

Tab 2	SB 1734 by Bradley; (Compare to CS/H 00969) Consumer Data Privacy					
482404	D	S	RCS	CM, Bradley	Delete everything after	03/23 10:44 AM
122682	AA	S	UNFAV	CM, Taddeo	Delete L.53:	03/23 10:44 AM
589178	AA	S	UNFAV	CM, Taddeo	Delete L.757 - 792:	03/23 10:44 AM

Tab 3	SPB 7064 by CM; Public Records/Investigations by the Department of Legal Affairs					
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Tab 4	SB 1312 by Bradley; (Identical to H 01175) Zoological and Aquarium Grant Program					
587156	A	S	RCS	CM, Bradley	Delete L.21:	03/23 10:51 AM

Tab 5	CS/SB 266 by CA, Perry (CO-INTRODUCERS) Baxley; (Similar to CS/H 00403) Home-based Businesses					
203018	A	S	FC	CM, Perry	Delete L.33 - 78:	03/23 10:52 AM

Tab 6	SB 1140 by Rodrigues (CO-INTRODUCERS) Garcia; (Similar to CS/H 00833) Unlawful Use of DNA					
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Tab 7	SB 1294 by Brodeur; (Similar to CS/H 00663) Cottage Food Operations					
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Tab 8	SB 1374 by Farmer; (Identical to H 00349) Small Business Website Development Grant Program					
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Tab 9	SB 1992 by Harrell; (Identical to H 01483) Solicitation of Nonmedical Services					
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Tab 10	SB 1542 by Burgess; (Identical to H 00535) Electronic Dissemination of Commercial Recordings and Audiovisual Works					
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Monday, March 22, 2021
TIME: 3:30—6:00 p.m.
PLACE: Toni Jennings Committee Room, 110 Senate Building

MEMBERS: Senator Hooper, Chair; Senator Wright, Vice Chair; Senators Burgess, Diaz, Garcia, Gruters, Hutson, Pizzo, Powell, Taddeo, and Torres

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

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
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Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.

Executive Director, Department of Economic Opportunity

1	Eagle, Dane (Tallahassee)	Pleasure of Governor	Recommend Confirm Yeas 11 Nays 0
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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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2	SB 1734 Bradley (Compare CS/H 969)	Consumer Data Privacy; Citing this act as the "Florida Privacy Protection Act"; providing that consumers have the right to direct certain businesses not to sell their personal information; prohibiting businesses from selling the personal information of consumers younger than a specified age without express authorization from the consumer or the consumer's parent or guardian under certain circumstances; providing that consumers have the right to submit a verified request for businesses to delete or correct personal information the businesses have collected about the consumers; prohibiting businesses from taking certain actions to discriminate against consumers who exercise certain rights, etc. CM AP RC	Fav/CS Yeas 10 Nays 1 03/22/2021 Fav/CS
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Consideration of proposed bill:

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, March 22, 2021, 3:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SPB 7064	Public Records/Investigations by the Department of Legal Affairs; Providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs and law enforcement agencies of certain data privacy violations; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.	Submitted and Reported Favorably as Committee Bill Yeas 11 Nays 0
4	SB 1312 Bradley (Identical H 1175)	Zoological and Aquarium Grant Program; Authorizing the Department of Economic Opportunity to establish a grant program for the support of zoos and aquariums located within the state; providing eligibility requirements; authorizing the use of grant funds for certain purposes; requiring the department to adopt rules; providing that the department has final grant approval authority, etc. CM 03/22/2021 Fav/CS ATD AP	Fav/CS Yeas 11 Nays 0
5	CS/SB 266 Community Affairs / Perry (Similar CS/H 403)	Home-based Businesses; Specifying conditions under which a business is considered a home-based business; providing requirements for home-based businesses; authorizing a home-based business to operate in a residential zone under certain circumstances; specifying that home-based businesses are subject to certain business taxes; prohibiting a local government from taking certain actions relating to home-based businesses, etc. CA 03/10/2021 Fav/CS CM 03/22/2021 Favorable RC	Favorable Yeas 9 Nays 2
6	SB 1140 Rodrigues (Identical H 833)	Unlawful Use of DNA; Prohibiting DNA analysis and disclosure of DNA analysis results without authorization; prohibiting the collection or retention of a DNA sample of another person without authorization for specified purposes; prohibiting specified DNA analysis and disclosure of DNA analysis results without authorization, etc. HP 03/10/2021 Favorable CM 03/22/2021 Favorable RC	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, March 22, 2021, 3:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 1294 Brodeur (Similar CS/H 663)	Cottage Food Operations; Citing this act as the "Home Sweet Home Act"; revising the definition of "cottage food operation"; increasing the annual gross sales limitation for exempting cottage food operations from certain food and building permitting requirements; authorizing the sale, offer for sale, acceptance of payment, and delivery of cottage food products by mail; preempting the regulation of cottage food operations to the state; prohibiting local governments from prohibiting or regulating cottage food operations, etc. RI 03/09/2021 Favorable CM 03/22/2021 Favorable RC	Favorable Yeas 7 Nays 2
8	SB 1374 Farmer (Identical H 349)	Small Business Website Development Grant Program; Creating the Small Business Website Development Grant Program within the Department of Economic Opportunity; requiring the department to provide grants subject to legislative appropriation; authorizing certain small businesses to apply for a grant in a specified amount; requiring that grant funds be used for the development of a website, etc. CM 03/22/2021 Favorable ATD AP	Favorable Yeas 9 Nays 0
9	SB 1992 Harrell (Identical H 1483)	Solicitation of Nonmedical Services; Providing that a person who submits or sponsors a nonmedical solicitation that contains certain terminology or fails to include specified disclosures commits a deceptive and unfair trade practice, subject to the penalties and remedies of the Florida Deceptive and Unfair Trade Practices Act; prohibiting the unauthorized use, sale, or transfer of protected health information for the purpose of soliciting professional services; providing criminal penalties for willful and knowing violations and enhanced criminal penalties for violations committed for financial gain, etc. CM 03/22/2021 Favorable JU RC	Favorable Yeas 11 Nays 0
10	SB 1542 Burgess (Identical H 535)	Electronic Dissemination of Commercial Recordings and Audiovisual Works; Revising the definition of the term "electronic dissemination", etc. CM 03/22/2021 Favorable JU RC	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, March 22, 2021, 3:30—6:00 p.m.

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



RON DESANTIS
GOVERNOR

RECEIVED
DEPARTMENT OF STATE
2020 DEC -8 AM 9:33
DIVISION OF ELECTIONS
TALLAHASSEE, FL

December 4, 2020

Secretary Laurel M. Lee
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Lee:

Please be advised I have made the following appointment under the provisions of Section 20.60, Florida Statutes:

Mr. Dane Eagle
107 E. Madison Street
Tallahassee, Florida 32399

as the executive director of Florida Department of Economic Opportunity, subject to confirmation by the Senate. This appointment is effective September 2, 2020, for a term ending at the pleasure of the governor.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron DeSantis".

Ron DeSantis
Governor

RD/sp

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Leon

2020 NOV 16 PM 12:12

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

Executive Director, Department of Economic Opportunity

(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 by means of ☒ physical presence or
online notarization, this 5 day of November, 2020.

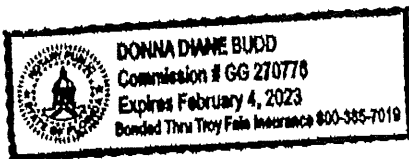
Donna Diane Budd
Signature of Officer Administering Oath or of Notary Public

Donna Diane Budd

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

107 E. Madison Street, Suite 212

Street or Post Office Box

Tallahassee, Florida 32399

City, State, Zip Code

Dane Eagle

Print Name

[Signature]
Signature

584

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Laurel M. Lee, Secretary of State,
do hereby certify that

Dane Eagle

is duly appointed

**Executive Director,
Department of Economic Opportunity**

for a term beginning on the Second day of September, A.D.,
2020, 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 Eighth day of December, A.D. 2020.*



Laurel M. Lee

Secretary of State

DSDE 99 (3/03)

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

CERTIFICATION

STATE OF FLORIDA
COUNTY OF _____

LEON

Before me, the undersigned Notary Public of Florida, personally appeared

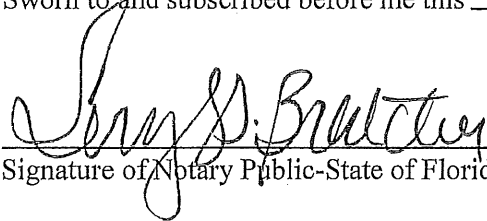
DAVE EAGLE

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.

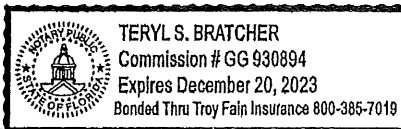


Signature of Applicant-Affiant

Sworn to and subscribed before me this 9th day of November, 2021.



Signature of Notary Public-State of Florida



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

My commission expires: 12/20/23

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

Dane Eagle

Executive Director, Department of Economic Opportunity

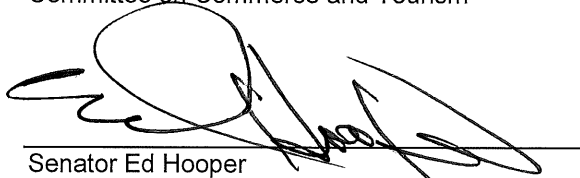
NOTICE OF HEARING

TO: Mr. Dane Eagle

YOU ARE HEREBY NOTIFIED that the Committee on Commerce and Tourism of the Florida Senate will conduct a hearing on your executive appointment on Monday, March 22, 2021, in the Toni Jennings Committee Room, 110 Senate Building, commencing at 3:30 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 16th day of March, 2021

Committee on Commerce and Tourism



Senator Ed Hooper
As Chair and by authority of the committee

cc: Members, Committee on Commerce and Tourism
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: Dane Eagle

ANSWER: I Do

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

COMMITTEE NAME: Commerce and Tourism Committee

DATE: 03/22/2021

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/21

Meeting Date

Bill Number (if applicable)

Topic Dave Eagle Confirmation Hearing

Name John Schrader

Amendment Barcode (if applicable)

Job Title Director of Legislative and Cabinet Affairs

Address 107 E. Madison Street

Phone 850-245-7370

Street

Tallahassee

FL

32312

City

State

Zip

Email John.Schrader@des.mylflhouse.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing DEO

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)

3/23/21
Meeting Date

Bill Number (if applicable)

Topic CONFIRMATION

Amendment Barcode (if applicable)

Name DANE EAGLE

Job Title EXECUTIVE DIRECTOR

Address 107 E MADISON ST
Street

Phone 850-245-7370

TALLAHASSEE FL 32379
City State Zip

Email DANE.EAGLE@DEO.PYFLORIDA.COM

Speaking: ☒ For ☐ Against ☐ Information

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

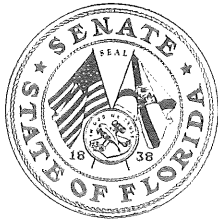
Representing DEO

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.

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SENATOR JENNIFER BRADLEY
5th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary

SELECT COMMITTEE:
Select Committee on Pandemic
Preparedness and Response

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

March 8, 2021

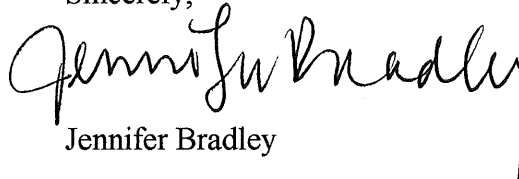
Senator Ed Hooper, Chairman
Senate Committee on Commerce and Tourism
310 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Mr. Chairman:

I respectfully request that Senate Bill 1734 be placed on the agenda of Committee on Commerce at your earliest convenience. The bill seeks to increase the privacy rights of Floridians as it pertains to personal data collected and sold by businesses.

Thank you for your consideration of this request.

Sincerely,


Jennifer Bradley

cc: Todd McKay
Kathryn Vigrass

REPLY TO:

- ☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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

THE FLORIDA SENATE

APPEARANCE RECORD

03.22.21

Meeting Date

1734

Bill Number (if applicable)

122682

Amendment Barcode (if applicable)

Topic Consumer Data Privacy

Name William Large

Job Title President

Address 210 South Monroe Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-222-0170

Email William@fljustice.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Justice Reform Institute

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

3/23/2021

Meeting Date

1734

Bill Number (if applicable)

122682

Amendment Barcode (if applicable)

Topic Consumer Data Privacy

Name Jake Farmer

Job Title Director of Government Affairs

Address 227 S Adams St

Phone 352-359-6835

Street

Tallahassee

FL

32301

Email jake@frf.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

Reset Form

THE FLORIDA SENATE
APPEARANCE RECORD

March 22, 2021

Meeting Date

1734

Bill Number (if applicable)

122682

Amendment Barcode (if applicable)

Topic _____

Name Tim Nungesser

Job Title Legislative Director

Address 110 East Jefferson Street

Phone 850-445-5367

Street

Tallahassee

FL

32301

City

State

Zip

Email Tim.nungesser@nfib.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NFIB

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.

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S-001 (10/14/14)

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

Monday BIF 3:30

THE FLORIDA SENATE

APPEARANCE RECORD

3/23/21

Meeting Date

SB 1734

Bill Number (if applicable)

122682

Amendment Barcode (if applicable)

Topic Consumer Data Privacy

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Street

Tallahassee

City

FL

State

32301

Zip

Phone 224-7173

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

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.

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S-001 (10/14/14)

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THE FLORIDA SENATE
APPEARANCE RECORD

3/22/21

Meeting Date

SB 1734

Bill Number (if applicable)

122682

Amendment Barcode (if applicable)

Topic Consumer Data Privacy

Name Carolyn Johnson

Job Title Senior Policy Director

Address 136 S Bronough Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-521-1200

Email cjohnson@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

Mon B41 3:30

THE FLORIDA SENATE
APPEARANCE RECORD

3/23/21

Meeting Date

SB 1734

Bill Number (if applicable)

589178

Amendment Barcode (if applicable)

Topic Consumer Data Privacy

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Street

Tallahassee

City

FL

State

32301

Zip

Phone 224-7173

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

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.

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S-001 (10/14/14)

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

Reset Form

THE FLORIDA SENATE
APPEARANCE RECORD

March 22, 2021

Meeting Date

1734

Bill Number (if applicable)

589178

Amendment Barcode (if applicable)

Topic _____

Name Tim Nungesser

Job Title Legislative Director

Address 110 East Jefferson Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-445-5367

Email Tim.nungesser@nfib.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NFIB

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.

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

03.22.21

Meeting Date

1734

Bill Number (if applicable)

589178

Amendment Barcode (if applicable)

Topic Consumer Data Privacy

Name William Large

Job Title President

Address 210 South Monroe Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-222-0170

Email William@fljustice.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Justice Reform Institute

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.

