

SB 1024 by **Hukill**; (Identical to H 00601) Ticket Websites

479106 D S RCS RI, Hukill Delete everything after 02/15 07:23 AM

CS/SB 1128 by **HP, Stargel**; (Identical to H 00675) Pharmacies

SB 1288 by **Simmons (CO-INTRODUCERS) Steube**; (Similar to H 01029) Tobacco Products

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Hutson, Chair
Senator Hukill, Vice Chair

MEETING DATE: Wednesday, February 14, 2018
TIME: 4:00—6:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Hutson, Chair; Senator Hukill, Vice Chair; Senators Benacquisto, Bracy, Brandes, Braynon, Gibson, Steube, Thurston, and Young

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.			
Secretary of Business and Professional Regulation			
1	Zachem, Jonathan (Tallahassee)	Pleasure of Governor	Recommend Confirm Yeas 8 Nays 0
Secretary of the Department of the Lottery			
2	Poppell, James "Jim" W. (Tallahassee)	Pleasure of Governor	Recommend Confirm Yeas 7 Nays 0
TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 1024 Hukill (Identical H 601)	Ticket Websites; Prohibiting website operators from using specified information in the sale of certain tickets, etc. RI 02/14/2018 Fav/CS CM RC	Fav/CS Yeas 8 Nays 0
4	CS/SB 1128 Health Policy / Stargel (Identical H 675)	Pharmacies; Revising the membership of the Board of Pharmacy; establishing Class III institutional pharmacies; authorizing the distribution of medicinal drugs and prepackaged drug products without a specified permit under certain conditions, etc. HP 01/30/2018 Fav/CS RI 02/14/2018 Favorable RC	Favorable Yeas 9 Nays 0
Workshop - Discussion and testimony only on the following (no vote to be taken):			
5	SB 1288 Simmons (Similar H 1029, Compare H 797, H 1095, S 350, S 994, S 1270)	Tobacco Products; Citing this act as the "Tobacco 21 Act"; revising shipping documentation requirements for specified sales of tobacco products; revising the age limit for smoking near school property; prohibiting certain entities from gifting sample tobacco products to persons under 21 years of age, etc. RI 02/14/2018 Workshop-Discussed CM RC	Workshop-Discussed

COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Wednesday, February 14, 2018, 4:00—6:00 p.m.

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

125

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Ken Detzner, Secretary of State,
do hereby certify that

Jonathan Zachem

is duly appointed

Secretary,
Department of Business and Professional
Regulation

for a term beginning on the Twenty-Eighth day of June, A.D.,
2017, to serve at the pleasure of the Governor and is subject to
be confirmed by the Senate during the next regular session of the
Legislature.



*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the First day of November, A.D., 2017.*

Ken Detzner

Secretary of State

If photocopied or chemically altered, the word "VOID" will appear.

State of Florida appears in small letters across the face of this 8 1/2 x 11" document



RICK SCOTT
GOVERNOR

RECEIVED
17 OCT -6 PM 12:21
DIVISION OF ELECTIONS
SECRETARY OF STATE

June 27, 2017

Secretary Kenneth W. Detzner
Secretary of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised that I have made the following appointment under the provisions of Section 20.165, Florida Statutes:

Mr. Jonathan Zachem
2933 Quail Rise Court
Tallahassee, Florida 32309

as Secretary of the Department of Business and Professional Regulation, subject to confirmation by the Senate. This appointment is effective June 28, 2017, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/cr

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED
DEPARTMENT OF STATE
17 OCT 25 AM 9:23
DIVISION OF ELECTIONS
TALLAHASSEE, FL

STATE OF FLORIDA

County of Leon

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary, Department of Business and Professional Regulation
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]
Signature

Sworn to and subscribed before me this 17th day of October, 2017.

Dixie Irene Parker
Signature of Official Administering Oath or of Notary Public



Dixie Irene Parker
Printed Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: Home Office

2601 Blair Stone Road
Street or Post Office Box

Jonathan Zacher
Print Name

Tallahassee, Florida 32399-1000
City, State, Zip Code

[Signature]
Signature

CERTIFICATION

STATE OF FLORIDA
COUNTY OF Leon

Before me, the undersigned Notary Public of Florida, personally appeared Jonathan Zachem,
who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

[Signature]
Signature of Applicant-Affiant

Sworn to and subscribed before me this 18th day of August, 2017

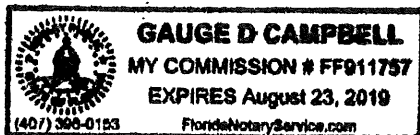
[Signature]
Signature of Notary Public-State of Florida

(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 8/23/2019

Personally Known OR Produced Identification

Type of Identification Produced _____



(seal)

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of
Jonathan Zachem
Secretary of Business and Professional Regulation


NOTICE OF HEARING

TO: Secretary Jonathan Zachem

YOU ARE HEREBY NOTIFIED that the Committee on Regulated Industries of the Florida Senate will conduct a hearing on your executive appointment on Wednesday, February 14, 2018, in the Toni Jennings Committee Room, 110 Senate Office Building, commencing at 4:00 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 9th day of February, 2018

Committee on Regulated Industries



Senator Travis Hutson
As Chair and by authority of the committee

cc: Members, Committee on Regulated Industries
Office of the Sergeant at Arms

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: Jonathan Zachem

ANSWER:

"I DO"

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Regulated Industries

DATE: February 14, 2018

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/14/18

Meeting Date

Bill Number (if applicable)

Topic confirmation

Amendment Barcode (if applicable)

Name Jonathan Zachen

Job Title Secretary

Address 2601 Blairstone Rd.

Phone

Street

TLH

FL

32399

Email

City

State

Zip

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

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

Representing DBPR

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

Lobbyist registered with Legislature: [x] 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)

1405

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Ken Detzner, Secretary of State,
do hereby certify that

James (Jim) W. Poppell

is duly appointed

**Secretary,
Department of Lottery**

for a term beginning on the Tenth day of July, A.D., 2017, to
serve at the pleasure of the Governor and is subject to be
confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twenty-Eighth day of July, A.D., 2017.*



Ken Detzner

Secretary of State

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document



RICK SCOTT
GOVERNOR

RECEIVED
DEPARTMENT OF STATE
2017 JUL 10 PM 2:40
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

June 29, 2017

Secretary Kenneth W. Detzner
Secretary of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised that I have made the following appointment under the provisions of Section 20.317, Florida Statutes:

Mr. Jim Poppell
3502 Limerick Drive
Tallahassee, Florida 32309

As Secretary of the Florida Department of Lottery. This appointment is effective July 10, 2017, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/cr

HAND DELIVERED

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

17 JUL 26 PM 3:03

DIVISION OF ELECTIONS
SECRETARY OF STATE

STATE OF FLORIDA

County of Leon

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary of the Florida Lottery

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

James W. (Jim) Poppell
Signature

Sworn to and subscribed before me this 26th day of July, 2017.

Laura K. Clement
Signature of Officer Administering Oath or of Notary Public



Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: Home Office

250 Marriott Drive

Street or Post Office Box

Tallahassee, FL 32301

City, State, Zip Code

James (Jim) W. Poppell

Print Name

James (Jim) W. Poppell
Signature

RECEIVED

CERTIFICATION

17 JUL 26 PM 3:04

STATE OF FLORIDA
COUNTY OF Leon

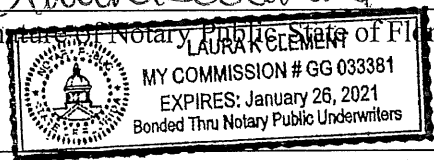
DIVISION OF ELECTIONS
SECRETARY OF STATE

Before me, the undersigned Notary Public of Florida, personally appeared James W. Poppell, who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

James W. Poppell
Signature of Applicant/Affiant

Sworn to and subscribed before me this 26th day of July, 2017.

Laura K. Clement
Signature of Notary Public, State of Florida



(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: _____

Personally Known OR Produced Identification

Type of Identification Produced _____

(seal)

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of
James "Jim" W. Poppell
Secretary of the Department of the Lottery


NOTICE OF HEARING

TO: Secretary James "Jim" W. Poppell

YOU ARE HEREBY NOTIFIED that the Committee on Regulated Industries of the Florida Senate will conduct a hearing on your executive appointment on Wednesday, February 14, 2018, in the Toni Jennings Committee Room, 110 Senate Office Building, commencing at 4:00 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 9th day of February, 2018

Committee on Regulated Industries



Senator Travis Hutson
As Chair and by authority of the committee

cc: Members, Committee on Regulated Industries
Office of the Sergeant at Arms

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: James "Jim" Poppell

ANSWER: "I DO"

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Regulated Industries

DATE: February 14, 2018

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/14/2018
Meeting Date

Bill Number (if applicable)

Topic CONFIRMATION

Amendment Barcode (if applicable)

Name JIM POPPEN

Job Title SECRETARY

Address _____
Street

Phone _____

City State Zip

Email _____

Speaking: For Against Information

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

Representing FLORIDA LOTTERY

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
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 Regulated Industries

BILL: CS/SB 1024

INTRODUCER: Regulated Industries Committee and Senator Hukill

SUBJECT: Ticket Websites

DATE: February 14, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	Fav/CS
2.			CM	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1024 regulates the content of certain Internet website addresses used by operators of ticket websites that advertise the sale or resale of tickets for events at Florida venues (such as stadiums and concert halls). The bill prohibits the intentional, unauthorized use by a website operator of an Internet website address that contains all or part of the venue name, or a substantially similar name.

A website operator authorized by a venue to act upon its behalf is exempt from the prohibitions in the bill relating to the use of venue identifiers.

The bill provides violations by non-exempt ticket website operators constitute a deceptive and unfair trade practice under the Florida Deceptive and Unfair Trade Practices Act, subjecting violators to legal remedies including injunctions against the deceptive conduct, the award of actual damages caused by the deceptive act, and for a willful deceptive act, civil penalties of up to \$10,000 per violation (up to \$15,000 for violations involving senior citizens, persons with disabilities, or members of the United States Armed Forces).

The remedies provided in the bill are supplemental to other state and federal laws which apply to conduct that violates the prohibitions in the bill.

The bill exempts media, such as newspapers and television stations, acting in good faith, from liability for publishing or broadcasting advertisements that improperly include venue names, unless the media owner is the website operator violating the act.

CS/SB 1024 does not have an impact on state government.

The bill provides an effective date of July 1, 2018.

II. Present Situation:

Until the Internet became popular, transactions by consumers for the sale of tickets to attend scheduled sporting or other entertainment events were transacted in person or by mail with the authorized “box office” of a stadium, concert hall, theater, or similar venue. With the advent of Internet applications providing various services, consumers are able to seek out information regarding local and out-of-town events, select desired seats, and purchase tickets online.

Increased ticket purchasing using Internet applications has resulted in consumers raising issues relating to inaccurate online information, ticket authenticity and pricing, undisclosed service fees, and customer service issues. Some website operators include the name of the venue in Internet addresses, which could be misleading to ticket purchasers who seek to transact purchases directly with the official online “box office” of a venue. When multiple website operators include venue names in Internet website addresses,¹ a search on the Internet by a consumer for “tickets to the ABC concert at XYZ venue,” often results in a consumer concluding, in error, they have accessed the official website of the event venue.

Ticket resellers may be required by the policies of an Internet search engine platform to apply to be certified advertisers before advertisements are accepted for publication on the platform, and to meet various requirements include proper disclosure of pricing and fees.²

Federal Trade Commission Settlement

The Federal Trade Commission (FTC) and the State of Connecticut have addressed Internet advertisements and websites alleged to have misled consumers, resulting in the consumers believing they were buying event tickets (at face value) directly from an original venue. In a case settled in 2014, the FTC alleged that the third largest online exchange for resale event tickets, and two of its sales partners (online ticket sellers,) used misleading advertising techniques. These

¹ According to the Department of Agriculture and Consumer Services, the Internet Corporation for Assigned Names and Numbers (ICANN) is a multi-stakeholder nonprofit organization that coordinates domain names and web addresses worldwide. See *Agency Legislative Bill Analysis by the Department of Agriculture and Consumer Services* for SB 1024, dated Dec. 19, 2017 (on file with Senate Committee on Regulated Industries) at page 1, and see <https://www.icann.org/resources/pages/what-2012-02-25-en> (last visited Feb. 8, 2018) discussing the role of ICANN to ensure unique identifiers, stability, and coordination for locating Internet content.

² For example, as of February, 2018, Google’s advertising policies require advertisers be certified by Google, which requires that advertisers apply for certification and must: 1) not imply they are a primary marketplace by using words like “official” or by including the venue name in the website address 2) prominently disclose they are a ticket reseller/secondary marketplace; 3) provide a price breakdown, including taxes and fees, during the checkout process, before requiring payment information from purchasers; and 4) beginning March, 2018, prominently provide the face value of a ticket along with the reseller’s price in the same currency. See <https://support.google.com/adwordspolicy/answer/7577050?hl=en> (last visited Feb. 14, 2018).

techniques included the design of online advertisements and corresponding websites to mimic genuine venue names, by combining them with the terms “official” and “box office,” to make it appear the misleading websites were the websites of the actual venue or performer.³

The FTC alleged the online ticket sellers paid for advertisements that conveyed “the impression that [the advertisement] was for the official Radio City Music Hall site”, and consumers who clicked on the advertisement accessed a website “prominently titled ‘Radio City Music Hall’ which featured photos, text, and other material designed to look like the official Radio City Music Hall website.”⁴ Instead, the website was an online ticket seller site “selling resale tickets, often at a price higher than original face value.”⁵

Under the FTC settlement order, the online ticket sellers are prohibited from:

- Misrepresenting, directly or by implication, that a resale ticket site is a venue site or is offering tickets at face value; and
- Using the word “official” in any ad, URL,⁶ website, or other advertising for resale tickets, except in very narrow circumstances.⁷

Additionally, the online ticket sellers are required to:

- Affirmatively disclose that:
 - Their websites are resale marketplaces and not venues or box offices;
 - The ticket price may exceed the ticket’s face value; and
 - The website is not owned by the venue, sports team, performer, or promoter.
- Sign written contracts in which all partners promise to adhere to the settlement order;
- Take disciplinary action when partners violate the settlement order;
- Appropriately handle consumer complaints about venue confusion; and
- Pay a total of \$1.4 million to the state of Connecticut.⁸

Sale and Resales of Event Admission Tickets in Florida

Florida law provides a criminal prohibition for the fraudulent creation or possession of admission tickets to events.⁹ A person who counterfeits, forges, alters, clones, or possesses a ticket, card, wristband, or other medium that accesses or is associated with an admission ticket, token, or paper, with the intent to defraud a sports, amusement, concert, or other facility offering services

³ See <https://www.consumer.ftc.gov/blog/2014/07/ticket-resellers-settle-misleading-advertising-charges> (last visited Feb. 8, 2018).

⁴ See <https://www.ftc.gov/news-events/press-releases/2014/07/ticketnetwork-marketing-partners-ryadd-secure-box-office-settle> (last visited Feb. 8, 2018).

⁵ *Id.*

⁶ The term “uniform resource locator” or “URL” is defined as the address of a resource (such as a document or website) on the Internet; a URL often includes information such as directory and file names. See <https://www.merriam-webster.com/dictionary/URL> (last visited Feb. 8, 2018).

⁷ See *supra* note 3.

⁸ *Id.*

⁹ See s. 817.355, F.S., and part I of ch. 817, F.S., relating to false pretenses and frauds.

to the general public, commits a first degree misdemeanor.¹⁰ A second or subsequent violation is commit a third degree felony.¹¹

A person who counterfeits, forges, alters, clones, or possesses 10 or more tickets, cards, wristbands, or other media that access or are associated with an admission ticket, token, or paper, with the intent to defraud a sports, amusement, concert, or other facility offering services to the general public, commits a third degree felony.¹²

Purchasers and resellers of tickets may also be subject to civil penalties under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), as discussed below.¹³ In the absence of a contract with the original ticket seller to distribute or sell tickets, a person who knowingly purchases from the original ticket seller, with the intent of resale, a quantity of event tickets which exceeds the posted¹⁴ maximum ticket limit per purchaser, violates FDUTPA.¹⁵

Florida Deceptive and Unfair Trade Practices Act

Part II of ch. 501, F.S., the “Florida Deceptive and Unfair Trade Practices Act” (FDUTPA) addresses protection of the public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce. Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.¹⁶

Section 501.203(2), F.S., provides that the FDUTPA may be enforced by the:

- Office of the state attorney when a violation occurs in or affects the judicial circuit under the jurisdiction of that state attorney; or
- Department of Legal Affairs, if the violation occurs in or affects more than one judicial circuit, or if the office of the state attorney defers to the department in writing, or fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney.

(Hereafter, an “enforcing authority.”)

An enforcing authority may:

- Obtain a declaratory judgment that an act or practice violates the FDUTPA;

¹⁰ See s. 817.355(1), F.S. Section 775.082, F.S., provides a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S., provides a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

¹¹ See s. 817.355(2), F.S. Section 775.082, F.S., provides a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides a felony of the third degree is punishable by a fine not to exceed \$5,000.

¹² See s. 817.355(3), F.S.

¹³ See part II of ch. 501, F.S., relating to consumer protection (ss. 501.201-501.213, F.S.).

¹⁴ Posting of a quantity limit occurs at the point of original sale or is printed on the tickets by or on behalf of the original ticket seller. See s. 817.357, F.S.

¹⁵ See s. 817.357, F.S.

¹⁶ See s. 501.202, F.S.

