

¹ Section 212.05(1)(a)1.a, F.S.

² Section 212.04(b), F.S.

³ Section 212.03(1)(a), F.S.

⁴ *See* s. 212.07(2), F.S.

⁵ Office of Economic and Demographic Research, *Florida Tax Handbook*, 16 (2020), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited Mar. 05, 2021).

⁶ Section 212.054(2)(a), F.S.

⁷ *Supra* note 5, at 231-232.

⁸ HB 6001 (Reg. Sess. 2005), HB 47 (Reg. Sess. 2006), HB 5601 at s. 23 (Reg. Sess. 2014), HB 7109 at s. 53 (Reg. Sess. 2017), HB 7087 at s. 55 (Reg. Sess. 2018), HB 7123 at s. 18 (Reg. Sess. 2019), and HB 7097 at s. 31 (Reg. Sess. 2020).

⁹ *Id.*

¹⁰ Florida Division of Emergency Management, *Plan & Prepare: Disaster Supply Kit Checklist*, available at <https://www.floridadisaster.org/planprepare/hurricane-supply-checklist/> (last visited Mar. 05, 2021).

real property is 70 cents per \$100,¹¹ and the tax on bonds, debentures, certificates of indebtedness, promissory notes, nonnegotiable notes, and other written obligations to pay money is 35 cents per \$100.^{12, 13} Documentary stamp taxes levied on promissory notes, nonnegotiable notes, and written obligations may not exceed \$2,450.¹⁴

Documentary stamp tax revenue accounted for approximately 2.9 percent of the state's General Revenue in Fiscal Year 2019-2020.¹⁵

Chapter 201, F.S., provides that certain transactions are exempt from the documentary stamp tax; notably, s. 201.25, F.S., exempts loans made by the Small Business Emergency Bridge Loan Program in response to a disaster for which the Governor declares a state of emergency.

Federal CARES Act

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law on March 27, 2020, in response to the COVID-19 pandemic. The CARES Act established, among other programs, the Paycheck Protection Program (PPP), which expanded the scope of both the businesses eligible for – and allowable uses of – loans made under section 7(a) of the Small Business Act.¹⁶ In addition to businesses already eligible for Small Business Administration (SBA) loans, eligibility was expanded to businesses, nonprofits, veterans' organizations, and tribal businesses with 500 or fewer employees or that meet the size standards based on the business's NAICS code.¹⁷

COVID-19 State of Emergency

On April 6, 2020, Governor DeSantis issued Executive Order 20-95, suspending the collection of documentary stamp taxes levied on notes and other written obligations made under Title I of the federal CARES Act. The suspension remains in effect until the expiration of Executive Order 20-52, which declared a state of emergency in response to the COVID-19 pandemic.¹⁸ Executive Order 20-52 has been extended four times since its issuance, most recently on December 29, 2020.¹⁹

III. Effect of Proposed Changes:

Section 1 of the bill establishes a documentary stamp tax exemption on federal loans related to a state of emergency declared by executive order or proclamation of the Governor.

¹¹ Section 201.02(1)(a), F.S.

¹² Section 201.07, F.S.

¹³ Section 201.08(1)(a), F.S.

¹⁴ *Id.*

¹⁵ *Supra* note 5.

¹⁶ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 1102, 134 Stat. 286 (2020).

¹⁷ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 1102, 134 Stat. 288 (2020).

¹⁸ Section 252.36(2), F.S., provides that states of emergency may not continue for more than 60 days unless renewed by the Governor.

¹⁹ Fla. Exec. Order No. 20-316 (Dec. 29, 2020).

Section 2 of the bill establishes a 17-day period, from Friday, May 28, 2021, to Sunday, June 13, 2021, during which the following items are exempt from the state sales tax and local discretionary sales surtaxes:

- Portable self-powered light sources selling for \$20 or less;
- Portable self-powered radios, two-way radios, or weather-band radios selling for \$50 or less;
- Tarpaulins or other flexible waterproof sheeting selling for \$50 or less;
- Any items normally sold as, or generally advertised as, ground anchor systems or tie-down kits selling for \$50 or less;
- Gas or diesel fuel tanks selling for \$25 or less;
- Packages of AA-cell, AAA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less;
- Nonelectric food storage coolers selling for \$30 or less;
- Portable generators used to provide light or communications or to preserve food selling for \$750 or less;
- Reusable ice selling for \$10 or less;
- Impact-resistant windows, when sold in units of 20 or fewer; and
- Impact-resistant doors and impact-resistant garage doors, when sold in units of 10 or fewer.

The exemptions for impact-resistant windows, doors, and garage doors apply to purchases made by an owner of residential real property where the impact-resistant windows, doors, or garage doors will be installed. The bill defines “impact-resistant” to mean that the window, door, or garage door complies with the standards for protection of openings and for windborne debris protection in the Florida Building Code, 7th Edition (2020) Residential, or in the Florida Building Code, 7th Edition (2020) Building. The purchaser must furnish to the selling dealer an affidavit stating that the impact-resistant items are to be used on residential property owned by the purchaser. The affidavit must include the name of the owner and the address of the residential property where the items will be installed. If a person furnishes a false affidavit in order to evade payment of the sales tax, the purchaser is subject to repayment of the tax plus a mandatory penalty of 200 percent of the tax in addition to a fine and punishment as provided by law for a conviction of a felony of the third degree.²⁰

The sales tax holiday does not apply to the following:

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

The department may adopt emergency rules pursuant to s. 120.54(4), F.S., for the purpose of implementing the sales tax holiday.

This section of the bill takes effect upon becoming law.

Section 3 of the bill provides that, except as otherwise expressly provided, the bill takes effect July 1, 2021.

²⁰ Section 212.085, F.S.

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

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

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,^{21, 22} which is \$2.2 million or less for Fiscal Year 2021-2022.²³ Therefore, the mandates provision may apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Not applicable. The bill does not create or increase state taxes or fees. Thus, s. 19, Art. VII of the Florida Constitution does not apply.

E. Other Constitutional Issues:

None identified.

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

The Revenue Estimating Conference estimates

- The provisions bill that exempt certain federal loans from the Documentary Stamp Tax will reduce General Revenue Fund receipts and State Trust Fund receipts by an indeterminate amount in Fiscal Year 2021-2022 and each year thereafter.

²¹ FLA. CONST. art. VII, s. 18(d).

²² An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Mar. 11, 2021).

²³ Based on the Demographic Estimating Conference's population adopted on November 13, 2020. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Mar. 11, 2021).

- The provisions of the bill granting the sales tax holiday will reduce General Revenue Fund receipts by \$20 million in Fiscal Year 2021-2022 and will reduce local revenues by \$6 million in Fiscal Year 2021-2022.

B. Private Sector Impact:

Businesses taking out certain federal loans that are subject to the documentary stamp tax will not pay those taxes and will realize savings.

Individuals purchasing items from stores participating in the sales tax holiday exemption will realize savings.

Businesses selling impact-resistant items will be required to accept affidavits attesting to the qualification of the sales tax exemption.

Individuals purchasing impact-resistant items will be required to submit an affidavit attesting to their qualification to their eligibility to receive the exemption.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill amends section 201.25 of the Florida Statutes.

The bill also creates two undesignated sections of chapter law.

IX. Additional Information:

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

CS/CS by Finance and Tax on March 11, 2021:

The CS:

- Removes the appropriation in the bill.
- Clarifies the exemption for the documentary stamp tax applies to loans which are related to declared state of emergencies of proclamations of the Governor.

CS by Commerce and Tourism on February 15, 2021:

The committee substitute provides for a documentary stamp tax exemption on federal

loans made in response to a state of emergency declared by executive order or proclamation of the Governor.

B. Amendments:

None.

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



954384

LEGISLATIVE ACTION

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

The Committee on Finance and Tax (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete lines 25 - 94

and insert:

(2) Any federal loans that are related to a state declaration of emergency made by the Governor pursuant to s. 252.36.

Section 2. Disaster preparedness supplies; sales tax holiday.—

(1) The tax levied under chapter 212, Florida Statutes, may



954384

11 not be collected during the period from 12:01 a.m. on May 28,
12 2021, through 11:59 p.m. on June 13, 2021, on the sale of:
13 (a) A portable self-powered light source selling for \$20 or
14 less.
15 (b) A portable self-powered radio, two-way radio, or
16 weather-band radio selling for \$50 or less.
17 (c) A tarpaulin or other flexible waterproof sheeting
18 selling for \$50 or less.
19 (d) An item normally sold as, or generally advertised as, a
20 ground anchor system or tie-down kit selling for \$50 or less.
21 (e) A gas or diesel fuel tank selling for \$25 or less.
22 (f) A package of AA-cell, AAA-cell, C-cell, D-cell, 6-volt,
23 or 9-volt batteries, excluding automobile and boat batteries,
24 selling for \$30 or less.
25 (g) A nonelectric food storage cooler selling for \$30 or
26 less.
27 (h) A portable generator used to provide light or
28 communications or preserve food in the event of a power outage
29 selling for \$750 or less.
30 (i) Reusable ice selling for \$10 or less.
31 (j) Impact-resistant windows, when sold in units of 20 or
32 fewer.
33 (k) Impact-resistant doors and impact-resistant garage
34 doors, when sold in units of 10 or fewer.
35
36 The exemptions under paragraphs (j) and (k) apply to purchases
37 made by an owner of residential real property where the impact-
38 resistant windows, impact-resistant doors, or impact-resistant
39 garage doors will be installed. For the purposes of this



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40 section, the term "impact-resistant" means that the window,
41 door, or garage door complies with the standards for protection
42 of openings and for windborne debris protection in the Florida
43 Building Code, 7th Edition (2020) Residential, or in the Florida
44 Building Code, 7th Edition (2020) Building. The purchaser must
45 furnish to the selling dealer an affidavit stating that the
46 impact-resistant windows, impact-resistant doors, or impact-
47 resistant garage doors to be exempted are for the exclusive use
48 designated herein and must include the name of the owner making
49 the purchase and the address of the residential real property
50 where the items will be installed. Any person furnishing a false
51 affidavit to such effect for the purpose of evading payment of
52 any tax imposed under chapter 212, Florida Statutes, is subject
53 to the penalties set forth in s. 212.085, Florida Statutes, and
54 as otherwise provided by law.

55 (2) The tax exemptions provided in this section do not
56 apply to sales within a theme park or entertainment complex as
57 defined in s. 509.013(9), Florida Statutes, within a public
58 lodging establishment as defined in s. 509.013(4), Florida
59 Statutes, or within an airport as defined in s. 330.27(2),
60 Florida Statutes.

61 (3) The Department of Revenue may, and all conditions are
62 deemed met to, adopt emergency rules pursuant to s. 120.54(4),
63 Florida Statutes, for the purpose of implementing this section.
64 Notwithstanding any other law, emergency rules adopted pursuant
65 to this subsection are effective for 6 months after adoption and
66 may be renewed during the pendency of procedures to adopt
67 permanent rules addressing the subject of the emergency rule.
68



954384

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

70 And the title is amended as follows:

71 Delete line 15

72 and insert:

73 emergency rules; providing

By the Committee on Commerce and Tourism; and Senator Gruters

577-02136-21

2021734c1

1 A bill to be entitled
 2 An act relating to tax exemptions; amending s. 201.25,
 3 F.S.; exempting federal loans made in response to a
 4 state of emergency from the excise tax imposed on
 5 documents; providing exemptions from the sales and use
 6 tax for specified disaster preparedness supplies
 7 during a specified timeframe; providing applicability
 8 for certain exemptions; defining the term "impact-
 9 resistant"; requiring purchasers of certain items to
 10 furnish a specified affidavit and information to the
 11 selling dealer; providing a criminal penalty for
 12 furnishing a false affidavit with certain intent;
 13 specifying locations where the exemptions do not
 14 apply; authorizing the Department of Revenue to adopt
 15 emergency rules; providing an appropriation; providing
 16 effective dates.

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

20 Section 1. Present subsection (2) of section 201.25,
 21 Florida Statutes, is redesignated as subsection (3), and a new
 22 subsection (2) is added to that section, to read:

23 201.25 Tax exemptions for certain loans.—There shall be
 24 exempt from all taxes imposed by this chapter:

25 (2) Any federal loan made in response to a state of
 26 emergency declared by executive order or proclamation of the
 27 Governor under s. 252.36.