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S-001 (10/14/14)

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THE FLORIDA SENATE
APPEARANCE RECORD

3/23/2021

Meeting Date

1734

Bill Number (if applicable)

589178

Amendment Barcode (if applicable)

Topic Consumer Data Privacy

Name Jake Farmer

Job Title Director of Government Affairs

Address 227 S Adams St

Street

Tallahassee

City

FL

State

32301

Zip

Phone 352-359-6835

Email jake@frf.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE
APPEARANCE RECORD

3/22/21

Meeting Date

SB 1734

Bill Number (if applicable)

589178

Amendment Barcode (if applicable)

Topic Consumer Data Privacy

Name Carolyn Johnson

Job Title Senior Policy Director

Address 136 S Bronough Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-521-1200

Email cjohnson@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

03.22.21

Meeting Date

1734

Bill Number (if applicable)

482404

Amendment Barcode (if applicable)

Topic Consumer Data Privacy

Name William Large

Job Title President

Address 210 South Monroe Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-222-0170

Email William@fljustice.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Justice Reform Institute

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

03.22.21

Meeting Date

1734

Bill Number (if applicable)

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Amendment Barcode (if applicable)

Name William Large

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Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

3/23/2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

1734

Bill Number (if applicable)

Topic Consumer Data Privacy

Amendment Barcode (if applicable)

Name Jake Farmer

Job Title Director of Government Affairs

Address 227 S Adams St

Phone 352-359-6835

Street

Tallahassee

FL

32301

City

State

Zip

Email jake@frf.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

March 22, 2021
Meeting Date

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

1734
Bill Number (if applicable)

Topic Consumer Data Privacy Bill

Amendment Barcode (if applicable)

Name Anthony DiMarco

Job Title VP of Government Affairs

Address 1001 Thomasville Rd

Phone 228-224-5

allaham FL 32303
City State Zip

Email admarco@floridabankers.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Bankers Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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Mon 3:30 Commence

THE FLORIDA SENATE
APPEARANCE RECORD

3/22/21

Meeting Date

SB 1734

Bill Number (if applicable)

Topic Consumer Data Privacy

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Street

Tallahassee

City

FL

State

32301

Zip

Phone 224-7173

Email bbevis@aif.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

March 22, 2021

Meeting Date

1734

Bill Number (if applicable)

Topic Consumer Data Privacy

Amendment Barcode (if applicable)

Name John Rothell

Job Title Sr. Director of Governmental Affairs

Address 3692 Coolidge Court

Phone 850-322-1635

Street

Tallahassee

FL

32311

Email john.rothell@lscu.coop

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Credit Union 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.

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

March 22, 2021

Meeting Date

1734

Bill Number (if applicable)

Topic Consumer Data Privacy

Amendment Barcode (if applicable)

Name Michael Carlson

Job Title President

Address 215 S. Monroe St. Ste. 835

Phone 850-544-9576

Street

Tallahassee

FL

32301

Email michael.carlson@piff.net

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Personal Insurance Federation of Florida, Inc.

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.

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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 Commerce and Tourism

BILL: CS/SB 1734

INTRODUCER: Commerce and Tourism Committee and Senator Bradley

SUBJECT: Consumer Data Privacy

DATE: March 23, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1734 creates the Florida Privacy Protection Act (Act) to grant Florida's consumers the ability to share their personal information as they wish, in a way that is safe and that they understand and control.

The Act generally applies to businesses that collect Florida consumers' personal information, and that either have a gross revenue of \$25 million or more; earn 50 percent of their revenue from the sale or sharing of personal information; or buy, receive, sell, or share the personal information of 50,000 or more consumers in a year.

The Act grants consumers the right to:

- Opt-out of the sale of their personal information;
- Know what personal information a business has collected about them;
- Delete their personal information;
- Correct their personal information;
- More stringently control the sale of their minor child's personal information.

Businesses subject to the Act must give consumers notice of their privacy rights, that their personal information may be sold and collected, and that the consumer may opt-out of the sale of his or her personal information. A consumer's opt-out would prevent the sale of his or her data to third-party data brokers, data profiling procedures, and targeted advertisements based on the consumer's activity at more than one website. Additionally, the act requires covered businesses

to implement data security measures to ensure the continued privacy of the personal information they hold.

A consumer may pursue a private civil action based on a business' violation of the Act. The Florida Department of Legal Affairs also has enforcement authority pursuant to the bill.

The bill takes effect on January 1, 2022.

II. Present Situation:

Americans are concerned about how much of their data is being collected, and many feel that their information is less secure than it used to be.¹ Further, 84 percent of Americans say they feel very little or no control over the data that is collected about them by both the government and private companies.² Despite this concern—very few read provided privacy policies in full, if at all.³

Consumer internet connectivity has increased in recent years, allowing consumer data to be collected not only from a personal computer, but also a smartwatch, phone, smart speaker, and even a home appliance.⁴ It is expected that the value of such connected devices and “the ecosystem in which they operate” will exceed four trillion dollars per year by 2025.⁵

Consumer data is most commonly tracked through the placement of ‘cookies’—files that a website places in the user’s device—or more sophisticated “fingerprinting” techniques.⁶ These technologies allow websites to, e.g., store a password that a consumer previously entered, but also allow websites to follow the consumer’s use patterns at other websites and to tailor their activities and advertisements to the consumer as a result of information it gleans.⁷ Certain commercial businesses collect this information and create a consumer profile that describes

¹ Brooke Auxier and Lee Rainie, PEW RESEARCH CENTER, *Key Takeaways on Americans’ Views About Privacy, Surveillance and Data-Sharing* (Nov. 15, 2019), <https://www.pewresearch.org/fact-tank/2019/11/15/key-takeaways-on-americans-views-about-privacy-surveillance-and-data-sharing/> (last visited Mar. 23, 2021). See also, Brooke Auxier, Lee Rainie, Monica Anderson, Andrew Perrin, Madhu Kumar, and Erica Turner, PEW RESEARCH CENTER, *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over their Personal Information* at 2 (Nov. 15, 2019), available at https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2019/11/Pew-Research-Center_PI_2019.11.15_Privacy_FINAL.pdf (last visited Mar. 23, 2021).

² Auxier, et. al, *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over their Personal Information* at 7.

³ *Id.* at 5.

⁴ See, e.g., Oracle, *What is IoT [Internet of Things]?*, <https://www.oracle.com/internet-of-things/what-is-iot/> (last visited Mar. 23, 2021). Stephen Mulligan, Wilson Freeman, Chris Linebaugh, Congressional Research Service, *Data Protection Law: An Overview* at 1 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Mar. 23, 2021).

⁵ Commissioner Rebecca K. Slaughter, Federal Trade Commission, *Raising the Standard: Bringing Security and Transparency to the Internet of Things?* (July 26, 2018), https://www.ftc.gov/system/files/documents/public_statements/1395854/slaughter_-_raising_the_standard_-_bringing_security_and_transparency_to_the_internet_of_things_7-26.pdf (last visited Mar. 23, 2021).

⁶ NPR.ORG, *Online Trackers Follow our Digital Shadow by ‘Fingerprinting’ Browsers, Devices* (Sep. 26, 2016), <https://www.npr.org/sections/alltechconsidered/2016/09/26/495502526/online-trackers-follow-our-digital-shadow-by-fingerprinting-browsers-devices> (last visited Mar. 23, 2021).

⁷ Wharton School of Business, University of Pennsylvania, *Your Data is Shared and Sold... What’s Being Done About It?* (Oct. 28, 2019), <https://knowledge.wharton.upenn.edu/article/data-shared-sold-whats-done/> (last visited Mar. 23, 2021).

possible interests or characteristics, and ultimately target ads for their products at the consumer.⁸ Other companies—data brokers—collect and sell consumer data as their main business operation.⁹

Policy regarding consumer data has two prongs: privacy and security. Data privacy concerns how companies collect, use, and disseminate personal information; data security concerns how companies protect the personal information they hold from unauthorized access or use and respond to such breaches.¹⁰ Federal and state governments have addressed data privacy and security to a certain extent, largely by targeting specific industries (e.g., healthcare and financial institutions) or types of data (such as children’s personal information).¹¹ States have recently begun to legislate more comprehensively to protect data privacy.¹²

Florida Information Protection Act (FIPA)¹³

FIPA is a data security measure that requires governmental entities, specific business entities, and any third-party agent that holds or processes personal information on behalf of these entities to take reasonable measures to protect a consumer’s personal information. Additionally, FIPA requires covered business entities¹⁴ that are subject to data breaches to attempt to remediate the breach by notification to affected consumers in Florida, and in cases where more than 500 individual’s information was breached—by additional notification to the Department of Legal Affairs (DLA).¹⁵ If the breach affected more than 1,000 individuals in Florida, the entity must also notify credit reporting agencies, with certain exceptions.¹⁶

FIPA defines “personal information” as:

- online account information, such as security questions and answers, email addresses, and passwords; and
- an individual’s first name or first initial and last name, in combination with any one or more of the following information regarding him or her:
 - A social security number;

⁸ Max Freedman, BUSINESS NEWS DAILY, *How Businesses are Collecting Data (and What They’re Doing With It)* (Jun. 17, 2020), <https://www.businessnewsdaily.com/10625-businesses-collecting-data.html> (last visited Mar. 23, 2021).

⁹ Lois Beckett, PROPUBLICA, *Everything We Know About What Data Brokers Know About You* (June 13, 2014), <https://www.propublica.org/article/everything-we-know-about-what-data-brokers-know-about-you> (last visited Mar. 23, 2021).

¹⁰ See, e.g., Andrew Burt and Dan Geer, *Data Protection for the Disoriented, From Policy to Practice* 9 (2018), available at <https://www.lawfareblog.com/flat-light-data-protection-disoriented-policy-practice> (last visited Mar. 23, 2021).

¹¹ Stephen Mulligan, Wilson Freeman, Chris Linebaugh, Congressional Research Service, *Data Protection Law: An Overview* at 7-8 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Mar. 23, 2021).

¹² NCSL, *2020 Consumer Data Privacy Legislation* (Jan. 17, 2020), <https://www.ncsl.org/research/telecommunications-and-information-technology/2020-consumer-data-privacy-legislation637290470.aspx> (last visited Mar. 23, 2021).

¹³ Section 501.171, F.S.; Chapter 2014-189, Laws of Fla. (FIPA expanded and updated Florida’s data breach disclosure laws contained in s. 817.5681, F.S. (2013), which was adopted in 2005 and repealed in 2014).

¹⁴ A “covered entity” is a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. Section 501.171(1)(b), F.S.

¹⁵ Florida Office of the Attorney General, *How to Protect Yourself: Data Security*, <http://myfloridalegal.com/pages.nsf/Main/53D4216591361BCD85257F77004BE16C> (last visited Mar. 23, 2021). Section 501.171(3)-(4), F.S.

¹⁶ Section 501.171(3)-(6), F.S.

- A driver license or similar identity verification number issued on a government document;
- A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account; or
- Medical history information or health insurance identification numbers.¹⁷

Personal information does not include information:

- About an individual that a federal, state, or local governmental entity has made publicly available; or
- That is encrypted, secured, or modified to remove elements that personally identify an individual or that otherwise renders the information unusable.¹⁸

FIPA does not provide a private cause of action, but authorizes the DLA to file charges against covered entities under Florida's Unfair and Deceptive Trade Practices Act (FDUTPA).¹⁹

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

Federal Privacy Regulations

*Gramm-Leach Bliley Act (GLBA)*²⁰

The GLBA governs financial institutions' use and protection of nonpublic personal information (NPI).²¹ A financial institution is any institution that engages in financial activities, such as banks, real estate appraisers and title companies, consumer-financing companies, insurance underwriters and agents, wire transfer agencies, check cashing stores, and mortgage brokers.²²

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

¹⁷ Section 501.171(1)(g)1., F.S.; OAG *supra* note 15.

¹⁸ Section 501.171(1)(g)2., F.S.

¹⁹ Section 501.171(9), (10), F.S.; OAG *supra* note 15.

²⁰ 15 U.S.C. §§ 6801-6809. *See generally*, Stephen Mulligan, Wilson Freeman, Chris Linebaugh, Congressional Research Service, *Data Protection Law: An Overview* pp. 8-10 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Mar. 23, 2021).

²¹ The GLBA defines "nonpublic personal information" as "personally identifiable information" that is not publicly available and is either provided by the consumer to a financial institution, resulting from any transaction with the consumer or any service performed for the consumer, or otherwise obtained by the financial institution. 15 U.S.C. § 6809(9).

²² Federal Trade Commission, *Financial Institutions and Customer Information: Complying with the Safeguards Rule: Who Must Comply?*, <https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying> (last visited Mar. 23, 2021).

send an annual notice to the consumer that clearly and conspicuously describes the institution's privacy policies and practices.²³

The financial institution must also ensure the security and confidentiality of a customer's (which requires an ongoing relationship with the financial institution) NPI by establishing concrete security policies, by, e.g., designating an information security program coordinator and implementing a risk assessment process.²⁴

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

Health Insurance Portability and Accountability Act (HIPPA)²⁵ and its Related Rules

HIPPA requires federal agencies to create national standards to protect sensitive patient health information from disclosure without the patient's consent or knowledge. HIPPA's two pertinent implementing rules are the Privacy Rule and the Security Rule.²⁶

The Privacy Rule addresses the use and disclosure of individual's protected health information (PHI) by covered entities.^{27, 28} PHI is information, including demographic data, that can be used to identify the individual, and that relates to the individual's:

- Past, present, or future physical or mental health or physical condition;
- Health care; or
- Payment for past, present, or future health care.

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

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

These covered entities must prominently post an electronic notice and give notice upon a specific request to patients regarding the manners in which they use and disclose PHI. A covered entity

²³ The notice must specifically include the categories of NPI the financial institution collects and discloses, the types of third parties with which it shares NPI, and how it protects consumers' NPI.

²⁴ See, 16 C.F.R. § 314.4

²⁵ 42 U.S.C. § 1320.

²⁶ See generally, Stephen Mulligan, Wilson Freeman, Chris Linebaugh, Congressional Research Service, *Data Protection Law: An Overview* pp. 10-12 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Mar. 23, 2021).

²⁷ 45 C.F.R. §160 and 164. See also, Department of Health and Human Services, *Summary of the HIPPA Privacy Rule*, (Jul. 26, 2013) <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html> (last visited Mar. 23, 2021).

²⁸ A covered entity is a health plan, health care clearinghouse, health care provider who transmits health information in electronic form, and these entities' business associates.

must also provide an accounting of disclosures it has made of a patient's PHI upon his or her request as well as a copy of his or her PHI.