- Enjoin any person who has violated, is violating, or is otherwise likely to violate, the FDUTPA; and
- Recover the actual damages caused by an act or practice in violation of the FDUTPA, on behalf of one or more consumers or governmental entities, except that damages are not recoverable against a retailer who has in good faith engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated the FDUTPA.¹⁷

Any person, firm, corporation, association, or entity, or any agent or employee of such persons, who is willfully using, or has willfully used, a method, act, or practice declared unlawful, or who is willfully violating any of the rules of the Department of Agriculture and Consumer Services (DACS) adopted under part II of ch. 501, F.S., is liable for a civil penalty of not more than \$10,000 for each such violation.¹⁸

Willful violations occur when the person knew or should have known that his or her conduct was unfair or deceptive or prohibited by rule.¹⁹ The civil penalty may be recovered in any action brought under FDUTPA by an enforcing authority; or an enforcing authority may terminate an investigation or action under an the agreement by which a violator pays a civil penalty²⁰

The DACS or a court may waive a civil penalty if the violator or his agents and employees have made full restitution or reimbursement or has paid actual damages to the consumers or governmental entities injured by the unlawful act or practice or rule violation.²¹ If civil penalties are assessed, the enforcing authority is entitled to reasonable attorney's fees and costs; the civil penalty accrues to the state.²²

Violations of the FDUTPA involving senior citizens, those with disabilities, or active duty or veteran members of the United States Armed Forces, may result in penalties of not more than \$15,000 for each violation, if the violator knew or should have known the conduct was unfair or deceptive.²³

Pricing of Resold Admission Tickets

The resale pricing of certain tickets is also governed by Florida law. Section 817.36, F.S., provides that a person or entity that offers for resale or resells any ticket (with the exception of travel agencies under certain conditions²⁴) may charge only \$1.00 above the admission price charged by the original ticket seller, for the following:

- Passage or accommodations on any common carrier in this state.
- Multiday or multievent tickets to a park or entertainment complex, or to a concert, entertainment event, permanent exhibition, or recreational activity within such a park or complex, including an entertainment/resort complex defined in s. 561.01(18), F.S.

¹⁷ See s. 501.207(1), F.S.

¹⁸ See s. 501.2075, F.S.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ See s. 501.2077, F.S.

²⁴ To qualify for this exception, travel agencies must have an established place of business in Florida and pay state, county, and city occupational license taxes. See s. 817.36(1)(a), F.S.

- Event tickets originally issued by a tax-exempt charitable organization, when no more than 3,000 tickets are issued per performance. The following must be conspicuously printed on the face or back of each such ticket: “*Pursuant to s. 817.36, Florida Statutes, this ticket may not be resold for more than \$1 over the original admission price.*” This provision does not apply to tickets issued or sold by a third party ticketing service on behalf of a charitable organization, unless the statement is on the ticket.

The limitation of an additional \$1.00 above the original price of a ticket also applies to any tickets that are resold or offered through an Internet website (except those described above), unless the website:

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

Individual or entities are not authorized to sell or purchase tickets at any price on property where an event is being held (i.e., outside a stadium) without the prior express written consent of the owner of the property.²⁵

Sales tax is due on resold tickets.²⁶

A person who knowingly resells a ticket or tickets in violation of the requirements in s. 817.36, F.S., is liable to the state for a civil penalty equal to three times the amount of the price for which the ticket or tickets were resold.²⁷

Persons intentionally using or selling software to circumvent a security measure, an access control system, or any other control or measure on a ticket seller’s Internet website which is used to ensure an equitable ticket-buying process, is liable to the state for a civil penalty equal to three times the amount for which any ticket was sold.²⁸

²⁵ See s. 817.36(2), F.S.

²⁶ See s. 817.36(4)

²⁷ See s. 817.36(5), F.S.

²⁸ *Id.* Section 817.36(6), F.S., defines the term “software” as “computer programs that are primarily designed or produced for the purpose of interfering with the operation of any person or entity that sells, over the Internet, tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind.” Similar federal legislation was enacted in 2016 to prohibit circumvention of ticket website security or control measures and the subsequent

Sale or Transfer of Multiuse Tickets to Theme Parks

Florida law also provides that the sale or transfer of multiuse tickets for admission to a theme park complex²⁹ is also a crime in certain circumstances.³⁰

A multiuse ticket is a ticket, other medium, or right for admission to:

- One or more theme park complexes;
- One or more amusement locations or other facilities in a theme park complex; or
- One or more such locations or facilities in a theme park complex for more than one day or more than once in the same day.³¹

A multiuse ticket is nontransferable unless the phrase “may be used by more than one person” is printed clearly on the ticket by the issuer or the issuer explicitly states on its website that the multiuse ticket may be used by more than one person.³²

A person who offers for sale, sells, or transfers, in a commercial transaction (whether or not money changes hands), a nontransferable multiuse ticket³³ after the nontransferable multiuse ticket has already been used for admission at least once, commits a first degree misdemeanor, but a second or subsequent violation is a third degree felony.³⁴

III. Effect of Proposed Changes:

CS/SB 1024 regulates the content of Internet website addresses by operators of ticket websites that advertise the sale of tickets, or offer tickets for sale or resale, for events at Florida venues, including arenas, stadiums, theaters, concert halls, or other places of exhibition or performance.

The bill prohibits the intentional, unauthorized use by a website operator of an Internet domain name in a website operator’s website address), if the domain name contains all or part of the name of the venue, or any substantially similar name.

The term “Internet domain name” is defined in the bill to mean the same as in s. 668.602, F.S., Florida’s Electronic Mail Communications Act.”³⁵

[A] globally unique, hierarchical reference to an Internet host or service,
which is assigned through centralized Internet naming authorities and

sale of the fraudulently obtained tickets by someone who knew or should have known about the violation. *See* The Better Online Ticket Sales Act, at 15 U.S.C. s. 45c.

²⁹ Section 361.361(1)(c), F.S., defines the term “theme park complex” as “an area comprised of at least 25 acres of land owned by the same business entity and which contains rides or other recreational activities.”

³⁰ *See* s. 817.361, F.S.

³¹ *See* s. 817.361(1), F.S.

³² *See* s. 817.361(2), F.S.

³³ A violation occurs when a card, wristband, or other medium that accesses or is associated with nontransferable multiuse ticket, is offered for sale, sold, or transferred after being used at least once for admission. *Id.*

³⁴ *See* s. 817.361, F.S. Sections 775.082 and 775.083, F.S., provide a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year and by a fine not to exceed \$1,000; those sections provide that a felony of the third degree is punishable by a term of imprisonment not to exceed five years and by a fine not to exceed \$5,000.

³⁵ *See* part III of ch. 668, F.S., relating to Electronic Mail Communications.

which is comprised of a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.³⁶

A website operator authorized by a venue to act upon the venue's behalf is exempt from the prohibitions in the bill.

The bill provides violations by non-exempt ticket website operators constitute a deceptive and unfair trade practice under the Florida Deceptive and Unfair Trade Practices Act, subjecting violators to legal remedies including injunctions against the deceptive conduct, the award of actual damages caused by the deceptive act, and for a willful deceptive act, civil penalties of up to \$10,000 per violation (up to \$15,000 for violations involving senior citizens, persons with disabilities, or members of the US Armed Forces).

The remedies provided in the bill are supplemental to other state and federal laws which apply.

The bill exempts newspaper publishers, magazine or other publications, telephone directories, directory assistance services, and the owners or operators of radio or television stations or any other media primarily devoted to advertising, from liability for publishing, broadcasting, or otherwise disseminating advertisements in good faith without actual knowledge that an advertisement improperly include venue names, unless the media owner is the website operator violating the act.

CS/SB 1024 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

CS/SB 1024 seeks to regulate and prohibit conduct by persons outside Florida, who may engage in the conduct prohibited by Florida in jurisdictions other than Florida, and whose conduct may not be misleading to persons in Florida. Enforcement against such persons for the conduct regulated and prohibited in the bill may not be constitutionally permissible, in the absence of any requirement for conduct in Florida sufficient to assert legal jurisdiction over alleged violators.

³⁶ See s. 668.602(10), F.S.

The ability of the state to enforce regulations and prohibitions against out-of-state persons in court may be limited by the doctrine of *in personam* jurisdiction, also known as personal jurisdiction. This legal doctrine requires that a court must have a legal basis to exercise jurisdiction over a person. Florida residents and Florida-based businesses clearly fall within the jurisdiction of the state's courts, including the federal courts located in Florida, but out-of-state persons may not. Florida's state and federal courts have jurisdiction over a non-resident only if there are sufficient jurisdictional facts for the court to exercise its jurisdiction.³⁷

A court's exercise of jurisdiction cannot violate due process. Due process is satisfied when a defendant has sufficient "minimum contacts" with the state and maintenance of the suit is reasonable, and does not violate "traditional notions of fair play and substantial justice."³⁸

In addition to due process concerns, a defendant's acts must also satisfy the state's long-arm statute in s. 48.193, F.S., which sets forth the acts that could subject a non-resident to the jurisdiction of Florida's courts, including the federal courts in Florida. In pertinent part, these acts include "operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state."³⁹ Courts have generally held that a non-resident operates or engages in a business in this state if he or she engages in a course of business activity in Florida for pecuniary gain, and has engaged in regular business dealings with Florida residents.⁴⁰

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1024 may benefit venues selling or offering event tickets whose reputations might be affected by website operators that use venue identifiers and websites in a manner that confuses event ticket purchasers or that creates negative perceptions of the venues. The bill may affect ticket website operators that use the names of Florida venues in advertising and in the marketing of their services.

C. Government Sector Impact:

There is no fiscal impact to state government.

³⁷ A detailed discussion of personal jurisdiction issues may be found at Philip J. Padovano, *Florida Civil Practice*, Vol. 5, 2017 Edition, (West's Florida Practice Series), sections 1:2 and 8:7.

³⁸ *Int'l Shoe Co. v. State of Washington, Office of Unemployment Compensation & Placement*, 326 U.S. 310, 316 (1945).

³⁹ See s. 48.193(1)(a), F.S.

⁴⁰ See *Homeway Furniture Co. of Mount Airy, Inc. v. Horne*, 822 So.2d 533, 536 (Fla. 2nd DCA 2002).

VI. Technical Deficiencies:

None.

VII. Related Issues:

Required disclosure statements mandated in current law (see s. 817.36(1)(d), F.S.) for the resale of admission tickets through online websites, may also be applicable to the conduct addressed in the bill.

VIII. Statutes Affected:

This bill creates section 501.9735 of the Florida Statutes.

IX. Additional Information:

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

CS/ by Regulated Industries on February 14, 2018:

The committee substitute:

- Applies to the unauthorized use of a Florida venue name (or a substantially similar name) in a website address for the purpose of selling event tickets to Florida residents.
- Deletes the bill’s prohibition against including the name of a sporting event, exhibition, or performer (scheduled at or to appear at a Florida venue) in a website address.
- Provides violations are a deceptive and unfair trade practice, under the Florida Deceptive and Unfair Trade Practices Act, with the following remedies under current law:
 - Entry of an injunction against persons engaging in a deceptive act;
 - An award of actual damages caused by the deceptive act; and
 - For a willful deceptive act, civil penalties of up to \$10,000 per violation (up to \$15,000 for violations involving senior citizens, persons with disabilities, or members of the U.S. Armed Forces).
- Provides the prohibition in the bill and the remedies for violations are supplemental to other state and federal laws which apply.
- Exempts media, such as newspapers and television stations, acting in good faith, from liability for publishing or broadcasting advertisements that improperly include venue names, unless the media owner is the website operator violating the act.
- Deletes from the bill an unused definition (uniform resource locator or “URL”).

- B. **Amendments:**

None.



479106

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2018	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Hukill) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 501.9735, Florida Statutes, is created
to read:

501.9735 Ticket websites; penalties.-

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

(a) "Ticket website" means an Internet website advertising
the sale of tickets, offering the sale of tickets, or offering



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11 tickets for resale to an event in this state.

12 (b) "Venue" means an arena, stadium, theater, concert hall,
13 or other place of exhibition or performance in this state.

14 (c) "Website operator" means a person owning, operating, or
15 controlling a ticket website for an event scheduled at a venue
16 in this state.

17 (2) A website operator may not sell a ticket to a Florida
18 resident through a ticket website if the website operator has
19 intentionally used an Internet domain name, as defined in s.
20 668.602, which contains the name of the venue or any name
21 substantially similar to the name of the venue. This paragraph
22 does not apply to a website operator who is authorized by the
23 venue to act upon its behalf.

24 (3) A violation of this section is a deceptive and unfair
25 trade practice and constitutes a violation of part II of this
26 chapter. A person who violates this section commits a deceptive
27 and unfair trade practice punishable by the penalties provided
28 under part II of this chapter, and is subject to the enforcement
29 of remedies for the violation as provided in part II of this
30 chapter.

31 (4) This section is supplemental to those provisions of
32 state or federal criminal or civil law which impose prohibitions
33 or provide penalties, sanctions, or remedies against the same
34 conduct prohibited by this section. This section may not be
35 construed to preclude the applicability of any other law that
36 now applies, or may in the future apply, to prohibit, penalize,
37 or impose sanctions or remedies for any conduct that violates
38 this section.

39 (5) A newspaper publisher, magazine or other publication,



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40 telephone directory or directory assistance service or its
41 officer or agent, or the owner or operator of a radio or
42 television station, or any other owner or operator of a medium
43 primarily devoted to advertising who publishes, broadcasts, or
44 otherwise disseminates an advertisement in good faith without
45 actual knowledge that such advertisement violates this section
46 is immune from liability under this section for publishing the
47 advertisement unless the owner or operator of such medium is the
48 website operator who has committed the act prohibited by this
49 section.

50 Section 2. This act shall take effect July 1, 2018.

51

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

53 And the title is amended as follows:

54 Delete everything before the enacting clause
55 and insert:

56 A bill to be entitled
57 An act relating to ticket websites; creating s.
58 501.9735, F.S.; defining terms; prohibiting website
59 operators from using specified information in the sale
60 of certain tickets; providing an exception; providing
61 civil penalties; providing for construction;
62 specifying that certain entities are immune from
63 liability under this act under certain circumstances;
64 providing an effective date.

By Senator Hukill

14-01083-18

20181024__

1 A bill to be entitled
 2 An act relating to ticket websites; creating s.
 3 817.356, F.S.; providing definitions; prohibiting
 4 website operators from using specified information in
 5 the sale of certain tickets; providing an exception;
 6 providing civil penalties; providing an effective
 7 date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Section 817.356, Florida Statutes, is created to
 12 read:

13 817.356 Ticket websites; definitions; rules; penalties.—

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

15 (a) "Ticket website" means a website advertising the sale
 16 of tickets, offering the sale of tickets, or offering tickets
 17 for resale.

18 (b) "URL" means a website's uniform resource locator.

19 (c) "Venue" means an arena, stadium, theater, concert hall,
 20 or other place of exhibition or performance in this state.

21 (d) "Website operator" means a person owning, operating, or
 22 controlling a ticket website for an event scheduled at a venue.

23 (2) (a) Except as provided in paragraph (b), a website
 24 operator may not intentionally use an Internet domain name, as
 25 defined in s. 668.602, or any subdomain thereof in a ticket
 26 website's URL that contains any of the following:

27 1. All or part of the name of the venue.

28 2. All or part of the name of the exhibition or
 29 performance, including the name of the person or entity

14-01083-18

20181024__

30 scheduled to perform or appear at the venue.

31 3. Any name substantially similar to those in subparagraph
32 1. or subparagraph 2.

33 (b) Paragraph (a) does not apply to a website operator who
34 is authorized by the venue to be acting upon its behalf.

35 (3) A website operator who violates subsection (2) is
36 subject to a fine of up to \$2,500 for each violation.

37 Section 2. This act shall take effect July 1, 2018.

By the Committee on Regulated Industries; and Senator Hukill

580-03262-18

20181024c1

1 A bill to be entitled
2 An act relating to ticket websites; creating s.
3 501.9735, F.S.; defining terms; prohibiting website
4 operators from using specified information in the sale
5 of certain tickets; providing an exception; providing
6 civil penalties; providing for construction;
7 specifying that certain entities are immune from
8 liability under this act under certain circumstances;
9 providing an effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Section 501.9735, Florida Statutes, is created
14 to read:

15 501.9735 Ticket websites; penalties.-

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

17 (a) "Ticket website" means an Internet website advertising
18 the sale of tickets, offering the sale of tickets, or offering
19 tickets for resale to an event in this state.

20 (b) "Venue" means an arena, stadium, theater, concert hall,
21 or other place of exhibition or performance in this state.

22 (c) "Website operator" means a person owning, operating, or
23 controlling a ticket website for an event scheduled at a venue
24 in this state.

25 (2) A website operator may not sell a ticket to a Florida
26 resident through a ticket website if the website operator has
27 intentionally used an Internet domain name, as defined in s.
28 668.602, which contains the name of the venue or any name
29 substantially similar to the name of the venue. This subsection

580-03262-18

20181024c1

30 does not apply to a website operator who is authorized by the
31 venue to act upon its behalf.

32 (3) A violation of this section is a deceptive and unfair
33 trade practice and constitutes a violation of part II of this
34 chapter. A person who violates this section commits a deceptive
35 and unfair trade practice punishable by the penalties provided
36 under part II of this chapter, and is subject to the enforcement
37 of remedies for the violation as provided in part II of this
38 chapter.

39 (4) This section is supplemental to those provisions of
40 state or federal criminal or civil law which impose prohibitions
41 or provide penalties, sanctions, or remedies against the same
42 conduct prohibited by this section. This section may not be
43 construed to preclude the applicability of any other law that
44 now applies, or may in the future apply, to prohibit, penalize,
45 or impose sanctions or remedies for any conduct that violates
46 this section.

47 (5) A newspaper publisher, magazine or other publication,
48 telephone directory or directory assistance service or its
49 officer or agent, or the owner or operator of a radio or
50 television station, or any other owner or operator of a medium
51 primarily devoted to advertising who publishes, broadcasts, or
52 otherwise disseminates an advertisement in good faith without
53 actual knowledge that such advertisement violates this section
54 is immune from liability under this section for publishing the
55 advertisement unless the owner or operator of such medium is the
56 website operator who has committed the act prohibited by this
57 section.