28 Section 2. Disaster preparedness supplies; sales tax
 29 holiday.—

Page 1 of 4

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

577-02136-21

2021734c1

30 (1) The tax levied under chapter 212, Florida Statutes, may
 31 not be collected during the period from 12:01 a.m. on May 28,
 32 2021, through 11:59 p.m. on June 13, 2021, on the sale of:
 33 (a) A portable self-powered light source selling for \$20 or
 34 less.
 35 (b) A portable self-powered radio, two-way radio, or
 36 weather-band radio selling for \$50 or less.
 37 (c) A tarpaulin or other flexible waterproof sheeting
 38 selling for \$50 or less.
 39 (d) An item normally sold as, or generally advertised as, a
 40 ground anchor system or tie-down kit selling for \$50 or less.
 41 (e) A gas or diesel fuel tank selling for \$25 or less.
 42 (f) A package of AA-cell, AAA-cell, C-cell, D-cell, 6-volt,
 43 or 9-volt batteries, excluding automobile and boat batteries,
 44 selling for \$30 or less.
 45 (g) A nonelectric food storage cooler selling for \$30 or
 46 less.
 47 (h) A portable generator used to provide light or
 48 communications or preserve food in the event of a power outage
 49 selling for \$750 or less.
 50 (i) Reusable ice selling for \$10 or less.
 51 (j) Impact-resistant windows, when sold in units of 20 or
 52 fewer.
 53 (k) Impact-resistant doors and impact-resistant garage
 54 doors, when sold in units of 10 or fewer.
 55
 56 The exemptions under paragraphs (j) and (k) apply to purchases
 57 made by an owner of residential real property where the impact-
 58 resistant windows, impact-resistant doors, or impact-resistant

Page 2 of 4

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

577-02136-21

2021734c1

59 garage doors will be installed. For the purposes of this
 60 section, the term "impact-resistant" means that the window,
 61 door, or garage door complies with the standards for protection
 62 of openings and for windborne debris protection in the Florida
 63 Building Code, 7th Edition (2020) Residential, or in the Florida
 64 Building Code, 7th Edition (2020) Building. The purchaser must
 65 furnish to the selling dealer an affidavit stating that the
 66 impact-resistant windows, impact-resistant doors, or impact-
 67 resistant garage doors to be exempted are for the exclusive use
 68 designated herein and must include the name of the owner making
 69 the purchase and the address of the residential real property
 70 where the items will be installed. Any person furnishing a false
 71 affidavit to such effect for the purpose of evading payment of
 72 any tax imposed under chapter 212, Florida Statutes, is subject
 73 to the penalties set forth in s. 212.085, Florida Statutes, and
 74 as otherwise provided by law.

75 (2) The tax exemptions provided in this section do not
 76 apply to sales within a theme park or entertainment complex as
 77 defined in s. 509.013(9), Florida Statutes, within a public
 78 lodging establishment as defined in s. 509.013(4), Florida
 79 Statutes, or within an airport as defined in s. 330.27(2),
 80 Florida Statutes.

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

Page 3 of 4

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

577-02136-21

2021734c1

88 (4) For the 2020-2021 fiscal year, the sum of \$70,072 in
 89 nonrecurring funds is appropriated from the General Revenue Fund
 90 to the Department of Revenue for the purpose of implementing
 91 this section. Funds remaining unexpended or unencumbered from
 92 this appropriation as of June 30, 2021, shall revert and be
 93 reappropriated for the same purpose in the 2021-2022 fiscal
 94 year.

95 (5) This section shall take effect upon becoming a law.
 96 Section 3. Except as otherwise expressly provided in this
 97 act, and except for this section, which shall take effect upon
 98 this act becoming a law, this act shall take effect July 1,
 99 2021.

Page 4 of 4

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

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/10/2021

Meeting Date

734

Bill Number (if applicable)

Topic Tax Exemptions

Amendment Barcode (if applicable)

Name Jake Farmer

Job Title Director of Government Affairs

Address 227 South Adams Street

Phone 352-359-6835

Street

Tallahassee

FL

32301

Email jake@frf.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/11/21

Meeting Date

734

Bill Number (if applicable)

Topic Tax Exemptions

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Senior Policy Director

Address 136 S Bronough St

Phone 850-521-1200

Street

Tallahassee

FL

32301

Email cjohnson@flchamber.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Ana Maria Rodriguez, Chair
Committee on Finance and Tax

Subject: Committee Agenda Request

Date: February 17, 2021

I respectfully request that **Senate Bill #734**, relating to Tax Exemptions, be placed on the:

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

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Joe Gruters".

Joe Gruters

Cc: Robert Babin, Staff Director
Stephanie Bell-Parke, Committee Administrative Assistant

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Education, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations Subcommittee on Education
Banking and Insurance
Commerce and Tourism
Regulated Industries
Rules

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining

SENATOR JOE GRUTERS

23rd District

March 11, 2021

Good Morning,

Senator Hooper will be presenting SB 734 today in Finance & Tax on behalf of Senator Gruters.

Thank you,



Joe Gruters

REPLY TO:

- 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- 316 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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 Finance and Tax

BILL: CS/SB 598

INTRODUCER: Commerce and Tourism Committee and Senator Perry

SUBJECT: Back-to-school Sales Tax Holiday

DATE: March 10, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Reeve</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
2.	<u>Bruno</u>	<u>Babin</u>	<u>FT</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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

The Revenue Estimating Conference determined that the bill will reduce General Revenue Fund receipts by \$51.5 million in Fiscal Year 2021-2022 and reduce local government receipts by \$15.5 million.

The bill takes effect upon becoming law.

II. Present Situation:

Florida Sales Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,¹ admissions,² transient rentals,³ and a limited number of services. Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida’s sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances.

¹ Section 212.05(1)(a)1.a, F.S.

² Section 212.04(b), F.S.

³ Section 212.03(1)(a), F.S.

Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.⁴ Sales tax receipts accounted for approximately 79 percent of the state’s General Revenue in Fiscal Year 2019-2020.⁵

Counties are authorized to impose local discretionary sales surtaxes in addition to the state sales tax.⁶ A surtax applies to “all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202.”⁷ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax rates currently levied vary by county in a range of 0.5 to 2.5 percent.⁸

“Back-to-School” Sales Tax Holidays

Florida has enacted a “back-to-school” sales tax holiday 19 times since 1998. The Florida Residents’ Tax Relief Act of 1998 established Florida’s first tax holiday, during which clothing purchases of \$50 or less were exempt from tax.⁹ Backpacks were added to the tax holiday in 1999 and school supplies were added in 2001. In 2013, the Legislature expanded the exemption to include personal computers and related accessories selling for \$750 or less, purchased for noncommercial home or personal use. The duration of “back-to-school” sales tax holidays has varied from 3 to 10 days. The type and value of exempt items have also varied.¹⁰

Florida’s 75 school districts began the 2020-2021 school year between August 10 and August 31, 2020.¹¹

III. Effect of Proposed Changes:

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

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

⁴ See s. 212.07(2), F.S.

⁵ Office of Economic and Demographic Research, *Florida Tax Handbook*, 16 (2020), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited Mar. 3, 2021).

⁶ Section 212.055, F.S.

⁷ Section 212.054(2)(a), F.S.

⁸ *Supra* note 5, at 231-232.

⁹ Chapter 98-341, Laws of Fla.

¹⁰ *Supra* note 5, at 159-165.

¹¹ Florida Department of Education, *PK-12 Public School Data Publications and Reports*, available at <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/index.stml> (last visited Mar. 3, 2021).

boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, staplers and staples used to secure paper products, protractors, compasses, and calculators;

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

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

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

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

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

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the

mandates requirements do not apply to laws having an insignificant impact,^{12, 13} which is \$2.2 million or less for Fiscal Year 2021-2022.¹⁴

The Revenue Estimating Conference determined that the bill will reduce the authority that counties have to raise revenue from the local options sales tax by \$15.5 million in Fiscal Year 2021-2022.¹⁵ Therefore, the mandates provision may apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Not applicable. The bill does not create or increase state taxes or fees. Thus, s. 19, of Art. VII of the Florida Constitution does not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that the bill will reduce General Revenue Fund receipts by \$51.5 million in Fiscal Year 2021-2022 and reduce local government receipts by \$15.5 million.

B. Private Sector Impact:

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

C. Government Sector Impact:

None.

¹² FLA. CONST. art. VII, s. 18(d).

¹³ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Mar. 5, 2021).

¹⁴ Based on the Demographic Estimating Conference's population adopted on November 13, 2020. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Mar. 5, 2021).

¹⁵ Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, School Sales Tax Holiday, CS for SB 598, Feb. 26, 2021, available at http://www.edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/Impact0226.pdf (last visited Mar. 4, 2021).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates two undesignated sections of chapter law.

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 February 15, 2021:

The committee substitute deletes language that appropriates funds to the Department of Revenue to implement the back-to-school sales tax holiday.

- B. **Amendments:**

None.

By the Committee on Commerce and Tourism; and Senator Perry

577-02137-21

2021598c1

A bill to be entitled

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

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

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

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

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

1. Any article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry,

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umbrellas, and handkerchiefs; and

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

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

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

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

(b) "Personal computer-related accessories" includes keyboards, mice, personal digital assistants, monitors, other peripheral devices, modems, routers, and nonrecreational software, regardless of whether the accessories are used in association with a personal computer base unit. The term does not include furniture or systems, devices, software, monitors

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59 with a television tuner, or peripherals that are designed or
60 intended primarily for recreational use.

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

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

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

83 Section 2. This act shall take effect upon becoming a law.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/10/2021

Meeting Date

598

Bill Number (if applicable)

Topic Back-to-school Sales Tax Holiday

Amendment Barcode (if applicable)

Name Jake Farmer

Job Title Director of Government Affairs

Address 227 South Adams Street

Phone 352-359-6835

Street

Tallahassee

FL

32301

Email jake@frf.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



The Florida Senate

Committee Agenda Request

To: Senator Ana Maria Rodriguez, Chair
Committee on Finance and Tax

Subject: Committee Agenda Request

Date: February 19, 2021

I respectfully request that **Senate Bill #598**, relating to Back-to-school Sales Tax Holiday, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry".

Senator Keith Perry
Florida Senate, District 8

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 Finance and Tax

BILL: SB 866

INTRODUCER: Senators Hooper and Rouson

SUBJECT: H. Lee Moffitt Cancer Center and Research Institute

DATE: March 10, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	Favorable
2.	<u>Kim</u>	<u>Babin</u>	<u>FT</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 866 increases the share of cigarette tax revenues directed to the H. Lee Moffitt Cancer Center and Research Institute (Moffitt). Beginning July 1, 2021, and continuing through June 30, 2024, the share of the revenues directed to Moffitt is increased from 4.04 percent to 7 percent of certain net collections. Beginning July 1, 2024, and continuing through June 30, 2054, the share of the revenues directed to Moffitt is further increased to 10 percent of certain net collections.

The Revenue Estimating Conference determined the bill will reduce General Revenue Fund receipts by \$11.4 million in each of Fiscal Years 2021-2022, 2022-2023, and 2023-2024, and reduce General Revenue Fund receipts by \$22.9 million each fiscal year thereafter.

The bill is effective upon becoming a law.

II. Present Situation:

H. Lee Moffitt Cancer Center

Moffitt was established by the Legislature in 1981, began construction in 1983, and opened to patients on Oct. 27, 1986.¹ Moffitt began its research on cancer in 1993 and became a National Cancer Institute (NCI) designated cancer center in 1998. In 2001, Moffitt achieved an NCI Comprehensive Cancer Center designation, indicating that it is one of “the strongest institutions in the nation dedicated to scientific innovation and excellence; to interdisciplinary research, training and education; and to coordinated recognition and pursuit of new research opportunities.” Currently, Moffitt is the only NCI-designated Comprehensive Cancer Center based in Florida.²

¹ See <https://moffitt.org/about-moffitt/our-story/> (last visited Mar. 3, 2021).

² See <https://moffitt.org/about-moffitt/nci-designation/> (last visited Mar. 3, 2021).

Moffitt treats cancer patients and performs cancer research. Moffitt is Florida's largest multi-disciplinary medical group practice that is dedicated to cancer care. The Moffitt Medical Group (MMG), based at Moffitt Cancer Center, also provides services at other hospitals and clinics throughout the State of Florida and beyond. The MMG consists of 377 oncology specialists, including 221 board-certified physicians and 156 advanced practice professionals, as well as other staff who specialize in nearly 30 cancer programs and services.³ Additionally, Moffitt employs about 800 research faculty scientists, career staff scientists, postdocs, graduate students, and support staff dedicated to cancer research.⁴

Cigarette Tax

An excise tax is imposed upon cigarettes in Florida.⁵ The tax rate varies depending on the type and packaging of cigarettes. For a pack of 20 cigarettes of common size, the rate is 33.9 cents, with rates varying proportionately for cigarettes and packs of non-standard size.⁶ Additionally, a \$1 surcharge per pack of common-size cigarettes is imposed, with rates varying proportionately for cigarettes and packs of non-standard size.⁷

Cigarette tax revenues are collected from cigarette dealers by the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation and deposited into the Cigarette Tax Collection Trust Fund, which is then distributed according to a statutory formula.⁸

The following chart describes the distribution of cigarette tax revenues in Fiscal Year 2019-2020.⁹

³ See <https://moffitt.org/about-moffitt/nci-designation/> (last visited Mar. 3, 2021).

⁴ See <https://moffitt.org/about-moffitt/research/> (last visited Mar. 3, 2021).