The Security Rule applies to the subset of identifiable health information that a covered entity creates, receives, maintains, or transmits in electronic form called "electronic protected health information" (e-PHI).²⁹ The Security Rule does not apply to PHI that is transmitted orally or in writing. A covered entity must comply with the Security Rule by:

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

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

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

The Common Rule is promulgated by the U.S. Food and Drug Administration (FDA) and governs the ethical conduct of research involving human subjects.³⁰ Twenty federal agencies and departments are party to this rule. The Common Rule mandates that researchers protect the privacy of subjects and maintain confidentiality of human subject data, among other requirements.³¹

Fair Credit Reporting Act (FCRA)³²

The FCRA promotes the accuracy, fairness, and privacy of information that consumer reporting agencies and their related entities collect.³³ The FCRA governs the acts of credit reporting agencies (CRAs), entities that furnish information to CRAs (furnishers), and individuals who use credit reports issued by CRAs. Specifically, CRAs and their furnishers must adopt methods to ensure the information they collect and report is accurate.

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

²⁹ 45 C.F.R. §164.302-318.

³⁰ 21 C.F.R. §§ 50, 60.

³¹ See generally, Health and Human Services, *Federal Policy for the Protection of Human Subjects ('Common Rule')* (Mar. 18, 2016), <https://www.hhs.gov/ohrp/regulations-and-policy/regulations/common-rule/index.html> (last visited Mar. 23, 2021).

³² 15 U.S.C. §1681.

³³ Consumer Finance Bureau, *A Summary of Your Rights Under the Fair Credit Reporting Act* (Sept. 18, 2018), 12 CFR 1022, available at <https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf> (last visited Mar. 23, 2021). See also, Federal Trade Commission, *Fair Credit Reporting Act*, <https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act> (last visited Mar. 23, 2021).

A CRA cannot provide information in a consumer report to anyone who does not have a specified purpose in the FCRA.³⁴

The FTC and Consumer Finance Protection Bureau share civil enforcement authority of the FCRA. A person who willfully obtains consumer information from a CRA under false pretenses is subject to criminal prosecution. An individual may also pursue a private right of action if he or she was injured by willful or negligent actions.³⁵

Children's Online Privacy Protection Act (COPPA)³⁶

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

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

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

A covered entity may not collect a child's (individual under the age of 13) personal information without the prior, verifiable consent of his or her parent.³⁷

COPPA further requires covered entities to:³⁸

- Give parents direct notice of their privacy policies, including a description of their data collection and sharing practices;
- Post a clear link to their privacy policies on their home page and at each area of their website where they collect personal information from children;

³⁴ Permissible purposes include employment, insurance underwriting that involves the consumer, evaluating the consumer's eligibility for licensure or other governmental benefit that considers the applicants financial responsibility or status, or a legitimate business need. 15 U.S.C. § 1681b(a).

³⁵ An individual may record actual damages, attorney's fees, litigation costs, and in the case of willful violations—statutory damages ranging from \$100 to \$1,000 and punitive costs as the court deems appropriate. 15 U.S.C. § 1681n(a).

³⁶ 16 C.F.R. pt. 312.

³⁷ 15 U.S.C. §§ 6502(a)-(b).

³⁸ See, Federal Trade Commission, *General Questions About the COPPA Rule: What is the Children's Online Privacy Protection Rule?*, <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0> (last visited Mar. 23, 2021).

- Institute procedures to protect the personal information that they hold;
- Ensure that any third party with which they share collected personal information implements the same protection procedures; and
- Delete children's personal information after the purpose for its retention has been fulfilled.

Violations of COPPA are deemed an unfair or deceptive act or practice and are therefore prosecuted by the FTC. COPPA also authorizes state attorneys general to enforce violations that affect residents of their states. There is no criminal prosecution or private right of action provided for under COPPA.³⁹

Driver's Privacy Protection Act (DPPA)⁴⁰

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

Violations of the DPPA are subject to criminal fine. Additionally, a private individual affected by the improper disclosure or use of his or her personal information may bring a private civil action against the violator.⁴¹

Family Educational Rights and Privacy Act (FERPA)⁴²

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

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

Schools must give an annual notice about rights granted by FERPA to affected parties.⁴³

³⁹ Federal Trade Commission, *General Questions About the COPPA Rule: COPPA Enforcement*, <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0> (last visited Mar. 23, 2021).

⁴⁰ 18 U.S.C. §2721.

⁴¹ 18 U.S.C. § 2724. *See generally*, Electronic Privacy Information Center, *The Drivers Privacy Protection Act (DPPA) and the Privacy of Your State Motor Vehicle Record*, <https://epic.org/privacy/drivers/> (last visited Mar. 23, 2021).

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

⁴³ U.S. Department of Education, *Family Educational Rights and Privacy Act (FERPA)*, (Dec. 15, 2020) <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html> (last visited Mar. 23, 2021).

Federal Trade Commission Act (FTC Act)

The FTC protects consumer data privacy by acting under Section 5 of the FTC Act, which bars unfair and deceptive acts and practices that affect commerce.⁴⁴ Specifically, the FTC prosecutes companies that act unfairly or deceptively when they gather, use, or disclose personal information in a manner that contradicts their posted privacy policy or other statements, or fail to implement reasonable data security safeguards.⁴⁵

For example, the FTC prosecuted both Sears and Upromise for drafting misleading privacy policies that did not fully disclose the extent to which a consumer's online browsing would be tracked.⁴⁶

The FTC generally cannot seek civil penalties for violations of the FTC Act, but may assess civil monetary penalties for repeated offenses.⁴⁷ There is no private right of action granted under the FTC Act.

General Data Protection Regulation (GDPR)—European Union

The GDPR protects individual personal data and restricts entities' use of personal data, especially those that exercise overall control over the purpose and means of processing personal data (controllers) or that process data on behalf of, or at the instruction of controllers (processors).⁴⁸ A controller or processor is required to comply with the GDPR if it has activity in the European Union—even a minimal one, and regardless of where the data processing occurs.⁴⁹

Personal data is defined as any information that relates to an identified or identifiable person, and can include names, identification numbers, location data, cookies, and any other information through which an individual can be directly or indirectly identified.⁵⁰ A processor and controller must receive express consent from an individual before they can collect or process his or her

⁴⁴ 15 U.S.C. § 1681. Federal Trade Commission, Privacy and Security Enforcement, <https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy/privacy-security-enforcement> (last visited Mar. 23, 2021).

⁴⁵ Stephen Mulligan, Wilson Freeman, Chris Linebaugh, CONGRESSIONAL RESEARCH SERVICE, *Data Protection Law: An Overview* p. 30-35 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Mar. 23, 2021).

⁴⁶ See, e.g., Federal Trade Commission, Membership Reward Service Upromise Penalized for Violating FTC Order (Mar. 17, 2017) Stephen Mulligan, Wilson Freeman, Chris Linebaugh, Congressional Research Service, *Data Protection Law: An Overview* p. 42 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Mar. 23, 2021); and Complaint In the Matter of Sears Holdings Mgmt Co., No. C-4264 (F.T.C. Aug. 31, 2009).

⁴⁷ Federal Trade Commission, FTC's Use of Its Authorities to Protect Consumer Privacy and Security at 4 (2020), available at <https://www.ftc.gov/system/files/documents/reports/reports-response-senate-appropriations-committee-report-116-111-ftcs-use-its-authorities-resources/p065404reportprivacydatasecurity.pdf> (last visited Mar. 23, 2021).

⁴⁸ See generally, Stephen Mulligan, Wilson Freeman, Chris Linebaugh, CONGRESSIONAL RESEARCH SERVICE, *Data Protection Law: An Overview* p. 42 (Mar. 25, 2019), <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited Mar. 23, 2021).

⁴⁹ GDPR, art. 3.

⁵⁰ GDPR, art. 4(1). See, U.K. Information Commissioner's Office, *Guide to General Data Protection Regulation: What is Personal Data?*, <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/key-definitions/what-is-personal-data/> (last visited Mar. 23, 2021).

personal data. The language must give a clear choice that is not based on an overbroad or overly complex question.⁵¹

The GDPR requires entities subject to the GDPR to provide individuals with a report of their data that is processed, where it is processed, why it is being processed.⁵² This report must be provided to the individual within one month of his or her request.⁵³ If an individual makes a request that an entity correct or delete his or her personal data held by an entity, the entity must do so.

State Data Privacy Regulations

Illinois Biometric Information Privacy Act

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

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

Under BIPA, a private entity:⁵⁴

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

BIPA provides a private cause of action, with relief including liquidated damages, ranging from \$1,000 to \$5,000 or actual damages (whichever is greater), attorney's fees and costs, and other relief deemed appropriate by a court.⁵⁵

The Illinois Supreme Court found that an individual need not allege an actual injury or adverse effect, beyond violation of their rights under BIPA, to qualify as an aggrieved party. Therefore, anyone whose biometric data is affected by a violation of BIPA may seek liquidated damages or

⁵¹ U.K. Information Commissioner's Office, *Guide to General Data Protection Regulation: Consent*, <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/consent/> (last visited Mar. 23, 2021).

⁵² Mark Kaelin, TECHREPUBLIC, *GDPR: A Cheat Sheet* (May 23, 2019), <https://www.techrepublic.com/article/the-eu-general-data-protection-regulation-gdpr-the-smart-persons-guide/> (last visited Mar. 23, 2021).

⁵³ GDPR, arts. 12(3), 15.

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

⁵⁵ 740 Ill. Comp. Stat. 14/20 (2008).

injunctive relief under BIPA.⁵⁶ Court documents also tend to support the notion that an individual in Illinois has a valid cause of action if their biometric data is taken without consent by a private entity, including out-of-state entities, but it is subject to a finding of fact.⁵⁷

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

The CCPA defines personal information as that which identifies, relates to, describes, or is capable of being associated with or could reasonably be linked, directly or indirectly, with a particular consumer or household.⁵⁸ The CCPA grants consumers greater control over their personal information by, among other provisions, creating the following consumer rights, to:

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

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

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

- Have a gross annual revenue of over \$25 million;
- Buy, receive, or sell the personal information of 50,000 or more California residents, households, or devices; or
- Derive 50 percent or more of their annual revenue from selling California residents' personal information.

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

The CPRA broadens consumers' rights by allowing them to:

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

The CPRA redefines businesses subject to the law to include those that buy, sell, or share the personal information of 100,000 or more consumers or households; this reduces its applicability

⁵⁶ *Rosenbach v. Six Flags Entertainment Corporation*, 2019 IL 123186.

⁵⁷ *Rivera v. Google, Inc.*, 238 F.Supp.3d 1088 (N.D. Ill. 2017); *In re Facebook Biometric Information Privacy Litigation*, 185 F.Supp.3d 1155 (N.D. Cal. (2016).; *Norberg v. Shutterfly, Inc.*, 152 F.Supp.3d 1103 (N.D. Ill. 2015).

⁵⁸ Cal. Civ. Code § 1798.140(O)(1).

to small and mid-size businesses. However, CPRA also now applies to businesses that not only sell personal information, but also ones that share it; it is unclear to what extent this will enlarge the businesses captured by the regulation. Additionally, the CPRA now prohibits sharing of data between different entities that make up a joint venture.

The CPRA creates a privacy regulator with implementation and enforcement authority relating to the CCPA and CPRA. The CPRA also increases penalties by allowing civil penalties for the theft of consumer login information and increasing the maximum penalties for violations that concern consumers under the age of 16.

The CPRA also provides that a business that collects personal information cannot retain a consumer's personal information or sensitive personal information for longer than is reasonably necessary.⁵⁹

CCPA and the Federal Airline Deregulation Act

The federal Airline Deregulation Act expressly preempts state laws that relate to a price, route, or service of an air carrier.⁶⁰ California brought an action against Delta Airlines for a violation of the CCPA because the airline failed to disclose a privacy policy on its mobile application despite the fact that it collected personally identifiable information about its consumers. This action failed, however, on the basis that the CCPA was preempted by the Airline Deregulation Act.⁶¹

Virginia Consumer Data Protection Act

The Virginia Consumer Data Protection Act (Virginia Act) takes effect on January 1, 2023. The Virginia act grants consumers the right to access, correct, delete, obtain a copy of, and opt out of the processing of their personal data for the purposes of targeted advertising.⁶² The Virginia Act defines “consumer” only as a natural person who is a resident of Virginia and acts only in an individual or household context.⁶³

Businesses are subject to the Virginia Act if they operate in Virginia and either (1) control or process personal data of 100,000 or more consumers or (2) derive over 50 percent of their gross revenue from the sale of personal data and control or process personal data of at least 25,000 consumers.⁶⁴

The Virginia Act exempts specific entities that are otherwise regulated by specific federal law, including those regulated by the GLBA and HIPAA. The Virginia Act also exempts Virginia

⁵⁹ Mario Meeks, JDSUPRA, *The CPRA's Storage Limitation Requirement is Coming—Practical Tips for Shoring Up Your Record Retention Practices to Comply* (Feb. 18, 2021), <https://www.jdsupra.com/legalnews/the-cpra-s-storage-limitation-9898179/> (last visited Mar. 23, 2021).

⁶⁰ 49 U.S.C.A. § 41713.

⁶¹ *Harris v. Delta Air Lines, Inc.*, 247 Cal. App. 4th 884, 202 Cal. Rptr. 3d 395 (2016). *See also*, Heather Zachary and Allison Trzop, *Online Consumer Privacy: Airlines Under Scrutiny*, (Jul. 29, 2014) <https://www.wilmerhale.com/en/insights/publications/online-consumer-privacy-airlines-under-scrutiny> (last visited Mar. 23, 2021).

⁶² Va. Code Ann. § 59.1-573 (2020).

⁶³ Va. Code Ann. § 59.1-571 (2020).

⁶⁴ Va. Code Ann. § 59.1-572 A (2020).

public entities, nonprofit organizations, and higher education institutions.⁶⁵ In a similar vein, the Virginia Act exempts specific personal information, where the collection and use thereof is otherwise regulated by FCRA, FERPA, and COPPA.⁶⁶

The Virginia Attorney General has exclusive enforcement authority of the Virginia Act.⁶⁷

	VCDPA	CCPA, as amended by the CPRA	GDPR
Right to opt-out of sale	✓	✓	✗
Opt-in or opt-out for processing of sensitive information	Opt-in	Opt-out	Opt-in
Statutory cure period for violations	✓	✓	✗
Right to appeal denials of requests	✓	✗	✗
Express obligations regarding de-identified data	✓	✗	✗
Requirement to perform data protection impact assessments	✓	✓	✓
Private right of action	✗	✓	✓
Governmental enforcement entities	Attorney General	CPPA, Attorney General	DPA's
Penalties	Up to \$7,500 per violation	Up to \$2,500 per violation and up to \$7,500 per intentional violation or violation involving minors	Up to €10 million, or 2% of worldwide annual revenue from the preceding financial year, whichever amount is higher, in the case of less severe violations. Up to €20 million, or 4% of worldwide annual revenue from the preceding financial year, whichever amount is higher, in the case of more serious violations.
Operative date	January 1, 2023	January 1, 2023	May 25, 2018

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III. Effect of Proposed Changes:

CS/SB 1734 creates the Florida Privacy Protection Act to grant Florida's consumers the ability to share their personal information as they wish, in a way that is safe and that they understand and control. The bill grants specific rights to consumers, and regulates businesses that collect, process, or sell personal information about consumers.