58 Section 2. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Education, *Chair*
Appropriations Subcommittee on the
Environment and Natural Resources, *Vice Chair*
Regulated Industries, *Vice Chair*
Agriculture
Environmental Preservation and Conservation
Health Policy
Transportation

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL

14th District

December 14, 2017

The Honorable Travis Hutson
314 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: Senate Bill 1024 – Ticket Websites


Dear Chairman Hutson:

Senate Bill 1024, relating to Ticket Websites, has been referred to the Senate Committee on Regulated Industries. I respectfully request that SB 1024 be placed on the committee agenda at your earliest possible convenience.

Should you need any additional information, please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,



Dorothy L. Hukill
State Senator, District 14

Cc: Ross McSwain, Staff Director, Senate Committee on Regulated Industries
Lynn Koon, Administrative Assistant, Senate Committee on Regulated Industries

REPLY TO:

- 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
- 434 Delannoy Avenue, Suite 204, Cocoa, Florida 32922 (321) 634-3549
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/14/2018 Meeting Date

SB 1024 Bill Number (if applicable)

Topic SB 1024, Ticket Websites

Amendment Barcode (if applicable)

Name JEFF JOHNSTON

Job Title Lobbyist

Address 112 E. Jefferson Street

Phone 813 777-9858

Tallahassee FL City State Zip

Email

Speaking: [X] For [] Against [] Information

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

Representing Ticketmaster

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

Lobbyist registered with Legislature: [X] 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
APPEARANCE RECORD

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

2/14/18
Meeting Date

1024
Bill Number (if applicable)

Topic Tickets

Amendment Barcode (if applicable)

Name Doug Bell

Job Title _____

Address 119 S. Monroe St
Street

Phone 205-9000

TCH
City

FL
State

Zip

Email doug.bell@mhdfirm.com

Speaking: For Against Information

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

Representing Elbay / Stob hubs

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
APPEARANCE RECORD

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

2.14.18

Meeting Date

1024

Bill Number (if applicable)

479106

Amendment Barcode (if applicable)

Topic TICKET SALES

Name WAYNE R. MALANEY

Will waive in support

Job Title _____

Address 32 VIA DEZ CORSO

Street

Phone 850-933-7001

PALM BEACH GARDENS

City

FL

State

33418

Zip

Email FLLOBBYIST@AOL.COM

Speaking: For Against Information

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

*SUPPORT AMENDMENT
SUPPORT BILL AS AMENDED*

Representing FLORIDA FACILITY MANAGERS ASS'N

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
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 Regulated Industries

BILL: CS/SB 1128

INTRODUCER: Health Policy Committee and Senator Stargel

SUBJECT: Pharmacies

DATE: February 14, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	Fav/CS
2.	Kraemer	McSwain	RI	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1128 establishes a Class III institutional pharmacy permit. A Class III institutional pharmacy may dispense, distribute, compound, fill prescriptions, and prepare prepackaged drug products, for an affiliated hospital and entities under common control that hold permits issued under the Florida Pharmacy Act or the Florida Drug and Cosmetic Act. A Class III institutional pharmacy is exempt from permitting under the Florida Drug and Cosmetic Act.

The bill exempts from the definition of wholesale distribution under the Florida Drug and Cosmetic Act:

- A hospital arranging for a prescription drug wholesale distributor to distribute prescription drugs that were purchased by the hospital under s. 340B of the Public Health Services Act directly to a contract pharmacy; and
- The dispensing or distribution of a medicinal (prescription) drug by a Class III institutional pharmacy.

The bill expands the pharmacists eligible for two seats on the Board of Pharmacy to include pharmacists engaged in the practice of pharmacy in a Class III institutional pharmacy.

CS/SB 1128 has an indeterminate effect on state government. See Section V, Fiscal Impact Statement.

The effective date of the bill is July 1, 2018.

II. Present Situation:

Pharmacy

The practice of pharmacy, and the licensure of pharmacies, are regulated by ch. 465, F.S. The “practice of the profession of pharmacy” includes:

- Compounding, dispensing, and consulting the consumer concerning the contents, therapeutic values, and uses of any medicinal (prescription)¹ drug; and
- Other pharmaceutical services.^{2,3}

The Board of Pharmacy

The Board of Pharmacy (Board) is created within the Department of Health (DOH), and consists of nine members appointed for four-year terms by the Governor and confirmed by the Senate.⁴ Seven members of the Board must be licensed pharmacists who are residents of Florida and who have been engaged in the practice of pharmacy in this state for at least four years and, to the extent possible, represent the various pharmacy practice settings.⁵

The Board members must include the following, of which one member must be 60 years of age or older:

- Two pharmacists currently engaged in practice in a community pharmacy;
- Two pharmacists currently engaged in practice in a Class II institutional pharmacy or a Modified Class II institutional pharmacy;
- Three pharmacists must be licensed in this state irrespective of practice setting; and
- Two Florida residents who are not pharmacists and are not connected with the practice of pharmacy, drug manufacturing or drug wholesaling.⁶

The Board is authorized to make rules to regulate the practice of professional pharmacy in pharmacies meeting minimum requirements for safe practice.⁷ All pharmacies must obtain a permit before operating, unless exempt. This is true whether opening a new establishment, or simply changing locations or owners.⁸

¹ Under s. 465.003(8), F.S., “medicinal drugs” means substances commonly known as “prescription: or “legend” drugs required by law to be dispensed by prescription only.

² Section 465.003(13), F.S.

³ In the context of pharmacy practice, “other pharmaceutical services” means the monitoring of the patient’s drug therapy and assisting the patient in the management of his or her drug therapy, and includes review of the patient’s drug therapy and communication with the patient’s prescribing health care provider as licensed under chs. 458, 459, 461, or 466, F.S., or similar statutory provision in another jurisdiction, or such provider’s agent or such other persons as specifically authorized by the patient, regarding the drug therapy. The “practice of the profession of pharmacy” also includes any other act, service, operation, research, or transaction incidental to, or forming a part of, any of the foregoing acts, requiring, involving, or employing the science or art of any branch of the pharmaceutical profession, study, or training, expressly permits a pharmacist to transmit information from persons authorized to prescribe medicinal drugs to their patients, and includes the administration of vaccines to adults. Section 465.003(13), F.S.

⁴ See s. 465.004(1), F.S.

⁵ See s. 465.004(2), F.S.

⁶ *Id.*

⁷ Sections 465.002, and 465.0155, F.S.

⁸ See Fla. Admin. Code R. 64B16-28.100(1) (2018).

The general application and permitting process for a business establishment to obtain a pharmacy permit requires the submission of the following information to the DOH:

- General drug safety measures;
- Minimum standards for the physical facilities of pharmacies;
- Safe storage of floor-stock drugs;
- Functions of the pharmacist, and consultant pharmacist⁹ in an institutional pharmacy, consistent with the size and scope of the pharmacy;
- Procedures for the safe storage and handling of radioactive drugs;
- Procedures for the distribution and disposition of drug samples or complimentary medicinal drugs;¹⁰
- Procedures for the transfer of prescription files and medicinal drugs upon the change of ownership or closing of a pharmacy;
- Minimum equipment which a pharmacy must at all times possess to fill prescriptions properly; and
- Procedures for the dispensing of controlled substances to minimize dispensing based on fraudulent representations or invalid practitioner-patient relationships.¹¹

The Practice of Pharmacy

There are seven types of pharmacies eligible for various operating permits issued by the DOH:

- Community pharmacy;¹²
- Institutional pharmacy;¹³
- Nuclear pharmacy;¹⁴
- Special pharmacy;¹⁵
- Internet pharmacy;¹⁶
- Non-resident sterile compounding pharmacy;¹⁷ and
- Special sterile compounding pharmacy.¹⁸

⁹ Sections 465.003(3) and 465.0125, F.S., provide that a consultant pharmacist, licensed and certified by DOH, is responsible for maintaining all required drug records and establishing safe drug handling and storage procedures. *See infra* notes 23 and 24.

¹⁰ *See s.* 499.028, F.S.

¹¹ Section 465.022, F.S., and *See Fla. Admin. Code R.* 64B16-28.100 (2018).

¹² The term “community pharmacy” includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis. *See ss.* 465.003(11)(a)1. and 465.018, F.S.

¹³ *See ss.* 465.003(11)(a)2. and 465.019, F.S.

¹⁴ The term “nuclear pharmacy” includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold, but does not include hospitals licensed under chapter 395, F.S., or the nuclear medicine facilities of such hospitals. *See ss.* 465.003(11)(a)3. and 465.0193, F.S.

¹⁵ The term “special pharmacy” includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined by law. *See ss.* 465.003(11)(a)4. and 465.0196, F.S.

¹⁶ The term “internet pharmacy” includes locations not otherwise licensed or issued a permit under ch. 465, F.S., whether or not in Florida, which use the Internet to communicate with or obtain information from consumers in this state and use such communication or information to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state. *See ss.* 465.003(11)(a)5. and 465.0197, F.S.

¹⁷ The term “nonresident sterile compounding pharmacy” includes a pharmacy that ships, mails, delivers, or dispenses, in any manner, a compounded sterile product into Florida, and a nonresident pharmacy registered under s. 465.0156, F.S., or an outsourcing facility, must hold a nonresident sterile compounding permit. *See s.* 465.0158, F.S.

¹⁸ *See Fla. Admin. Code R.* 64B16-28.100 and 64B16-28.802 (2018). An outsourcing facility is considered a pharmacy and must hold a special sterile compounding permit if it engages in sterile compounding.

Institutional Pharmacies

An “institutional pharmacy” includes any pharmacy located in a health care institution, which includes a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility where medicinal drugs are compounded, dispensed, stored, or sold.¹⁹ Institutional pharmacy permits are required for any pharmacy located in any health care institution.²⁰

All institutional pharmacies must designate a consultant pharmacist²¹ who is responsible for maintaining all drug records required by law, and for establishing drug handling procedures for the safe handling and storage of drugs. The consultant pharmacist may also be responsible for ordering and evaluating any laboratory or clinical tests when such tests are necessary for the proper performance of his or her responsibilities.²² Such laboratory or clinical tests may be ordered only with regard to patients residing in a nursing home; and then only when authorized by the medical director. The consultant pharmacist must complete additional training, demonstrate additional qualifications in the practice of institutional pharmacy, as required by the board, and be licensed as a registered pharmacist.^{23,24}

Currently there are three types of institutional pharmacy permits issued by the Board to institutional pharmacies: Institutional Class I, Class II, and Modified Class II.²⁵

Institutional Class I Pharmacy

A Class I institutional pharmacy is an institutional pharmacy in which all medicinal drugs are administered from individual prescription containers to an individual patient; and in which medicinal drugs are not dispensed on the premises, except licensed nursing homes²⁶ may purchase medical oxygen for administration to residents.²⁷

Institutional Class II Pharmacy

A Class II institutional pharmacy is a pharmacy that employs the services of a registered pharmacist or pharmacists who, in practicing institutional pharmacy, provide dispensing and

¹⁹ Section 465.003(11)(a)2., F.S.

²⁰ See Fla. Admin. Code R. 64B16-28.100(3) (2018).

²¹ See ss. 465.003(11), and 465.0125, F.S.

²² *Id.*

²³ Section 465.0125, F.S.

²⁴ As required by Fla. Admin. Code R. 64B16-28.501(1), (2), and (3) (2018), the consultant pharmacist must also “conduct Drug Regimen Reviews required by Federal or State law, inspect the facility and prepare a written report to be filed at the permitted facility at least monthly, . . . , monitor the facility system for providing medication administration records and physician order sheets to ensure that the most current record of medications is available for the monthly drug regimen review, and may utilize additional consultant pharmacists to assist in this review and in the monthly facility inspection.” A licensed consultant pharmacist may “remotely access a facility or pharmacy’s electronic database from outside the facility or pharmacy to conduct any services additional or supplemental to regular drug regimen reviews, subject to the pharmacy or facility establishing policies and procedures to ensure the security and privacy of confidential patient records, including compliance with applicable Federal HIPAA regulations.” The Board office must be notified in writing within ten days of any change in the consultant pharmacist of record, pursuant to Fla. Admin. Code R. 64B16-28.100(3)(b) (2018).

²⁵ Section 465.019, F.S.

²⁶ See part II, ch. 400, F.S., relating to Nursing Homes.

²⁷ Section 465.019(2)(a), F.S.

consulting services on the premises to patients of the institution, for use on the premises of the institution.²⁸ A Class II institutional pharmacy is required to be open sufficient hours to meet the needs of the hospital facility.²⁹ The consultant pharmacist of record is responsible for establishing a written policy and procedure manual for the implementation.³⁰ An Institutional Class II Pharmacy may elect to participate in the Cancer Drug Donation Program within the Department of Business and Professional Regulation (DBPR).³¹

Modified Institutional Class II Pharmacy Permits

Modified Institutional Class II pharmacies are those institutional pharmacies in short-term, primary care treatment centers that meet all the requirements for a Class II permit, except space and equipment requirements.³² Modified Class II Institutional pharmacies are designated as Type “A,” Type “B,” and Type “C” according to the specialized type of the medicinal drug delivery system utilized at the facility, either a patient-specific or bulk drug system, and, the quantity of the medicinal drug formulary at the facility;³³ and provide the following pharmacy services.

Type “A” Modified Class II Institutional Pharmacies provide pharmacy services in a facility which has a formulary of not more than 15 medicinal drugs, excluding those medicinal drugs contained in an emergency box, and in which the medicinal drugs are stored in bulk and in which the consultant pharmacist provides on-site consultations not less than once every month, unless otherwise directed by the Board after review of the policy and procedure manual.

Type “B” Modified Class II Institutional Pharmacies provide pharmacy services in a facility in which medicinal drugs are stored in the facility in patient specific form and in bulk form and which has an expanded drug formulary, and in which the consultant pharmacist provides on-site consultations not less than once per month, unless otherwise directed by the Board after review of the policy and procedure manual.

Type “C” Modified Class II Institutional Pharmacies provide pharmacy services in a facility in which medicinal drugs are stored in the facility in patient specific form and which has an expanded drug formulary, and in which the consultant pharmacist provides onsite consultations not less than once per month, unless otherwise directed by the Board after review of the policy and procedure manual.³⁴

All Modified Class II Institutional Pharmacies must be under the control and supervision of a certified consultant pharmacist. The consultant pharmacist of record is responsible for developing and maintaining a current policy and procedure manual. The permittee must make

²⁸ See s. 565.019(2)(b), F.S. Exceptions apply when there is a state of emergency and for single doses of a drug ordered by physicians under limited circumstances.

²⁹ See Fla. Admin. Code R. 64B16-28.603 (2018).

³⁰ See s. 465.019(5), F.S.

³¹ See s. 499.029, F.S., relating to the Cancer Drug Donation Program Act.

³² See s. 465.019(2)(c), F.S.

³³ See Fla. Admin. Code R. 64B16-28.702 (2018).

³⁴ *Id.*

available the policy and procedure manual to the appropriate state or federal agencies upon inspection.³⁵

Pharmaceutical Distribution in Florida

The DBPR is charged with, among other duties, regulating the distribution of prescription drugs into and within Florida against fraud, adulteration, misbranding, or false advertising in the preparation, manufacture, repackaging, or distribution of drugs under the Florida Drug and Cosmetic Act.³⁶

In particular, the regulations require various entities in the distribution chain, such as prescription drug manufacturers,³⁷ prescription drug repackagers, and prescription drug wholesale distributors,³⁸ to obtain permits. In total, Florida has 18 distinct permits for prescription drug manufacturers and wholesale distributors.³⁹

Prescription Drug Repackaging Permit and Restricted Prescription Drug Distributor Permit

Within the pharmaceutical supply chain, a repackager removes a drug from its container and places it in another, usually smaller, container for sale to a distributor or dispenser. At the end of the supply chain, a dispenser provides the drug to the patient. A dispenser may be a community pharmacy (i.e. a retail chain pharmacy), an institutional pharmacy, a health care facility, or a doctor's office.⁴⁰

A prescription drug repackager permit is required for any person that repackages a prescription drug in this state. A person that operates an establishment permitted as a prescription drug repackager may engage in distribution of prescription drugs repackaged at that establishment and must comply with all of the provisions of this part and the rules adopted under this part that apply to a prescription drug manufacturer. A prescription drug repackager must comply with all appropriate state and federal good manufacturing practices.⁴¹

³⁵ See the *Institutional Pharmacy Permit* information published by the DOH at <http://floridaspharmacy.gov/licensing/institutional-pharmacy-permit/> (last visited Feb. 7, 2018).

³⁶ See part I, ch. 499, F.S., and specifically s. 499.002, F.S.

³⁷ Sections 499.01(2)(a) and (c), F.S.

³⁸ Sections 499.01(2)(e), (f), (g) and (h), F.S.

³⁹ See s. 499.01(1), F.S., which provides a permit is required, before operating, for each person and establishment that intends to operate as a: prescription drug manufacturer; prescription drug repackager; nonresident prescription drug manufacturer; nonresident prescription drug repackager; prescription drug wholesale distributor; out-of-state prescription drug wholesale distributor; retail pharmacy drug wholesale distributor; restricted prescription drug distributor; complimentary drug distributor; freight forwarder; veterinary prescription drug retail establishment; veterinary prescription drug wholesale distributor; limited prescription drug veterinary wholesale distributor; over-the-counter drug manufacturer; device manufacturer; cosmetic manufacturer; third party logistics provider; or health care clinic establishment.

⁴⁰ Section 499.01(2)(b), F.S.