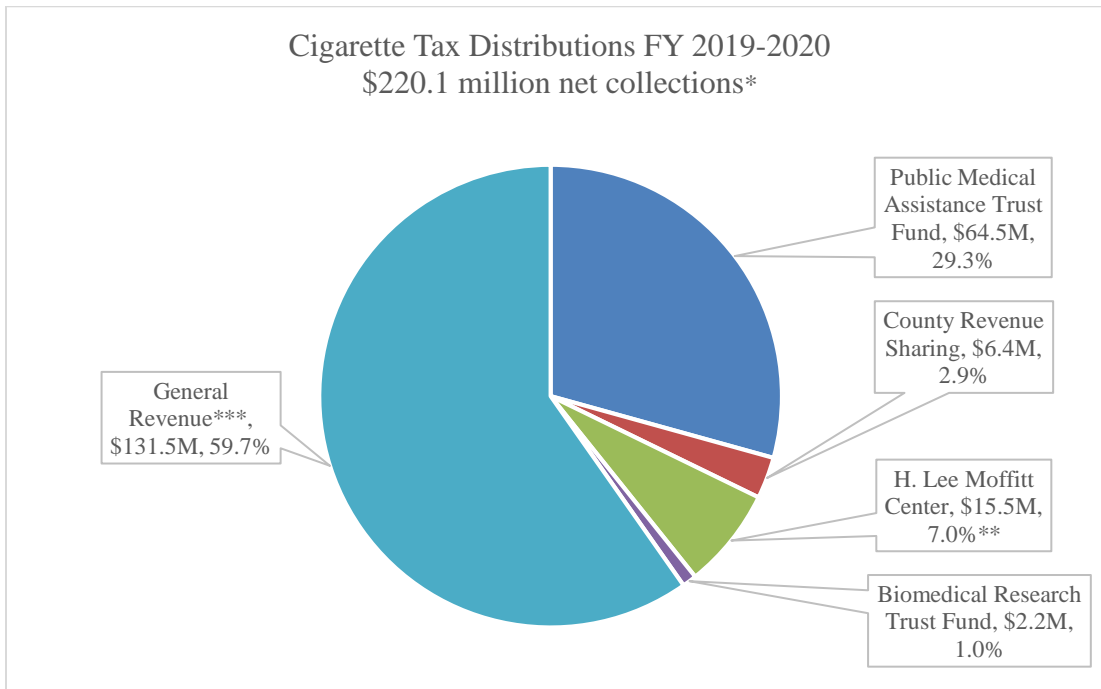
⁵ Section 210.02, F.S.

⁶ *Id.*

⁷ See s. 210.011, F.S. Cigarette surcharge revenues are deposited in the Health Care Trust Fund pursuant to s. 210.011(9), F.S.

⁸ Sections 210.02(6) and 210.20, F.S.

⁹ Data from Office of Economic and Demographic Research, The Florida Legislature, Tobacco Tax and Surcharge Conference Results, November 2020, *available at* <http://www.edr.state.fl.us/Content/conferences/tobaccotaxsurcharge/TobaccoTaxForecast.pdf> (last visited Mar. 3, 2021).



* As used in s. 210.20, F.S., net collections is the amount after subtracting the 8 percent General Revenue service charge in s. 215.20, F.S., and the 0.9 percent amount deposited into the Alcoholic Beverage and Tobacco Trust Fund pursuant to s. 210.20, F.S.

** Pursuant to s. 210.20(2)(b), F.S., Moffitt is paid the greater of 4.04 percent of net collections each fiscal year or 4.04 percent of Fiscal Year 2001-2002 net collections (\$383.7M). Moffitt’s share of \$15.5M represents 4.04 percent of Fiscal Year 2001-2002 net collections and 7 percent of Fiscal Year 2019-2020 net collections.

*** Pursuant to s. 210.20(3), F.S., the balance of revenue after making all other distributions is deposited in the General Revenue Fund.

Moffitt’s Cigarette Tax Revenue

The distribution of cigarette tax revenue to Moffitt is the greater of 4.04 percent of cigarette tax net collections each fiscal year or 4.04 percent of cigarette tax net collections in Fiscal Year 2001-2002.¹⁰ This provision continues through June 30, 2053.

Cigarette tax net collections have generally declined over time and are substantially lower than in Fiscal Year 2001-2002.¹¹ In Fiscal Year 2019-2020, cigarette tax net collections were \$220.1 million compared to \$383.7 million in Fiscal Year 2001-2002.¹² In the preceding 11 fiscal years, Moffitt’s share has been calculated based on Fiscal Year 2001-2002 net collections.¹³ Since

¹⁰ Section 210.20(2)(b), F.S., provides in relevant part: “In fiscal years 2004-2005 and thereafter, the appropriation to the H. Lee Moffitt Cancer Center and Research Institute authorized by this paragraph shall not be less than the amount that would have been paid to the H. Lee Moffitt Cancer Center and Research Institute in Fiscal Year 2001-2002, had this paragraph been in effect.”

¹¹ See, e.g., *supra* note 9, for a history of net collections for the past 13 fiscal years.

¹² Fiscal Year 2001-2002 data from Revenue Estimating Conference, Tobacco Tax and Surcharge Executive Summary, August 2009, available at <http://www.edr.state.fl.us/Content/conferences/tobaccotaxsurcharge/archives/090810tobaccotaxsurcharge.pdf> (last visited Mar. 3, 2021).

¹³ Based on a review of data in *supra* note 9.

Fiscal Year 2014-2015, when Moffitt's share percentage was increased to its current level,¹⁴ the Moffitt distribution amount has been \$15.5 million each fiscal year,¹⁵ which is equal to 4.04 percent of the Fiscal Year 2001-2002 net collections amount of \$383.7 million. The above chart shows that the \$15.5 million share represents 7 percent of Fiscal Year 2019-2020 net collections.

Moffitt is authorized to use cigarette tax revenue, among other purposes, to secure financing to pay costs related to constructing, furnishing, equipping, operating, and maintaining cancer research and clinical and related facilities; furnishing, equipping, operating, and maintaining other leased or owned properties; and paying costs incurred in connection with purchasing, financing, operating, and maintaining such equipment, facilities, and properties.¹⁶ Such financing may include the issuance of tax-exempt bonds or other forms of indebtedness by a local authority, municipality, or county pursuant to parts II and III of chapter 159, F.S.¹⁷ Moffitt currently has three series of bonds outstanding which are secured by cigarette tax revenue.¹⁸

III. Effect of Proposed Changes:

The bill increases the percentage of cigarette tax net collections that is paid from month to month to Moffitt. Beginning July 1, 2021, and continuing through June 30, 2024, the percentage is increased from the current percentage of 4.04 percent to 7 percent of certain net collections. Beginning July 1, 2024, and continuing through June 30, 2054, the percentage is further increased to 10 percent.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. Therefore, the mandates provisions of Article VII, s. 18 of the State Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

¹⁴ Beginning July 1, 2014, the percentage of Moffitt's share was increased from 2.75 percent to 4.04 percent. Chapter 2014-38, s. 8, Laws of Fla.

¹⁵ *Supra* note 9.

¹⁶ Sections 210.20(2)(b) and 210.201, F.S.

¹⁷ Section 210.201, F.S.

¹⁸ Series 2012A, 2016A, and 2020A Cigarette Tax Allocation Bonds. *See, e.g.,* H. Lee Moffitt Cancer Center & Research Institute, Inc. and Subsidiaries, *Consolidated Financial Statements and Report of Independent Certified Public Accountants*, June 30, 2019 and 2018, 20-22, available at <https://moffitt.org/media/11952/h-lee-moffitt-cancerresearch-2019-fs.pdf> (last visited Mar 3., 2021); and Moody's Investors Service, *Moody's assigns A1 to Florida State's Cigarette Tax Allocation Bonds (H. Lee Moffitt Cancer Center), Ser. 2020A; outlook stable*, available at https://www.moody.com/research/Moodys-assigns-A1-to-Florida-States-Cigarette-Tax-Allocation-Bonds--PR_906431431 (last visited Mar. 3, 2021).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise state taxes or fees. Therefore, the requirements of Article VII, s. 19 of the State Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined the bill will reduce General Revenue Fund receipts by \$11.4 million in each of Fiscal Years 2021-2022, 2022-2023, and 2023-2024, and reduce General Revenue Fund receipts by \$22.9 million each fiscal year thereafter.

B. Private Sector Impact:

The Revenue Estimating Conference determined the bill will increase the funds directed to Moffitt from \$15.5 million annually to \$26.9 million (an \$11.4 million increase over the current year) from Fiscal Year 2021-2022 through Fiscal Year 2023-2024. Starting in Fiscal Year 2024-2025, the funds directed to Moffitt are estimated to be \$38.4 million annually (a \$22.9 million increase over the current year). Such amounts would be available pursuant to s. 210.201, F.S., to secure financing, including the issuance of bonds or other forms of indebtedness, for purposes authorized in that statute. The estimate assumes that cigarette tax net collections will continue declining, meaning that Moffitt's share of cigarette tax revenues would continue to be calculated based on Fiscal Year 2001-2002 net collections.¹⁹

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁹ Revenue Estimating Conference analysis of SB 866, Jan. 29, 2021, *available at* <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/pdf/page19-21.pdf> (last visited Mar. 3, 2021).

VIII. Statutes Affected:

This bill substantially amends section 210.20 of the Florida Statutes.

This bill reenacts section 210.205 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 Hooper

16-01127A-21

2021866__

A bill to be entitled

An act relating to the H. Lee Moffitt Cancer Center and Research Institute; amending s. 210.20, F.S.; increasing, at specified timeframes, the percentage of cigarette tax proceeds paid to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute for certain purposes; reenacting s. 210.205, F.S., relating to cigarette tax distribution reporting, to incorporate the amendment made to s. 210.20, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 210.20, Florida Statutes, is amended to read:

210.20 Employees and assistants; distribution of funds.—

(2) As collections are received by the division from such cigarette taxes, it shall pay the same into a trust fund in the State Treasury designated "Cigarette Tax Collection Trust Fund" which shall be paid and distributed as follows:

(b) Beginning July 1, 2004, and continuing through June 30, 2013, the division shall from month to month certify to the Chief Financial Officer the amount derived from the cigarette tax imposed by s. 210.02, less the service charges provided for in s. 215.20 and less 0.9 percent of the amount derived from the cigarette tax imposed by s. 210.02, which shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund, specifying an amount equal to 1.47 percent of the net collections, and that

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16-01127A-21

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amount shall be paid to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute, established under s. 1004.43, by warrant drawn by the Chief Financial Officer. Beginning July 1, 2014, and continuing through June 30, ~~2021~~ ~~2053~~, the division shall from month to month certify to the Chief Financial Officer the amount derived from the cigarette tax imposed by s. 210.02, less the service charges provided for in s. 215.20 and less 0.9 percent of the amount derived from the cigarette tax imposed by s. 210.02, which shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund, specifying an amount equal to 4.04 percent of the net collections, and that amount shall be paid to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute, established under s. 1004.43, by warrant drawn by the Chief Financial Officer. Beginning July 1, 2021, and continuing through June 30, 2024, the division shall from month to month certify to the Chief Financial Officer the amount derived from the cigarette tax imposed by s. 210.02, less the service charges provided for in s. 215.20 and less 0.9 percent of the amount derived from the cigarette tax imposed by s. 210.02, which shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund, specifying an amount equal to 7 percent of the net collections, and that amount shall be paid to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute, established under s. 1004.43, by warrant drawn by the Chief Financial Officer. Beginning July 1, 2024, and continuing through June 30, 2054, the division shall from month to month certify to the Chief Financial Officer the amount derived from the cigarette tax imposed by s. 210.02, less the service charges provided for in

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59 s. 215.20 and less 0.9 percent of the amount derived from the
 60 cigarette tax imposed by s. 210.02, which shall be deposited
 61 into the Alcoholic Beverage and Tobacco Trust Fund, specifying
 62 an amount equal to 10 percent of the net collections, and that
 63 amount shall be paid to the Board of Directors of the H. Lee
 64 Moffitt Cancer Center and Research Institute, established under
 65 s. 1004.43, by warrant drawn by the Chief Financial Officer.
 66 These funds are appropriated monthly out of the Cigarette Tax
 67 Collection Trust Fund, to be used for lawful purposes, including
 68 constructing, furnishing, equipping, financing, operating, and
 69 maintaining cancer research and clinical and related facilities;
 70 furnishing, equipping, operating, and maintaining other
 71 properties owned or leased by the H. Lee Moffitt Cancer Center
 72 and Research Institute; and paying costs incurred in connection
 73 with purchasing, financing, operating, and maintaining such
 74 equipment, facilities, and properties. In fiscal years 2004-2005
 75 and thereafter, the appropriation to the H. Lee Moffitt Cancer
 76 Center and Research Institute authorized by this paragraph shall
 77 not be less than the amount that would have been paid to the H.
 78 Lee Moffitt Cancer Center and Research Institute in fiscal year
 79 2001-2002, had this paragraph been in effect.

80 Section 2. For the purpose of incorporating the amendment
 81 made by this act to section 210.20, Florida Statutes, in a
 82 reference thereto, section 210.205, Florida Statutes, is
 83 reenacted to read:

84 210.205 Cigarette tax distribution reporting.—By March 15
 85 of each year, each entity that received a distribution pursuant
 86 to s. 210.20(2)(b) in the preceding calendar year shall report
 87 to the Office of Economic and Demographic Research the following

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88 information:

89 (1) An itemized accounting of all expenditures of the funds
 90 distributed in the preceding calendar year, including amounts
 91 spent on debt service.

92 (2) A statement indicating what portion of the distributed
 93 funds have been pledged for debt service.

94 (3) The original principal amount and current debt service
 95 schedule of any bonds or other borrowing for which the
 96 distributed funds have been pledged for debt service.

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

Page 4 of 4

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YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/11/2021

Meeting Date

SB 866

Bill Number (if applicable)

Topic H. Lee Moffitt Cancer Center and Research Institute

Amendment Barcode (if applicable)

Name Merritt Martin

Job Title Chief of Staff to the CEO

Address 12902 Magnolia Drive

Phone 813-240-3454

Street

Tampa

FL

33612

Email Merritt.Martin@Moffitt.org

City

State

Zip

Speaking: For Against Information

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

Representing Moffitt Cancer Center

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Ana Maria Rodriguez, Chair
Committee on Finance and Tax

Subject: Committee Agenda Request

Date: February 17, 2021

I respectfully request that **Senate Bill # 866**, relating to H. Lee Moffitt Cancer Center and Research Institute, be placed on the:

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

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

Senator Ed Hooper
Florida Senate, District 16

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 Finance and Tax

BILL: SB 688

INTRODUCER: Senator Berman

SUBJECT: Waivers of Exemptions of Applicable Assets

DATE: March 10, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Bruno</u>	<u>Babin</u>	<u>FT</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 688 prescribes the method by which an individual may waive constitutional and statutory protections that prevent creditors from obtaining a judgment against certain assets, allowing the individual to pledge such assets as collateral. The bill provides that such protection can only be waived by specifically identifying the asset in a contract. The bill provides that language referring to “all of a person’s assets and rights ...” or general references only to the type of collateral are insufficient under the bill to waive such protection.