⁶⁵ Va. Code Ann. § 59.1-572 B (2020).

⁶⁶ Va. Code Ann. § 59.1-572 C (2020).

⁶⁷ See generally, Kurt Hunt and Matthew Diaz, JDSUPRA, *Virginia Becomes 2nd State to Adopt a Comprehensive Consumer Data Privacy Law* (Mar. 8, 2021), <https://www.natlawreview.com/article/virginia-becomes-2nd-state-to-adopt-comprehensive-consumer-data-privacy-law> (last visited Mar. 23, 2021).

⁶⁸ Briana Falcon and Devika Kornbacher, JDSUPRA, *Virginia is for Lovers...of Data Privacy* (Feb. 15, 2021), <https://www.jdsupra.com/legalnews/virginia-is-for-lovers-of-data-privacy-3879845/> (last visited Mar. 23, 2021).

Personal Information

The bill defines personal information as information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household, such as a consumer's:

- First and last name;
- Home or other physical address that includes the name of a street and city or town;
- E-mail address or phone number;
- Social security number;
- Identifier, such as an alias, unique personal identifier, online identifier, Internet protocol (IP) address, account name, driver license number, passport number, or similar identifier;
- Biometric information,⁶⁹ such as DNA or fingerprints or any other biometric information that a business collects about the consumer without his or her knowledge;
- Internet or other electronic network activity information, including but not limited to, browsing and search history, and information regarding a consumer's interaction with a website, application, or advertisement;
- Audio, electronic, visual, thermal, olfactory, geolocation, or similar information;
- Professional or employment-related information;
- Education information, defined as only information that is not publicly available;
- Information that may serve as a probabilistic identifier⁷⁰ concerning him or her which is collected from the consumer through a website, online service, or some other means by the business and is maintained by the business in combination with an identifier that, when used with the information, identifies the consumer;
- Characteristics of protected classifications under state or federal law;
- Commercial information, including records of personal property, purchased or considered products or services, or other purchasing and shopping habits; and
- Geolocation data.

The bill further defines personal information as any inferences drawn from the above information regarding the consumer that can be compiled to create a consumer profile that reflects his or her preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes. This list is not exhaustive of information that may constitute personal information.

However, the bill specifies that the definition of personal information *does not* include:

- Information obtained from public records, including information that is lawfully made available from federal, state, or local governmental records;

⁶⁹ The bill defines "biometric information" as "an individual's physiological, biological, or behavioral characteristics, including an individual's deoxyribonucleic acid (DNA), which can be used, singly or in combination with each other or with other identifying data, to establish individual identity. The term includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, or palm; vein patterns; voice recordings from which an identifier template, such as a faceprint, a minutiae template, or a voice print, can be extracted; keystroke patterns or rhythms; gait patterns or rhythms; and sleep, health, or exercise data that contain identifying information."

⁷⁰ The bill defines a "probabilistic identifier" as the identification of a consumer or a device to a degree of certainty ... based on categories of personal information included in or similar to a person's personal information.

- Information that was made available to the general public by either the consumer or widely distributed media and that the collecting business has a reasonable basis to believe is lawfully available;
- Information that is truthful and that is a matter of public concern; and
- De-identified consumer information or aggregate consumer information that relates to a group or category of consumers from which individual consumer identities have been removed.

Information is de-identified if it:

- Cannot reasonably identify, relate to, describe, or be associated with or linked to a particular consumer or device;
- Contains data that the business has taken reasonable measures to ensure cannot be reidentified;
- Contains data that the business publicly commits to maintain and use in a de-identified fashion and that it will not attempt to reidentify; and
- Contains data that the business contractually prohibits downstream recipients from attempting to reidentify.

Aggregate consumer information, like de-identified information, has had individual consumer identities removed from it and cannot be linked to any consumer or household—but it relates to a group or category of consumers as a whole, rather than to a particular consumer.

Consumer Rights

The bill defines a consumer as a person who is in Florida for a purpose that is not temporary or transitory. The term specifically excludes nonresidents. A person can be an individual, business, or other organization or group of persons who act in concert. The bill vests consumers with specific rights regarding their personal information in interactions with businesses that collect and sell consumer personal information.

Minor's Right to Opt-In to the Sale of Personal Information

The bill prohibits a business from *selling* a consumer's information if he or she is younger than 13 years old, unless the business has affirmative authorization to do so from the child's parent or guardian. Similarly, a business may not collect the personal information of an individual who is between the ages of 13 and 16 unless he or she has affirmatively opts-in. This "opt-in" right does not prevent businesses from *collecting* the individual personal information of consumers under the age of 16.

A business is deemed to have actual knowledge of its consumers' ages if it willfully disregards such information, and therefore is subject to penalty under the bill if it fails to institute some method to determine its consumers' ages. However, what specifically constitutes "willful disregard" of this information will likely need to be determined by a trier of fact.

Right to Opt Out of the Sale of Personal Information

The bill creates a "right to opt out of the sale," which allows a consumer who is 16 years old, or older to instruct a business that sells personal information not to sell his or her personal

information. The business may not require a consumer to create an account to submit his or her opt out request. As discussed below,⁷¹ “sale” is defined expansively by the bill to include any transfer or communication of consumer personal data to advance a business’ economic interests.

The business must stop selling the consumer’s personal information as soon as reasonably possible, but within no more than 2 days after it receives an opt-out request.

A consumer’s opt-out request may also be made by an authorized third-party or through a user-enabled global privacy control, e.g., a browser plug-in or privacy setting. A business cannot require a consumer to make a verified request to submit his or her request to opt out.

Targeted Advertisements and Profiling

The right to opt-out includes a right to opt-out of the processing of one’s data for the purposes of profiling and targeted advertising.

Profiling is defined as the automated processing that a business performs on a consumer’s personal data that will evaluate or predict things about the consumer’s economic situation, health, personal preferences, interests, reliability, behavior, location, or movements.

Targeted advertising is distinct from profiling in result—that it ultimately leads to the display of an advertisement to the consumer based on the profiling of his or her personal data obtained from a broad array of the consumer’s activities, including activity on other business’ websites or applications. As defined by the bill, targeted advertising does not include nonpersonalized advertising that is based only on the consumer’s personal information derived from the consumer’s current interaction with the business—excluding the consumer’s precise geolocation.

A consumer may trigger this specific portion of the right to opt-out at any time, but it is unclear whether he or she must also execute the broader opt-out right to enable the targeted advertisement and profiling opt-out.

A business can offer additional benefits to consumers who participate in targeted advertisements or profiling processes. For example, a business can offer a consumer who participates in targeted advertisements, loyalty programs or related enticements free goods or services, and goods or services at a different price, rate, level, quality, or selection than that offered to consumers who opt out. However, the discount or promotional item must be reasonably related to the value the consumer’s data provides to the business and must not be unjust, unreasonable, coercive, or usurious.

Duration of opt out

Once a consumer opts out, the business must comply without requiring any additional consumer action if it can identify the consumer through a login protocol or similar process, or if the business is made aware of the consumer’s continued opt-out preference by a user-enabled global privacy control, such as a browser plug-in or privacy setting.

⁷¹ See *infra*, Notice Requirements: Notice of Sale of Personal Information.

The bill states elsewhere that a business that received an opt-out request is prohibited from selling the consumer's personal information until it receives the consumer's subsequent express authorization. Additionally, section 501.175(5)(d) of the bill permits a business to request a consumer to re-authorize his or her opt-out after 12 months have passed from initial receipt of the consumer's preference. The bill therefore appears to provide inconsistent guidance regarding re-authorization of a consumer's opt out request.

Right to Know, Edit, or Delete Specific Collected Public Information

The bill grants consumers several additional rights that revolve around the need to first know what a covered business actually holds about the consumer. These rights are the right to know the details of one's personal information held by a business, the right to correct that personal information, and the right to have it deleted. A consumer must submit a verified request to exercise these rights.

Verified Requests

A consumer must make a verified request to exercise his or her rights to know, delete, or correct their collected personal information. An opt-out or opt-in request is not required to be made by verified request.

A "verified request" is defined as a request that is submitted to a business by one of the following:

- A consumer;
- A consumer on behalf of his or her minor child; or
- A natural person or a person registered with the Secretary of State who is authorized by the consumer to act on his or her behalf.

The business must be able to reasonably verify that the request is authentic.

Businesses must establish a designated request address to which consumers may submit their verified request; the address may be either an e-mail address, toll-free phone number, or website. It appears that businesses may receive verified requests in other manners, as a verified request is not defined as one submitted to a business' designated request address.

The covered business is required to respond to the consumer's verified request to access, correct, or delete personal information within 30 days of its submission. The business may take an additional 30 days (total of 60 days) to respond if it makes a good faith determination that it is reasonably necessary to do so. Any business that extends its response beyond the initial 30-day timeframe must notify the requesting consumer of the extension.

If the business deems the consumer request manifestly unfounded or excessive—especially where the consumer's request is overly repetitive, the business may either refuse to comply or charge a reasonable fee for the services requested. The fee must take into account administrative cost of the work required to respond. If a business refuses to respond, it must notify the consumer of the underlying reason. It is the business' burden to demonstrate that the consumer's verified request was unfounded or burdensome.

Right to an Accounting of One's Personal Information Held by a Covered Business

A consumer has the right to request an accounting of certain information from a covered business.⁷² This information includes:

- The sources from which the business collected the consumer's personal information;
- The specific items of personal information the business collected about the consumer;
- The third parties to whom the business sold the personal information.

However, the corresponding business obligation appears only to require that the business provide "any personal information about the consumer which it has collected, directly or indirectly...". Another portion of the bill requires the business to comply with a consumer's request to "access" personal information.

A separate section of the bill obligates businesses that control the collection of a consumer's personal information that will be used for any purpose other than a business purpose to inform consumers of the purposes for which it collects or uses personal information, as applicable to each category of personal information it collects or uses. These specific businesses must also inform its consumers whether it will sell their personal information. This requirement applies to the general public and does not require specific or personal information to be provided to individuals.

It is therefore unclear whether a consumer's right to request the sources from which his or her personal information was collected and the third parties to which it was sold actually translates to a right to receive such information from a covered business.

A service provider is not required to personally comply with a verified request. It is obligated to provide any personal information it obtained as a result of its performance under a contract with a business to said business in order to help the business respond to a verified request for information.

Because the law cannot be applied retroactively, a business is required to disclose only the information it collected about a consumer since July 1, 2022.

Right to Delete Personal Information

A consumer may submit a verified request that a covered business that sells his or her information delete it. After the business receives such a request, it must delete the information, and instruct any third party that bought or received the consumer's personal information to delete the information.

A business and service provider are not required to delete a consumer's personal information pursuant to his or her request where it is necessary to maintain to:

⁷² It is unclear to what businesses consumers have the right to submit this request. The right is created in a subsection that obligates "businesses required to comply with this section." However, there is no general statement of required compliance within the section. Other subsections within the section apply to businesses that sell consumer information, so this right may also only apply to businesses that sell a consumer's information.

- Complete the transaction, provide the good or service, or perform a contract, for which the personal information was collected;
- Fulfill the terms of a written warranty or product recall that is conducted in accordance with federal law;
- Ensure the security and integrity of the business, the personal information it holds, or the safety of a natural person;
- Debug and identify repair errors;
- Exercise free speech or another right provided for by law;
- Engage in public or peer-reviewed scientific, historical, or statistical research that is performed in accordance with applicable ethical standards and privacy laws—only when the deletion of the consumer’s personal information would render such research impossible or seriously impaired and where the consumer previously provided informed consent; and
- Comply with a legal obligation.

Where a business has already de-identified the personal information, it cannot be required to reidentify it to accommodate a request to delete personal information.

Right to Correct Inaccurate Personal Information

A consumer may submit a verified request that a covered business correct incorrect personal information it holds about him or her. A business and any service provider must correct the incorrect information.

Business Requirements

Covered Businesses

The bill defines a business subject to the Act (covered business) as a sole proprietorship, partnership, limited liability company, corporation, association, or any other legal entity that:

- Is organized or operated for the profit or financial benefit of its shareholders or owners;
- Does business in Florida;
- Collects personal information about consumers, or is the entity on behalf of which such information is collected;
- Determines the purpose and means of processing personal information about consumers, alone or jointly with others; and
- Satisfies at least one of the following thresholds:
 - Has a global annual gross revenue in excess of \$25 million, as adjusted in January of every odd-numbered year to reflect an increase in the consumer price index;
 - Annually buys, receives for the business’ commercial purposes, sells, or shares for commercial purposes, the personal information of 50,000 or more consumers, households, or devices; or
 - Derives 50 percent or more of its global annual revenues from selling or sharing personal information about consumers.

The bill further includes within the definition of a covered business (1) the franchisees or franchisors⁷³ of a business that meets the above qualifications, and (2) all of the entities involved in a joint venture or partnership, if the business has at least a 40 percent interest therein. To prevent the improper sharing of personal information between businesses, the bill prohibits each business within the joint venture or partnership from sharing a consumer's personal information with its partner business using the common entity (joint venture or partnership) as a pass through. The businesses are permitted to share a consumer's personal information with the joint venture or partnership, however.

The bill specifically excludes from the definition of a joint venture any third party that operates, hosts, or manages a website or an online service on behalf of a business or processes information on behalf of a business.

Service Providers

A service provider is a person in an express contractual relationship with a business for which it processes personal information that it receives from the business. The contract between the parties must prohibit the service provider from:

- Selling the information;
- Retaining, using or disclosing the personal information it receives from the business for any reason other than that specified in the contract;
- Combining personal information it receives from or on behalf of the business with any other business, or that it collects on its own; and
- Retaining, using, or disclosing personal information outside of the direct business relationship created by the contract.

A business that collects and sells consumer personal information may disclose consumer personal information to a service provider without notice to or consent from the consumer. However, this disclosure must be made pursuant to a contract between the disclosing business and the service provider that prohibits the sale, retention, use, or disclosure of the personal information for any purpose other than the service specified in the contract. The contract must also require that the service provider does not combine a consumer's personal information it receives from multiple businesses or from its own interactions with the consumer.

If a service provider discloses personal information in violation of such a contract, the business generally cannot be found liable. Conversely, a service provider is not liable for duties and obligations assigned to a business under the Act.

Third Parties

A third party is any person who is neither a business that collects person information from a consumer during an intentional interaction with him or her, nor the business' service provider.

⁷³ A franchisee or franchisor is "an entity that controls or is controlled by a business and that shares common branding with the business." Control, for purposes in the bill, means the ownership of, or power to vote, more than 50 percent of the outstanding shares of any class of voting security of a business or the control in any manner over the election of a majority of the directors or individuals who exercise similar functions, or the power to exercise a controlling influence over the management of a company.