⁴¹ *Id.*

A health care entity,⁴² permitted as a restricted prescription drug distributor,⁴³ is exempt from obtaining a prescription drug repackager permit for the repackaging of prescription drugs for that health care entity's own use or for distribution to other hospitals or health care entities in the state for their own use under the following conditions:⁴⁴

- The hospital or health care entity is under common control;⁴⁵
- The prescription drugs are repackaged in accordance with current state and federal good manufacturing practices;
- The prescription drugs are labeled in accordance with state and federal law; and
- The distributor notifies the DOH 30 days in advance of its intent to repackage.

Health Care Clinic Establishment Permit

A health care clinic establishment permit is required for the purchase of a prescription drug by a health care clinic that provides health care or veterinary services, which is owned and operated by a business entity that has been issued a federal employer tax identification number.⁴⁶

Section 340B Discount Drug Program

Section 340B of the Public Health Services Act is a federal program that requires drug manufacturers to provide outpatient drugs to eligible health care organizations and covered entities at significantly reduced prices directed at serving primarily low income and vulnerable populations.⁴⁷ Eligible health care organizations are required to register with the Health Resources and Services Administration within the federal Department of Health and Human Services and meet established eligibility requirements.⁴⁸ Eligible health care entities who receive distributions of such drugs must obtain a restricted drug distributor-governmental entities permit from DBPR allowing them to receive and distribute the discounted drugs.⁴⁹

The following six categories of hospitals are eligible to participate in the program:

- Disproportionate Share Hospitals (DSH);
- Children's hospitals;
- Cancer hospitals exempt from the Medicare prospective payment system;
- Sole community hospitals;
- Rural Referral Centers; and

⁴² A "health care entity" means a closed pharmacy or any person, organization, or business entity that provides diagnostic, medical, surgical, or dental treatment or care, or chronic or rehabilitative care, but does not include any wholesale distributor or [community pharmacy]. *See* s. 499.003(21), F.S. A "closed pharmacy" means a pharmacy that is licensed under ch. 465, F.S., and purchases prescription drugs for use by a limited patient population and not for wholesale distribution or sale to the public. *See* s. 499.003(8), F.S.

⁴³ A restricted prescription drug distributor permit is required for the distribution of a prescription drug that is not considered wholesale distribution. *See* s. 499.01(2)(h)1.a., F.S. Several exemptions from the definition of wholesale distribution could be applicable to the discussion, including s. 499.003(48)(a)3, (b)6, and (i), F.S.

⁴⁴ Section 499.01(5), F.S.

⁴⁵ Section 499.01(5)(b), F.S., defines "common control" as the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise.

⁴⁶ *See* s. 499.01(2)(r), F.S.

⁴⁷ 42 U.S.C. s. 256(b); *See also* 340B Health, *Overview of the 340B Drug Pricing Program* <https://www.340bhealth.org/340b-resources/340b-program/overview/> (last visited Feb. 7, 2018).

⁴⁸ *Id.*

⁴⁹ *See* Fla. Admin. Code R. 61N-1.023 (2018).

- Critical Access Hospitals (CAH).

Hospitals in each of the categories must be owned or operated by state or local government, a public or private non-profit corporation which is formally granted governmental powers by state or local government, or a private non-profit organization that has a contract with a state or local government to provide care to low-income individuals who do not qualify for Medicaid or Medicare.⁵⁰ In addition, with the exception of CAHs, hospitals must meet payer-mix criteria related to the Medicare DSH program.

There are also eleven categories of non-hospital covered entities that are eligible based on receiving federal funding, including federally qualified health centers (FQHCs)⁵¹; FQHC “look-alikes”⁵²; state-operated AIDS drug assistance programs; the Ryan White Comprehensive AIDS Resources Emergency Act clinics and programs; tuberculosis, black lung, family planning, and sexually transmitted disease clinics; hemophilia treatment centers; Title X public housing primary care clinics; homeless clinics; Urban Indian clinics; and Native Hawaiian health centers.⁵³

III. Effect of Proposed Changes:

Amendments to the Florida Pharmacy Act

The bill creates a new type of institutional pharmacy – the “Class III institutional pharmacy”; and describes it as an institutional pharmacy, including central distribution facilities, which is affiliated with a hospital and provides the same services as those authorized for Class II institutional pharmacies.

Additionally, the bill authorizes a Class III institutional pharmacy to:

- Dispense, distribute, compound, and fill prescriptions for medicinal drugs;
- Prepare prepackaged drug products;
- Conduct other pharmaceutical services for affiliated hospitals and entities under common control, each of which must be permitted under ch. 465, F.S., to possess medicinal drugs; and
- Provide medicinal drugs, drug products, and pharmaceutical services to an entity under common control that holds an active health care clinic establishment permit.⁵⁴

The bill requires a Class III institutional pharmacy to maintain policies and procedures that identify or address:

- The consultant pharmacist responsible for pharmaceutical services;

⁵⁰ See *supra* note 47.

⁵¹ Federally Qualified Health Centers are community-based health care providers that receive funds from the HRSA Health Center Program to provide primary care services in underserved areas. See U.S. Health Resources & Services Administration, *Federally Qualified Health Centers* <https://www.hrsa.gov/opa/eligibility-and-registration/health-centers/fqhc/index.html> (last visited Feb. 7, 2018).

⁵² Federally Qualified Health Center Look-Alikes are community-based health care providers that meet the requirements of the HRSA Health Center Program, but do not receive Health Center Program funding. See U.S. Health Resources & Services Administration, *Federally Qualified Health Centers Look Alike* <https://www.hrsa.gov/opa/eligibility-and-registration/health-centers/fqhc-look-alikes/index.html> (last visited Feb. 7, 2018).

⁵³ See *supra* note 51.

⁵⁴ See s. 499.01(2)(r), F.S.

- Safe practices for the preparation, dispensing, prepackaging, distribution, and transportation of medicinal drugs and prepackaged drug products;
- Recordkeeping to monitor the movement, distribution, and transportation of medicinal drugs and prepackaged drug products;
- Recordkeeping of pharmacy staff responsible for each step in the preparation, dispensing, prepackaging, transportation, and distribution of medicinal drugs and prepackaged drug products; and
- Medicinal drugs and prepackaged drug products that may not be safely distributed among Class III institutional pharmacies.

The bill amends s. 465.003, F.S., to modify the definition of the “practice of the profession of pharmacy” to include the preparation of prepackaged drug products in facilities holding Class III institutional pharmacy permits. The bill also provides the following new definitions:

- “Central distribution facility” means a facility under common control with a hospital holding a Class III institutional pharmacy permit that may dispense, distribute, compound, or fill prescriptions for medicinal drugs; prepare prepackaged drug products; and conduct other pharmaceutical services.
- “Common control” means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise.

The bill allows up to a 24- hour supply of medicinal drugs to be prescribed to outpatients in a hospital emergency department that does not have a Community Pharmacy Permit, if the hospital holds a Class III institutional pharmacy permit, similar to the authority granted to a Class II institutional pharmacy. The bill also treats Class III permits similar to Class II permits with respect to institutional formulary systems and substitutions of interchangeable biosimilar products.

Section 465.004, F.S., expands the qualifications of two persons eligible to serve on the Board to include a person engaged in the practice of professional pharmacy in a Class II institutional pharmacy, a Modified Class II institutional pharmacy, or a Class III institutional pharmacy.

Amendments to the Florida Drug and Cosmetic Act

The bill amends s. 499.003, F.S., to modify the definition of a “prepackaged drug product” to include a drug that was originally finished in a package sealed by a manufacturer, that is placed in a properly labeled container by a pharmacy or practitioner authorized to dispense pursuant to ch. 465, F.S., for the purpose of dispensing, or such a product dispensed “by a facility holding a Class III institutional pharmacy permit,” The revised definition authorizes dispensing by a facility with a Class III institutional pharmacy permit and removes a reference to “the establishment in which the prepackaging occurred.”

The definition of “wholesale distribution” in s. 499.003(48), F.S., is amended to exclude:

- A hospital covered by s. 340B of the Public Health Service Act, 42 U.S.C. s. 256b, that arranges for a prescription drug wholesale distributor to distribute prescription drugs covered

under that act directly to a contract pharmacy.⁵⁵ The definition further provides that such hospital is exempt from obtaining a restricted prescription drug distributor permit under s. 499.01(2)(h), F.S.; and

- The dispensing or distribution of a medicinal drug by a Class III institutional pharmacy pursuant to s. 465.019, F.S.

Section 499.01, F.S., is amended to exempt entities holding a Class III institutional pharmacy permit or a health care clinic establishment permit from the requirement for Prescription Drug Repackager permits or Restricted Prescription Drug Distributor permits for the distribution of medicinal drugs or prepackaged drug products between the establishments, if those entities are under common control.

The bill removes the exemption in s. 499.01(5), F.S., from the requirement that a health care entity with a Prescription Drug Repackager permit obtain a Restricted Prescription Drug Distributor permit when the prepackaging or distribution is for its own use. That exemption is replaced by the express exemptions in ss. 499.01((2)(b) and (h), F.S., created in the bill.

CS/SB 1128 has an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Department of Business and Professional Regulation (DBPR) indicated it may see a reduction in licensure revenues as health care institutions that obtain a Class III Institutional Pharmacy permit will no longer require permits from the DBPR as a prescription drug repackager or restricted prescription drug distributor.⁵⁶

⁵⁵ A “contract pharmacy” is a pharmacy which contracts with a covered entity to dispense 340B drugs to eligible patients on the covered entity’s behalf in accordance with guidelines of the federal agency charged with improving access to health services for poor, uninsured, or underserved communities. See <https://www.340bhealth.org/340b-resources/340b-program/key-acronyms-terms/> (last visited Feb. 7, 2018).

⁵⁶ See *2018 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation)* for HB 675, (similar to SB 1128), dated Jan. 5, 2018, (on file with Senate Committee on Regulated Industries) at page 6.

B. Private Sector Impact:

According to the DBPR, the private sector could realize a reduction in expenditures on permitting fees based on the ability to obtain one Class III institutional pharmacy permit and be exempted from other permitting requirements under ch. 499, F.S.⁵⁷

C. Government Sector Impact:

Because the number of licensees choosing to obtain a Class III institutional permit is unknown, the DBPR indicated that the fiscal impact upon its operations is indeterminate.⁵⁸

While the creation of Class III institutional pharmacy permits may result in additional expenditures for the DOH and the Board with respect to licensure and enforcement, the DOH estimated no fiscal impact to state government.⁵⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

The provision in s. 499.01(5), F.S., that is eliminated by the bill (in favor of the Class III institutional pharmacy permit) authorized repackaging and distribution activities of prescription [medicinal] drugs for a hospital or other health care entity's "own use," which is a limiting term of art for antitrust considerations. This limiting term is not used with respect to the authorized activities under the Class III institutional pharmacy permit.⁶⁰

Similarly, the exemption from the definition of wholesale distribution for the dispensing or distribution of a medicinal drug by a Class III institutional pharmacy pursuant to s. 465.019, F.S., is very broad. Section 465.019(2)(d)1.d., F.S., of the bill authorizes the provision of services (stated in s. 465.019(2)(d)1.(a.-c.), F.S.), to affiliated hospitals, and to any entity under common control, if the entity holds a health care clinic establishment permit.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 465.003, 465.004, 465.019, 465.0252, 499.003, and 499.01.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See 2018 Agency Legislative Bill Analysis (AGENCY: Florida Department of Health) for HB 675, (similar to SB 1128), dated Nov. 15, 2017, (on file with Senate Committee on Regulated Industries) at page 4.

⁶⁰ See *Abbott Laboratories v. Portland Retail Druggists*, 425 U.S. 1 (1976).

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 Health Policy on January 30, 2018:

The committee substitute:

- Reorganizes the contents of the bill;
- Further modifies the definition of “prepackaged drug product” in Section 5 of the CS; and
- Instead of exempting a hospital that arranges for a prescription drug wholesale distributor to distribute 340B drugs directly to a contract pharmacy from the requirement to obtain a restricted prescription drug distributor permit, the CS exempts the activity from the definition of wholesale distribution.

- 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 the Committee on Health Policy; and Senator Stargel

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1 A bill to be entitled
2 An act relating to pharmacies; amending s. 465.003,
3 F.S.; revising and providing definitions; amending s.
4 465.004, F.S.; revising the membership of the Board of
5 Pharmacy; amending s. 465.019, F.S.; establishing
6 Class III institutional pharmacies; providing
7 requirements for such pharmacies; conforming
8 provisions to changes made by the act; amending s.
9 465.0252, F.S.; revising notice requirements to
10 conform to changes made by the act; amending s.
11 499.003, F.S.; providing and revising definitions;
12 amending s. 499.01, F.S.; authorizing the distribution
13 of medicinal drugs and prepackaged drug products
14 without a specified permit under certain conditions;
15 deleting a provision exempting certain drug
16 repackagers from specified permit requirements;
17 providing an effective date.

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

20
21 Section 1. Subsections (7) and (13) of section 465.003,
22 Florida Statutes, are amended, and subsections (21) and (22) are
23 added to that section, to read:

24 465.003 Definitions.—As used in this chapter, the term:

25 (7) "Institutional formulary system" means a method whereby
26 the medical staff evaluates, appraises, and selects those
27 medicinal drugs or proprietary preparations which in the medical
28 staff's clinical judgment are most useful in patient care, and
29 which are available for dispensing by a practicing pharmacist in

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30 a Class II or Class III institutional pharmacy.

31 (13) "Practice of the profession of pharmacy" includes
32 compounding, dispensing, and consulting concerning contents,
33 therapeutic values, and uses of any medicinal drug; consulting
34 concerning therapeutic values and interactions of patent or
35 proprietary preparations, whether pursuant to prescriptions or
36 in the absence and entirely independent of such prescriptions or
37 orders; and conducting other pharmaceutical services. For
38 purposes of this subsection, "other pharmaceutical services"
39 means the monitoring of the patient's drug therapy and assisting
40 the patient in the management of his or her drug therapy, and
41 includes review of the patient's drug therapy and communication
42 with the patient's prescribing health care provider as licensed
43 under chapter 458, chapter 459, chapter 461, or chapter 466, or
44 similar statutory provision in another jurisdiction, or such
45 provider's agent or such other persons as specifically
46 authorized by the patient, regarding the drug therapy. However,
47 nothing in this subsection may be interpreted to permit an
48 alteration of a prescriber's directions, the diagnosis or
49 treatment of any disease, the initiation of any drug therapy,
50 the practice of medicine, or the practice of osteopathic
51 medicine, unless otherwise permitted by law. "Practice of the
52 profession of pharmacy" also includes any other act, service,
53 operation, research, or transaction incidental to, or forming a
54 part of, any of the foregoing acts, requiring, involving, or
55 employing the science or art of any branch of the pharmaceutical
56 profession, study, or training, and shall expressly permit a
57 pharmacist to transmit information from persons authorized to
58 prescribe medicinal drugs to their patients. The practice of the

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59 profession of pharmacy also includes the administration of
60 vaccines to adults pursuant to s. 465.189 and the preparation of
61 prepackaged drug products in facilities holding Class III
62 institutional pharmacy permits.

63 (21) "Central distribution facility" means a facility under
64 common control with a hospital holding a Class III institutional
65 pharmacy permit that may dispense, distribute, compound, or fill
66 prescriptions for medicinal drugs; prepare prepackaged drug
67 products; and conduct other pharmaceutical services.

68 (22) "Common control" means the power to direct or cause
69 the direction of the management and policies of a person or an
70 organization, whether by ownership of stock, voting rights,
71 contract, or otherwise.

72 Section 2. Subsection (2) of section 465.004, Florida
73 Statutes, is amended to read:

74 465.004 Board of Pharmacy.—

75 (2) Seven members of the board must be licensed pharmacists
76 who are residents of this state and who have been engaged in the
77 practice of the profession of pharmacy in this state for at
78 least 4 years and, to the extent practicable, represent the
79 various pharmacy practice settings. Of the pharmacist members,
80 two must be currently engaged in the practice of pharmacy in a
81 community pharmacy, two must be currently engaged in the
82 practice of pharmacy in a Class II, ~~institutional pharmacy or a~~
83 Modified Class II, or Class III institutional pharmacy, and
84 three must be pharmacists licensed in this state irrespective of
85 practice setting. The remaining two members must be residents of
86 the state who have never been licensed as pharmacists and who
87 are in no way connected with the practice of the profession of

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88 pharmacy. No person may be appointed as a consumer member who is
89 in any way connected with a drug manufacturer or wholesaler. At
90 least one member of the board must be 60 years of age or older.
91 The Governor shall appoint members to the board in accordance
92 with this subsection as members' terms expire or as a vacancy
93 occurs until the composition of the board complies with the
94 requirements of this subsection.

95 Section 3. Subsections (4) and (6) of section 465.019,
96 Florida Statutes, are amended, and paragraph (d) is added to
97 subsection (2) of that section, to read:

98 465.019 Institutional pharmacies; permits.-

99 (2) The following classes of institutional pharmacies are
100 established:

101 (d)1. "Class III institutional pharmacies" are those
102 institutional pharmacies, including central distribution
103 facilities, affiliated with a hospital that provide the same
104 services that are authorized by a Class II institutional
105 pharmacy permit. Class III institutional pharmacies may also:

106 a. Dispense, distribute, compound, and fill prescriptions
107 for medicinal drugs.

108 b. Prepare prepackaged drug products.

109 c. Conduct other pharmaceutical services for the affiliated
110 hospital and for entities under common control that are each
111 permitted under this chapter to possess medicinal drugs.

112 d. Provide the services in sub-subparagraphs a.-c. to an
113 entity under common control which holds an active health care
114 clinic establishment permit as required under s. 499.01(2)(r).

115 2. A Class III institutional pharmacy shall maintain
116 policies and procedures addressing:

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117 a. The consultant pharmacist responsible for pharmaceutical
118 services.