These changes are in response to a recent court case which held that mere contractual reference to “all assets” included certain property previously understood to be excluded from such an agreement.

Staff estimates that the bill will not affect local or state revenues.

The bill takes effect October 1, 2021, and applies only to security interests created after the effective date.

II. Present Situation:

Asset Protection from Legal Process

A creditor can collect money owed by filing an action for a judgment in state court. A judgment is an order of the court creating an obligation, typically a debt when creditors are involved. The creditor may then use that judgment to collect assets from the debtor. Chapter 222, F.S., contains exemptions that protect certain assets from legal process under Florida law, absent a waiver. Florida exempts the following assets against creditor claims in most situations:

- Homestead property (ss. 222.01-222.05, F.S.).
- Certain items of personal property (s. 222.061, F.S.).

- Certain disposable earnings of head of family (s. 222.11, F.S.).
- The proceeds of a life insurance policy (s. 222.13, F.S.).
- The cash surrender value of a life insurance policy and the proceeds of an annuity contract (s. 222.14, F.S.).
- Disability benefits payable from any insurance (s. 222.18, F.S.).
- Certain pension, retirement, or profit sharing benefits (s. 222.21, F.S.).
- Prepaid College Trust Fund moneys and Medical Savings Account funds (s. 222.22, F.S.).
- A debtor's interest in a motor vehicle, up to \$1,000 in value (s. 222.25, F.S.).
- The debtor's interest in any professionally prescribed health aids (s. 222.25, F.S.).
- Social security benefits, unemployment compensation, or public assistance benefits; veterans' benefits; disability, illness, or unemployment benefits; alimony, support, or separate maintenance; and stock or pension plans under specified circumstances (s. 222.201, F.S.).

These exemptions have historically been construed liberally in favor of the consumer against creditors' claims to exempt property.¹ When a consumer enters a security agreement – a contract in which a debtor offers assets as collateral (“security”) to guarantee repayment – the contract describes what assets are offered as security. Historically, a contract's blanket offering of “all assets” as security has not been interpreted to include assets subject to these exemptions.²

An individual must take additional steps in order to offer certain exempt assets as collateral. For example, in the case of Florida's constitutional right to homestead exemptions, a contractual waiver of those rights must be “knowing, voluntary, and intelligent” to have any effect.³ As another example, certain wages are exempt from legal process.⁴ The wages exemption may only be waived in writing, in a separate document attached to the security agreement, which must contain mandatory waiver language in at least 14-point font.⁵

Sufficiency of Description for Collateral in Security Agreements

An effective description of collateral in a security agreement identifies the asset by specific listing; category; type of collateral; quantity, computational or allocational formula; or any method under which the identity of the collateral is objectively determinable.^{6,7}

Current law specifically provides that a description of collateral as “all the debtor's assets” or “all the debtor's personal property” does not reasonably identify collateral.⁸

¹ See e.g. *Patten Package Co. v. Houser*, 102 Fla. 603, 607, 136 So. 353, 355 (1931); *Killian v. Lawson*, 387 So.2d 960, 962 (Fla. 1980); *Havoco of Am. Ltd. v. Hill*, 790 So.2d 1018, 1021 (Fla. 2001); *Connor v. Seaside National Bank*, 135 So.3d 508, 509 (Fla. 5th DCA 2014).

² Section 679.1081(3), F.S., Official Comment 2 to U.C.C. s. 9-110 (s. 679.1081(3), F.S.).

³ See e.g. *Chames v. DeMayo*, 972 So.2d 850, 861 (Fla. 2007) (citing *State v. Upton*, 658 So.2d 86, 87 (Fla.1995)).

⁴ Section 222.11, F.S.

⁵ Section 222.11(2), F.S.

⁶ Chapter 679, F.S., adopts Article 9 of the Universal Commercial Code (U.C.C.), dealing with secured transactions. Every state in the United States has adopted the U.C.C. See <https://www.uniformlaws.org/acts/ucc> (last visited Mar. 8, 2021).

⁷ Section 679.1081(2), F.S.

⁸ Section 679.1081(3), F.S.

Finally, current law provides that a description defined by “type” of collateral alone for a commercial tort claim or, in a consumer transaction, for a security entitlement, securities account, or commodity account, is not sufficient.⁹ For example, “all existing and after-acquired investment property” or “all existing and after-acquired security entitlements,” without more, would be insufficient in a consumer transaction to describe a security entitlement, securities account, or commodity account.¹⁰

Kearney Construction Co, LLC v. Travelers Casualty & Surety Company of America

A recent federal court case held that general, broad pledges of “all assets” waives ch. 222, F.S., protections.¹¹ In *Kearney Construction Company, LLC v. Travelers Casualty and Surety Company of America*¹² the debtor obtained a line of credit and pledged collateral in the contract as follows:

Grant of Security Interest. As security for any and all Indebtedness (as defined below), the Pledgor hereby irrevocably and unconditionally grants a security interest in the collateral described in the following properties[:] all assets and rights of the Pledgor, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof, all goods (including inventory, equipment and any accessories thereto), instruments (including promissory notes)[,] documents, accounts, chattel paper, deposit accounts, letters of credit, rights, securities and all other investment property, supporting obligation[s], any contract or contract rights or rights to the payment of money, insurance claims, and proceeds, and general intangibles (the “Collateral”).¹³

The Eleventh Circuit considered whether this language included assets held in the debtor’s Individual Retirement Account (IRA). The debtor argued that the IRA should not have been included in all assets and was never intended to have been offered as collateral.¹⁴ The court found that the security agreement’s language constituted an “unambiguous pledge” of all assets, which includes those exempt under ch. 222, F.S.¹⁵ Kearney’s IRA was not specifically listed in the agreement, but the court concluded that the broad language of the contract “encompassed potential retirement accounts or funds, such as the [IRA] at issue here.”¹⁶

The courts did not address whether ch. 222, F.S., exemptions or ch. 679, F.S., description requirements should have any weight in interpreting the contract. The courts also did not explain what part of the security agreement encompassed the IRA. It is unclear if it was part of a specific

⁹ Section 679.1081(5), F.S.

¹⁰ Section 679.1081(5), F.S.; Official Comment 5 to U.C.C. s. 9-108 (s. 679.1081(5), F.S.).

¹¹ These concerns were raised by the Florida Bar’s Real Property, Probate, and Trust Law Section, which formed a “Kearney Subcommittee” within its Asset Protection Committee. See the Kearney Subcommittee’s White Paper (Jan. 26, 2021) (on file with the Senate Committee on Finance and Tax).

¹² 795 Fed.Appx. 671 (Fla. 11th Cir. Nov. 13, 2019).

¹³ *Id.* at 673.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Magistrate Judge’s Report and Recommendation, Case 8:09-cv-01850-JSM-TBM, Docket 865, at 28.

collateral category such as a deposit account, investment property, general intangible, or another category,¹⁷ each of which could have different treatment.¹⁸

Federal law treats the use of any funds inside a tax-advantaged retirement account as a taxable distribution from that account.¹⁹

III. Effect of Proposed Changes:

Section 1 creates s. 222.105, F.S., which prescribes the method by which an individual may waive statutory exemptions protecting certain assets and accounts from creditors. The bill provides that such protection can only be waived by specifically identifying the “applicable asset” in a security agreement, rather than by general reference to “all assets” or to the general category of assets.

The bill provides that language referring to all of a person’s “assets and rights, wherever located, whether now owned or after acquired, and all proceeds thereof,” or of similar nature is not sufficient to waive the protections provided for in ch. 222, F.S. References only to the type of collateral are insufficient under the bill to waive such an exemption.

The bill defines “applicable assets” as those accounts and entitlements described in ss. 222.13-222.16, s. 222.18, and ss. 22.201-222.22, F.S., which include life insurance policies, cash surrender value of life insurance policies and annuity contracts; wages or reemployment assistance or unemployment compensation payments due deceased employees; disability income benefits; certain payments protected by the federal Bankruptcy Reform Act of 1978; pension money and tax exempt retirement accounts; and assets in qualified tuition programs, medical savings accounts, Coverdell education savings accounts, and hurricane savings accounts. These accounts and entitlements, deemed “applicable assets,” are exempt under current law from the reach of creditors without a waiver.

Section 2 amends s. 679.1081(5), F.S., to provide that the accounts and entitlements identified in section 1 of the bill are not adequately described by general reference to the type of collateral. In order to include such an asset in a security agreement the asset must be described by specific reference to the individual asset as provided in s. 679.1081, F.S.

Section 3 provides that the bill applies to security interests created after the effective date of the act.

Section 4 provides the bill takes effect October 1, 2021.

¹⁷ *Id.*

¹⁸ Sections 679.1021, 679.1031, 679.1041, 679.1051, 679.1061, 679.1071, 679.1081 and 679.1091, F.S.

¹⁹ I.R.C. 408(e)(4).

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

Not applicable. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. Therefore, the mandates provisions of s. 18, Art. VII of the State 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 state taxes or fees. Therefore, the requirements of s. 19, Art. VII of the State Constitution do not apply.

E. Other Constitutional Issues:

None identified.

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

The Revenue Estimating Conference has not reviewed the bill to identify a fiscal impact. Staff estimates that the bill will not affect state or local revenues.

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 222.105 of the Florida Statutes.

This bill substantially amends section 679.1081 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 Berman

31-00573C-21

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1 A bill to be entitled
 2 An act relating to waivers of exemptions of applicable
 3 assets; creating s. 222.105, F.S.; providing that
 4 certain exemptions of certain assets may not be waived
 5 unless certain conditions are met; specifying
 6 references that are insufficient to pledge a security
 7 interest in certain assets or to waive certain
 8 protections; defining the term "applicable assets";
 9 amending s. 679.1081, F.S.; providing that a
 10 description of certain accounts and entitlements by
 11 certain type of collateral is insufficient; providing
 12 applicability; providing an effective date.

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

15 Section 1. Section 222.105, Florida Statutes, is created to
 16 read:

17 222.105 Waiver of exemptions; requirements.-

18 (1) The exemptions set forth in this chapter with respect
 19 to applicable assets may not be waived unless the person who is
 20 entitled to such exemption has specifically pledged a security
 21 interest in the applicable asset in a security agreement, as
 22 defined in s. 679.1021, that identifies the asset by specific
 23 reference to the applicable asset.

24 (2) The following references in a security agreement
 25 purporting to pledge a security interest are insufficient to
 26 pledge applicable assets or to waive the protections afforded to
 27 applicable assets by this chapter:

28 (a) All of a person's "assets and rights, wherever located,
 29

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30 whether now owned or after acquired, and all proceeds thereof,"
 31 or other words of similar import, including, but not limited to,
 32 those described in s. 679.1081(3); or

33 (b) References only to the type of collateral, as described
 34 in s. 679.1081(5).

35 (3) For purposes of this section, "applicable assets" means
 36 those assets described in ss. 222.13-222.16, s. 222.18, and ss.
 37 222.201-222.22.

38 Section 2. Subsection (5) of section 679.1081, Florida
 39 Statutes, is amended to read:

40 679.1081 Sufficiency of description.-

41 (5) A description only by type of collateral defined in
 42 this chapter is an insufficient description of:

43 (a) A commercial tort claim;

44 (b) In a consumer transaction, consumer goods, a security
 45 entitlement, a securities account, or a commodity account; ~~or~~

46 (c) An account consisting of a right to payment of a
 47 monetary obligation for the sale of real property that is the
 48 debtor's homestead under the laws of this state; ~~or-~~

49 (d) Accounts and other entitlements set forth in ss.
 50 222.13-222.16, s. 222.18, and ss. 222.201-222.22.

51 Section 3. This act applies to security interests created
 52 after the effective date of this act.

53 Section 4. This act shall take effect October 1, 2021.

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WHITE PAPER

PROTECTION OF FLORIDA RESIDENTS FROM UNINTENTIONALLY ASSIGNING, PLEDGING, OR WAIVING RIGHTS TO ASSETS THAT OTHERWISE ARE EXEMPT FROM LEGAL PROCESS UNDER CHAPTER 222 OF THE FLORIDA STATUTES BY IMPLEMENTING CLEARLY DEFINED REQUIREMENTS FOR WAIVING THE PROTECTION OF SUCH EXEMPTIONS

I. SUMMARY

This legislation protects Florida residents from unintentionally assigning, pledging, or waiving rights to, retirement accounts, annuities, certain life insurance policies and certain other assets that otherwise are exempt from legal process under Chapter 222 of the Florida Statutes by requiring that a Security Agreement purporting to pledge such asset specifically identify the exempt asset, such as in a manner consistent with Fla. Stat. § 679.1081 (Florida's Uniform Commercial Code), in order to constitute a valid and intentional assignment, pledge, or waiver. Because of the adverse economic impact of Covid-19, it is imperative to protect citizens from unknowing forfeiture of assets and potentially disastrous tax consequences. The bill does not have a fiscal impact on state funds.