A business may sell collected personal information to a third party, but similar to a business' disclosure to a service provider; this sale must be based on a contract that expressly obligates the third party to comply with applicable provisions of the Act—especially regarding the provision of privacy protection.

A service provider may also engage a third party to assist with its performance under a contract for processing personal information, but it must also create a contract with the third party, which shows the third party's understanding and ability to comply with the privacy and security obligations of the Act.

General Business Obligations

Generally, a business may use consumer personal information for a business purpose, which is the business' or service providers' operational purposes. The term "business purpose" may also encompass any reason for which a business gives proper consumer notice (however, service providers are not granted this leeway). The bill provides a non-exhaustive list of permitted business purposes, which includes:

- Auditing related to determining the effectiveness of an advertisement;
- Ensuring the security and integrity of a network or information system, confidentiality of personal information, and physical safety of natural persons;
- Debugging to identify and repair errors that impair functionality;
- Short-term, transient use such as for nonpersonalized advertising –if it does not involve disclosure of personal information or profiling of the consumer;
- Performing services on behalf of the business such as fulfilling orders, processing payments, providing financing, and providing customer service;
- Providing advertising and marketing services that exclude targeted advertising, with specific limits on the combination of personal information;
- Undertaking internal research for technological development and demonstration; and
- Undertaking activities to verify or maintain the quality or safety of a service or device, and to provide upgrades for any such service or device.

Any business' collection, use, retention, and sharing of personal information must be reasonably necessary to achieve, and proportionate to the benefit of achieving, the business purpose.

Notice of Collection of Personal Information

Covered businesses that collect or control the collection of consumer personal information must make the following information reasonably accessible to those consumers from whom they collect personal information through their website or online service:

- The categories of personal information that they collect through their websites or online services, and the categories of third parties with whom they share this information;
- The process, if applicable, through which a consumer may review and request changes to the personal information collected about him or her through the website or online service;
- Whether the business allows a third party to collect the consumer's personal information mined from their online activities over time and across different websites or online services when the consumer uses the business' website or online service; and

- The notice’s effective date and how the business will notify a consumer of material changes to the notice.

This notice must be “reasonably accessible.” It does not appear that this requires a business to post the notice online.

A similar notice is required for a business that controls the collection of consumer personal information that will be used for a non-business purpose, which must inform its consumers of each category of personal information it collects or uses and why it collects or uses that information. The business cannot collect or use types of personal information outside of this notice without first updating the notice to reflect a new category and purpose.

Notice of Retention of Personal Information

Covered businesses are not required to retain consumer personal information, but if they do, they must do so only for as long as is reasonably necessary to effectuate the purpose for which they collected it. However, a covered business can retain de-identified or aggregate consumer information for any amount of time.

A business that collects a consumer’s information for a non-business purpose must inform the consumer from whom it collects that it will retain his or her information. This notification must include the length of time the business expects to retain the information; if the business does not know the duration—it must provide the criteria it will use to determine it.

Notice of Consumer Rights

As discussed above, the bill grants consumers specific rights regarding their personal information. A business that sells a consumer’s information must post a notice to consumers that (1) their information may be sold, and (2) they have the right to opt out of such a sale. This notice requirement may not apply to all covered businesses, as the sale of personal information is required to trigger this notice requirement. Additionally, it is unclear what method of notice is required.

Additionally, specific businesses⁷⁴ must post a clear and conspicuous link with the specific title “Do Not Sell My Personal Information” on their homepages to enable the consumer or an authorized actor to opt out of the sale of the consumer’s personal information. Alternately, a covered business may maintain a separate and additional home page that is dedicated to providing Florida consumers with the required privacy information, if it takes reasonable steps to direct Florida consumers to that specialized webpage.

Employee Education

The bill requires covered business to educate their employees who handle consumer inquiries about the business’ privacy practices and compliance about the bill’s requirements and how to counsel consumers to exercise their rights granted under the bill.

⁷⁴ This requirement applies to “a business that is required to comply with this section.” There is no explicit statement of what types of businesses must comply with s. 501.175, “Use of personal information; third parties; other rights” within the bill.

Data Security

A business that collects a consumer's personal information must implement reasonable security procedures and practices to protect the information from unauthorized or illegal access, destruction, use, modification, or disclosure. This will apply to a large portion of businesses subject to the bill, as even those that keep collected personal information entirely within their business will be required to implement security protections to comply with this provision.

Exclusions

Section 6 of the bill provides specific exclusions or exemptions from the bill.

The bill does not govern the sale, use, retention, or disclosure of de-identified personal information or aggregate consumer information from which individual consumer identities have been removed. Additionally, it permits the sale of personal information if every aspect of that conduct takes place outside of Florida; the consumer's information must have been collected while he or she was not in Florida, and no part of the resulting sale may have occurred in Florida.

The bill expressly allows covered business to do the following:

- Comply with federal, state, or local laws;
- Comply with civil, criminal, or regulatory inquiry or an investigation, a subpoena, or a federal, state, or local summons;
- Cooperate with law enforcement agencies concerning conduct or activity that the business, service provider, or third party reasonably and in good faith believes may violate federal, state, or local law; and
- Exercise or defend legal claims.

The bill also states that those rights afforded and obligations imposed may not adversely affect the rights and freedoms of other consumers.

The bill provides express exemptions for the following types of information:

- Personal information collected or disclosed by a business in the scope of its role as an employer regarding its employees, applicants, interns, or volunteers;
- Health information collected by a covered entity or its businesses associate as governed by HIPPA and its associated rules;
- Information collected as part of a clinical trial that is subject to the Federal Policy for the Protection of Human Subjects pursuant to specific industry guidelines;
- Personal information that is sold to or by a consumer reporting agency, for use in or to generate a consumer report and limited by the Fair Credit Reporting Act;
- Personal information collected, processed, sold, or disclosed pursuant to GLBA and its implementing regulations;
- Personal information collected, processed, sold, or disclosed pursuant to DPPP;
- Education information covered by FERPA;
- Personal information that is collected, processed, sold, or disclosed relating to the price, route, or service by entities that are subject to the federal Airline Deregulation Act, and only to the extent that this Act is preempted by s. 41713 of the federal Airline Deregulation Act; and

- Vehicle Information or ownership information that is retained by or shared between a new motor vehicle dealer and the vehicle's manufacture, if done so to effectuate a warrantied vehicle repair or recall.

Enforcement

Section 7 grants affected consumers a private right of action against a business for its violation of the Act. Specifically, a consumer may bring a civil action for recovery of:

- Damages of between \$100-\$749 per consumer, per incident or actual damages—whichever is greater;
- Injunctive or declaratory relief;
- Reasonable costs of enforcement, including a reasonable attorney fee; and
- Any other relief a court deems proper.

The bill separately grants the Department of Legal Affairs authority to bring an action against a business it has reason to believe is violating or has violated the Act. The trial court may issue a temporary or permanent injunction, impose a civil penalty of \$5,000 or less per violation (this may be tripled if the consumer was under 16 years of age at the time of the violation), award reasonable enforcement costs—including a reasonable attorney fee, and grant any other relief it deems appropriate.

The bill grants the Department of Legal Affairs rulemaking authority to enforce the Act.

Effective Date

Section 8 of the bill provides that the Act will take effect on January 1, 2022.

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 7064 (2021 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:

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

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

C. Government Sector Impact:

The DLA will likely see an increase in prosecutions and other regulatory activity relating to the Act. Additionally, the Judiciary may see an increase in caseload as a result of private actions filed under the Act.

VI. Technical Deficiencies:

The bill requires service providers that disclose personal information with a third party in furtherance of their contractual duties to do so pursuant to a contract that outlines the third party's duty to maintain the security of the shared personal information. The bill describes this duty as "that described in s. 501.174(23)," but this section does not include a duty—it only defines "security and integrity." This provision may be more clear if it replaces the reference to s. 501.174(23) with a reference to s. 501.1745(3), F.S., which requires businesses that collect consumer personal information to implement reasonable security procedures and practices.

Section 501.175, as created by the bill, generally creates business duties to notify consumers of rights regarding their personal information. Most subsections of the bill apply to "a business that sells consumers' personal information," but subsection (5) refers to "a business that is required to comply with this section." There is no general statement of applicability within s. 501.175, and therefore it may be unclear to which businesses these duties created by s. 501.175(5), F.S., apply.

The committee substitute adds geolocation data as information that is considered personal information. This is repetitive, as personal information was already defined to include "audio, electronic, visual, thermal, olfactory, *geolocation*, or similar information."

VII. Related Issues:

The bill grants the DLA rulemaking authority to enforce the Act and otherwise permits it to institute appropriate legal proceedings where it believes necessary. However, the DLA may require investigative authority. For example, s. 501.206, F.S., grants the DLA authority to administer oaths and affirmations, subpoena witnesses or matter, and collect evidence in furtherance of its enforcement authority under the Florida Deceptive and Unfair Trade Practices Act.

The bill appears to provide inconsistent guidance regarding re-authorization of the consumer's opt out request. For example, the bill states that once a consumer opts out, the business must comply without requiring any additional consumer action if it can identify the consumer through a login protocol or a user-enabled global privacy control. The bill states elsewhere that a business that received an opt-out request cannot sell the consumer's personal information until it receives the consumer's subsequent express authorization. Section 501.175(5)(d) of the bill also permits a business to request a consumer to re-authorize his or her opt-out after 12 months have passed from initial receipt of the consumer's preference.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 501.172, 501.173, 501.174, 501.175, 501.176, 501.177.

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 22, 2021:

- Re-defines the term “consumer” so that an individual is no longer required to seek or acquire a good or service from a business to accrue the rights granted by the bill;
- Clarifies that information a consumer shares with the public, or truthful information that concerns a public matter, is not personal information regulated by the bill;
- Broadens the definition of a “business purpose” to include any reason for which a business gives proper notice to its consumers, thereby creating a more a flexible business purpose;
- Instills a corresponding business duty to provide an accounting of personal information it collects about an individual consumer upon his or her request;
- Clarifies that a business is required to provide requesting consumers an accounting of the personal information the business collected on or after July 1, 2022.
- Implements a requirement that covered businesses inform consumers of the duration they intend to retain personal information, and require that the retention be for no longer than reasonably necessary to accomplish the business purpose for which it was collected;
- Requires a covered business to comply with a consumer's opt-out request within 2 days, versus 15;

- Requires a covered business to implement data security measures to protect consumer personal information;
- Excludes specific information from the act, including information subject to enumerated federal privacy regulations, information collected or disclosed by an employer about its employees in the regular scope of its duties, and information held or shared by a car dealer and manufacturer for car repairs, recalls, and maintenance; and
- Delays the effective date to January 1, 2022.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2021	.	
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The Committee on Commerce and Tourism (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 501.172, Florida Statutes, is created to
read:

501.172 Short title.—This act may be cited as the “Florida
Privacy Protection Act.”

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



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501.173 Purpose.—This act shall be construed liberally in recognition that privacy is an important right, and consumers in this state should have the ability to share their personal information as they wish, in a way that is safe and that they understand and control.

Section 3. Section 501.174, Florida Statutes, is created to read:

501.174 Definitions.—As used in ss. 501.172-501.177, unless the context otherwise requires, the term:

(1) "Advertising and marketing" means a communication by a business or a person acting on behalf of the business through any medium intended to induce a consumer to obtain goods, services, or employment.

(2) "Aggregate consumer information" means information that relates to a group or category of consumers, from which individual consumer identities have been removed, which is not linked or reasonably linkable to any consumer or household, including through a device. The term does not include one or more individual consumer records that have been de-identified.

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



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rhythms; and sleep, health, or exercise data that contain identifying information.

(4) "Business" means:

(a) A sole proprietorship, a partnership, a limited liability company, a corporation, or an association or any other legal entity that meets the following requirements:

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

2. Does business in this state;

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

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

5. Satisfies at least one of the following thresholds:

a. Has global annual gross revenues in excess of \$25 million, as adjusted in January of every odd-numbered year to reflect any increase in the Consumer Price Index.

b. Annually buys, sells, or shares the personal information of 50,000 or more consumers, households, or devices.

c. Derives 50 percent or more of its global annual revenues from selling or sharing personal information about consumers.

(b) An entity that controls or is controlled by a business and that shares common branding with the business. As used in this paragraph, the term:

1. "Common branding" means a shared name, service mark, or trademark that the average consumer would understand to mean that two or more entities are commonly owned.

2. "Control" means:

a. Ownership of, or the power to vote, more than 50 percent



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of the outstanding shares of any class of voting security of a business;

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

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

(c) A joint venture or partnership composed of businesses in which each business has at least a 40 percent interest. For the purposes of this act, the joint venture or partnership, and each business that comprises the joint venture or partnership, must be considered a separate, single business, except that personal information in the possession of each business and disclosed to the joint venture or partnership may not be shared with the other business. A joint venture does not include a third party that operates, hosts, or manages a website or an online service on behalf of a business or processes information on behalf of a business.

(5) "Business purpose" means the use of personal information for the business' operational or other notice-given purposes or for the service provider's operational purposes, provided that the use of the personal information is reasonably necessary to achieve, and proportionate to the benefit of achieving, the purpose for which the personal information was collected or processed or for another purpose that is compatible with the context in which the personal information was collected. The term includes all of the following:

(a) Auditing related to counting ad impressions of unique visitors and verifying positioning and the quality of ad



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98 impressions, and auditing compliance with this specification and
99 other standards.

100 (b) Helping to ensure security and integrity to the extent
101 that the use of the consumer's personal information is
102 reasonably necessary for these purposes and proportionate to the
103 benefit of its use for these purposes.

104 (c) Debugging to identify and repair errors that impair
105 existing intended functionality.

106 (d) Short-term, transient use, including, but not limited
107 to, nonpersonalized advertising shown as part of a consumer's
108 current interaction with the business, provided that the
109 consumer's personal information is not disclosed to a third
110 party and is not used to build a profile of the consumer or to
111 otherwise alter the consumer's experience outside his or her
112 current interaction with the business.

113 (e) Performing services on behalf of the business,
114 including maintaining or servicing accounts, providing customer
115 service, processing or fulfilling orders and transactions,
116 verifying customer information, processing payments, or
117 providing financing, analytic services, storage, or similar
118 services on behalf of the business.

119 (f) Providing advertising and marketing services, not
120 including targeted advertising, to the consumer provided that,
121 for the purpose of advertising and marketing, a service provider
122 may not combine the personal information of consumers who opt
123 out which the service provider receives from, or on behalf of,
124 the business with personal information that the service provider
125 receives from, or on behalf of, another person or persons or
126 collects from its own interaction with consumers.



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(g) Undertaking internal research for technological development and demonstration.

(h) Undertaking activities to verify or maintain the quality or safety of a service or device that is owned, manufactured, manufactured for, or controlled by the business, and to improve, upgrade, or enhance the service or device that is owned, manufactured, manufactured for, or controlled by the business.