119 b. Safe practices for the preparation, dispensing,
120 prepackaging, distribution, and transportation of medicinal
121 drugs and prepackaged drug products.

122 c. Recordkeeping to monitor the movement, distribution, and
123 transportation of medicinal drugs and prepackaged drug products.

124 d. Recordkeeping of pharmacy staff responsible for each
125 step in the preparation, dispensing, prepackaging,
126 transportation, and distribution of medicinal drugs and
127 prepackaged drug products.

128 e. Medicinal drugs and prepackaged drug products that may
129 not be safely distributed among Class III institutional
130 pharmacies.

131 (4) Medicinal drugs shall be dispensed in an institutional
132 pharmacy to outpatients only when that institution has secured a
133 community pharmacy permit from the department. However, an
134 individual licensed to prescribe medicinal drugs in this state
135 may dispense up to a 24-hour supply of a medicinal drug to any
136 patient of an emergency department of a hospital that operates a
137 Class II or Class III institutional pharmacy, provided that the
138 physician treating the patient in such hospital's emergency
139 department determines that the medicinal drug is warranted and
140 that community pharmacy services are not readily accessible,
141 geographically or otherwise, to the patient. Such dispensing
142 from the emergency department must be in accordance with the
143 procedures of the hospital. For any such patient for whom a
144 medicinal drug is warranted for a period to exceed 24 hours, an
145 individual licensed to prescribe such drug must dispense a 24-

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146 hour supply of such drug to the patient and must provide the
147 patient with a prescription for such drug for use after the
148 initial 24-hour period. The board may adopt rules necessary to
149 carry out the provisions of this subsection.

150 (6) In a Class II or Class III institutional pharmacy, an
151 institutional formulary system may be adopted with approval of
152 the medical staff for the purpose of identifying those medicinal
153 drugs, proprietary preparations, biologics, biosimilars, and
154 biosimilar interchangeables that may be dispensed by the
155 pharmacists employed in such institution. A facility with a
156 Class II or Class III institutional pharmacy permit which is
157 operating under the formulary system shall establish policies
158 and procedures for the development of the system in accordance
159 with the joint standards of the American Hospital Association
160 and American Society of Hospital Pharmacists for the utilization
161 of a hospital formulary system, which formulary shall be
162 approved by the medical staff.

163 Section 4. Subsection (3) of section 465.0252, Florida
164 Statutes, is amended to read:

165 465.0252 Substitution of interchangeable biosimilar
166 products.—

167 (3) A pharmacist who practices in a Class II, ~~or~~ Modified
168 Class II, or Class III institutional pharmacy shall comply with
169 the notification provisions of paragraph (2)(c) by entering the
170 substitution in the institution's written medical record system
171 or electronic medical record system.

172 Section 5. Subsection (39) of section 499.003, Florida
173 Statutes, is amended, and paragraphs (w) and (x) are added to
174 subsection (48) of that section, to read:

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175 499.003 Definitions of terms used in this part.—As used in
176 this part, the term:

177 (39) "Prepackaged drug product" means a drug that
178 originally was in finished packaged form sealed by a
179 manufacturer and that is placed in a properly labeled container
180 by a pharmacy or practitioner authorized to dispense pursuant to
181 chapter 465 for the purpose of dispensing or by a facility
182 holding a Class III institutional pharmacy permit in the
183 establishment in which the prepackaging occurred.

184 (48) "Wholesale distribution" means the distribution of a
185 prescription drug to a person other than a consumer or patient,
186 or the receipt of a prescription drug by a person other than the
187 consumer or patient, but does not include:

188 (w) A hospital covered by s. 340B of the Public Health
189 Service Act, 42 U.S.C. s. 256b, that arranges for a prescription
190 drug wholesale distributor to distribute prescription drugs
191 covered under that act directly to a contract pharmacy. Such
192 hospital is exempt from obtaining a restricted prescription drug
193 distributor permit under s. 499.01(2)(h).

194 (x) The dispensing or distribution of a medicinal drug by a
195 Class III institutional pharmacy pursuant to s. 465.019.

196 Section 6. Paragraphs (b) and (h) of subsection (2) and
197 subsection (5) of section 499.01, Florida Statutes, are amended
198 to read:

199 499.01 Permits.—

200 (2) The following permits are established:

201 (b) *Prescription drug repackager permit.*—A prescription
202 drug repackager permit is required for any person that
203 repackages a prescription drug in this state.

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204 1. A person that operates an establishment permitted as a
205 prescription drug repackager may engage in distribution of
206 prescription drugs repackaged at that establishment and must
207 comply with all of the provisions of this part and the rules
208 adopted under this part that apply to a prescription drug
209 manufacturer.

210 2. A prescription drug repackager must comply with all
211 appropriate state and federal good manufacturing practices.

212 3. A prescription drug repackager permit is not required
213 for distributing medicinal drugs or prepackaged drug products
214 between entities under common control which each hold an active
215 Class III institutional pharmacy permit under chapter 465 or an
216 active health care clinic establishment permit under paragraph
217 (r). For purposes of this subparagraph, the term "common
218 control" has the same meaning as in s. 499.003(48) (a)3.

219 (h) *Restricted prescription drug distributor permit.*—

220 1. A restricted prescription drug distributor permit is
221 required for:

222 a. Any person located in this state who engages in the
223 distribution of a prescription drug, which distribution is not
224 considered "wholesale distribution" under s. 499.003(48) (a).

225 b. Any person located in this state who engages in the
226 receipt or distribution of a prescription drug in this state for
227 the purpose of processing its return or its destruction if such
228 person is not the person initiating the return, the prescription
229 drug wholesale supplier of the person initiating the return, or
230 the manufacturer of the drug.

231 c. A blood establishment located in this state which
232 collects blood and blood components only from volunteer donors

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233 as defined in s. 381.06014 or pursuant to an authorized
234 practitioner's order for medical treatment or therapy and
235 engages in the wholesale distribution of a prescription drug not
236 described in s. 499.003(48)(j) to a health care entity. A mobile
237 blood unit operated by a blood establishment permitted under
238 this sub-subparagraph is not required to be separately
239 permitted. The health care entity receiving a prescription drug
240 distributed under this sub-subparagraph must be licensed as a
241 closed pharmacy or provide health care services at that
242 establishment. The blood establishment must operate in
243 accordance with s. 381.06014 and may distribute only:

244 (I) Prescription drugs indicated for a bleeding or clotting
245 disorder or anemia;

246 (II) Blood-collection containers approved under s. 505 of
247 the federal act;

248 (III) Drugs that are blood derivatives, or a recombinant or
249 synthetic form of a blood derivative;

250 (IV) Prescription drugs that are identified in rules
251 adopted by the department and that are essential to services
252 performed or provided by blood establishments and authorized for
253 distribution by blood establishments under federal law; or

254 (V) To the extent authorized by federal law, drugs
255 necessary to collect blood or blood components from volunteer
256 blood donors; for blood establishment personnel to perform
257 therapeutic procedures under the direction and supervision of a
258 licensed physician; and to diagnose, treat, manage, and prevent
259 any reaction of a volunteer blood donor or a patient undergoing
260 a therapeutic procedure performed under the direction and
261 supervision of a licensed physician,

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262
263 as long as all of the health care services provided by the blood
264 establishment are related to its activities as a registered
265 blood establishment or the health care services consist of
266 collecting, processing, storing, or administering human
267 hematopoietic stem cells or progenitor cells or performing
268 diagnostic testing of specimens if such specimens are tested
269 together with specimens undergoing routine donor testing. The
270 blood establishment may purchase and possess the drugs described
271 in this sub-subparagraph without a health care clinic
272 establishment permit.

273 2. Storage, handling, and recordkeeping of these
274 distributions by a person required to be permitted as a
275 restricted prescription drug distributor must be in accordance
276 with the requirements for wholesale distributors under s.
277 499.0121.

278 3. A person who applies for a permit as a restricted
279 prescription drug distributor, or for the renewal of such a
280 permit, must provide to the department the information required
281 under s. 499.012.

282 4. The department may adopt rules regarding the
283 distribution of prescription drugs by hospitals, health care
284 entities, charitable organizations, other persons not involved
285 in wholesale distribution, and blood establishments, which rules
286 are necessary for the protection of the public health, safety,
287 and welfare.

288 5. A restricted prescription drug distributor permit is not
289 required for distributions between pharmacies that each hold an
290 active permit under chapter 465, have a common ownership, and

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291 are operating in a freestanding end-stage renal dialysis clinic,
292 if such distributions are made to meet the immediate emergency
293 medical needs of specifically identified patients and do not
294 occur with such frequency as to amount to the regular and
295 systematic supplying of that drug between the pharmacies. The
296 department shall adopt rules establishing when the distribution
297 of a prescription drug under this subparagraph amounts to the
298 regular and systematic supplying of that drug.

299 6. A restricted prescription drug distributor permit is not
300 required for distributing medicinal drugs or prepackaged drug
301 products between entities under common control that each hold
302 either an active Class III institutional pharmacy permit under
303 chapter 465 or an active health care clinic establishment permit
304 under paragraph (2) (r). For purposes of this subparagraph, the
305 term "common control" has the same meaning as in s.
306 499.003(48) (a) 3.

307 ~~(5) A prescription drug repackager permit issued under this~~
308 ~~part is not required for a restricted prescription drug~~
309 ~~distributor permit holder that is a health care entity to~~
310 ~~repackage prescription drugs in this state for its own use or~~
311 ~~for distribution to hospitals or other health care entities in~~
312 ~~the state for their own use, pursuant to s. 499.003(48) (a) 3.,~~
313 ~~if:~~

314 ~~(a) The prescription drug distributor notifies the~~
315 ~~department, in writing, of its intention to engage in~~
316 ~~repackaging under this exemption, 30 days before engaging in the~~
317 ~~repackaging of prescription drugs at the permitted~~
318 ~~establishment;~~

319 ~~(b) The prescription drug distributor is under common~~

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320 ~~control with the hospitals or other health care entities to~~
321 ~~which the prescription drug distributor is distributing~~
322 ~~prescription drugs. As used in this paragraph, "common control"~~
323 ~~means the power to direct or cause the direction of the~~
324 ~~management and policies of a person or an organization, whether~~
325 ~~by ownership of stock, voting rights, contract, or otherwise;~~

326 ~~(c) The prescription drug distributor repackages the~~
327 ~~prescription drugs in accordance with current state and federal~~
328 ~~good manufacturing practices; and~~

329 ~~(d) The prescription drug distributor labels the~~
330 ~~prescription drug it repackages in accordance with state and~~
331 ~~federal laws and rules.~~

332
333 ~~The prescription drug distributor is exempt from the product~~
334 ~~registration requirements of s. 499.015 with regard to the~~
335 ~~prescription drugs that it repackages and distributes under this~~
336 ~~subsection. A prescription drug distributor that repackages and~~
337 ~~distributes prescription drugs under this subsection to a not-~~
338 ~~for-profit rural hospital, as defined in s. 395.602, is not~~
339 ~~required to comply with paragraph (c) or paragraph (d), but must~~
340 ~~provide to each health care entity for which it repackages, for~~
341 ~~each prescription drug that is repackaged and distributed, the~~
342 ~~information required by department rule for labeling~~
343 ~~prescription drugs. The department shall adopt rules to ensure~~
344 ~~the safety and integrity of prescription drugs repackaged and~~
345 ~~distributed under this subsection, including rules regarding~~
346 ~~prescription drug manufacturing and labeling requirements.~~

347 ~~Section 7. This act shall take effect July 1, 2018.~~



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Finance and Tax, *Chair*
Appropriations Subcommittee on Health and Human Services, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability
Military and Veterans Affairs, Space, and Domestic Security

SENATOR KELLI STARGEL

Deputy Majority Leader
22nd District

February 1, 2018

The Honorable Travis Hutson
Senate Regulated Industries Committee, Chair
330 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Hutson:

I respectfully request that SB 1128, related to *Pharmacies*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 22

Cc: Ross McSwain/ Staff Director
Lynn Koon/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/14/13 Meeting Date

1128 Bill Number (if applicable)

Topic PHARMACY

Amendment Barcode (if applicable)

Name HEATHER FULLER

Job Title PHARMACIST

Address 402 E PALMER AVE

Phone 386 405 1923

TALLAHASSEE FL City State Zip

Email

Speaking: [X] For [] Against [] Information

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

Representing FSHIP

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

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

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

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

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 Regulated Industries

BILL: SB 1288

INTRODUCER: Senators Simmons and Steube

SUBJECT: Tobacco Products

DATE: February 9, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1288 increases the minimum age to lawfully possess tobacco products from 18 to 21 years of age. The provisions of the bill may be cited as the “Tobacco 21 Act”.

The bill defines “tobacco products” to include electronic smoking devices, such as electronic cigarettes. The sale of tobacco products through a vending machine is also prohibited by the bill.

The bill decriminalizes the penalties for any person who sells, delivers, barter, furnishes, or gives tobacco products to a person under the age of 21. Instead of criminal penalties, the bill provides a noncriminal penalty of a fine of no more than \$500 for the first offense, and a fine of no more than \$1,000 for a second or subsequent offense within one year of the first violation.

Additionally, the bill repeals the current prohibitions against the possession of tobacco products by persons under the minimum age of lawful possession. However, the bill maintains the current prohibition against any person who misrepresents his or her age for the purpose of inducing a retail tobacco dealer, or an agent or employee of the dealer, to sell any tobacco product or to attempt to purchase any tobacco product from a person or vending machine, and provides a noncriminal penalty of 20 hours of community service for a first offense and at least 40 hours of community service for subsequent offenses within one year of the first violation.

The effective date of the bill is October 1, 2018.

SB 1288 may have an indeterminate fiscal impact on state government, the courts, and the clerks of county courts.¹ See Section V, Fiscal Impact Statement.

¹ Pursuant to s. 34.031, F.S., the clerk of the circuit court is the clerk of the county court, unless otherwise provided by law.

II. Present Situation:

Tobacco Products Regulation in Florida

The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation (department) is the state agency responsible for the regulation and enforcement of the tobacco products under ch. 569, F.S.

Section 569.002(6), F.S., defines the term “tobacco products” to include:

loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

Section 210.25(11), F.S., relating to the tax on tobacco products other than cigarettes or cigars, defines the term “tobacco products” to mean:

loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but “tobacco products” does not include cigarettes, as defined by s. 210.01(1), or cigars.

Tobacco Products and Minors

Section 569.0075, F.S., prohibits the giving of sample tobacco products to persons under the age of 18.

Section 569.101, F.S., prohibits the sale, delivery, bartering, furnishing or giving of tobacco products to persons under the age of 18. A violation of this prohibition is a second degree misdemeanor.² A second or subsequent violation within one year of the first violation is a first degree misdemeanor.³

It is a complete defense to a person charged with a violation of s. 569.101, F.S., if the buyer or recipient falsely evidenced that he or she was 18 years of age or older, a prudent person would

² Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60 days. Section 775.083, F.S. provides that the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

³ Section 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S. provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

believe the buyer or recipient to be 18 years of age or older, and the buyer or recipient presented false identification⁴ upon which the person relied upon in good faith.⁵

Section 569.11, F.S., prohibits persons under the age of 18 years from possessing, directly or indirectly, any tobacco products.

- A first violation of this prohibition is a non-criminal violation with a penalty of 16 hours of community service or a \$25 fine, and attendance at a school-approved anti-tobacco program, if locally available.
- A second violation within 12 weeks of the first violation is punishable with a \$25 fine.
- A third or subsequent violation within 12 weeks of the first violation requires that the person be punished with the suspension or revocation of his or her driver's license or driving privilege, as provided in s. 322.056, F.S.⁶

However, a person "under the age of 18" does not include any person under the age of 18 who:

- Has had his or her disability of nonage removed under ch. 743, F.S.;
- Is in the military reserve or on active duty in the Armed Forces of the United States;
- Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or
- Is acting in his or her scope of lawful employment with an entity licensed under the provisions of ch. 210, F.S., relating to taxation of cigarettes and other tobacco products, or ch. 569, F.S., relating to tobacco products.⁷

Eighty percent of all civil penalties received by a county court must be remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court must remain with the clerk of the county court to cover administrative costs.⁸

Retail tobacco products dealers (retailers) must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The division is required to make the signs available to retailers. Retailers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.⁹

⁴ Identification includes carefully checking "driver's license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older. See s. 569.101(2)(c), F.S.

⁵ Section 569.101(3), F.S.

⁶ Section 322.056, F.S., requires the mandatory revocation or suspension of, or delay of eligibility for, a driver license for persons under 18 years of age found guilty of certain alcohol, drug, tobacco or nicotine product and nicotine dispensing device offenses. Penalties range from a 30-day suspension to a two-year revocation of a driver license. However, a court may, in its discretion, order a restricted driver license for business or employment purposes.

⁷ Section 569.002(7), F.S.

⁸ Section 569.11(6), F.S.

⁹ Section 569.14, F.S.

To prevent persons under 18 years of age from purchasing or receiving tobacco products, the sale or delivery of tobacco products is prohibited, except when those products are under the direct control or line of sight of the dealer or the dealer's agent or employee. If a tobacco product is sold from a vending machine, the vending machine must have:

- An operational lockout device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one tobacco product;
- A mechanism on the lockout device to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled;
- A mechanism to ensure that only one tobacco product is dispensed at a time.¹⁰

These requirements for the sale of tobacco products do not apply to an establishment that prohibits persons under 18 years of age on premises and do not apply to the sale or delivery of cigars and pipe tobacco.¹¹

Section 386.212, F.S., in the Florida Clean Indoor Air Act, prohibits any person under the age of 18 from smoking tobacco within 1,000 feet of a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. A violation of this prohibition is punishable by a maximum noncriminal civil penalty not to exceed \$25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco "alternative to suspension" program.