II. CURRENT SITUATION

A. Current Florida Statutes

Chapter 222 of the Florida Statutes contains most of the statutory exemptions that protect certain assets from legal process under Florida law. Florida Statutes § 222.21(2)(a) allows Florida Consumers to claim an exemption from creditors for funds held in individual retirement accounts (“IRAs”), 401(k) retirement accounts, and other tax-exempt accounts. Florida Statutes § 222.14 provides that the cash surrender values of life insurance policies and the proceeds of annuity contracts issued to citizens or residents of the State of Florida are exempt from creditor attachment. Florida Statutes § 222.22 and Fla. Stat. § 222.25 state that funds held in qualified tuition programs and other qualifying accounts and certain individual property are also protected from creditors.

Under Fla. Stat. § 222.11, wages are exempt from attachment or garnishment unless the Florida Consumer agrees to waive the protection from wage garnishment in a writing complying with the requirements set forth in Fla. Stat. § 222.11(2)(b). Florida Statutes § 222.11(2)(b) provides that the agreement to waive the protection from wage garnishment must be in writing and be written in the same language as the contract to which the waiver relates, be contained in a separate document attached to the contract, and contain the mandatory waiver language specified in Fla. Stat. § 222.11(2)(b) in at least 14-point type. This writing ensures the Consumer understands they are waiving a statutory exemption.

It has been standard result for any asset which is exempt under Chapter 222 of the Florida Statutes to remain exempt from the reach of creditors, if the exempt asset is not specifically pledged. Long standing public policy of the Florida legislature promotes the financial independence of the retired and elderly by protecting their IRAs and pensions plans with an

exemption, thus reducing the need for public financial assistance. This consumer protection built into the framework of the existing law protecting Florida Consumers from overreaching creditors, unfair transactions, and retirement poverty was recently cast aside in the decision of *Kearney Constr. Co., LLC v. Travelers Cas. & Sur. Co. of Am.*, 795 Fed. Appx. 671 (11th Cir. 2019). The *Kearney* result flies in the face of the intent of the Florida legislature and the current statutory framework which requires a Florida Consumer to understand and acknowledge any waiver of a statutory exemption under Florida law.

B. Kearney Holding

On October 27, 2011, the United States District Court Middle District of Florida, Tampa Division granted a motion for entry of final judgment in favor of Travelers Casualty & Surety Company of America and against Bing Charles W. Kearney (“**Kearney**”) and others in the amount of \$3,750,000. Magistrate Judge’s Report and Recommendation, Case 8:09-cv-01850-JSM-TBM, Docket 711, at 1-2 (March 17, 2016). On March 1, 2012, Kearney executed a Revolving Line of Credit Promissory Note (the “**Promissory Note**”) in favor of Moose Investments of Tampa, LLC (“**Moose Investments**”), which was an entity owned by Kearney’s son. Magistrate Judge’s Report and Recommendation, Case 8:09-cv-01850-JSM-TBM, Docket 865, at 9 (August 16, 2017). The Promissory Note was collateralized by a security agreement (the “**Security Agreement**”), in which Kearney pledged a security interest in

all assets and rights of the Pledgor, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof, all good (including inventory, equipment and any accessories thereto), instruments (including promissory notes), documents, accounts, chattel paper, **deposit accounts**, letters of credit, rights, securities and all other **investment property**, supporting obligation, any contract or contract rights or rights to the payment of money, insurance claims, and proceeds, and **general intangibles** (the “Collateral”). *Id.* at 9-10 (emphasis added).

On October 25, 2012, Kearney deposited funds into an IRA at USAmeriBank. *Id.* at 10. On July 23, 2015, the Magistrate Judge granted Travelers’ motion for a writ of garnishment directed to USAmeriBank. Magistrate Judge’s Report and Recommendation, Docket 711, at 2.

Magistrate Judge McCoun III submitted a Report and Recommendation on March 17, 2016 (Docket 711) and a Report and Recommendation on August 16, 2017 (Docket 865) addressing the numerous summary judgment motions related to the writ of garnishment directed to USAmeriBank. In the Report and Recommendation submitted on August 16, 2017, Magistrate Judge McCoun III issued a recommendation on three summary judgment motions related to determining whether the funds deposited into Kearney’s IRA at USAmeriBank lost the exempt status because of Kearney’s pledge of collateral in the Security Agreement with Moose Investments. Docket 865, at 7. Kearney argued the funds held in his IRA were exempt from garnishment under Fla. Stat. § 221.21(2). *Id.* at 8. Travelers countered that Kearney pledged the IRA as security to Moose Investments pursuant to the Promissory Note and Security Agreement, and such pledge of the IRA as collateral caused the funds in the IRA to both lose its tax-exempt status and its exempt status from garnishment. *Id.* at 8-9. Kearney responded that the Promissory

Note and Security Agreement did not specify the IRA was intended to be pledged as a “deposit account” as part of the collateral under the Security Agreement. *Id.* at 22- 23.

The Magistrate Judge determined that Kearney pledged all of his assets and rights in the Security Agreement securing the Promissory Note. *Id.* at 22. Thus, the funds held in Kearney’s IRA lost their tax-exempt status and were not protected by Fla. Stat. § 221.21(2) or any other statutory exemption. *Id.* at 29. In arriving at this conclusion, the Magistrate Judge determined the language of the Security Agreement was “clear, unambiguous, and without exception.” *Id.* at 26. Although Kearney’s IRA was not specifically identified as part of the collateral, the Magistrate Judge noted that the broad language of the Security Agreement “encompassed potential retirement accounts or funds, such as the [IRA] at issue here.” *Id.* at 28. The Magistrate Judge did not identify the collateral category in the Security Agreement that purportedly covered the IRA. The Magistrate Judge did not explain whether the IRA was a “deposit account,” “investment property,” a “general intangible,” or something else. Furthermore, the Magistrate Judge did not reference Fla. Stat. § 679.1081(3), which provides that a description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral for purposes of the security agreement. Such general descriptions are legally inadequate to create a lien. The Magistrate Judge did not cite any Florida case law or the Florida Statutes in support of the Magistrate Judge’s position that a pledge of IRA funds causes such funds to lose their creditor exempt status in Florida. In fact, the Magistrate Judge only cited cases from the United States Bankruptcy Court for the Southern District of Ohio and the Eastern District Court of Virginia to support the conclusion. *Id.* at 21-22 (citing *In re Roberts*, 326 B.R. 424, 426 (Bankr. S.D. Ohio 2004), and *XL Specialty Ins. Co. v. Truland*, 2015 WL 2195181, at *11–13 (E.D. Va., May 11, 2015)).

The United States District Court Middle District of Florida, Tampa Division adopted, confirmed, and approved in all respects the Reports and Recommendations submitted by Magistrate Judge McCoun III in Docket 711 and Docket 865. *Kearney Construction Company, LLC v. Travelers Casualty & Surety Company of America*, 2016 WL 1394372 at *1; *Kearney Construction Company, LLC v. Travelers Casualty & Surety Company of America*, 2017 WL 4244390 at *1. In 2019, the United States Court of Appeals for the Eleventh Circuit reexamined whether Kearney pledged his IRA as collateral under the Security Agreement. *Kearney Constr. Co., LLC v. Travelers Cas. & Sur. Co. of Am.*, 795 Fed. Appx. 671, 673 (11th Cir. 2019). The Eleventh Circuit agreed with the United States District Court Middle District of Florida, Tampa Division, and determined the language in the Security Agreement “constitutes an unambiguous pledge of ‘all assets and rights of the Pledgor,’ including his IRA Account” *Id.* at 674. The Eleventh Circuit concluded the District Court properly held the IRA was pledged as security for Kearney’s loan with Moose Investments and “therefore was not exempt under § 222.21.” *Id.* at 675. As with the Magistrate Judge, the Eleventh Circuit did not identify the collateral category in the Security Agreement that purportedly covered the IRA and did not reference how Fla. Stat. § 679.1081(3) provides that general descriptions of collateral are legally inadequate to create a valid lien.

As discussed in Footnote 7, the Eleventh Circuit rejected Kearney’s argument that the IRA was protected by Fla. Stat. §§ 222.21(2)(a) 1 and 2 even if it was determined that the IRA was pledged under the Security Agreement. *Id.* at 674, n.7. The Eleventh Circuit asserted Fla. Stat. §

222.21(2)(a)(1) can be applied only if the Internal Revenue Service (“IRS”) “pre-approved” the IRA as exempt from taxation. *Id.* The Eleventh Circuit also stated Fla. Stat. § 222.21(2)(a)(2) can be applied only if the IRS has “determined” an IRA is exempt from taxation. *Id.* The Eleventh Circuit concluded Kearney provided no evidence the IRS “pre-approved” Kearney’s IRA as exempt from taxation, or that the IRS made a “determination” that Kearney’s IRA was exempt from taxation. *Id.* Since Kearney had the burden of proving such “pre-approval” or “determination,” the Eleventh Circuit concluded the funds held in Kearney’s IRA lost their tax-exempt status and were not protected by Fla. Stat. § 221.21(2) or any other statutory exemption. *Id.* Although there is a procedure for obtaining a determination letter from the IRS for a qualified plan, employers who sponsor retirement plans are generally not required to apply for a determination letter from the IRS. Furthermore, effective January 1, 2017, Revenue Procedure 2016-37 provides the limited circumstances under which plan sponsors may submit determination letter applications to the IRS. In general, a sponsor of an individually designed plan may submit a determination letter application only for initial plan qualification and for qualification upon plan termination. Thus, the custodians of IRAs rarely seek determination of tax-exempt status from the IRS. Furthermore, it is both absurd and impossible to require all Florida Consumers owning IRAs to obtain the IRS’s approval regarding the status of their IRAs as exempt in order to be protected by Florida’s statutory exemption.

C. Issues Resulting from Kearney Holding

Chapter 222 of the Florida Statutes contains most of the statutory exemptions that protect certain assets from legal process under Florida law. The Magistrate Judge, the District Court, and the Eleventh Circuit concluded that Kearney forfeited the exempt status of the funds held in the IRA by pledging the funds as collateral because the Security Agreement provided Kearney pledged all of his “assets and rights.” In arriving at this conclusion, the three courts ignored Fla. Stat. § 679.1081(3), which provides that a description of collateral as “all the debtor’s assets” or words of similar import does not reasonably identify the collateral for purposes of the security agreement. Such general descriptions are legally inadequate to create a lien. The Security Agreement did not specifically identify the IRA as part of the collateral. It has been standard practice for any asset which is exempt under Chapter 222 of the Florida Statutes to remain exempt from the reach of creditors, if the exempt asset is not specifically pledged. The three courts did not identify the collateral category in the Security Agreement that purportedly covered the IRA, and never explained whether the IRA was a “deposit account,” “investment property,” a “general intangible,” or something else.

The three courts did not cite any Florida case law or relevant statute in the Florida Statutes to support the conclusion that Kearney waived his exemption from creditors for funds held in the IRA by signing the Security Agreement containing a broadly worded security interest provision. The Magistrate Judge cited cases from the United States Bankruptcy Court for the Southern District of Ohio and the Eastern District Court of Virginia to support the conclusion that a pledge of IRA funds causes such funds to lose their creditor exempt status. However, those cases were not decided under Florida law, are not binding on a Florida court, and rest in jurisdictions that do not necessarily have state law creditor exemptions similar to Florida for IRAs.

The Eleventh Circuit, in the *Kearney* decision, without citing any Florida case law supporting its conclusion:

- blind-sides millions of Florida Consumers by rendering moot numerous statutory exemptions from creditors under Florida law for anyone who has signed a contract containing a blanket security interest provision that includes deposit accounts, general intangibles, and/or investment property;
- causes citizens to unintentionally remove the exempt protection they have from their IRAs and qualified retirement plans which may cause them to become so destitute they must become wards of the state;
- creates a toxic environment for business because all business loans requiring a general pledge of assets would force business owners to give their creditors total access to their retirement savings, children's college funds and life insurance cash surrender values; and
- potentially triggers a ruinous immediate financial result for Florida Consumers by causing the loss of the pledged amount of a Consumer's IRAs and qualified retirement plans, plus up to 40% of the full value to taxes and penalties upon making a general pledge of assets.

1. Forfeiture of Exempt Status for Pledged Assets: Chapter 222 of the Florida Statutes contains most of the statutory exemptions that protect certain assets from legal process under Florida law. For example, Fla. Stat. § 222.21(2)(a) allows Florida Consumers to claim an exemption from creditors for funds held in IRAs, 401(k) retirement accounts, and other tax-exempt accounts. Florida Consumers have long operated under the belief any asset which is exempt under Chapter 222 of the Florida Statutes is exempt from the reach of creditors unless such exempt asset is specifically pledged in a security agreement. The Magistrate Judge, the District Court, and the Eleventh Circuit cast aside this widely held belief in concluding that *Kearney* forfeited the exempt status of the funds held in the IRA by pledging the funds as collateral because the Security Agreement provided *Kearney* pledged all of his "assets and rights." In arriving at this conclusion, the three courts ignored Fla. Stat. § 679.1081(3), which provides that a description of collateral as "all the debtor's assets" or words of similar import does not reasonably identify the collateral for purposes of the security agreement. Such general descriptions are legally inadequate to create a lien. Furthermore, the Security Agreement at issue in *Kearney* did not specifically identify *Kearney's* IRA as part of the collateral. The three courts did not identify the collateral category in the Security Agreement that purportedly covered the IRA, and never explained whether the IRA was a "deposit account," "investment property," a "general intangible," or something else. A long standing public policy of the Florida legislature is the promotion of the financial independence of the retired and elderly through the protection of their IRAs and pensions plans with an exemption, thus reducing the need for public financial assistance. However, the *Kearney* decision may result in Florida Consumers unintentionally removing the exempt protection they have from their IRAs and qualified retirement plans, which could then cause them to become so destitute they must become wards of the state.