(6) "Categories" or "category" means the items of personal identifying information specified as being included as personal information under subsection (18).

(7) "Collects," "collected," or "collection" means buying, renting, gathering, obtaining, receiving, or accessing by any means any personal information pertaining to a consumer. The term includes receiving information from the consumer, either actively or passively, or by observing the consumer's behavior.

(8) "Commercial purposes" means to advance a person's commercial or economic interests, such as by inducing another person to buy, rent, lease, join, subscribe to, provide, or exchange products, goods, property, information, or services or enabling or effecting, directly or indirectly, a commercial transaction. The term does not include engaging in speech that state or federal courts have recognized as noncommercial speech, including political speech and journalism.

(9) "Consumer" means a natural person, however identified, including identification by a unique identifier, who is in this state for other than a temporary or transitory purpose. The term does not include any other natural person who is a nonresident.

(10) "De-identified" means information:



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(a) That cannot reasonably identify, relate to, describe, be associated with, or be linked directly or indirectly to a particular consumer or device;

(b) Containing data that the business has taken reasonable measures to ensure could not be reidentified;

(c) Containing data that the business publicly commits to maintain and use in a de-identified fashion and that it does not attempt to reidentify; and

(d) Containing data that the business contractually prohibits downstream recipients from attempting to reidentify.

(11) "Designated request address" means an electronic mail address, a toll-free telephone number, or a website established by a business through which a consumer may submit a verified request to the business.

(12) "Device" means a physical object capable of directly or indirectly connecting to the Internet.

(13) "Home page" means the introductory page of an Internet website and any Internet web page where personal information is collected. In the case of an online service, such as a mobile application, the term means the application's platform page or download page; a link within the application, such as from the application configuration, "about," "information," or settings page; and any other location that allows consumers to review the notices required by this act, at any time, including, but not limited to, before downloading the application.

(14) "Household" means a person or group of persons living together or sharing living quarters who are or are not related.

(15) "Intentional interaction" or "intentionally interacting" means the consumer intends to interact with or



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disclose personal information to a person through one or more deliberate interactions, including visiting the person's website or purchasing a good or service from the person. The term does not include hovering over, muting, pausing, or closing a given piece of content.

(16) "Nonpersonalized advertising" means advertising and marketing that is based solely on a consumer's personal information derived from the consumer's current interaction with the business, with the exception of the consumer's precise geolocation.

(17) "Person" means an individual, a proprietorship, a firm, a partnership, a joint venture, a syndicate, a business trust, a company, a corporation, a limited liability company, an association, a committee, and any other organization or group of persons acting in concert.

(18) "Personal information" means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.

(a) The term includes, but is not limited to, all of the following items of personal identifying information about a consumer collected and maintained by a person or business:

1. A first and last name.
2. A home or other physical address that includes the name of a street and the name of a city or town.
3. An electronic mail address.
4. A telephone number.
5. A social security number.
6. An identifier such as an alias, a unique personal



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identifier, an online identifier, an Internet protocol address,
an account name, a driver license number, a passport number, or
other similar identifiers.

7. Biometric information, such as DNA or fingerprints or
any other biometric information collected by a business about a
consumer without the consumer's knowledge.

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

9. Audio, electronic, visual, thermal, olfactory,
geolocation, or similar information.

10. Professional or employment-related information.

11. Education information, defined as only information that
is not publicly available.

12. Inferences drawn from any information specified in this
paragraph which can create a profile about a consumer reflecting
the consumer's preferences, characteristics, psychological
trends, predispositions, behavior, attitudes, intelligence,
abilities, and aptitudes.

13. Any other information that may serve as a probabilistic
identifier concerning a consumer which is collected from the
consumer through a website, an online service, or some other
means by the business and maintained by the business in
combination with an identifier in a form that, when used
together with the information, identifies the consumer.

14. Characteristics of protected classifications under
state or federal law.

15. Commercial information, including records of personal



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property; products or services purchased, obtained, or
considered; or other purchasing or consuming histories or
tendencies.

16. Geolocation data.

(b) The term does not include:

1. Information about a consumer obtained from public
records, including information that is lawfully made available
from federal, state, or local governmental records; information
that a business has a reasonable basis to believe is lawfully
made available to the general public by the consumer or from
widely distributed media; or lawfully obtained, truthful
information that is a matter of public concern.

2. Consumer information that is de-identified or aggregate
consumer information that relates to a group or category of
consumers from which individual consumer identities have been
removed.

(19) "Probabilistic identifier" means the identification of
a consumer or a device to a degree of certainty more probable
than not, based on any categories of personal information
included in or similar to the items of personal identifying
information specified in subsection (18).

(20) "Processing" means any operation or set of operations
performed on personal information or on sets of personal
information, whether or not by automated means.

(21) "Profiling" means any form of automated processing
performed on personal data to evaluate, analyze, or predict
personal aspects related to an identified or identifiable
natural person's economic situation, health, personal
preferences, interests, reliability, behavior, location, or



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movements.

(22) (a) "Sale" or "sell" means the sale, rental, release, disclosure, dissemination, making available, loaning, sharing, transferring, or other communication, orally, in writing, or by electronic or other means, of a consumer's personal information by a business to a third party for monetary or other tangible or intangible consideration or for any commercial purpose.

(b) The term does not include any of the following:

1. The disclosure, for a business purpose, of personal information by a business to a service provider who processes the personal information on behalf of the business.

2. The disclosure, for the purposes of providing a product or service requested by the consumer, of personal information by a business to another business resulting from the consumer's intentional interaction.

(23) "Security and integrity" means the ability of a:

(a) Network or information system to detect security incidents that compromise the availability, authenticity, integrity, and confidentiality of stored or transmitted personal information.

(b) Business to detect security incidents; to resist malicious, deceptive, fraudulent, or illegal actions; and to help prosecute those responsible for such actions.

(c) Business to ensure the physical safety of natural persons.

(24) "Service provider" means a person who processes personal information on behalf of a business to whom the business discloses a consumer's personal information for a business purpose pursuant to a written or electronic contract if



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the contract prohibits the person from:

(a) Selling the information;

(b) Retaining, using, or disclosing the personal information for any purpose other than the business purposes specified in the contract, including a prohibition on retaining, using, or disclosing the personal information for a commercial purpose other than the business purposes specified in the contract with the business;

(c) Combining the personal information that the service provider receives from or on behalf of the business with personal information that the service provider receives from or on behalf of another person or persons or collects from its own interaction with consumers, provided that the service provider may combine personal information to perform a business purpose; and

(d) Retaining, using, or disclosing the information outside of the direct business relationship between the service provider and the business.

(25) "Targeted advertising" means displaying an advertisement to a consumer when the advertisement is selected based on personal data obtained from a consumer's activities over time and across businesses, websites, or online applications other than the business, website, or online application with which the consumer is intentionally interacting, to predict such consumer's preferences or interests. The term does not include nonpersonalized advertising.

(26) "Third party" means a person who is not any of the following:



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(a) The business with which the consumer intentionally interacts which collects personal information from the consumer as part of the consumer's current interaction with the business.

(b) A service provider to the business.

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

(28) "Verified request" means a request submitted by a consumer, by a consumer on behalf of the consumer's minor child, or by a natural person or a person registered with the Secretary of State, who is authorized by the consumer to act on the consumer's behalf, to a business for which the business can reasonably verify the authenticity of the request.

Section 4. Section 501.1745, Florida Statutes, is created to read:

501.1745 General duties of businesses that collect personal information.—

(1) A business that controls the collection of a consumer's personal information that will be used for any purpose other



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than a business purpose, at or before the point of collection,
shall inform consumers of all of the following:

(a) The purposes for which each category of personal information is collected or used and whether that information is sold. A business may not collect additional categories of personal information, or use collected personal information for additional purposes that are incompatible with the disclosed purpose for which the personal information was collected, without providing the consumer with notice consistent with this section.

(b) The length of time the business intends to retain each category of personal information or, if that is not possible, the criteria used to determine such period, provided that a business may not retain a consumer's personal information for each disclosed purpose for which the personal information was collected for longer than is reasonably necessary for that disclosed purpose.

(2) A business' collection, use, retention, and sharing of a consumer's personal information must be reasonably necessary to achieve, and proportionate to the benefit of achieving, the purposes for which the personal information was collected or processed, and such information may not be further processed in a manner that is incompatible with those purposes.

(3) A business that collects a consumer's personal information shall implement reasonable security procedures and practices appropriate to the nature of the personal information to protect the personal information from unauthorized or illegal access, destruction, use, modification, or disclosure.

(4) A business that collects a consumer's personal



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information and sells that personal information to a third party
or discloses it to a service provider for a business purpose
shall enter into an agreement with such third party or service
provider which obligates the third party or service provider to
comply with applicable obligations under this act and obligates
those persons to provide the same level of privacy protection as
is required by this act. If a service provider engages any other
person to assist it in processing personal information for a
business purpose on behalf of the business, or if any other
person engaged by the service provider engages another person to
assist in processing personal information for that business
purpose, the provider or person must notify the business of that
engagement, and the engagement must be pursuant to a written
contract that includes the prohibitions described in s.
501.174(23) and a certification made by the person receiving the
personal information that he or she understands the restrictions
under this act and will comply with them.

Section 5. Section 501.175, Florida Statutes, is created to
read:

501.175 Use of personal information; third parties; other
rights.—

(1)(a) A consumer has the right, at any time, to direct a
business that sells personal information about the consumer not
to sell the consumer's personal information. This right may be
referred to as the right to opt out of the sale.

(b) As part of the right to opt out of the sale of his or
her personal information, a consumer has the right, at any time,
to opt out of the processing of the consumer's personal data for
purposes of targeted advertising or profiling. However, this



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paragraph may not be construed to prohibit the business that collected the consumer's personal information from:

1. Offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the consumer has opted out of targeted advertising or the sale of his or her personal information; or

2. Offering a loyalty, reward, premium feature, discount, or club card program.

(c) A business that charges or offers a different price, rate, level, quality, or selection of goods or services to a consumer who has opted out of targeted advertising or the sale of his or her personal information, or that offers goods or services for no fee, shall ensure that such charge or offer is:

1. Reasonably related to the value provided to the business by the consumer's data; and

2. Not unjust, unreasonable, coercive, or usurious.

(2) A business that sells consumers' personal information shall provide notice to consumers that the information may be sold and that consumers have the right to opt out of the sale of their personal information.

(3) A business that sells consumer information and that has received direction from a consumer not to sell the consumer's personal information or, in the case of a minor consumer's personal information, has not received consent to sell the minor consumer's personal information, is prohibited from selling the consumer's personal information after the business receives the consumer's direction, unless the consumer subsequently provides express authorization for the sale of the consumer's personal



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information. A business that is able to authenticate the consumer, for example, by the consumer logging in, or that uses some other unique identifier for the consumer, must comply with any privacy preferences the consumer previously directed. The business may not require the consumer to declare privacy preferences every time the consumer visits the business' website or uses the business' online services.

(4) (a) Notwithstanding subsection (1), a business may not sell the personal information of consumers if the business has actual knowledge that the consumer is younger than 16 years of age, unless:

1. The consumer, in the case of consumers between 13 and 16 years of age, has affirmatively authorized the sale of the consumer's personal information; or

2. The consumer's parent or guardian, in the case of consumers who are younger than 13 years of age, has affirmatively authorized the sale of the consumer's personal information.

(b) This right may be referred to as the right to opt in.

(c) A business that willfully disregards the consumer's age is deemed to have actual knowledge of the consumer's age.

(5) A business that is required to comply with this section shall, in a form that is reasonably accessible to consumers, do all of the following:

(a) Provide a clear and conspicuous link on the business' Internet home page, titled "Do Not Sell My Personal Information," to a web page that enables a consumer or a person authorized by the consumer to opt out of the sale of the consumer's personal information. A business may not require a



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consumer to create an account in order to direct the business not to sell the consumer's information.

(b) Ensure that all individuals responsible for handling consumer inquiries about the business' privacy practices or the business' compliance with this section are informed of all requirements of this section and how to direct consumers to exercise their rights.

(c) For consumers who exercise their right to opt out of the sale of their personal information, refrain from selling personal information the business collected about the consumer as soon as reasonably possible but no longer than 2 business days after receiving the request to opt out.

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

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

(f) Ensure that consumers have the right to submit a verified request for certain information from a business, including the sources from which the consumer's personal information was collected, the specific items of personal information it has collected about the consumer, and any third parties to whom the personal information was sold.

(6) Consumers have the right to submit a verified request for the deletion of their personal information that the business has collected.



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(7) A business, or a service provider acting pursuant to its contract with the business or another service provider, is not required to comply with a consumer's verified request to delete the consumer's personal information if it is necessary for the business or service provider to maintain the consumer's personal information in order to do any of the following:

(a) Complete the transaction for which the personal information was collected, fulfill the terms of a written warranty or product recall conducted in accordance with federal law, provide a good or service requested by the consumer, or otherwise perform a contract between the business and the consumer.

(b) Help to ensure security and integrity to the extent that the use of the consumer's personal information is reasonably necessary and proportionate for those purposes.

(c) Debug to identify and repair errors that impair existing intended functionality.

(d) Exercise free speech, ensure the right of another consumer to exercise that consumer's right of free speech, or exercise another right provided for by law.

(e) Engage in public or peer-reviewed scientific, historical, or statistical research that conforms or adheres to all other applicable ethics and privacy laws, when the business' deletion of the information is likely to render impossible or seriously impair the ability to complete such research, if the consumer has provided informed consent.

(f) Comply with a legal obligation.

(8) Consumers have the right to submit a verified request for correction of their personal information held by a business



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if that information is inaccurate.

(9) This section may not be construed to require a business to comply by including the required links and text on the home page that the business makes available to the public generally, if:

(a) The business maintains a separate and additional home page that is dedicated to consumers in this state and includes the required links and text; and

(b) The business takes reasonable steps to ensure that consumers in this state are directed to the home page for consumers in this state and not the home page made available to the public generally.

(10) A consumer may authorize another person to opt out of the sale of the consumer's personal information. A business shall comply with an opt-out request received from a person authorized by the consumer to act on the consumer's behalf, including a request received through a user-enabled global privacy control, such as a browser plug-in or privacy setting, device setting, or other mechanism, which communicates or signals the consumer's choice to opt out, and may not require a consumer to make a verified request to opt out of the sale of his or her information.

(11) Each business shall establish a designated request address through which a consumer may submit a request to exercise his or her rights under this act.

(12) (a) A business that receives a verified request:

1. For a consumer's personal information, shall disclose to the consumer any personal information about the consumer which it has collected since July 1, 2022, directly or indirectly,



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including through or by a service provider.