Mail Order, Internet, and Other Remote Sales of Tobacco Products

Section 210.095(5), F.S., provides requirements for the delivery of mail order, Internet, and other remote sales of tobacco products, referred to as "delivery sales". Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale is required to:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Tobacco Products: Florida law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes."
- Use a method of mailing, shipping, or delivery which obligates the delivery service to require:
 - The signature of an adult who resides at the delivery address and to obtain proof of the legal minimum purchase age of the individual accepting delivery is required, if the individual appears to be under 27 years of age.
 - Proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.
- Provide to the delivery service, if such service is used, evidence of full compliance with requirements for the collection and remittance of all taxes imposed on tobacco products by this state with respect to the delivery sale.¹²

¹⁰ Section 569.007(1), F.S.

¹¹ Sections 569.007(2) and (3), F.S.

¹² Section 210.095(5), F.S.

If a person accepts a purchase order for a delivery sale and delivers the tobacco products without using a delivery service, the person must comply with all of the requirements that apply to a delivery service.¹³

Section 210.095(8), F.S., currently provides that the penalty for the following violations of the delivery sale requirements is a misdemeanor of the third degree.¹⁴

- A delivery sale of delivers tobacco products, on behalf of a delivery service, to an individual who is under 18 years of age.
- A violation of any provision in s. 210.095, F.S., by an individual who is under 18 years of age.

Florida law does not provide a criminal penalty classification for a misdemeanor of the third degree. However, the prohibitions and penalties in s. 569.101, F.S., prohibiting the sale, delivery, bartering, furnishing, or giving, directly or indirectly, to any person who is under 18 years of age, any tobacco product, and s. 569.11, F.S., prohibiting persons under 18 years of age from possessing, directly or indirectly, any tobacco products, apply to s. 210.095, F.S., related to the delivery of tobacco products to persons under the age of 18.

Nicotine Dispensing Devices

Section 877.112, F.S., provides for the regulation of nicotine dispensing devices and nicotine products, such as electronic cigarettes (e-cigarettes). This statute extends the current prohibitions related to tobacco products to the sale, gifting, possession, or use of nicotine dispensing devices and nicotine products to and by persons under 18 years of age.

A “nicotine dispensing device” is:

any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.¹⁵

A “nicotine product” is any product that contains nicotine, including liquid nicotine intended for human consumption, whether inhaled, chewed, absorbed, dissolved or ingested by any means. The definition does not include a tobacco product under Florida law, a drug or device under federal law, or a product that contains incidental nicotine.¹⁶

¹³ *Id.*

¹⁴ Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

¹⁵ Section 877.112(1)(a), F.S.

¹⁶ Section 877.112(1)(b), F.S.

The sale or giving of nicotine products or nicotine dispensing devices to any person under 18 years of age is prohibited and punishable as a second degree misdemeanor.¹⁷ It is a complete defense to a violation if an underage person falsely misrepresented his or her age, the underage person had the appearance to a prudent person to 18 years of age or older, and the person carefully checked, and relied on, the driver license or identification card of the recipient.¹⁸

Persons under 18 years of age possessing, purchasing, or misrepresenting their age or military service to obtain nicotine products or nicotine dispensing devices commit a noncriminal violation.¹⁹ The penalty is 16 hours of community service or a \$25 fine for a first violation, and attendance at a school-approved anti-tobacco and nicotine program, if available. A second violation within 12 weeks of the first violation requires a \$25 fine. A third violation within 12 weeks of the first violation requires the suspension or revocation of the person's driver license, as provided in s. 322.056, F.S.²⁰

Eighty percent of civil penalties are remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court are retained by the clerk of the county court to cover administrative costs.²¹

Section 877.112(10), F.S., requires a retail dealer of nicotine products and nicotine dispensing devices to post signs that the sale of nicotine products and nicotine dispensing devices to persons under 18 years of age is prohibited.

Nicotine products or nicotine dispensing devices may not be sold or delivered by self-service merchandising, except when such products are under the direct control, or line of sight where effective control may be reasonably maintained by the retailer or their agent or employee.²²

To prevent persons under 18 years of age from purchasing or receiving nicotine products or nicotine dispensing devices, s. 877.112(12), F.S., requires retailers to comply with restrictions identical to the restrictions on the sale of tobacco products in s. 569.007(1), F.S., such as requiring the products to be sold or delivered only when under the direct control or line of sight of the retailer and requiring a lockout device if the products are sold or delivered from a vending machine.

Responsible Retail Tobacco Products Dealers

Section 569.008, F.S., provides a process for a retail tobacco product dealer to mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person

¹⁷ Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

¹⁸ Section 877.112(5), F.S.

¹⁹ Sections 877.112(6) and (7), F.S.

²⁰ Section 877.112(8), F.S.

²¹ Section 877.112(9), F.S.

²² Section 877.112(11), F.S.

under 18 years of age.²³ The process encourages retail tobacco products dealers to comply with responsible practices. The division may mitigate penalties, if:

- The dealer is qualified as a responsible dealer having established and implemented specified practices designed to ensure that the dealer’s employees comply with ch. 569, F.S., such as employee training.
- The dealer had no knowledge of that employee’s violation at the time of the violation and did not direct, approve, or participate in the violation.
- The sale was made through a vending machine equipped with an operational lock-out device.²⁴

III. Effect of Proposed Changes:

“Tobacco 21 Act”

Section 1 of the bill provides that this act may be cited as the "Tobacco 21 Act."

Mail Order, Internet, and Other Remote Sales of Tobacco Products

The bills amends s. 210.095, F.S., to increase the minimum age to purchase tobacco products from 18 to 21 years of age. The bill revises the penalties in s. 210.095, F.S., by:

- Decriminalizing a violation for a person who omits the required disclaimer from the shipping documents.
- Reducing the penalty from a “third degree misdemeanor” to a noncriminal violation with a penalty for a first offense of at least 20 hours of community service, and a penalty for a second or subsequent violation within one year of the first violation of least 40 hours of community service.
- Providing a penalty of a second degree misdemeanor penalty (instead of the current “third degree misdemeanor”) for a person who, in connection with a delivery sale, delivers tobacco products on behalf of a delivery service to an individual who is not an adult.

Mandatory Driver License Penalties

The bill amends s. 322.056, F.S., to repeal the mandatory revocation or suspension of, or the delay of eligibility for, a driver license for persons under 18 years of found guilty of certain tobacco or nicotine product and nicotine dispensing device offenses.

Definitions

The bill creates s. 569.002(6), F.S., to define the term “electronic smoking device” as:

any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. The term includes any component, part, or accessory of such a device, sold separately or with the

²³ The Florida Responsible Vendor Act in ss. 561.701-561.706, F.S., provides a comparable process for mitigation of penalties against vendors of alcoholic beverages.

²⁴ See s. 569.008(3), F.S.

device, and includes any substance intended to be aerosolized or vaporized during the use of the device. The term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

The bill amends s. 569.002(7), F.S., and revises the definition of “tobacco products” to be any:

product that is made from or derived from tobacco or that contains nicotine and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus.

Under the bill, the term “tobacco products” includes electronic smoking devices and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, and liquids used in electronic smoking devices, whether or not they contain nicotine. However, the term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

The bill repeals s. 877.122, F.S., which defines nicotine dispensing devices and nicotine products.

Retail sellers of electronic smoking devices are required by the bill to be licensed as retail tobacco products dealers because of the bill’s amended definition of tobacco products.

The bill does not revise the definition of “tobacco products” in ch. 210, F.S., which governs the excise tax and surcharge imposed and collected on cigarettes and other tobacco products. Consequently, the bill does not affect:

- The collection excise taxes and surcharge taxes on tobacco products; and
- The licensure, reporting, and recordkeeping of manufacturers and distributors of the additional nicotine delivery products.

Decriminalization and Penalties

The bill amends s. 569.101, F.S., to decriminalize penalties for any person who sells, delivers, barter, furnishes, or gives tobacco products to a person under the age of 21. Under the bill, a violation of the prohibition on such acts is a noncriminal violation punishable by a fine of no more than \$500 for the first offense, and a fine of no more than \$1,000 for a second or subsequent offense within one year of the first violation.

Section 569.11, F.S., relating to prohibitions on the possession of tobacco products by persons under the minimum age of purchase, is amended by the bill to repeal the current prohibition on the possession of tobacco products by a person who is under the minimum age for lawful possession of tobacco products and the related penalties for violations of the prohibition.

In lieu of criminal penalties, a person misrepresenting his or her age for the purpose of inducing a dealer or an agent or employee of the dealer to sell any tobacco product, or attempts to purchase any tobacco product from a person or vending machine, is subject to a noncriminal penalty of 20 hours of community service for a first offense, and at least 40 hours of community service for a second or subsequent offense within one year of the first violation.

The bill requires a person accused of a violation of s. 561.11, F.S., to appear before the county court for a hearing. The bill removes the option in current law permitting the accused to pay the applicable fine without having to appear in county court.

The bill amends s. 569.002(7), F.S., which provides exclusions from the meaning of "any person under the age of 18". The bill does not provide comparable exclusions for persons under 21 years of age. The elimination of these exceptions to the minimum age, coupled with the increase of the minimum age to 21 years of age, requires active duty or reserve military personnel, otherwise exempt under current law, to be 21 to purchase or possess tobacco products, including electronic smoking devices.

The bill decreases the applicable penalties in s. 569.14(5), F.S., for a retail tobacco dealer who fails to post a clear and conspicuous sign stating that the sale of tobacco to a person under the legal age is prohibited under Florida law. A violation of this prohibition remains a second degree misdemeanor, punishable by a fine of no more than \$500, as provided in s. 775.083, F.S., but the bill repeals the criminal penalty of a maximum 60-day period of incarceration provided in s. 775.082, F.S.

Sales Restrictions

The bill amends s. 569.007(1), F.S., and repeals s. 877.112, F.S., to eliminate the general restrictions on the sale or delivery of tobacco products, nicotine dispensing devices, and nicotine products. The bill requires that tobacco products and electronic smoking devices be sold from behind a counter where the products are required to be retrieved and hand delivered by an employee to the consumer. The bill repeals the current authorization for sales from a vending machine.

Responsible Retail Tobacco Products Dealers

The bill amends s. 569.008, F.S., to remove the authority for the division to mitigate penalties based on a dealer's adherence to the responsible practices provided in this section. However, the bill retains the current conditions to qualify as a responsible retail tobacco products dealer.

Conforming Provisions

The bill amends ss. 386.212, 569.12, 569.14, and 569.19, F.S., to increase the minimum age in these provisions from 18 to 21 years of age.

Effective Date

The effective date of the bill is October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who violate the current criminal prohibitions in ss. 569.101 and 569.11, F.S., will not incur costs related to the payment of criminal fines or costs related to incarceration.

Retail dealers of electronic smoking devices, such as electronic cigarettes, are required by the bill to obtain a retail tobacco products dealer permit, which has an annual license fee of \$50.²⁵

C. Government Sector Impact:

The Department of Business and Professional Regulation may incur indeterminate expenses related to personnel or modification of operational priorities needed to accommodate the additional licensure of dealers of electronic smoking devices.

Under current law, clerks of county courts may retain 20 percent of civil penalties received by a county court from penalties imposed for violations of the prohibitions in ss. 569.101 and 569.11, F.S., to cover administrative costs.²⁶ The bill repeals those penalties, which will eliminate this funding source.

The bill requires a person accused of a violation of s. 561.11, to appear before the county court for a hearing, and removes the option in current law permitting an accused person to pay the applicable fine without having to appear in county court. This may have an indeterminate impact on county courts due to the additional time and personnel required to schedule and hold these hearings.

²⁵ See 569.003(1)(c), F.S.

²⁶ See ss. 569.11(6) and 877.112(9), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Five states have raised the minimum age for a person to lawfully possess or purchase tobacco products to 21 years of age: California, New Jersey, Oregon, Hawaii, and Maine. At least 285 localities, including New York City, Chicago, San Antonio, Boston, Cleveland, and Kansas City (in Kansas and Missouri) have also raised the minimum to 21 years of age.²⁷

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 210.095, 322.056, 386.212, 569.002, 569.007, 569.0075, 569.008, 569.101, 569.11, 569.12, 569.14, and 569.19.

This bill repeals section 877.112 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.

²⁷ See Campaign for Tobacco-Free Kids, States and Localities that have Raised the Minimum Legal Sale Age for Tobacco Products to 21, available at: https://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf (last visited February 12, 2018).

By Senator Simmons

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1 A bill to be entitled
2 An act relating to tobacco products; providing a short
3 title; amending s. 210.095, F.S.; revising shipping
4 documentation requirements for specified sales of
5 tobacco products; providing criminal and noncriminal
6 penalties; amending s. 322.056, F.S.; deleting
7 provisions requiring driver license penalties for
8 certain persons who commit tobacco-related offenses;
9 amending s. 386.212, F.S.; revising the age limit for
10 smoking near school property; amending s. 569.002,
11 F.S.; defining the term "electronic smoking device";
12 redefining the term "tobacco products"; deleting the
13 term "any person under the age of 18"; amending s.
14 569.007, F.S.; prohibiting the sale of tobacco
15 products except under certain circumstances; providing
16 an exception for certain establishments; amending s.
17 569.0075, F.S.; prohibiting certain entities from
18 gifting sample tobacco products to persons under 21
19 years of age; amending s. 569.008, F.S.; providing
20 legislative intent; deleting a provision relating to
21 the mitigation of penalties imposed against a dealer
22 for certain violations; amending s. 569.101, F.S.;
23 providing that it is unlawful to sell, deliver,
24 barter, furnish, or give tobacco products to persons
25 under 21 years of age; revising penalties for
26 violations; revising the requirements for a complete
27 defense for persons charged with certain violations;
28 amending s. 569.11, F.S.; deleting provisions relating
29 to persons under 18 years of age possessing tobacco

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30 products; providing that it is unlawful for persons
31 under 21 years of age to misrepresent their age to
32 acquire tobacco products; revising the penalties for
33 certain persons who misrepresent their age; deleting a
34 provision requiring a person participating in
35 community service to be considered an employee of the
36 state for certain purposes; conforming a provision to
37 changes made by the act; amending ss. 569.12, 569.14,
38 and 569.19, F.S.; conforming provisions to changes
39 made by the act; repealing s. 877.112, F.S., relating
40 to restrictions on the sale and delivery of nicotine
41 products and nicotine dispensing devices; providing an
42 effective date.

43
44 Be It Enacted by the Legislature of the State of Florida:

45
46 Section 1. This act may be cited as the "Tobacco 21 Act."

47 Section 2. Subsection (5) and paragraphs (e) and (g) of
48 subsection (8) of section 210.095, Florida Statutes, are amended
49 to read:

50 210.095 Mail order, Internet, and remote sales of tobacco
51 products; age verification.—

52 (5) Each person who mails, ships, or otherwise delivers
53 tobacco products in connection with an order for a delivery sale
54 must:

55 (a) Include as part of the shipping documents, in a clear
56 and conspicuous manner, the following statement: "Tobacco
57 Products: Florida law prohibits shipping to individuals under 21
58 ~~18~~ years of age and requires the payment of all applicable

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59 taxes.”

60 (b) Use a method of mailing, shipping, or delivery which
61 obligates the delivery service to require:

62 1. The individual submitting the order for the delivery
63 sale or another adult who resides at the individual's address to
64 sign his or her name to accept delivery of the shipping
65 container. Proof of the legal minimum purchase age of the
66 individual accepting delivery is required only if the individual
67 appears to be under 27 years of age.

68 2. Proof that the individual is either the addressee or the
69 adult designated by the addressee, in the form of a valid,
70 government-issued identification card bearing a photograph of
71 the individual who signs to accept delivery of the shipping
72 container.

73 (c) Provide to the delivery service, if such service is
74 used, evidence of full compliance with subsection (7).

75
76 Any person who violates paragraph (a) commits a noncriminal
77 violation and must serve at least 20 hours of community service.

78 Any person who violates paragraph (a) a second or subsequent
79 time within 1 year of the first violation commits a noncriminal
80 violation and must serve at least 40 hours of community service

81 ~~If the person accepting a purchase order for a delivery sale~~
82 ~~delivers the tobacco products without using a delivery service,~~
83 ~~the person must comply with all of the requirements of this~~
84 ~~section which apply to a delivery service. Any failure to comply~~
85 ~~with a requirement of this section constitutes a violation~~
86 ~~thereof.~~

87 (8)

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88 (e) A person who, in connection with a delivery sale,
89 delivers tobacco products on behalf of a delivery service to an
90 individual who is not an adult commits a misdemeanor of the
91 second degree ~~of the third degree~~, punishable as provided in s.
92 775.082 or s. 775.083.

93 ~~(g) An individual who is not an adult and who knowingly~~
94 ~~violates any provision of this section commits a misdemeanor of~~
95 ~~the third degree, punishable as provided in s. 775.082 or s.~~
96 ~~775.083.~~

97 Section 3. Section 322.056, Florida Statutes, is amended to
98 read:

99 322.056 Mandatory revocation or suspension of, or delay of
100 eligibility for, driver license for persons under age 18 found
101 guilty of certain alcohol or ~~drug, or tobacco~~ offenses;
102 prohibition.-

103 (1) Notwithstanding the provisions of s. 322.055, if a
104 person under 18 years of age is found guilty of or delinquent
105 for a violation of s. 562.11(2), s. 562.111, or chapter 893,
106 and:

107 (a) The person is eligible by reason of age for a driver
108 license or driving privilege, the court shall direct the
109 department to revoke or to withhold issuance of his or her
110 driver license or driving privilege for a period of:

111 1. Not less than 6 months and not more than 1 year for the
112 first violation.

113 2. Two years, for a subsequent violation.

114 (b) The person's driver license or driving privilege is
115 under suspension or revocation for any reason, the court shall
116 direct the department to extend the period of suspension or

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117 revocation by an additional period of:

118 1. Not less than 6 months and not more than 1 year for the
119 first violation.

