

**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.)

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

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BILL: CS/SB 1652

INTRODUCER: Commerce and Tourism Committee and Senator Gruters

SUBJECT: Consumer Fraud, Identity Theft, and Skimmer Working Group

DATE: March 18, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.			GO	
3.			RC	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1652 creates the Consumer Fraud, Identity Theft, and Skimmer Working Group (Working Group) adjunct to Florida Department of Agriculture and Consumer Services (Department). Identity theft, credit card fraud, and consumer financial fraud often occur as a result of the use of a credit card skimmer at gas stations. The Working Group must submit a plan to combat these frauds at Florida retail gas stations by December 31, 2021.

**II. Present Situation:**

**Consumer Fraud and Identity Theft**

The Federal Trade Commission (FTC) received 210,174 complaints from Florida consumers regarding fraud and related crimes in 2018, making Florida the leading state for reports of such crimes per capita.<sup>1</sup> One technology that is used in the commission of these crimes is a credit card skimmer (skimmer).

A skimmer is an electronic device that attaches to point of sale card readers (e.g., gas station pumps and automated teller machines) to collect a consumer's credit or debit card information

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<sup>1</sup> Federal Trade Commission, *Consumer Sentinel Network Data Book 2018*, 31 (Feb. 2019), available at [https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer\\_sentinel\\_network\\_data\\_book\\_2018\\_0.pdf](https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer_sentinel_network_data_book_2018_0.pdf) (last visited Mar. 18, 2019).

when a card is swiped through the reader.<sup>2</sup> The thief can sell the consumer's information or use the information to make illegal purchases.<sup>3</sup> The Department has discovered and removed 2,400 skimmers since 2015.<sup>4</sup> The use, possession, or sale of a skimmer is punishable as a second-degree felony under Florida law.<sup>5</sup>

## **Department of Agriculture and Consumer Services**

### ***Generally***

The Department has broad duties, including safeguarding the public from deceptive business practices, supporting Florida's agricultural economy, and administering the state's firearms licensing scheme.<sup>6</sup> Twelve divisions and six offices within the Department support its mission.<sup>7</sup> The Division of Consumer Services inspects all measuring devices used in selling or distributing fuel at retail gas pumps and ensures the use of security mechanisms on gas pumps that help to prevent the use of skimmers.<sup>8</sup> This Division also provides consumer education regarding a variety of scams and frauds that target Florida residents, include identity theft and credit card fraud.<sup>9</sup>

### ***Advisory Committees***

The Commissioner of Agriculture has statutory authority to appoint advisory committees to assist the Department with its duties and responsibilities. Current advisory committees that operate under the Department include the State Agricultural Advisory Council; the Agricultural Feed, Seed, and Fertilizer Advisory Council; the Florida Consumers' Council; and the Florida Young Farmer and Rancher Advisory Council, among others.<sup>10</sup>

Section 570.232, F.S., limits an advisory committee's powers to the consideration and study of its area of responsibility and other matters submitted to it by the Agriculture Commissioner or division directors. In addition, the advisory committee may develop proposed laws, other regulations, and policies for submission to only the Agriculture Commissioner and the Department's division directors.

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<sup>2</sup> Florida Department of Agriculture and Consumer Services, *Card Skimmers*, <https://www.freshfromflorida.com/Consumer-Resources/Scams-and-Fraud/Card-Skimmers> (last visited Mar. 18, 2019).

<sup>3</sup> Federal Trade Commission, *Avoid Skimmers at the Pump* (June 22, 2017), <https://www.consumer.ftc.gov/blog/2017/06/avoid-skimmers-pump> (last visited Mar. 18, 2019).

<sup>4</sup> Florida Department of Agriculture and Consumer Services, *Commissioner Nikki Fried on Gas Skimmers, National Consumer Protection Week* (Mar. 6, 2019), <https://www.freshfromflorida.com/News-Events/Press-Releases/2019-Press-Releases/Commissioner-Nikki-Fried-on-Gas-Skimmers-National-Consumer-Protection-Week> (last visited Mar. 18, 2019).