2. To correct a consumer's inaccurate personal information,
shall correct the inaccurate personal information.

3. To delete a consumer's personal information, shall
delete such personal information.

(b) A service provider is not required to personally comply
with a verified request received directly from a consumer or a
consumer's authorized agent to the extent that the service
provider has collected personal information about the consumer
in its role as a service provider. A service provider shall
provide assistance to a business with which it has a contractual
relationship with respect to the business' response to a
verifiable consumer request, including, but not limited to, by
providing to the business the consumer's personal information in
the service provider's possession which the service provider
obtained as a result of providing services to the business.

(c) At the direction of the business, a service provider
shall correct inaccurate personal information, or delete
personal information, or enable the business to do the same, and
shall notify any service providers who may have accessed such
personal information from or through the service provider, to
correct or delete the consumer's personal information, as
applicable.

(d) A business shall comply with a verified request
submitted by a consumer to access, correct, or delete personal
information within 30 days after the date the request is
submitted. A business may extend such period by up to 30 days if
the business, in good faith, determines that such an extension
is reasonably necessary. A business that extends the period



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shall notify the consumer of the necessity of an extension.

(13) A business shall comply with a consumer's previous expressed decision to opt out of the sale of his or her personal information without requiring the consumer to take any additional action if:

(a) The business is able to identify the consumer through a login protocol or any other process the business uses to identify consumers and the consumer has previously exercised his or her right to opt out of the sale of his or her personal information; or

(b) The business is aware of the consumer's desire to opt out of the sale of his or her personal information through the use of a user-enabled global privacy control, such as a browser, browser instruction, plug-in or privacy setting, device setting, application, service, or other mechanism, which communicates or signals the consumer's choice to opt out.

(14) A business shall make available, in a manner reasonably accessible to consumers whose personal information the business collects through its website or online service, a notice that does all of the following:

(a) Identifies the categories of personal information that the business collects through its website or online service about consumers who use or visit the website or online service and the categories of third parties with whom the business may share such personal information.

(b) Provides a description of the process, if applicable, for a consumer who uses or visits the website or online service to review and request changes to any of his or her personal information that is collected through the website or online



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service.

(c) Describes the process by which the business notifies consumers who use or visit the website or online service of material changes to the notice.

(d) Discloses whether a third party may collect personal information about a consumer's online activities over time and across different websites or online services when the consumer uses the business' website or online service.

(e) States the effective date of the notice.

Section 6. Section 501.176, Florida Statutes, is created to read:

501.176 Exclusions.—

(1) The obligations imposed on a business by this act do not restrict a business' ability to do any of the following:

(a) Comply with federal, state, or local laws.

(b) Comply with a civil, criminal, or regulatory inquiry or an investigation, a subpoena, or a summons by federal, state, or local authorities.

(c) Cooperate with law enforcement agencies concerning conduct or activity that the business, service provider, or third party reasonably and in good faith believes may violate federal, state, or local law.

(d) Exercise or defend legal claims.

(e) Collect, use, retain, sell, or disclose consumer information that is de-identified or in the aggregate consumer information that relates to a group or category of consumers from which individual consumer identities have been removed.

(f) Collect or sell a consumer's personal information if every aspect of that commercial conduct takes place wholly



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outside of this state. For purposes of this act, commercial conduct takes place wholly outside of this state if the business collected that information while the consumer was outside of this state, no part of the sale of the consumer's personal information occurred in this state, and no personal information collected while the consumer was in this state is sold. This paragraph does not permit a business to store, including on a device, personal information about a consumer when the consumer is in this state and then to collect that personal information when the consumer and stored personal information are outside of this state.

(2) This act does not apply to any of the following:

(a) A business that collects or discloses the personal information of the business' employees, applicants, interns, or volunteers so long as the business is collecting or disclosing such information within the scope of its role as an employer.

(b) Health information that is collected by a covered entity or business associate governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services in 45 C.F.R. parts 160 and 164.

(c) A covered entity governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services in 45 C.F.R. parts 160 and 164, to the extent the provider or covered entity maintains patient information in the same manner as medical information or protected health information as described in paragraph (b).

(d) Information collected as part of a clinical trial subject to the Federal Policy for the Protection of Human



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Subjects pursuant to good clinical practice guidelines issued by the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use or pursuant to human subject protection requirements of the United States Food and Drug Administration.

(e) The sale of personal information to or from a consumer reporting agency if that information is to be reported in or used to generate a consumer report as defined by 15 U.S.C. s. 1681(a), and if the use of that information is limited by the federal Fair Credit Reporting Act, 15 U.S.C. s. 1681 et seq.

(f) Personal information collected, processed, sold, or disclosed pursuant to the federal Gramm-Leach-Bliley Act, 12 U.S.C. s. 24(a) et seq. and implementing regulations.

(g) Personal information collected, processed, sold, or disclosed pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. s. 2721 et seq.;

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

(i) Personal information collected, processed, sold, or disclosed in relation to price, route, or service as those terms are used in the federal Airline Deregulation Act, 49 U.S.C. s. 40101 et seq., by entities subject to the federal Airline Deregulation Act, to the extent the provisions of this act are preempted by s. 41713 of the federal Airline Deregulation Act.

(j) Vehicle information or ownership information retained or shared between a new motor vehicle dealer and the vehicle's manufacturer if the vehicle or ownership information is shared for the purpose of effectuating, or in anticipation of



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effectuating, a vehicle repair covered by a vehicle warranty or
a recall conducted pursuant to 49 U.S.C. s. 30118-30120,
provided that the new motor vehicle dealer or vehicle
manufacturer with which that vehicle information or ownership
information is shared does not sell, share, or use that
information for any other purpose. As used in this paragraph,
the term "vehicle information" means the vehicle information
number, make, model, year, and odometer reading, and the term
"ownership information" means the name or names of the
registered owner or owners and the contact information for the
owner or owners.

(3) If a request from a consumer is manifestly unfounded or
excessive, in particular because of the request's repetitive
character, a business may either charge a reasonable fee, taking
into account the administrative costs of providing the
information or communication or taking the action requested, or
refuse to act on the request and notify the consumer of the
reason for refusing the request. The business bears the burden
of demonstrating that any verified consumer request is
manifestly unfounded or excessive.

(4) A business that discloses personal information to a
service provider is not liable under this act if the service
provider receiving the personal information uses it in violation
of the restrictions set forth in the act, provided that, at the
time of disclosing the personal information, the business does
not have actual knowledge, or reason to believe, that the
service provider intends to commit such a violation. A service
provider is likewise not liable under this act for the
obligations of a business for which it provides services as set



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736 forth in this act.

737 (5) This act may not be construed to require a business to
738 reidentify or otherwise link information that is not maintained
739 in a manner that would be considered personal information;
740 retain any personal information about a consumer if, in the
741 ordinary course of business, that information would not be
742 retained; maintain information in identifiable, linkable, or
743 associable form; or collect, obtain, retain, or access any data
744 or technology in order to be capable of linking or associating a
745 verifiable consumer request with personal information.

746 (6) The rights afforded to consumers and the obligations
747 imposed on a business in this act may not adversely affect the
748 rights and freedoms of other consumers. Notwithstanding s.
749 501.175(7), a verified request for specific items of personal
750 information, to delete a consumer's personal information, or to
751 correct inaccurate personal information does not extend to
752 personal information about the consumer which belongs to, or
753 which the business maintains on behalf of, another natural
754 person.

755 Section 7. Section 501.177, Florida Statutes, is created to
756 read:

757 501.177 Civil actions; private right of action; attorney
758 general; rules.—

759 (1) If any business violates any provision of this act, the
760 consumer may initiate a civil action for any of the following:

761 (a) Recovery of damages of at least \$100 and not more than
762 \$750 per consumer per incident or actual damages, whichever is
763 greater.

764 (b) Injunctive or declaratory relief.



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(c) Reasonable costs of enforcement, including a reasonable attorney fee and costs.

(d) Any other relief deemed appropriate by the court.

(2) In assessing the amount of statutory damages, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(3) (a) The Department of Legal Affairs shall adopt rules to enforce this act. If the department has reason to believe that a business, directly or indirectly, has violated or is violating this section, the department may institute an appropriate legal proceeding against the business.

(b) The trial court, upon a showing that any business, directly or indirectly, has violated or is violating this act, may take any of the following actions:

1. Issue a temporary or permanent injunction.

2. Impose a civil penalty not to exceed \$5,000 for each violation. If the violation involves a consumer who was 16 years of age or younger at the time of the violation, the court may triple the civil penalty.

3. Award reasonable costs of enforcement, including a reasonable attorney fee and costs.

4. Grant such other relief as the court may deem appropriate.

Section 8. This act shall take effect January 1, 2022.



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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to consumer data privacy; creating s.
501.172, F.S.; providing a short title; creating s.
501.173, F.S.; providing a purpose; creating s.
501.174, F.S.; defining terms; creating s. 501.1745,
F.S.; requiring certain businesses that collect
consumer personal information to provide certain
information to the consumer; requiring such
collection, use, retention, and sharing of such
information to meet certain requirements; requiring
such businesses to implement reasonable security
procedures and practices; requiring such businesses to
enter into an agreement with third parties under
certain circumstances; creating s. 501.175, F.S.;
providing that consumers have the right to direct
certain businesses not to sell their personal
information; providing construction; requiring such
businesses to notify consumers of such right;
requiring businesses to comply with such a request
under certain circumstances; prohibiting businesses
from selling the personal information of consumers
younger than a specified age without express
authorization from the consumer or the consumer's
parent or guardian under certain circumstances;



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providing that a business that willfully disregards a consumer's age is deemed to have actual knowledge of the consumer's age; requiring certain businesses to provide a specified link on their home page for consumers to opt out; providing requirements for businesses to comply with a consumer's opt-out request; providing that consumers have the right to submit a verified request for businesses to delete or correct personal information the businesses have collected about the consumers; providing construction; providing that consumers may authorize other persons to opt out of the sale of the consumer's personal information on the consumer's behalf; requiring businesses to establish designated addresses through which consumers may submit verified requests; specifying requirements for consumers' verified requests and businesses' responses; requiring businesses to comply with previous consumer requests without requiring additional information from the consumer, under certain circumstances; requiring businesses to provide certain notices to consumers; creating s. 501.176, F.S.; providing applicability; authorizing businesses to charge consumers a reasonable fee for manifestly unfounded or excessive requests, or to refuse to complete a request under certain circumstances; providing for business liability under certain circumstances; providing construction; providing that a consumer's rights and the obligations of a business may not adversely affect



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852 the rights and freedoms of other consumers; creating
853 s. 501.177, F.S.; authorizing consumers to initiate
854 civil actions for violations; providing civil
855 remedies; requiring the Department of Legal Affairs to
856 adopt rules and to initiate legal proceedings against
857 a business under certain circumstances; providing
858 civil penalties; providing an effective date.



122682

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/23/2021	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (482404)

Delete line 53

and insert:

5. Satisfies at least two of the following thresholds:



589178

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/23/2021	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (482404) (with title amendment)

Delete lines 757 - 792
and insert:

501.177 Department of Legal Affairs; rules.—

(1) The Department of Legal Affairs shall adopt rules to enforce this act. If the department has reason to believe that a business, directly or indirectly, has violated or is violating this section, the department may institute an appropriate legal



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proceeding against the business.

(2) The trial court, upon a showing that any business, directly or indirectly, has violated or is violating this act, may take any of the following actions:

(a) Issue a temporary or permanent injunction.

(b) Impose a civil penalty not to exceed \$5,000 for each violation. If the violation involves a consumer who was 16 years of age or younger at the time of the violation, the court may triple the civil penalty.

(c) Award reasonable costs of enforcement, including a reasonable attorney fee and costs.

(d) Grant such other relief as the court may deem appropriate.

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

And the title is amended as follows:

Delete lines 853 - 855

and insert:

s. 501.177, F.S.; requiring the Department of Legal Affairs to

By Senator Bradley

5-01023C-21

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1 A bill to be entitled
 2 An act relating to consumer data privacy; creating s.
 3 501.172, F.S.; providing a short title; creating s.
 4 501.173, F.S.; providing a purpose; creating s.
 5 501.174, F.S.; defining terms; creating s. 501.175,
 6 F.S.; providing that consumers have the right to
 7 direct certain businesses not to sell their personal
 8 information; providing construction; requiring such
 9 businesses to notify consumers of such right;
 10 requiring businesses to comply with such a request
 11 under certain circumstances; prohibiting businesses
 12 from selling the personal information of consumers
 13 younger than a specified age without express
 14 authorization from the consumer or the consumer's
 15 parent or guardian under certain circumstances;
 16 providing that a business that willfully disregards a
 17 consumer's age is deemed to have actual knowledge of
 18 the consumer's age; requiring certain businesses to
 19 provide a specified link on their web page for
 20 consumers to opt out; providing requirements for
 21 businesses to comply with a consumer's opt-out
 22 request; providing that consumers have the right to
 23 submit a verified request for businesses to delete or
 24 correct personal information the businesses have
 25 collected about the consumers; prohibiting businesses
 26 from taking certain actions to discriminate against
 27 consumers who exercise certain rights; providing
 28 construction; providing that consumers may authorize
 29 other persons to opt out of the sale of the consumer's

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

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30 personal information or to request the deletion of
 31 such information on the consumer's behalf; requiring
 32 businesses to establish designated addresses through
 33 which consumers may submit verified requests;
 34 specifying requirements for consumers' verified
 35 requests and businesses' responses; requiring
 36 businesses to comply with previous consumer requests
 37 without requiring additional information from the
 38 consumer, under certain circumstances; requiring
 39 businesses to provide certain notices to consumers;
 40 creating s. 501.176, F.S.; providing applicability;
 41 authorizing businesses to charge consumers a
 42 reasonable fee for manifestly unfounded or excessive
 43 requests, or to refuse to complete a request under
 44 certain circumstances; providing for business
 45 liability under certain circumstances; providing
 46 construction; providing that a consumer's rights and
 47 the obligations of a business may not adversely affect
 48 the rights and freedoms of other consumers; creating
 49 s. 501.177, F.S.; authorizing consumers to initiate
 50 civil actions for violations; providing civil
 51 remedies; requiring the Department of Legal Affairs to
 52 adopt rules and to initiate legal proceedings against
 53 a business under certain circumstances; providing
 54 civil penalties; providing an effective date.

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

58 Section 1. Section 501.172, Florida Statutes, is created to

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

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59 read:

60 501.172 Short title.—This act may be cited as the “Florida
 61 Privacy Protection Act.”

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

64 501.173 Purpose.—This act shall be construed liberally in
 65 recognition that privacy is an important right, and consumers in
 66 this state should have the ability to share their personal
 67 information as they wish, in a way that is safe and that they
 68 understand and control.