2. Application of *Kearney* Decision Beyond IRAs: The *Kearney* decision creates a dangerous precedent by permitting funds held in an IRA or other qualified plans to be garnished by creditors without a Consumer making an express and knowing waiver of the Fla. Stat. § 222.21(2)(a) exemption. The holding in *Kearney* appears to be in contravention with the intent of the Florida legislature to protect the assets of IRAs and pension plans from creditors. *See Dunn v.*

Doskocz, 590 So. 2d 521, 522, n.2 (Fla. Dist. Ct. App. 1991) (“It appears the legislature has made the policy decision that it should protect the assets of IRA’s and pension plans, thereby promoting the financial independence of IRA and pension plan beneficiaries in their retirement years—in turn reducing the incidence and amount of requests for public financial assistance”). The ripple effects of the *Kearney* decision go beyond the loss of the statutory exemption for funds held in IRAs or other qualified retirement plans. In *Kearney*, the Eleventh Circuit only examined whether Kearney waived the statutory exemption for his IRA. However, the *Kearney* holding is not necessarily limited to the waiver of the statutory exemption for IRAs. The *Kearney* decision can be used by creditors to pursue other purportedly exempt assets. *Kearney* potentially renders moot numerous statutory exemptions from creditors under Florida law for anyone who has signed a contract containing a broadly worded security interest provision that includes a general reference to deposit accounts, general intangibles, and/or investment property. For example, funds in other tax-exempt accounts protected under Fla. Stat. § 222.21(2)(a), such as 401(k) retirement accounts, are potentially vulnerable to creditors. Since the Eleventh Circuit did not identify which collateral category in the Security Agreement covered the IRA in *Kearney*, it is not unreasonable to believe that the cash surrender values of life insurance policies and the proceeds of annuity contracts protected under Fla. Stat. § 222.14 could be classified as “deposit accounts” or “investment property” in a different security agreement, and thus, potentially accessible to creditors. A similar analysis applies to other assets exempt under Chapter 222, such as funds held in qualified tuition programs and other qualifying accounts and certain individual property currently protected by Fla. Stat. § 222.22 and Fla. Stat. § 222.25, respectively.

3. Creates a toxic environment for new business: Mortgages, credit card applications, home equity line of credit agreements, security agreements, financing statements, and personal guarantees on business loans are only a few examples of documents that typically include a general pledge of assets as collateral similar to the provision at issue in *Kearney*. Millions of Florida Consumers are parties to at least one (if not more) of these contracts secured by their assets, which may now, unbeknownst to them, include a pledge of their exempt assets. The *Kearney* holding creates a toxic environment for business because almost all business loans require a general pledge of assets, which forces business owners to unknowingly give their creditors total access to their retirement savings, children’s college funds, life insurance cash surrender values, and coin collections as collateral.

4. Triggers early distribution taxes and penalties of up to 40%: The tax result of the *Kearney* decision makes it even worse. Under federal law, if an IRA owner uses the account or any portion of such account as security for a loan, the portion used as security is deemed distributed to the owner. IRC § 408(e)(4). The IRA owner is required to include any amount paid or distributed out of the IRA in gross income and to pay federal income taxes on such gross income. IRC § 408(d)(1). The same adverse federal income tax results will occur if a Consumer pledges an interest in a qualified employer plan. Pursuant to § 72(p)(1)(B) of the Code, if a Consumer “pledges (or agrees to pledge) any portion of his interest in a qualified employer plan, such portion shall be treated as having been received by such individual as a loan from such plan.” IRC § 72(p)(1)(B). A loan from a qualified employer plan is treated as being received as a deemed distribution for purposes of § 72. IRC § 72(p)(1). Additionally, the Code imposes penalties depending on when the deemed distribution from an IRA or qualified employer plan is made. Like an actual distribution, a deemed distribution is subject to the 10% additional tax on certain early distributions

under § 72(t). Treas. Reg. § 1.72(p)-1, Q&A 11(b). For example, if a Consumer is under the age of 59 ½ and not disabled, the deemed distribution under § 408(e)(4) is also subject to the 10% penalty tax under § 72(t). IRC § 72(t).

The *Kearney* holding generates a calamitous financial result for Florida Consumers. If a Consumer signs a document containing a broadly worded security interest provision that includes a general reference to deposit accounts, general intangibles, and/or investment property, that Consumer, under *Kearney*, has arguably pledged the entirety of all such funds owned in an IRA, as well as their other exempt assets, such as cash surrender values of life insurance policies and the proceeds of annuity contracts. If a Consumer pledges an IRA, potentially the entirety of the pledged funds held in the IRA will be treated as a loan to the Consumer and thus taxable as a deemed distribution. If a creditor can garnish the funds held in an IRA, the debtor Consumer would, in addition to losing the pledged funds, be required to pay federal income taxes on all of the funds along with possibly the additional tax penalty for making an early distribution of the IRA!

D. Legislative Fix Needed

The Eleventh Circuit, without citing any Florida case law supporting its conclusion, potentially rendered moot numerous statutory exemptions from creditors contained in Chapter 222 of the Florida Statutes for any Florida Consumer who has signed any contract containing a blanket security interest provision that includes deposit accounts, general intangibles, and/or investment property. The *Kearney* result flies in the face of the current statutory framework requiring a Consumer to be made aware of, understand, and acknowledge that such Consumer is waiving a statutory exemption under Florida law. In light of the serious issues resulting from the *Kearney* holding, Chapter 222 requires a legislative fix. In the absence of legislative action, a Consumer, by signing a document containing a broadly worded security interest provision, unknowingly places their IRA, pension plan, annuity or life insurance contract at risk of forfeiture and confiscatory taxation. Because of the protection afforded to the ownership of homestead property under Article X Section 4 of the Florida Constitution as well as the Florida Supreme Court's holding in *Havoco of America, Ltd. v. Hill*, 790 So. 2d 1018 (Fla. 2001) and its progeny, no change is necessary with respect to the exemption related to homestead property. The proposed legislative changes described in Section III below therefore are not intended to apply to, or alter the existing protections afforded to, homestead property in any manner.

III. EFFECT OF PROPOSED CHANGES

Florida Statutes § 222.105

Current Situation: Under Fla. Stat. § 222.11(2)(b), for a Consumer to waive protection from wage garnishment, the Consumer must consent to garnishment of such Consumer's wages in writing. This written waiver document must be written in the same language as the contract to which the waiver relates, be contained in a separate document attached to the contract, and contain the mandatory waiver language specified in Fla. Stat. § 222.11(2)(b) in at least 14-point type. Pursuant to Fla. Stat. § 732.702, a surviving spouse can waive his or her homestead rights by a written contract, agreement, or waiver, signed by two subscribing witnesses, that contains a waiver of "all

rights,” or equivalent language in the homestead property. There is currently no law in the Florida Statutes that discusses when and how a Consumer can waive the statutory exemptions from garnishment set forth in Fla. Stat. § 222.13, Fla. Stat. § 222.14, Fla. Stat. § 222.15, Fla. Stat. § 222.16, Fla. Stat. § 222.18, Fla. Stat. § 222.21, Fla. Stat. § 222.22, and Fla. Stat. § 222.25.

Effect of Proposed Changes: The Committee proposes the insertion of proposed Fla. Stat. § 222.105, which will clarify a Consumer can only waive the exemptions afforded to funds held in an IRA or other qualified retirement accounts (Fla. Stat. § 222.21), funds held in qualified tuition programs and other qualified accounts (Fla. Stat. § 222.22), proceeds from an annuity or life insurance contract (Fla. Stats. §§ 222.13 and 222.14), benefits under unemployment compensation (Fla. Stats. §§ 222.15 and 222.16) and disability insurance (Fla. Stat. § 222.18) by specifically identifying the exempt asset in a security agreement, such as in a manner consistent with Fla. Stat. § 679.1081 (Florida’s Uniform Commercial Code). The proposed legislation protects Florida residents from unintentionally assigning, pledging or waiving rights to, assets that are exempt under Chapter 222 of the Florida Statutes. A general pledge of assets should not allow a creditor to attach those assets otherwise exempt under Florida law without a written waiver that clearly and specifically identifies the exempt asset being pledged. This ensures that the Consumer understands they are waiving their statutory exemptions.

Florida Statutes § 679.1081

Florida Statutes § 679.1081 is part of Florida’s Uniform Commercial Code. Florida Statutes § 679.1081 sets forth the requirements for the description of collateral in order to perfect a valid security interest in an asset. Specifically, Fla. Stat. § 679.1081(3) currently states that “[a] description of collateral as ‘all the debtor’s assets’ or ‘all the debtor’s personal property’ or using words of similar import does not reasonably identify the collateral for purposes of the security agreement” and, therefore, would not create a valid security interest. Because security interests in assets are largely governed by Florida’s Uniform Commercial Code, coordinating the proposed changes to Chapter 222 with Fla. Stat. § 679.1081 by adding a new subsection (d) to Fla. Stat. § 679.1081 to reference accounts and other Chapter 222 exemptions is essential for consistency and clarity.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state or local governments.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

Millions of Florida Consumers are parties to at least one (if not more) contracts secured by their assets, which may now, unbeknownst to them, include a pledge of their exempt assets. Today, especially given the devastating economic hardships caused by Covid-19, citizens of the state of Florida have but few assets which they can rely upon for a modicum of financial security. The proposed Fla. Stat. § 222.105 protects Florida residents from unintentionally assigning, pledging, or waiving rights to, certain assets that otherwise are exempt from legal process under Chapter 222 of the Florida Statutes by requiring that a Security Agreement purporting to pledge such asset

specifically identify the exempt asset in a manner consistent with Fla. Stat. § 679.1081 in order to constitute a valid and intentional assignment, pledge, or waiver.

The *Kearney* decision unknowingly places a Consumer's IRA, pension plan, annuity or life insurance contract at risk of forfeiture and confiscatory taxation. For example, if a Consumer pledges the funds held in an IRA, the portion used as security is deemed distributed to the Consumer. The Consumer must pay federal income taxes on this deemed distribution. The Consumer may also be required to pay a 10% additional tax for making an early distribution of the IRA. This proposal saves Florida Consumers from unknowingly losing the pledged funds and incurring federal income taxes on the total balance of the pledged funds.

VI. CONSTITUTIONAL ISSUES

There are no constitutional issues that may arise as a result of the proposal.

VII. OTHER INTERESTED PARTIES

Tax Section of The Florida Bar

Name:

Contact Information:

Support, Oppose or No Position: Support pending finalization of language

Business Law Section of The Florida Bar

Name:

Contact Information:

Support, Oppose or No Position: Support pending finalization of language

Florida Bankers Association

Name:

Contact Information:

Support, Oppose or No Position: Pending

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/11/2021

Meeting Date

SB 688

Bill Number (if applicable)

Topic Waivers of Exemptions of Applicable Assets

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title Lawyer

Address 119 S. Monroe Street, Ste. 200

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Street

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FL

32301

Email adl@mhdfirm.com

City

State

Zip

Speaking: For Against Information

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

Representing The Business Law Section of The Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Ana Maria Rodriguez, Chair
Committee on Finance and Tax

Subject: Committee Agenda Request

Date: March 3, 2021

I respectfully request that **Senate Bill #688**, relating to Waivers of Exemptions of Applicable Assets, be placed on the:

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

A handwritten signature in cursive script that reads "Lori Berman" followed by a horizontal line.

Senator Lori Berman
Florida Senate, District 31

Cc: Senator Janet Cruz, Vice Chair
Robert Babin, Staff Director

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: CS/SB 258

INTRODUCER: Finance and Tax Committee and Senator Jones

SUBJECT: Internship Tax Credit Program

DATE: March 12, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brick</u>	<u>Bouck</u>	<u>ED</u>	Favorable
2.	<u>Kim</u>	<u>Babin</u>	<u>FT</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 258 creates the “Florida Internship Tax Credit Program,” which authorizes a corporate income tax credit of \$2,000 for each student intern employed by a qualified business, up to a maximum of \$10,000 in any taxable year, for taxable years beginning on or after January 1, 2022. The bill defines terms, specifies eligibility conditions for the credit, authorizes the carryforward of unused credits for a specified period, and authorizes the Department of Revenue (department) to adopt rules.

The Revenue Estimating Conference determined SB 258 will reduce General Revenue Fund receipts by \$4.4 million beginning in Fiscal Year 2021-2022 and by at least \$4.4 million each fiscal year thereafter. CS/SB 258 has not been reviewed by the Revenue Estimating Conference, but staff estimates that the changes do not significantly affect the fiscal impact.

The bill takes effect on July 1, 2021, except for the department’s emergency rulemaking authority, which takes effect upon becoming a law.

II. Present Situation:

Internships

The National Association of Colleges and Employers (NACE) defines an internship as “a form of experiential learning that integrates knowledge and theory learned in the classroom with

practical application and skill development in a professional setting. Internships give students the opportunity to gain valuable applied experience and make connections in professional fields they are considering for career paths; and give employers the opportunity to guide and evaluate talent.”¹

The NACE further defines criteria to determine if an experience is a legitimate internship:²

- The experience must be an extension of the classroom: a learning experience that provides for applying the knowledge gained in the classroom. It must not be simply to advance the operations of the employer or be the work that a regular employee would routinely perform.
- The skills or knowledge learned must be transferable to other employment settings.
- The experience has a defined beginning and end, and a job description with desired qualifications.
- There are clearly defined learning objectives or goals related to the professional goals of the student’s academic coursework.
- There is supervision by a professional with expertise and educational or professional background in the field of the experience.
- There is routine feedback by the experienced supervisor.
- There are resources, equipment, and facilities provided by the host employer that support learning objectives/goals.