120 2. Two years, for a subsequent violation.

121 (c) The person is ineligible by reason of age for a driver
122 license or driving privilege, the court shall direct the
123 department to withhold issuance of his or her driver license or
124 driving privilege for a period of:

125 1. Not less than 6 months and not more than 1 year after
126 the date on which he or she would otherwise have become
127 eligible, for the first violation.

128 2. Two years after the date on which he or she would
129 otherwise have become eligible, for a subsequent violation.

130

131 However, the court may, ~~in its sound discretion,~~ direct the
132 department to issue a license for driving privileges restricted
133 to business or employment purposes only, as defined in s.
134 322.271, if the person is otherwise qualified for such a
135 license.

136 ~~(2) If a person under 18 years of age is found by the court~~
137 ~~to have committed a noncriminal violation under s. 569.11 or s.~~
138 ~~877.112(6) or (7) and that person has failed to comply with the~~
139 ~~procedures established in that section by failing to fulfill~~
140 ~~community service requirements, failing to pay the applicable~~
141 ~~fine, or failing to attend a locally available school-approved~~
142 ~~anti-tobacco program, and:~~

143 ~~(a) The person is eligible by reason of age for a driver~~
144 ~~license or driving privilege, the court shall direct the~~
145 ~~department to revoke or to withhold issuance of his or her~~

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146 ~~driver license or driving privilege as follows:~~

147 ~~1. For the first violation, for 30 days.~~

148 ~~2. For the second violation within 12 weeks of the first~~
149 ~~violation, for 45 days.~~

150 ~~(b) The person's driver license or driving privilege is~~
151 ~~under suspension or revocation for any reason, the court shall~~
152 ~~direct the department to extend the period of suspension or~~
153 ~~revocation by an additional period as follows:~~

154 ~~1. For the first violation, for 30 days.~~

155 ~~2. For the second violation within 12 weeks of the first~~
156 ~~violation, for 45 days.~~

157 ~~(c) The person is ineligible by reason of age for a driver~~
158 ~~license or driving privilege, the court shall direct the~~
159 ~~department to withhold issuance of his or her driver license or~~
160 ~~driving privilege as follows:~~

161 ~~1. For the first violation, for 30 days.~~

162 ~~2. For the second violation within 12 weeks of the first~~
163 ~~violation, for 45 days.~~

164
165 ~~Any second violation of s. 569.11 or s. 877.112(6) or (7) not~~
166 ~~within the 12-week period after the first violation will be~~
167 ~~treated as a first violation and in the same manner as provided~~
168 ~~in this subsection.~~

169 ~~(3) If a person under 18 years of age is found by the court~~
170 ~~to have committed a third violation of s. 569.11 or s.~~
171 ~~877.112(6) or (7) within 12 weeks of the first violation, the~~
172 ~~court must direct the Department of Highway Safety and Motor~~
173 ~~Vehicles to suspend or withhold issuance of his or her driver~~
174 ~~license or driving privilege for 60 consecutive days. Any third~~

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175 ~~violation of s. 569.11 or s. 877.112(6) or (7) not within the~~
 176 ~~12-week period after the first violation will be treated as a~~
 177 ~~first violation and in the same manner as provided in subsection~~
 178 ~~(2).~~

179 (2) ~~(4)~~ A penalty imposed under this section shall be in
 180 addition to any other penalty imposed by law.

181 ~~(5) The suspension or revocation of a person's driver~~
 182 ~~license imposed pursuant to subsection (2) or subsection (3),~~
 183 ~~shall not result in or be cause for an increase of the convicted~~
 184 ~~person's, or his or her parent's or legal guardian's, automobile~~
 185 ~~insurance rate or premium or result in points assessed against~~
 186 ~~the person's driving record.~~

187 Section 4. Subsection (1) of section 386.212, Florida
 188 Statutes, is amended to read:

189 386.212 Smoking prohibited near school property; penalty.-

190 (1) It is unlawful for any person under 21 ~~18~~ years of age
 191 to smoke tobacco in, on, or within 1,000 feet of the real
 192 property comprising a public or private elementary, middle, or
 193 secondary school between the hours of 6 a.m. and midnight. This
 194 section does not apply to any person occupying a moving vehicle
 195 or within a private residence.

196 Section 5. Present subsections (3), (4), and (5) of section
 197 569.002, Florida Statutes, are redesignated as subsections (4),
 198 (5), and (6), respectively, present subsections (6) and (7) of
 199 that section are amended, and a new subsection (3) is added to
 200 that section, to read:

201 569.002 Definitions.—As used in this chapter, the term:

202 (3) "Electronic smoking device" means any device that can
 203 be used to deliver aerosolized or vaporized nicotine to the

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204 person inhaling from the device, including, but not limited to,
205 an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. The term
206 includes any component, part, or accessory of such a device,
207 sold separately or with the device, and includes any substance
208 intended to be aerosolized or vaporized during the use of the
209 device. The term does not include drugs, devices, or combination
210 products authorized for sale by the United States Food and Drug
211 Administration, as those terms are defined in the Federal Food,
212 Drug, and Cosmetic Act.

213 (7)-(6) "Tobacco products" means any product that is made
214 from or derived from tobacco or that contains nicotine and is
215 intended for human consumption or is likely to be consumed,
216 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or
217 ingested by any other means, including, but not limited to, a
218 cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or
219 snus. The term includes electronic smoking devices and any
220 component or accessory used in the consumption of a tobacco
221 product, such as filters, rolling papers, pipes, and liquids
222 used in electronic smoking devices, whether or not they contain
223 nicotine. The term does not include drugs, devices, or
224 combination products authorized for sale by the United States
225 Food and Drug Administration, as those terms are defined in the
226 Federal Food, Drug, and Cosmetic Act ~~includes loose tobacco~~
227 leaves, and products made from tobacco leaves, in whole or in
228 part, and cigarette wrappers, which can be used for smoking,
229 sniffing, or chewing.

230 (7) "Any person under the age of 18" does not include any
231 person under the age of 18 who:

232 (a) Has had his or her disability of nonage removed under

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233 ~~chapter 743;~~

234 ~~(b) Is in the military reserve or on active duty in the~~
235 ~~Armed Forces of the United States;~~

236 ~~(c) Is otherwise emancipated by a court of competent~~
237 ~~jurisdiction and released from parental care and responsibility;~~
238 ~~or~~

239 ~~(d) Is acting in his or her scope of lawful employment with~~
240 ~~an entity licensed under the provisions of chapter 210 or this~~
241 ~~chapter.~~

242 Section 6. Subsections (1) and (2) of section 569.007,
243 Florida Statutes, are amended to read:

244 569.007 Sale or delivery of tobacco products;
245 restrictions.—

246 ~~(1)~~ In order to prevent persons under 21 ~~18~~ years of age
247 from purchasing or receiving tobacco products, the sale or
248 delivery of tobacco products is prohibited, except when the
249 tobacco products are sold from behind a counter and are required
250 to be retrieved and hand delivered by an employee to the
251 consumer. Sales from a vending machine are prohibited. This
252 section does not apply to an establishment that prohibits
253 persons under 21 years of age on the licensed premises.

254 ~~(a) When under the direct control or line of sight of the~~
255 ~~dealer or the dealer's agent or employee; or~~

256 ~~(b) Sales from a vending machine are prohibited under the~~
257 ~~provisions of paragraph (1)(a) and are only permissible from a~~
258 ~~machine that is equipped with an operational lockout device~~
259 ~~which is under the control of the dealer or the dealer's agent~~
260 ~~or employee who directly regulates the sale of items through the~~
261 ~~machine by triggering the lockout device to allow the dispensing~~

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262 ~~of one tobacco product. The lockout device must include a~~
263 ~~mechanism to prevent the machine from functioning if the power~~
264 ~~source for the lockout device fails or if the lockout device is~~
265 ~~disabled, and a mechanism to ensure that only one tobacco~~
266 ~~product is dispensed at a time.~~

267 ~~(2) The provisions of Subsection (1) shall not apply to an~~
268 ~~establishment that prohibits persons under 18 years of age on~~
269 ~~the licensed premises.~~

270 Section 7. Section 569.0075, Florida Statutes, is amended
271 to read:

272 569.0075 Gift of sample tobacco products prohibited.—The
273 gift of sample tobacco products to any person under the age of
274 21 ~~18~~ by an entity licensed or permitted under the provisions of
275 chapter 210 or this chapter, or by an employee of such entity,
276 is prohibited and is punishable as provided in s. 569.101.

277 Section 8. Subsections (1), (2), and (3) of section
278 569.008, Florida Statutes, are amended to read:

279 569.008 Responsible retail tobacco products dealers;
280 qualifications; mitigation of disciplinary penalties; diligent
281 management and supervision; presumption.—

282 (1) The Legislature intends to prevent the sale of tobacco
283 products to persons under 21 ~~18~~ years of age and to encourage
284 retail tobacco products dealers to comply with responsible
285 practices in accordance with this section.

286 (2) To qualify as a responsible retail tobacco products
287 dealer, the dealer must establish and implement procedures
288 designed to ensure that the dealer's employees comply with the
289 provisions of this chapter. The dealer must provide a training
290 program for the dealer's employees which addresses the use and

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291 sale of tobacco products and which includes at least the
292 following topics:

293 (a) Laws covering the sale of tobacco products.

294 (b) Methods of recognizing and handling customers under 21
295 ~~18~~ years of age.

296 (c) Procedures for proper examination of identification
297 cards in order to verify that customers are not under 21 ~~18~~
298 years of age.

299 (d) The use of the age audit identification function on
300 electronic point-of-sale equipment, where available.

301 ~~(3) In determining penalties under s. 569.006, the division~~
302 ~~may mitigate penalties imposed against a dealer because of an~~
303 ~~employee's illegal sale of a tobacco product to a person under~~
304 ~~18 years of age if the following conditions are met:~~

305 ~~(a) The dealer is qualified as a responsible dealer under~~
306 ~~this section.~~

307 ~~(b) The dealer provided the training program required under~~
308 ~~subsection (2) to that employee before the illegal sale~~
309 ~~occurred.~~

310 ~~(c) The dealer had no knowledge of that employee's~~
311 ~~violation at the time of the violation and did not direct,~~
312 ~~approve, or participate in the violation.~~

313 ~~(d) If the sale was made through a vending machine, the~~
314 ~~machine was equipped with an operational lock-out device.~~

315 Section 9. Section 569.101, Florida Statutes, is amended to
316 read:

317 569.101 Selling, delivering, bartering, furnishing, or
318 giving tobacco products to persons under 21 ~~18~~ years of age;
319 criminal penalties; defense.-

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320 (1) It is unlawful to sell, deliver, barter, furnish, or
321 give, directly or indirectly, to any person who is under 21 ~~18~~
322 years of age, any tobacco product.

323 (2) Any person who violates subsection (1) commits a
324 noncriminal violation punishable by a fine of no more than \$500
325 ~~misdemeanor of the second degree, punishable as provided in s.~~
326 ~~775.082 or s. 775.083.~~ However, any person who violates
327 subsection (1) for a second or subsequent time within 1 year of
328 the first violation, commits a noncriminal violation punishable
329 by a fine of no more than \$1,000 ~~misdemeanor of the first~~
330 ~~degree, punishable as provided in s. 775.082 or s. 775.083.~~

331 (3) A person charged with a violation of subsection (1) has
332 a complete defense if, at the time the tobacco product was sold,
333 delivered, bartered, furnished, or given:

334 (a) The buyer or recipient falsely evidenced that she or he
335 was 21 ~~18~~ years of age or older;

336 (b) The appearance of the buyer or recipient was such that
337 a prudent person would believe the buyer or recipient to be 21
338 ~~18~~ years of age or older; and

339 (c) Such person carefully checked a driver license or an
340 identification card issued by this state or another state of the
341 United States, a passport, or a United States armed services
342 identification card presented by the buyer or recipient and
343 acted in good faith and in reliance upon the representation and
344 appearance of the buyer or recipient in the belief that the
345 buyer or recipient was 21 ~~18~~ years of age or older.

346 Section 10. Section 569.11, Florida Statutes, is amended to
347 read:

348 569.11 ~~Possession,~~ Misrepresenting age ~~or military service~~

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349 to purchase, and purchase of tobacco products by persons under
350 21 ~~18~~ years of age prohibited; penalties; jurisdiction;
351 disposition of fines.-

352 ~~(1) It is unlawful for any person under 18 years of age to~~
353 ~~knowingly possess any tobacco product. Any person under 18 years~~
354 ~~of age who violates the provisions of this subsection commits a~~
355 ~~noncriminal violation as provided in s. 775.08(3), punishable~~
356 ~~by:~~

357 ~~(a) For a first violation, 16 hours of community service~~
358 ~~or, instead of community service, a \$25 fine. In addition, the~~
359 ~~person must attend a school-approved anti-tobacco program, if~~
360 ~~locally available;~~

361 ~~(b) For a second violation within 12 weeks of the first~~
362 ~~violation, a \$25 fine; or~~

363 ~~(c) For a third or subsequent violation within 12 weeks of~~
364 ~~the first violation, the court must direct the Department of~~
365 ~~Highway Safety and Motor Vehicles to withhold issuance of or~~
366 ~~suspend or revoke the person's driver license or driving~~
367 ~~privilege, as provided in s. 322.056.~~

368
369 ~~Any second or subsequent violation not within the 12-week time~~
370 ~~period after the first violation is punishable as provided for a~~
371 ~~first violation.~~

372 ~~(1)-(2)~~ It is unlawful for any person under 21 ~~18~~ years of
373 age to misrepresent his or her age or military service for the
374 purpose of inducing a dealer or an agent or employee of the
375 dealer to sell, give, barter, furnish, or deliver any tobacco
376 product, or to purchase, or attempt to purchase, any tobacco
377 product from a person or a vending machine. ~~Any person under 18~~

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378 ~~years of age who violates a provision of this subsection commits~~
379 ~~a noncriminal violation as provided in s. 775.08(3), punishable~~
380 ~~by:~~

381 ~~(a) For a first violation, 16 hours of community service~~
382 ~~or, instead of community service, a \$25 fine and, in addition,~~
383 ~~the person must attend a school-approved anti-tobacco program,~~
384 ~~if available;~~

385 ~~(b) For a second violation within 12 weeks of the first~~
386 ~~violation, a \$25 fine; or~~

387 ~~(c) For a third or subsequent violation within 12 weeks of~~
388 ~~the first violation, the court must direct the Department of~~
389 ~~Highway Safety and Motor Vehicles to withhold issuance of or~~
390 ~~suspend or revoke the person's driver license or driving~~
391 ~~privilege, as provided in s. 322.056.~~

392
393 ~~Any second or subsequent violation not within the 12-week time~~
394 ~~period after the first violation is punishable as provided for a~~
395 ~~first violation.~~

396 ~~(3) Any person under 18 years of age cited for committing a~~
397 ~~noncriminal violation under this section must sign and accept a~~
398 ~~civil citation indicating a promise to appear before the county~~
399 ~~court or comply with the requirement for paying the fine and~~
400 ~~must attend a school-approved anti-tobacco program, if locally~~
401 ~~available. If a fine is assessed for a violation of this~~
402 ~~section, the fine must be paid within 30 days after the date of~~
403 ~~the citation or, if a court appearance is mandatory, within 30~~
404 ~~days after the date of the hearing.~~

405 ~~(2)-(4)~~ (2) A person charged with a noncriminal violation under
406 this section must appear before the county court ~~or comply with~~

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407 ~~the requirement for paying the fine. The court, after a hearing,~~
408 ~~shall make a determination as to whether the noncriminal~~
409 ~~violation was committed. If the court finds the violation was~~
410 ~~committed, it shall impose an appropriate penalty as specified~~
411 ~~in subsection (3).~~

412 (3) Any person who violates subsection (1) commits a
413 noncriminal violation and must serve at least 20 hours of
414 community service. Any person who violates subsection (1) a
415 second or subsequent time within 1 year of the first violation
416 commits a noncriminal violation and must serve at least 40 hours
417 of community service ~~(1) or subsection (2). A person who~~
418 ~~participates in community service shall be considered an~~
419 ~~employee of the state for the purpose of chapter 440, for the~~
420 ~~duration of such service.~~

421 ~~(5) (a) If a person under 18 years of age is found by the~~
422 ~~court to have committed a noncriminal violation under this~~
423 ~~section and that person has failed to complete community~~
424 ~~service, pay the fine as required by paragraph (1) (a) or~~
425 ~~paragraph (2) (a), or attend a school-approved anti-tobacco~~
426 ~~program, if locally available, the court must direct the~~
427 ~~Department of Highway Safety and Motor Vehicles to withhold~~
428 ~~issuance of or suspend the driver license or driving privilege~~
429 ~~of that person for a period of 30 consecutive days.~~

430 ~~(b) If a person under 18 years of age is found by the court~~
431 ~~to have committed a noncriminal violation under this section and~~
432 ~~that person has failed to pay the applicable fine as required by~~
433 ~~paragraph (1) (b) or paragraph (2) (b), the court must direct the~~
434 ~~Department of Highway Safety and Motor Vehicles to withhold~~
435 ~~issuance of or suspend the driver license or driving privilege~~

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436 of that person for a period of ~~45 consecutive days.~~

437 ~~(6) Eighty percent of all civil penalties received by a~~
438 ~~county court pursuant to this section shall be remitted by the~~
439 ~~clerk of the court to the Department of Revenue for transfer to~~
440 ~~the Department of Education to provide for teacher training and~~
441 ~~for research and evaluation to reduce and prevent the use of~~
442 ~~tobacco products by children. The remaining 20 percent of civil~~
443 ~~penalties received by a county court pursuant to this section~~
444 ~~shall remain with the clerk of the county court to cover~~
445 ~~administrative costs.~~

446 Section 11. Paragraph (b) of subsection (2) and subsection
447 (3) of section 569.12, Florida Statutes, are amended to read:

448 569.12 Jurisdiction; tobacco product enforcement officers
449 or agents; enforcement.-

450 (2)

451 (b) A tobacco product enforcement officer is authorized to
452 issue a citation to a person under the age of 21 ~~18~~ when, based
453 upon personal investigation, the officer has reasonable cause to
454 believe that the person has committed a civil infraction in
455 violation of s. 386.212 or s. 569.11.