<sup>5</sup> Section 817.625(2), F.S. A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082(3)(d) and 775.083(1)(c), F.S.

<sup>6</sup> Florida Department of Agriculture and Consumer Services, *About*, <https://www.freshfromflorida.com/About/> (last visited Mar. 18, 2019).

<sup>7</sup> Florida Department of Agriculture and Consumer Services, *Divisions & Offices*, <https://www.freshfromflorida.com/Divisions-Offices/> (last visited Mar. 18, 2019).

<sup>8</sup> Section 525.07, F.S.; Florida Department of Agriculture and Consumer Services, *Petroleum Inspection*, <https://www.freshfromflorida.com/Business-Services/Petroleum-Inspection> (last visited Mar. 18, 2019).

<sup>9</sup> See, e.g., Florida Department of Agriculture and Consumer Services, *Scams and Fraud*, <https://www.freshfromflorida.com/Consumer-Resources/Scams-and-Fraud> (last visited Mar. 18, 2019).

<sup>10</sup> Sections 570.23, 570.541, 570.543, and 570.843, F.S.

The composition of such advisory committees, the terms of their members' service, and the specific procedures required at each of their meetings are further outlined by s. 570.232, F.S., as follows:

- Advisory committees may exist for no more than 3 years, unless reestablished before expiration;
- The Agriculture Commissioner appoints all members of an advisory committee;
- Advisory committees must meet at least one time each year to elect officers;
- The secretary of each advisory committee must keep a complete record of each meeting, and preserve those records on file with the Department; and
- Members of an advisory committee may not receive compensation for their service.

### **III. Effect of Proposed Changes:**

CS/SB 1652 creates the Consumer Fraud, Identity Theft, and Skimmer Working Group to operate as an advisory committee adjunct to Department. The Working Group must meet at least four times each year that it exists to produce a recommendation of how to counter fraud and related thefts that occur as a result of activity at Florida retail gas stations. The Working Group must submit this recommendation to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2021.

The Working Group's membership must consist of the following:

- A representative of the Department, appointed by the Commissioner of Agriculture, who will serve as chair;
- A representative of the Department of Legal Affairs, appointed by the Attorney General;
- Two representatives of the Department of Financial Services, appointed by the Chief Financial Officer (CFO);
- Two representatives appointed by the Governor;
- A representative of the Department of Law Enforcement, appointed by its executive director;
- A representative appointed by the President of the Senate;
- A representative appointed by the Speaker of the House of Representatives;
- An assistant state attorney, appointed by the Attorney General;
- An active law enforcement officer, appointed by the Commissioner of Agriculture;
- A victim of identity theft, appointed by the Commissioner of Agriculture;
- A person who represents credit reporting agencies, appointed by the Commissioner of Agriculture; and
- A representative of a major credit card company, appointed by the Commissioner of Agriculture.

The Working Group is subject to s. 570.232, F.S., which provides general meeting, quorum, and membership requirements as discussed above. Additionally, members of the Working Group may not receive reimbursement for per diem or travel expenses, pursuant to s. 570.232, F.S.

The bill takes effect July 1, 2019.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

Any public records or open meetings issues are addressed in SB 7084 (2019 Regular Session).

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The Department may incur costs related to the provision of administrative and staff support services and meeting space for the Working Group.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 570.232, F.S., provides that advisory committees cannot exist for more than 3 years. The Working Group's plan is due on December 31, 2021, but it is unclear whether the Working Group continues to exist after this deadline. The Legislature may wish to consider adding a sunset date to clarify the lifespan of the Working Group.

**VIII. Statutes Affected:**

This bill creates s. 570.233, F.S.

**IX. Additional Information:**

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

**CS by Commerce and Tourism on March 18, 2019:**

- Clarifies the Working Group’s governance, duties, and responsibilities that are subject to s. 570.232, F.S.; and
- Increases the Working Group appointments made by the Governor and CFO from one to two members, each.

- B. **Amendments:**

None.