Internships are typically one-time work or service experiences related to the student’s major or career goal. The internship plan generally involves students working in professional settings under the supervision and monitoring of practicing professionals. Internships can be paid³ or unpaid,⁴ and the student may or may not receive academic credit for performing the internship.⁵

Florida’s Corporate Income Tax

Florida imposes a tax on the taxable income of certain corporations and financial institutions doing business in Florida.⁶ The current rate is 4.458 percent⁷ of a taxpayer’s net income for its taxable year (the calendar or fiscal year or period upon which its net income is computed).⁸

¹ National Association of Colleges and Employers, *Position Statement: U.S. Internships*, <http://www.naceweb.org/advocacy/position-statements/united-states-internships.aspx> (last visited Mar. 11, 2021).

² National Association of Colleges and Employers, *Position Statement: U.S. Internships*, <http://www.naceweb.org/advocacy/position-statements/united-states-internships.aspx> (last visited Mar. 11, 2021).

³ The average hourly wage for interns in 2020 was \$19.54. National Association of Colleges and Employers, *2020 Internship & Co-op Survey Report, Executive Summary* (NACE Survey) (2020), available at <https://www.naceweb.org/uploadedfiles/files/2020/publication/executive-summary/2020-nace-internship-and-co-op-survey-executive-summary.pdf>, at 3.

⁴ The U.S. Department of Labor (USDOL) provides information to help determine whether or not interns and students are considered employees entitled to minimum wages and overtime pay under the Fair Labor Standards Act. That test requires courts to analyze the “economic reality” of the intern’s relationship with his or her employer to evaluate whether the internship is primarily for the economic benefit of the employer or primarily for the educational benefit of the intern. USDOL, U.S. Wage and Hour Division, *Fact Sheet #71: Internship Programs Under the Fair Labor Standards Act* (updated Jan. 2018), available at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs71.pdf>.

⁵ NACE Survey, *supra* note 3, at 2.

⁶ Chapter 220, F.S.

⁷ The tax rate was adjusted downward to 4.458 percent pursuant to s. 220.1105, F.S., for taxable years beginning on or after January 1, 2019. Pursuant to s. 220.1105(5), F.S., the rate is scheduled to return to 5.5 percent for taxable years beginning on or after January 1, 2022.

⁸ Sections 220.11(2) and 220.63(2), F.S.

The calculation of Florida corporate income tax starts with a corporation's federal taxable income.⁹ Taxable income earned by corporations operating in more than one state is taxed in Florida on an apportioned basis using a formula based 25 percent on property, 25 percent on payroll, and 50 percent on sales.¹⁰ Income that is apportioned to Florida using this formula is then subject to the Florida income tax. The first \$50,000 of net income is exempt, effective with taxable years beginning January 1, 2013.¹¹

The Revenue Estimating Conference estimates Fiscal Year 2021-2022 gross corporate income tax collections of approximately \$2.67 billion.¹² All revenue from the corporate income tax is paid into the General Revenue Fund.¹³

Corporate Income Tax Credits

Florida offers credits, refunds, and other incentives against Florida corporate income tax liability to promote business development and job creation within the state.¹⁴ Some incentives related to employment include:

- The Rural Job Tax Credit Program, which provides credits against sales tax or corporate income tax liability for eligible businesses located within qualified rural areas, up to a maximum credit amount of \$5 million per calendar year.¹⁵
- The Urban High-Crime Area Job Tax Credit Program, which provides credits against sales tax or corporate income tax liability for eligible businesses located within qualified high-crime areas, up to a maximum credit amount of \$5 million per calendar year.¹⁶
- Subtraction for Florida Employees Included in Calculation of Federal Employment Credits, which authorizes a deduction¹⁷ for the amount of wages and salaries paid to Florida employees for the taxable year for which no deduction is allowed under section 280C(a) of the Internal Revenue Code¹⁸, valued at \$17.9 million in 2020-2021.¹⁹

Credits against either the corporate income tax or the franchise tax are applied in an order established in law.²⁰ There is presently no credit available against corporate income tax for employing student interns.

⁹ Section 220.12, F.S.

¹⁰ Section 220.15, F.S.

¹¹ Section 220.14, F.S.

¹² Florida Revenue Estimating Conference, *General Revenue Fund, Changes to the Estimate* (December 21, 2020), available at <http://edr.state.fl.us/Content/conferences/generalrevenue/grchng.pdf> (last visited Mar. 11, 2021).

¹³ Section 220.701, F.S.

¹⁴ Florida Department of Revenue, *Corporate Income Tax Incentives (Incentives Related to Jobs)*, https://floridarevenue.com/taxes/taxesfees/Pages/corp_tax_incent.aspx (last visited Mar. 11, 2021).

¹⁵ Sections 212.098 and 220.1895, F.S.

¹⁶ Sections 212.097 and 220.1895, F.S.

¹⁷ Section 220.13(1)(b)3, F.S.

¹⁸ 26 U.S.C. s. 280C(a).

¹⁹ Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 67 (2020), available at <http://www.edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited Mar. 11, 2021).

²⁰ Section 220.02(8), F.S.

III. Effect of Proposed Changes:

The bill creates s. 220.198, F.S., to establish the “Florida Internship Tax Credit Program,” which authorizes a tax credit of \$2,000 for each student intern employed by a qualified business, up to a maximum of \$10,000 in any taxable year, for taxable years beginning on or after January 1, 2022.

The bill amends s. 220.02, F.S., to specify the order in which the credit is applied in relation to other corporate income tax credits. The bill amends s. 220.13, F.S., to require a taxpayer to add claimed credit amounts back to its taxable income, which prevents the taxpayer from claiming the amount as both a credit and a deduction.

The bill defines a “student intern” as a person who has completed at least 60 credit hours at a state university or a Florida College System institution; a person who is enrolled in a career center operated by a school district under s. 1001.44, F.S., or a charter technical career center; or any graduate student enrolled at a state university. The bill defines “full time” as at least 30 hours per week. The bill defines a “qualified business” as a business that is in existence and has been continuously operating for at least three years.

The bill authorizes a qualified business to receive a credit against Florida corporate income tax liability in the amount of \$2,000 per student intern employed by the qualified business. Under the bill, a business would qualify to receive the tax credit if:

- The business employed at least one student in an internship in which the student worked full time for at least nine consecutive weeks, and the qualified business provides the department documentation evidencing each internship claimed;
- At the start of an internship, each student intern provides the qualified business with verification by the student intern’s state university, Florida College System institution, career center operated by a school district under s. 1001.44, F.S., or charter technical career center that the student intern is enrolled and maintains a minimum grade point average of 2.0 on a 4.0 scale; and
- The qualified business provides the department documentation for the current taxable year to show that at least 20 percent of the business’s full-time employees were previously employed by that business as student interns, or the business:
 - For the three prior years on average, employed ten or fewer full-time employees;
 - Previously hired at least one student intern; and
 - For the current taxable year, employs on a full-time basis at least one employee who was previously employed by the business as a student intern.

The bill establishes a maximum credit of \$10,000 in any taxable year and authorizes a qualified business to carry forward any unused portion of the tax credit for up to two taxable years.

The bill authorizes the department to adopt rules governing the manner and form of applications for the tax credit and establishing qualification requirements for the tax credit. The rule may need to specify requirements not in the bill, such as timelines for approval of tax credits, and which entity receives the documentation of the student’s enrollment status. The bill also authorizes the department to adopt emergency rules, which are effective for 6 months after adoption and may

be renewed during the pendency of procedures to adopt permanent rules. The emergency rulemaking authority expires July 1, 2022.

The bill takes effect on July 1, 2021, except for the department's emergency rulemaking authority, which takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. Therefore, the mandates provisions of s. 18, Art. VII of the State 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 state taxes or fees. Therefore, the requirements of s. 19, Art. VII of the State Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined SB 258 will reduce General Revenue Fund receipts by \$4.4 million beginning in Fiscal Year 2021-2022 and by at least \$4.4 million each fiscal year thereafter. CS/SB 258 has not been reviewed by the Revenue Estimating Conference, but staff estimates that the changes do not significantly affect the fiscal impact.

B. Private Sector Impact:

Qualified businesses that employ student interns specified in the bill and meet specified requirements may decrease their corporate income tax liability by up to \$10,000 in any taxable year. The tax credit established in the bill may provide an incentive for qualified businesses to provide internship opportunities for students.

C. **Government Sector Impact:**

The department estimates it requires a \$37,497 appropriation in Fiscal Year 2022-2023 to implement the bill.²¹

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

The bill does not define an “internship” experience, and so it is unclear if any type of work-based educational experience may qualify, such as co-operative education, apprenticeships, practicums, service learning, clinical experience, or virtual internships. The bill does not specify if the internship may be paid or unpaid, or if the student must be receiving academic course credit for the internship experience.

VIII. **Statutes Affected:**

The bill creates section 220.198 of the Florida Statutes.

The bill amends the following sections of the Florida Statutes: ss. 220.02 and 220.13.

IX. **Additional Information:**

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

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

CS by Finance and Tax on March 11, 2021:

The CS:

- Specifies the order in which the internship tax credit is claimed relative to other credits.
- Prevents the taxpayer from claiming the credit amount as both a credit and a deduction.
- Provides that the credit may be applied against a taxpayer’s current tax liability.
- Specifies documentation the taxpayer must provide to the department regarding its interns and revises the verification an intern must provide to the qualified business.
- Authorizes the department to adopt emergency rules.
- Makes clarifying and technical changes.

B. **Amendments:**

None.

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

²¹ Florida Dep’t of Revenue, *Senate Bill 258 Bill Analysis* (Jan. 26, 2021) (on file with the Senate Committee on Finance and Tax).



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LEGISLATIVE ACTION

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

The Committee on Finance and Tax (Jones) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (8) of section 220.02, Florida
Statutes, is amended to read:

220.02 Legislative intent.—

(8) It is the intent of the Legislature that credits
against either the corporate income tax or the franchise tax be
applied in the following order: those enumerated in s. 631.828,



11 those enumerated in s. 220.191, those enumerated in s. 220.181,
12 those enumerated in s. 220.183, those enumerated in s. 220.182,
13 those enumerated in s. 220.1895, those enumerated in s. 220.195,
14 those enumerated in s. 220.184, those enumerated in s. 220.186,
15 those enumerated in s. 220.1845, those enumerated in s. 220.19,
16 those enumerated in s. 220.185, those enumerated in s. 220.1875,
17 those enumerated in s. 220.193, those enumerated in s. 288.9916,
18 those enumerated in s. 220.1899, those enumerated in s. 220.194,
19 ~~and~~ those enumerated in s. 220.196, and those enumerated in s.
20 220.198.

21 Section 2. Paragraph (a) of subsection (1) of section
22 220.13, Florida Statutes, is amended to read:

23 220.13 "Adjusted federal income" defined.—

24 (1) The term "adjusted federal income" means an amount
25 equal to the taxpayer's taxable income as defined in subsection
26 (2), or such taxable income of more than one taxpayer as
27 provided in s. 220.131, for the taxable year, adjusted as
28 follows:

29 (a) *Additions.*—There shall be added to such taxable income:

30 1.a. The amount of any tax upon or measured by income,
31 excluding taxes based on gross receipts or revenues, paid or
32 accrued as a liability to the District of Columbia or any state
33 of the United States which is deductible from gross income in
34 the computation of taxable income for the taxable year.

35 b. Notwithstanding sub-subparagraph a., if a credit taken
36 under s. 220.1875 is added to taxable income in a previous
37 taxable year under subparagraph 11. and is taken as a deduction
38 for federal tax purposes in the current taxable year, the amount
39 of the deduction allowed shall not be added to taxable income in



40 the current year. The exception in this sub-subparagraph is
41 intended to ensure that the credit under s. 220.1875 is added in
42 the applicable taxable year and does not result in a duplicate
43 addition in a subsequent year.

44 2. The amount of interest which is excluded from taxable
45 income under s. 103(a) of the Internal Revenue Code or any other
46 federal law, less the associated expenses disallowed in the
47 computation of taxable income under s. 265 of the Internal
48 Revenue Code or any other law, excluding 60 percent of any
49 amounts included in alternative minimum taxable income, as
50 defined in s. 55(b)(2) of the Internal Revenue Code, if the
51 taxpayer pays tax under s. 220.11(3).

52 3. In the case of a regulated investment company or real
53 estate investment trust, an amount equal to the excess of the
54 net long-term capital gain for the taxable year over the amount
55 of the capital gain dividends attributable to the taxable year.

56 4. That portion of the wages or salaries paid or incurred
57 for the taxable year which is equal to the amount of the credit
58 allowable for the taxable year under s. 220.181. This
59 subparagraph shall expire on the date specified in s. 290.016
60 for the expiration of the Florida Enterprise Zone Act.

61 5. That portion of the ad valorem school taxes paid or
62 incurred for the taxable year which is equal to the amount of
63 the credit allowable for the taxable year under s. 220.182. This
64 subparagraph shall expire on the date specified in s. 290.016
65 for the expiration of the Florida Enterprise Zone Act.

66 6. The amount taken as a credit under s. 220.195 which is
67 deductible from gross income in the computation of taxable
68 income for the taxable year.



