

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1652

INTRODUCER: Senator Gruters

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

DATE: March 15, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 1652 creates the Consumer Fraud, Identity Theft, and Skimmer Working Group (Working Group) within the 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.¹ 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 when a card is swiped through the reader.² The thief can sell the consumer's information or use the information to make illegal purchases.³ The Department has discovered and removed 2,400

¹ 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 (last visited Mar. 15, 2019).

² Florida Department of Agriculture and Consumer Services, *Card Skimmers*, <https://www.freshfromflorida.com/Consumer-Resources/Scams-and-Fraud/Card-Skimmers> (last visited Mar. 15, 2019).

³ 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. 15, 2019).

skimmers since 2015.⁴ The use, possession, or sale of a skimmer is punishable as a second-degree felony under Florida law.⁵

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.⁶ Twelve divisions and six offices within the Department support its mission.⁷ 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.⁸ This Division also provides consumer education regarding a variety of scams and frauds that target Florida residents, include identity theft and credit card fraud.⁹

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.¹⁰

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.

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;

⁴ 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. 15, 2019).

⁵ Section 817.625(2), F.S.

⁶ Florida Department of Agriculture and Consumer Services, *About*, <https://www.freshfromflorida.com/About/> (last visited Mar. 15, 2019).

⁷ Florida Department of Agriculture and Consumer Services, *Divisions & Offices*, <https://www.freshfromflorida.com/Divisions-Offices/> (last visited Mar. 15, 2019).

⁸ 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. 15, 2019).

⁹ 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. 15, 2019).

¹⁰ Sections 570.23, 570.541, 570.543, and 570.843, F.S.

- 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:

SB 1652 creates the Consumer Fraud, Identity Theft, and Skimmer Working Group to operate as an advisory committee within the 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;
- A representative of the Department of Financial Services, appointed by the Chief Financial Officer;
- A representative 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:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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

VI. Technical Deficiencies:

The bill subjects the operation of the Working Group to s. 570.232, F.S. However, s. 570.232, F.S., requires all members of advisory committees that operate pursuant to its terms to be appointed by the Agriculture Commissioner. This may conflict with the bill's requirements that several other Executive Officers appoint specific members to the Working Group.

Additionally, s. 570.232, F.S., limits an advisory committee's ability to advise and consult or develop proposed legislation or other policies to the benefit of exclusively the Agriculture Commissioner. It is unclear whether the Working Group's submission of a plan to the Governor, President of the Senate, and Speaker of the House of Representatives is a reach beyond powers granted in statute.

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.

VII. Related Issues:

The Working Group may review and discuss confidential or confidential and exempt information at its meetings. To maintain the confidentiality or confidential and exempt status of such

information, the Legislature may wish to create a public records and public meetings exemption for certain information obtained or discussed by the Working Group.

VIII. Statutes Affected:

This bill creates s. 570.233, F.S.

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.