456 (3) A correctional probation officer as defined in s.
457 943.10(3) is authorized to issue a citation to a person under
458 the age of 21 ~~18~~ when, based upon personal investigation, the
459 officer has reasonable cause to believe that the person has
460 committed a civil infraction in violation of s. 569.11.

461 Section 12. Section 569.14, Florida Statutes, is amended to
462 read:

463 569.14 Posting of a sign stating that the sale of tobacco
464 products to persons under 21 ~~18~~ years of age is unlawful;

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465 enforcement; penalty.-

466 (1) A dealer that sells tobacco products shall post a clear
 467 and conspicuous sign in each place of business where such
 468 products are sold which substantially states the following:
 469 THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21 ~~18~~
 470 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

471 ~~(2) A dealer that sells tobacco products and nicotine~~
 472 ~~products or nicotine dispensing devices, as defined in s.~~
 473 ~~877.112, may use a sign that substantially states the following:~~
 474 ~~THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE~~
 475 ~~DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST~~
 476 ~~FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.~~

477 ~~A dealer that uses a sign as described in this subsection meets~~
 478 ~~the signage requirements of subsection (1) and s. 877.112.~~

479 ~~(2)(3)~~ The division shall make available to dealers of
 480 tobacco products signs that meet the requirements of subsection
 481 (1) ~~or subsection (2)~~.

482 ~~(3)(4)~~ Any dealer that sells tobacco products shall provide
 483 at the checkout counter in a location clearly visible to the
 484 dealer or the dealer's agent or employee instructional material
 485 in a calendar format or similar format to assist in determining
 486 whether a person is of legal age to be sold ~~purchase~~ tobacco
 487 products. This point of sale material must contain substantially
 488 the following language:

489 IF YOU WERE NOT BORN BEFORE THIS DATE

490 (insert date and applicable year)

491 YOU CANNOT BE SOLD ~~BUY~~ TOBACCO PRODUCTS.

492 Upon approval by the division, in lieu of a calendar a dealer
 493 may use card readers, scanners, or other electronic or automated

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494 systems that can verify whether a person is of legal age to
495 purchase tobacco products. Failure to comply with the provisions
496 contained in this subsection shall result in imposition of
497 administrative penalties as provided in s. 569.006.

498 (4)~~(5)~~ The division, through its agents and inspectors,
499 shall enforce this section.

500 (5)~~(6)~~ Any person who fails to comply with subsection (1)
501 is guilty of a misdemeanor of the second degree, punishable as
502 provided in ~~s. 775.082~~ or s. 775.083.

503 Section 13. Subsection (4) of section 569.19, Florida
504 Statutes, is amended to read:

505 569.19 Annual report.—The division shall report annually
506 with written findings to the Legislature and the Governor by
507 December 31, on the progress of implementing the enforcement
508 provisions of this chapter. This must include, but is not
509 limited to:

510 (4) The number of persons under age 21 ~~18~~ cited for
511 violations of s. 569.11 and sanctions imposed as a result of
512 citation.

513 Section 14. Section 877.112, Florida Statutes, is repealed.

514 Section 15. This act shall take effect October 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-14-18

Meeting Date

SB 1288

Bill Number (if applicable)

Topic Smoking Age

Amendment Barcode (if applicable)

Name Marnie George

Job Title Sr. Advisor, Buchanan Ingersoll Rooney

Address 101 N. Monroe St Suite 1070 Phone 850-510-8866

Street

Tallahassee FL 32301

City

State

Zip

Email

Speaking: [X] For [] Against [] Information

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

Representing FL Chapter, American College of Cardiology

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

Lobbyist registered with Legislature: [X] 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
APPEARANCE RECORD

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

2/14/2018
Meeting Date

1288
Bill Number (if applicable)

Topic Tobacco Products

Amendment Barcode (if applicable)

Name Mario Norris

Job Title Business owner

Address 1056 NE 10th Ave
Street

Phone _____

Gainesville, FL 32601
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Smoke Free Association

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
APPEARANCE RECORD

2-14-18

Meeting Date

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

1288

Bill Number (if applicable)

Topic Tobacco

Amendment Barcode (if applicable)

Name Kitty Flynn

Job Title volunteer

Address 3333 Sagee Pl.

Phone 980-0517

Street

Tallahassee FL 32309

Email kitty.flynn@acs.org

City

State

Zip

Speaking: For Against Information

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

Representing American Cancer Society

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
APPEARANCE RECORD

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

2/15/2018

Meeting Date

1288

Bill Number (if applicable)

Topic Tobacco Products

Amendment Barcode (if applicable)

Name Dee Ann Smith

Job Title Citizen / 17 yr smoke free

Address 4510 Rockbridge Hollow

Phone 850-545-4420

Tallahassee FL 32309

Email dasmith@comcast.net

City State Zip

Speaking: For Against Information

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

Representing Self

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
APPEARANCE RECORD

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

2/14/18
Meeting Date

1288
Bill Number (if applicable)

Topic Tobacco Products

Amendment Barcode (if applicable)

Name John Trombetta

Job Title CEO

Address 600 1st Ave W

Phone 850-320-8319

St. Petersburg FL 32308
City State Zip

Email john@floridaymca.org

Speaking: For Against Information

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

Representing Florida State Alliance of YMCAs

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
APPEARANCE RECORD

2-14-18

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

1288

Meeting Date

Bill Number (if applicable)

Topic Tobacco

Amendment Barcode (if applicable)

Name Matt Jordan

Job Title GRD

Address 1922 Bellwood Dr

Phone 850-519-2801

Street
Tallahassee FL 32303

Email matt.jordan@acs.org

City State Zip

Speaking: For Against Information

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

Representing American Cancer Society

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
APPEARANCE RECORD

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

2/14/18
Meeting Date

1288
Bill Number (if applicable)

Topic Tobacco Products

Amendment Barcode (if applicable)

Name Rivers H. Buford, III

Job Title GOVERNMENT RELATIONS DIRECTOR

Address 2851 REMINGTON GREEN CIRCLE
Street

Phone 888-566-9119

JALANVILLE FL 32308
City State Zip

Email Rivers.Buford@heart.org

Speaking: For Against Information

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

Representing AMERICAN HEART ASSOCIATION

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)

SB 1288

**Increasing the Minimum Legal Sales Age
for Tobacco to 21 Years of Age
(Tobacco 21)**

Senate Regulated Industries Committee

February 14, 2018

Increasing the Tobacco Sale Age to 21

A policy strategy to reduce youth tobacco use

Why Raise The Age? Most Smokers Start Before They Turn 21

- 95% of adult smokers begin smoking before they turn 21
- Many smokers transition to regular use during the ages of 18-21
- Nationally, 18-20 year olds are twice as likely as 16-17 year olds to be current smokers

“Raising the legal minimum age for cigarette purchaser to 21 could gut our key young adult market (17-20) where we sell about 25 billion cigarettes and enjoy a 70 percent market share.”

—Philip Morris report, 1/21/1986

Why Raise The Age? Nicotine Is Addictive

- **Nicotine is addictive, and adolescents and young adults are more susceptible to its effects because they are still going through critical periods of growth and development**
- **Symptoms of dependence—withdrawal, tolerance—can occur after just minimal exposure to nicotine**
- **As a result of nicotine addiction, about 3 out of 4 teen smokers end up smoking into adulthood, even if they intend to quit after a few years**

Why Raise The Age? Older Kids Are A Source of Cigarettes

- **Two-thirds of 10th grade students and nearly half of 8th grade students say it's easy to get cigarettes**
- **Older youth smokers (18-19 years) are a major supplier of cigarettes for younger kids who rely on friends and classmates to buy them**
- **More 18-19 year olds in high school means younger kids have daily contact with students who can legally purchase tobacco**
- **Retailer violation rate is low (9.6%) – kids are getting cigarettes from other sources**

Why Raise The Age?

Tobacco Companies Target Young Adults

**100%
ADDITIVE-FREE
NATURAL
TOBACCO**



No additives in our tobacco does **NOT** mean a safer cigarette.

Organic tobacco does **NOT** mean a safer cigarette.

**SURGEON GENERAL'S WARNING: Cigarette
Smoke Contains Carbon Monoxide.**

TRY 1 PACK FOR \$2.00*

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PROMO CODE 96435

CIGARETTES

* Plus applicable sales tax

Offer for two - 1 for \$2 - Gift Certificates good for any Natural American Spirit cigarette product (excludes RYO pouches and 15mg tins). Not to be used in conjunction with any other offer. Offer and website restricted to U.S. smokers 21 years of age and older. Limit one offer per person per 12 month period. Offer void in MA and where prohibited. Other restrictions may apply. Offer expires 06/30/16.

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swishersweets Welcome back Sweeties. Check out this year's Swisher Sweeties at www.swishersweeties.com #squadgoals

ham_shitviak I wanna be a sweetie!

swishaaasweeeet Me too ^^^

ashlas Uhhh.. I need to put my pic up here. Lol #seriouslytho #IDo

al.lick @stephyohh I do too...!/:

Add a comment...

Key Facts:

- Tobacco kills more than 480,000 Americans each year. Virtually all of them started using tobacco before age 21.
- Since tobacco is so harmful, we should do everything we can to prevent tobacco use among young people. Increasing the legal sale age of tobacco products will help reduce smoking and save lives.
- Tobacco companies target kids and young adults because they know that's when most users become addicted. Increasing the sale age will help counter tobacco company efforts to target young adults at a critical time when many move from experimenting with tobacco to regular smoking.

What Is the Science Base On Tobacco 21?

- **The Institute of Medicine released a national report in 2015.**
- **Data predict substantial improvements in public health with an increase to 21.**
- **Specific impacts over the long run:**
 - ✓ reduce the smoking rate by 12 percent
 - ✓ reduce smoking-related deaths by 10 percent
 - 223,000 fewer premature deaths
 - 50,000 fewer deaths from lung cancer



Benefits of Increasing the Sale Age

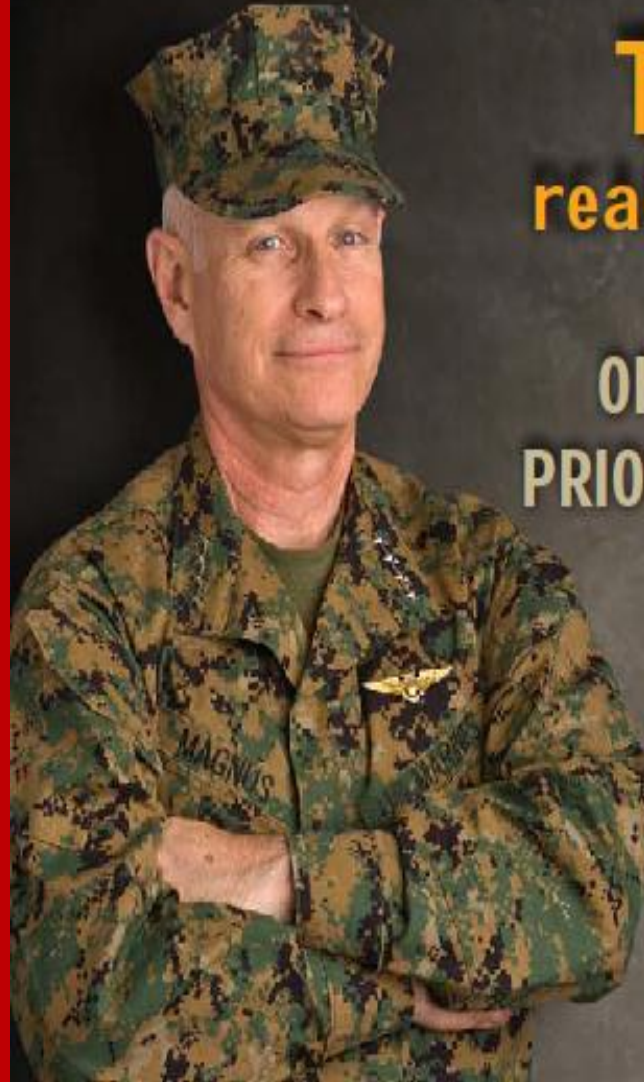
- **Delay the age when people first use tobacco and reduce risk of becoming a regular smoker**
- **Help keep tobacco out of elementary & high schools**
- **Younger adolescents have a harder time passing themselves off as 21 year olds**
- **Simplify ID checks for retailers**
- **Reduce smoking and save lives**

The Military and Tobacco Prevention

- **The minimum age of military service does not equal readiness to enlist in a lifetime of nicotine addiction. Tobacco use is not a right or a privilege; it is an addictive and deadly activity.**
- **Tobacco companies target young people before they can fully appreciate the consequences of becoming addicted to the nicotine in tobacco.**
- **Once they are addicted to nicotine, it is difficult to stop, and the health consequences begin immediately and accumulate over a lifetime.**

**Robert Magnus,
General, Ret**

**Former
Assistant
Commandant of
the
Marine Corps**



TOBACCO IMPAIRS
reaction time and judgment.
IT STANDS IN THE WAY
OF A MARINE'S NUMBER ONE
PRIORITY: TO BE IN TOP PHYSICAL
AND MENTAL SHAPE—
combat ready.

— General Robert Magnus
Assistant Commandant of the Marine Corps

QUIT TOBACCO.
make everyone proud
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Will Tobacco 21 Hurt the Economy and Retailers?

- Little short-term effect on tobacco sales revenue is expected because:
 - ✓ Tobacco consumption by 18-20 year olds is a very small share of total consumption in a state
 - ✓ Reductions in smoking initiation and smoking prevalence will be small initially and will grow over time
- Money spent on tobacco in retail stores will not disappear from the economy
- Reduced tobacco use reduces health care costs

Thank You for Your Time and Attention Today!

Any Questions?

CourtSmart Tag Report

Room: EL 110 Case No.:
Caption: Senate Regulated Industries Committee

Type:
Judge:

Started: 2/14/2018 4:03:16 PM
Ends: 2/14/2018 4:52:55 PM Length: 00:49:40

4:03:17 PM Meeting called to order by Chair Hutson
4:03:22 PM Pledge of Allegiance led by Senator Steube
4:03:40 PM Roll call by Lynn Koon
4:03:55 PM Quorum present
4:04:11 PM Comments from Chair Hutson
4:04:22 PM Senator Thurston recognized for announcement
4:04:42 PM Moment of silence
4:05:10 PM Tab 1: Confirmation Hearing on Jonathan Zachem, Secretary of DBPR
4:05:43 PM Jonathan Zachem addressing committee
4:12:35 PM Motion to recommend confirmation by Senator Hukill
4:12:50 PM Roll call by Lynn Koon
4:13:13 PM Confirmation of Jonathan Zachem is recommended favorably
4:13:26 PM Tab 4: CS/SB 1128 Pharmacies
4:13:33 PM Senator Stargel recognized to explain bill
4:14:11 PM Questions on bill?
4:14:17 PM Appearance forms
4:14:25 PM Heather Fuller, FSHP, waives in support
4:14:29 PM Debate on bill?
4:14:34 PM Close waived by Senator Stargel
4:14:38 PM Roll call by Lynn Koon
4:14:50 PM CS/SB 1128 reported favorably
4:15:09 PM Tab 2: Confirmation of James "Jim" Poppell, Secretary of Department of Lottery
4:15:21 PM Jim Poppell addressing committee
4:19:04 PM Motion to recommend confirmation by Senator Hukill
4:19:07 PM Roll call by Lynn Koon
4:19:23 PM Confirmation of Jim Poppell is recommended favorably
4:19:40 PM Tab 3: SB 1024 by Senator Hukill
4:19:55 PM Senator Hukill recognized to explain Amendment Barcode 479106
4:21:54 PM Questions on amendment?
4:22:05 PM Wayne Malaney, Florida Facility Managers Association, waives in support
4:22:07 PM Debate on amendment?
4:22:15 PM Amendment Barcode 479106 approved
4:22:19 PM Back on bill as amended
4:22:21 PM Questions on bill?
4:22:23 PM Appearance forms
4:22:25 PM Wayne Malaney, Florida Facility Managers Association, waives in support
4:22:30 PM Doug Bell, Ebay/Stubhub, waives in support
4:22:36 PM Jeff Johnston, Ticketmaster, waives in support
4:22:41 PM Debate on bill?
4:22:45 PM Close waived by Senator Hukill
4:22:48 PM Roll call by Lynn Koon
4:23:06 PM SB 1024 reported favorably
4:23:17 PM Tab 5: Senator Simmons workshop on SB 1288
4:23:22 PM Senator Simmons recognized to explain bill
4:32:35 PM Questions?
4:32:50 PM Rivers Buford, American Heart Association, speaking in support
4:36:41 PM Questions?
4:36:51 PM Matt Jordan, American Cancer Society, speaking in support
4:39:20 PM John Trombetta, Florida State Alliance of YMCAs, waives in support
4:39:28 PM Dee Ann Smith, speaking in support
4:42:03 PM Kitty Flynn, American Cancer Society, speaking in support
4:45:18 PM Mario Norris, Florida Smoke Free Association, speaking for information

4:50:19 PM Marnie George, Florida chapter, American College of Cardiology, waives in support
4:50:30 PM Senator Simmons recognized for further discussion or comments
4:52:39 PM Senator Gibson recognized for motion to vote on Tab 4 11148
4:52:43 PM Motion approved
4:52:49 PM Senator Bracey moves to adjourn without objection