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69 7. That portion of assessments to fund a guaranty
70 association incurred for the taxable year which is equal to the
71 amount of the credit allowable for the taxable year.

72 8. In the case of a nonprofit corporation which holds a
73 pari-mutuel permit and which is exempt from federal income tax
74 as a farmers' cooperative, an amount equal to the excess of the
75 gross income attributable to the pari-mutuel operations over the
76 attributable expenses for the taxable year.

77 9. The amount taken as a credit for the taxable year under
78 s. 220.1895.

79 10. Up to nine percent of the eligible basis of any
80 designated project which is equal to the credit allowable for
81 the taxable year under s. 220.185.

82 11. The amount taken as a credit for the taxable year under
83 s. 220.1875. The addition in this subparagraph is intended to
84 ensure that the same amount is not allowed for the tax purposes
85 of this state as both a deduction from income and a credit
86 against the tax. This addition is not intended to result in
87 adding the same expense back to income more than once.

88 12. The amount taken as a credit for the taxable year under
89 s. 220.193.

90 13. Any portion of a qualified investment, as defined in s.
91 288.9913, which is claimed as a deduction by the taxpayer and
92 taken as a credit against income tax pursuant to s. 288.9916.

93 14. The costs to acquire a tax credit pursuant to s.
94 288.1254(5) that are deducted from or otherwise reduce federal
95 taxable income for the taxable year.

96 15. The amount taken as a credit for the taxable year
97 pursuant to s. 220.194.



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98 16. The amount taken as a credit for the taxable year under
99 s. 220.196. The addition in this subparagraph is intended to
100 ensure that the same amount is not allowed for the tax purposes
101 of this state as both a deduction from income and a credit
102 against the tax. The addition is not intended to result in
103 adding the same expense back to income more than once.

104 17. The amount taken as a credit for the taxable year
105 pursuant to s. 220.198.

106 Section 3. Section 220.198, Florida Statutes, is created to
107 read:

108 220.198 Internship tax credit program.-

109 (1) This section may be cited as the "Florida Internship
110 Tax Credit Program."

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

112 (a) "Full time" means at least 30 hours per week.

113 (b) "Qualified business" means a business that is in
114 existence and has been continuously operating for at least 3
115 years.

116 (c) "Student intern" means a person who has completed at
117 least 60 credit hours at a state university or a Florida College
118 System institution; a person who is enrolled in a career center
119 operated by a school district under s. 1001.44 or a charter
120 technical career center; or any graduate student enrolled at a
121 state university.

122 (3) For taxable years beginning on or after January 1,
123 2022, a qualified business is eligible for a credit against the
124 tax imposed by this chapter in the amount of \$2,000 per student
125 intern if all of the following apply:

126 (a) The qualified business employed at least one student



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127 intern in an internship in which the student intern worked full
128 time in this state for at least 9 consecutive weeks, and the
129 qualified business provides the department documentation
130 evidencing each internship claimed.

131 (b) The qualified business provides the department
132 documentation for the current taxable year showing that at least
133 20 percent of the business' full-time employees were previously
134 employed by that business as student interns.

135 (c) At the start of an internship, each student intern
136 provides the qualified business with verification by the student
137 intern's state university, Florida College System institution,
138 career center operated by a school district under s. 1001.44, or
139 charter technical career center that the student intern is
140 enrolled and maintains a minimum grade point average of 2.0 on a
141 4.0 scale.

142 (4) Notwithstanding paragraph (3)(b), a qualified business
143 that, on average for the 3 immediately preceding years, employed
144 10 or fewer full-time employees may receive the tax credit if it
145 provides documentation that it previously hired at least one
146 student intern and, for the current taxable year, that it
147 employs on a full-time basis at least one employee who was
148 previously employed by that qualified business as a student
149 intern.

150 (5) A qualified business may not claim a tax credit of more
151 than \$10,000 in any one taxable year.

152 (6) The department may adopt rules governing the manner and
153 form of applications for the tax credit and establishing
154 qualification requirements for the tax credit.

155 (7) A qualified business may carry forward any unused



156 portion of a tax credit under this section for up to 2 taxable
157 years.

158 Section 4. (1) The Department of Revenue is authorized, and
159 all conditions are deemed met, to adopt emergency rules pursuant
160 to s. 120.54(4), Florida Statutes, for the purpose of
161 administering this act.

162 (2) Notwithstanding any other law, emergency rules adopted
163 pursuant to subsection (1) are effective for 6 months after
164 adoption and may be renewed during the pendency of procedures to
165 adopt permanent rules addressing the subject of the emergency
166 rules.

167 (3) This section shall take effect upon this act becoming a
168 law and expires July 1, 2022.

169 Section 5. Except as otherwise expressly provided in this
170 act and except for this section, which shall take effect upon
171 this act becoming a law, this act shall take effect July 1,
172 2021.

173
174 ===== T I T L E A M E N D M E N T =====

175 And the title is amended as follows:

176 Delete everything before the enacting clause
177 and insert:

178 A bill to be entitled
179 An act relating to an internship tax credit program;
180 amending s. 220.02, F.S.; specifying the order in
181 which the Florida Internship Tax Credit Program
182 corporate income tax credit created by this act is
183 applied; amending s. 220.13, F.S.; requiring certain
184 claimed tax credit amounts to be added to a taxpayer's



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185 adjusted federal income; creating s. 220.198, F.S.;

186 providing a short title; defining terms; providing a

187 corporate income tax credit for qualified businesses

188 employing student interns if certain criteria are met;

189 specifying the amount of the credit a qualified

190 business may claim per student intern; specifying a

191 limit on the credit claimed per taxable year;

192 authorizing the Department of Revenue to adopt certain

193 rules; authorizing a qualified business to carry

194 forward unused credit for a certain time; authorizing

195 the department to adopt emergency rules; providing for

196 expiration of that authority; providing effective

197 dates.

By Senator Jones

35-00585-21

2021258__

A bill to be entitled

An act relating to an internship tax credit program; creating s. 220.198, F.S.; providing a short title; defining terms; providing a corporate income tax credit for qualified businesses employing degree-seeking student interns if certain criteria are met; specifying the amount of the credit a qualified business may claim per student intern; specifying a limit on the credit claimed per taxable year; authorizing the Department of Revenue to adopt certain rules; authorizing a qualified business to carry forward unused credit for a certain time; providing an effective date.

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

Section 1. Section 220.198, Florida Statutes, is created to read:

220.198 Internship tax credit program.—

(1) This section may be cited as the "Florida Internship Tax Credit Program."

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

(a) "Degree-seeking student intern" means a person who is a junior or senior at a state university, a Florida College System institution, a career center operated by a school district under s. 1001.44, or a charter technical career center, or any graduate student enrolled at a state university.

(b) "Full time" means at least 30 hours per week.

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

35-00585-21

2021258__

(c) "Qualified business" means a business that is in existence and has been continuously operating for at least 3 years.

(3) For taxable years beginning on or after January 1, 2022, a qualified business may receive a tax credit for previously paid corporate income taxes imposed under this chapter in the amount of \$2,000 per student intern if:

(a) The qualified business employed a degree-seeking student in an internship in which the student worked full time for at least 9 consecutive weeks;

(b) The qualified business provides documentation for the current taxable year to show that at least 20 percent of the business's full-time employees were previously employed by that business as degree-seeking student interns;

(c) A degree-seeking student intern working for a qualified business had a minimum grade point average of 2.0 at the start of the internship; and

(d) The state university, Florida College System institution, career center operated by a school district under s. 1001.44, or charter technical career center has provided documentation attesting to the degree-seeking student intern's enrollment status.

(4) Notwithstanding paragraph (3)(b), a qualified business that, for the 3 prior years on average, employed 10 or fewer full-time employees may receive the tax credit if it provides documentation that it previously hired at least one degree-seeking student intern and, for the current taxable year, that it employs on a full-time basis at least one employee who was previously employed by that qualified business as a degree-

Page 2 of 3

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

35-00585-21

2021258__

59 seeking student intern.

60 (5) A qualified business may not claim a tax credit of more
61 than \$10,000 for previously paid corporate income taxes in any
62 one taxable year.

63 (6) The department may adopt rules governing the manner and
64 form of applications for the tax credit and establishing
65 qualification requirements for the tax credit.

66 (7) A qualified business awarded a tax credit for
67 previously paid corporate income taxes under this section may
68 carry forward any unused portion of a tax credit for up to 2
69 taxable years.

70 Section 2. This act shall take effect July 1, 2021.



The Florida Senate

Committee Agenda Request

To: Chair Ana Maria Rodriguez
Committee on Finance and Tax

Subject: Committee Agenda Request

Date: March 8th, 2021

I respectfully request that **Senate Bill #258**, relating to Internship Tax Credit Program, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Shev", positioned above a horizontal line.

Senator Shevrin D. "Shev" Jones
Florida Senate, District 35

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/11/21

SB756

Meeting Date

Bill Number (if applicable)

Topic

Internship Tax Credit

Amendment Barcode (if applicable)

Name

David Serdan

Job Title

Retired Business Citizen of Florida

Address

66 Winterygreen Dr

Phone

352 805 6591

Street

City

Fruitland Park FL 34731

State

Zip

Email

golfer

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

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

Representing

SIFA & Retired Business Owner

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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

CourtSmart Tag Report

Room: SB 110

Case No.:

Type:

Caption: Senate Finance and Tax Committee

Judge:

Started: 3/11/2021 9:01:10 AM

Ends: 3/11/2021 9:24:09 AM

Length: 00:23:00

9:01:09 AM Meeting called to order by Chair Rodriguez
9:01:12 AM Roll call by CAA Stephanie Bell-Parke
9:01:25 AM Quorum present
9:01:47 AM Comments from Senator Rodriguez
9:02:31 AM Introduction of Tab 1, S/SB 734 by Chair Rodriguez
9:02:45 AM Explanation of CS/SB 734, Tax Exemptions by Chair Hooper on behalf of Senator Gruters
9:04:03 AM Question from Senator Berman
9:04:08 AM Response from Senator Hooper
9:04:14 AM Follow-up question from Senator Berman
9:04:19 AM Response from Senator Hooper
9:05:14 AM Introduction of Amendment Barcode 954384 by Chair Rodriguez
9:05:23 AM Explanation of Amendment by Senator Hooper
9:05:34 AM Comments from Chair Rodriguez
9:05:49 AM Closure waived
9:05:52 AM Amendment adopted
9:06:00 AM Comments from Chair Rodriguez
9:06:10 AM Carolyn Johnson, Florida Chamber of Commerce waives in support
9:06:15 AM Jake Farmer, Florida Retail Federation waives in support
9:06:35 AM Senator Hooper in closure
9:06:55 AM Roll call by CAA
9:07:08 AM CS/CS/SB 734 reported favorably
9:07:22 AM Introduction of Tab 2, CS/SB 598 by Chair Rodriguez
9:07:41 AM Explanation of CS/SB 598, Back-to-School Sales Tax Holiday by Senator Perry
9:07:56 AM Comments from Chair Rodriguez
9:08:24 AM Jake Farmer, Florida Retail Federation waives in support
9:08:38 AM Comments from Chair Rodriguez
9:08:46 AM Senator Perry in closure
9:08:50 AM Roll call by CAA
9:08:57 AM CS/SB 598 reported favorably
9:09:09 AM Introduction of Tab 3, SB 866 by Chair Rodriguez
9:09:26 AM Explanation of SB 866, H. Lee Moffitt Cancer Center and Research Institute by Senator Hooper
9:10:55 AM Comments from Chair Rodriguez
9:11:00 AM Merritt Martin, Moffitt Cancer Center waives in support
9:11:20 AM Senator Harrell in debate
9:12:19 AM Senator Cruz in debate
9:13:42 AM Closure waived
9:13:44 AM Roll call by CAA
9:13:49 AM SB 866 reported favorably
9:14:26 AM Introduction of Tab 4, SB 688 by Chair Rodriguez
9:14:30 AM Explanation of SB 688, Waivers of Exemptions of Applicable Assets by Senator Berman
9:15:15 AM Comments from Chair Rodriguez
9:15:22 AM Aimee Diaz Lyon waives in support
9:15:44 AM Closure waived
9:15:47 AM Roll call by CAA
9:15:51 AM SB 688 reported favorably
9:16:02 AM Introduction of Tab 5, SB 258 by Chair Rodriguez
9:16:16 AM Explanation of SB 258, Internship Tax Credit Program by Senator Jones
9:17:41 AM Comments from Chair Rodriguez
9:17:48 AM Question from Senator Harrell
9:17:54 AM Response from Senator Jones
9:18:36 AM Follow-up question from Senator Harrell
9:18:44 AM Response from Senator Jones

9:19:19 AM Introduction of Amendment Barcode 779720 by Chair Rodriguez
9:19:35 AM Explanation of Amendment by Senator Jones
9:20:18 AM Comments from Chair Rodriguez
9:20:34 AM Closure waived
9:20:37 AM Amendment adopted
9:20:43 AM Comments from Chair Rodriguez
9:20:49 AM Question from Senator Wright
9:21:20 AM Response from Senator Jones
9:21:39 AM Comments from Chair Rodriguez
9:21:50 AM Speaker David Serdar
9:22:44 AM Comments from Chair Rodriguez
9:22:50 AM Senator Jones in closure
9:22:54 AM Roll call by CAA
9:23:32 AM CS/SB 258 reported favorably
9:23:47 AM Comments from Chair Rodriguez
9:23:54 AM Senator Jones moves to adjourn
9:23:59 AM Meeting adjourned