69 Section 3. Section 501.174, Florida Statutes, is created to
 70 read:

71 501.174 Definitions.—As used in ss. 501.172-501.177, unless
 72 the context otherwise requires, the term:

73 (1) “Biometric information” means an individual’s
 74 physiological, biological, or behavioral characteristics,
 75 including an individual’s deoxyribonucleic acid (DNA), which can
 76 be used, singly or in combination with each other or with other
 77 identifying data, to establish individual identity. The term
 78 includes, but is not limited to, imagery of the iris, retina,
 79 fingerprint, face, hand, or palm; vein patterns; voice
 80 recordings from which an identifier template, such as a
 81 faceprint, a minutiae template, or a voice print, can be
 82 extracted; keystroke patterns or rhythms; gait patterns or
 83 rhythms; and sleep, health, or exercise data that contain
 84 identifying information.

85 (2) “Business” means:

86 (a) A sole proprietorship, a partnership, a limited
 87 liability company, a corporation, or an association that meets

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88 the following requirements:

89 1. Is organized or operated for the profit or financial
 90 benefit of its shareholders or owners;

91 2. Does business in this state;

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

94 4. Determines the purposes and means of processing personal
 95 information about consumers, alone or jointly with others; and

96 5. Satisfies at least one of the following thresholds:

97 a. Has global annual gross revenues in excess of \$25
 98 million, as adjusted in January of every odd-numbered year to
 99 reflect any increase in the Consumer Price Index.

100 b. Annually buys, receives for the business’ commercial
 101 purposes, sells, or shares for commercial purposes the personal
 102 information of 50,000 or more consumers, households, or devices.

103 c. Derives 50 percent or more of its global annual revenues
 104 from selling or sharing personal information about consumers.

105 (b) An entity that controls or is controlled by a business
 106 and that shares common branding with the business. As used in
 107 this paragraph, the term:

108 1. “Common branding” means a shared name, service mark, or
 109 trademark.

110 2. “Control” means:

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

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

116 or

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

(c) A joint venture or partnership composed of businesses in which each business has at least a 40 percent interest. For the purposes of this act, the joint venture or partnership and each business that composes the joint venture or partnership must be considered a separate, single business, except that personal information in the possession of each business and disclosed to the joint venture or partnership may not be shared with the other businesses.

The term does not include a third party that operates, hosts, or manages a website or an online service on behalf of a business or processes information on behalf of a business; or an entity that is subject to the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, and regulations adopted pursuant thereto.

(3) "Business purpose" means a business or a service provider that uses personal information for the operational purposes of the business or service provider, which is necessary and proportionate to achieve the operational purpose for which the personal information was collected or processed or for another operational purpose that is compatible with the context in which the personal information was collected.

(4) "Commercial purposes" means to advance a business' commercial or economic interests, such as by inducing a consumer to buy, rent, lease, join, subscribe to, provide, or exchange products, goods, property, information, or services or enabling or effecting, directly or indirectly, a commercial transaction.

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The term does not include engaging in speech that state or federal courts have recognized as noncommercial speech, including political speech and journalism.

(5) "Consumer" means a natural person who is in this state for other than a temporary or transitory purpose, or a natural person who is domiciled in this state but is outside this state for a temporary or transitory purpose, who seeks or acquires, by purchase or lease, any good, service, money, or credit for personal, family, or household purposes from a business. The term does not include any other natural person who is a nonresident.

(6) "De-identified" means information:

(a) That cannot reasonably identify, relate to, describe, be associated with, or be linked directly or indirectly to a particular consumer or device;

(b) Containing data that the business has taken reasonable measures to ensure could not be reidentified;

(c) Containing data that the business publicly commits to maintain and use in a de-identified fashion and that it does not attempt to reidentify; and

(d) Containing data that the business contractually prohibits downstream recipients from attempting to reidentify.

(7) "Designated request address" means an electronic mail address, a toll-free telephone number, or a website established by a business through which a consumer may submit a verified request to the business.

(8) "Personal information" means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly

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or indirectly, with a particular consumer or household.

(a) The term includes, but is not limited to, all of the following items of personal identifying information about a consumer collected and maintained by a person or business in an accessible format:

1. A first and last name.
2. A home or other physical address that includes the name of a street and the name of a city or town.
3. An electronic mail address.
4. A telephone number.
5. A social security number.
6. An identifier that allows a consumer to be contacted either physically or online.
7. Biometric information, such as DNA or fingerprints or any other biometric information collected by a business about a consumer without the consumer's knowledge.
8. Internet or other electronic network activity information, including, but not limited to, browsing history, search history, and information regarding a consumer's interaction with a website, an application, or an advertisement.
9. Audio, electronic, visual, thermal, olfactory, geolocation, or similar information.
10. Professional or employment-related information.
11. Education information, defined as only information that is not publicly available.
12. Inferences drawn from any information specified in this paragraph which can create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence,

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abilities, and aptitudes.

13. Any other information that may serve as a probabilistic identifier concerning a consumer which is collected from the consumer through a website, an online service, or some other means by the business and maintained by the business in combination with an identifier in a form that, when used together with the information, identifies the consumer.

(b) The term does not include:

1. Information about a consumer actually obtained from public records, including information that is lawfully made available from federal, state, or local governmental records.
2. Consumer information that is de-identified or aggregate consumer information that relates to a group or category of consumers from which individual consumer identities have been removed.
3. Information collected, processed, sold, or disclosed pursuant to the federal Gramm-Leach-Bliley Act, 15 U.S.C. s. 6801 et seq., and regulations adopted pursuant thereto, if it is inconsistent with that act, and only to the extent of the inconsistency.
- (9) "Probabilistic identifier" means the identification of a consumer or a device to a degree of certainty more probable than not, based on any categories of personal information included in or similar to the categories enumerated in subsection (8).
- (10) "Profiling" means any form of automated processing performed on personal data to evaluate, analyze, or predict personal aspects related to an identified or identifiable natural person's economic situation, health, personal

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233 preferences, interests, reliability, behavior, location, or
 234 movements.

235 (11)(a) "Sale" or "sell" means to sell, rent, release,
 236 disclose, disseminate, make available, loan, share, transfer, or
 237 otherwise communicate orally, in writing, or by electronic or
 238 other means, a consumer's personal information by a business to
 239 another business or a third party for monetary or other tangible
 240 or intangible consideration or for any commercial purpose.

241 (b) The term does not include any of the following:

242 1. The business disclosing personal information to a
 243 service provider that processes the personal information on
 244 behalf of the business.

245 2. The business disclosing personal information to another
 246 business that the consumer has a direct relationship, for the
 247 purposes of providing a product or service requested by the
 248 consumer.

249 (12) "Service provider" means a person that processes
 250 personal information on behalf of a business and to which the
 251 business discloses a consumer's personal information pursuant to
 252 a written or electronic contract if:

253 (a) The contract prohibits the person from retaining,
 254 using, or disclosing the personal information for any purpose
 255 other than the specific purposes of performing the services
 256 specified in the contract for the business, including a
 257 prohibition on retaining, using, or disclosing the personal
 258 information for a commercial purpose other than providing the
 259 services specified in the contract with the business; and

260 (b) The service provider does not combine the personal
 261 information that the service provider receives from or on behalf

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262 of the business with personal information that the service
 263 provider receives from or on behalf of another person or persons
 264 or collects from its own interaction with consumers.

265 (13) "Targeted advertising" means displaying an
 266 advertisement to a consumer when the advertisement is selected
 267 based on personal data obtained from a consumer's activities
 268 over time and across nonaffiliated websites or online
 269 applications to predict such consumer's preferences or
 270 interests. The term does not include any of the following:

271 (a) Advertisements based on activities within a business'
 272 own websites or online applications.

273 (b) Advertisements based on the context of a consumer's
 274 current search query, visit to a website, or online application.

275 (c) Advertisements directed to a consumer in response to
 276 the consumer's request for information or feedback.

277 (d) Processing personal data processed solely to measure or
 278 report advertising performance, reach, or frequency.

279 (14) "Third party" means a person who is not any of the
 280 following:

281 (a) The business that collects personal information from
 282 consumers under this section.

283 (b) A service provider that the business discloses a
 284 consumer's personal information for a business purpose pursuant
 285 to a written contract that does all of the following:

286 1. Prohibits the person receiving the personal information
 287 from doing any of the following:

288 a. Selling the personal information.

289 b. Retaining, using, or disclosing the personal information
 290 for any purpose other than for the specific purpose of

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291 performing the services specified in the contract, including
 292 retaining, using, or disclosing the personal information for a
 293 commercial purpose other than providing the services specified
 294 in the contract.

295 c. Retaining, using, or disclosing the information outside
 296 of the direct business relationship between the person and the
 297 business.

298 d. Combining the personal information that the service
 299 provider receives from or on behalf of any person with personal
 300 information that the service provider receives from or on behalf
 301 of another person or persons or collects from its own
 302 interaction with consumers.

303 2. Includes a certification made by the person who receives
 304 the personal information that the person understands the
 305 restrictions under this act and will comply with them.

306 (15) "Unique identifier" or "unique personal identifier"
 307 means a persistent identifier that can be used to recognize a
 308 consumer, a family, or a device linked to a consumer or family
 309 over time and across different services, including, but not
 310 limited to, a device identifier; an Internet protocol address;
 311 cookies, beacons, pixel tags, mobile ad identifiers, or similar
 312 technology; a customer number, unique pseudonym, or user alias;
 313 telephone numbers; or other forms of persistent or probabilistic
 314 identifiers that can be used to identify a particular consumer
 315 or device. For purposes of this subsection, the term "family"
 316 means a custodial parent or guardian and any minor children of
 317 which the parent or guardian has custody.

318 (16) "Verified request" means a request submitted by a
 319 consumer, by a consumer on behalf of the consumer's minor child,

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320 by a natural person or a person registered with the Secretary of
 321 State, authorized by the consumer to act on the consumer's
 322 behalf, to a business for which a business can reasonably verify
 323 the authenticity of the request.

324 Section 4. Section 501.175, Florida Statutes, is created to
 325 read:

326 501.175 Use of personal information; third parties; other
 327 rights.—

328 (1) (a) A consumer has the right, at any time, to direct a
 329 business that sells personal information about the consumer not
 330 to sell the consumer's personal information. This right may be
 331 referred to as the right to opt out of the sale.

332 (b) As part of the right to opt out of the sale of his or
 333 her personal information, a consumer has the right, at any time,
 334 to opt out of the processing of the consumer's personal data for
 335 purposes of targeted advertising or profiling in furtherance of
 336 decisions that produce legal or similarly significant effects
 337 concerning the consumer. However, this paragraph may not be
 338 construed to prohibit the business that collected the consumer's
 339 personal information from offering a different price, rate,
 340 level, quality, or selection of goods or services to a consumer,
 341 including offering goods or services for no fee, if the consumer
 342 has opted out of targeted advertising or the offer is related to
 343 a consumer's voluntary participation in a bona fide loyalty,
 344 rewards, premium features, discounts, or club card program.

345 (2) A business that sells consumers' personal information
 346 to third parties shall provide notice to consumers that the
 347 information may be sold and that consumers have the right to opt
 348 out of the sale of their personal information.

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(3) A business that has received direction from a consumer not to sell the consumer's personal information or, in the case of a minor consumer's personal information, has not received consent to sell the minor consumer's personal information, is prohibited from selling the consumer's personal information after the business receives the consumer's direction, unless the consumer subsequently provides express authorization for the sale of the consumer's personal information. A business that is able to authenticate the consumer, for example, by the consumer logging in, or that uses some other unique identifier for the consumer must comply with any privacy preferences the consumer previously directed. The consumer may not be required to declare privacy preferences every time the consumer visits the business' website or uses the business' online services.

(4) (a) Notwithstanding subsection (1), a business may not sell the personal information of consumers if the business has actual knowledge that the consumer is younger than 16 years of age, unless:

1. The consumer, in the case of consumers between 13 and 16 years of age, has affirmatively authorized the sale of the consumer's personal information; or

2. The consumer's parent or guardian, in the case of consumers who are younger than 13 years of age, has affirmatively authorized the sale of the consumer's personal information.

(b) A business that willfully disregards the consumer's age is deemed to have actual knowledge of the consumer's age. This right may be referred to as the right to opt in.

(5) A business that is required to comply with this section

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shall, in a form that is reasonably accessible to consumers, do all of the following:

(a) Provide a clear and conspicuous link on the business' Internet home page, titled "Do Not Sell My Personal Information," to a web page that enables a consumer or a person authorized by the consumer to opt out of the sale of the consumer's personal information. A business may not require a consumer to create an account in order to direct the business not to sell the consumer's information.

(b) Ensure that all individuals responsible for handling consumer inquiries about the business' privacy practices or the business' compliance with this section are informed of all requirements of this section and how to direct consumers to exercise their rights.

(c) For consumers who exercise their right to opt out of the sale of their personal information, refrain from selling personal information the business collected about the consumer within 15 business days after receiving the request to opt out.

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

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

(f) Ensure that consumers have the right to submit a verified request for certain information from a business, including the sources from which the consumer's personal

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information was collected, the specific elements of personal information it collected about the consumer, and any third parties to whom the personal information was sold.

(6) Consumers have the right to submit a verified request that personal information that has been collected be deleted. A business shall notify a third party to delete any consumer personal information bought or received.

(7) Consumers have the right to submit a verified request for correction of their personal information held by a business if that information is inaccurate.

(8) Consumers have the right to receive equal service and pricing from a business, even if they exercise their privacy rights. A business may not discriminate against such consumers by denying them goods or services, charging different prices, or providing a different quality of goods or services to consumers who exercise their right to opt out from having their personal information sold.

(9) This section may not be construed to require a business to comply by including the required links and text on the home page that the business makes available to the public generally, if:

(a) The business maintains a separate and additional home page that is dedicated to consumers in this state and includes the required links and text; and

(b) The business takes reasonable steps to ensure that consumers in this state are directed to the home page for consumers in this state and not the home page made available to the public generally.

(10) A consumer may authorize another person to opt out of

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the sale of the consumer's personal information or to request the deletion of the consumer's personal information on the consumer's behalf. A business shall comply with an opt-out request or deletion request received from a person authorized by the consumer to act on the consumer's behalf, including a request received through a user-enabled global privacy control, such as a browser plug-in or privacy setting, device setting, or other mechanism, which communicates or signals the consumer's choice to opt out.

(11) Each business shall establish a designated request address through which a consumer may submit a request to exercise his or her rights under this act.

(12) A business shall respond to a verified request submitted by a consumer to correct or delete personal information within 30 days after the date the request is submitted. A business may extend such period by up to 30 days if the business, in good faith, determines that such an extension is reasonably necessary. A business that extends the period shall notify the consumer of the necessity of an extension.

(13) A business shall comply with a consumer's previous expressed decision to opt out of the sale of his or her personal information without requiring the consumer to take any additional action if:

(a) The business is able to identify the consumer through a login protocol, and the consumer has previously exercised his or her right to opt out of the sale of their personal information; or

(b) The business is aware of the consumer's desire to opt out of the sale of his or her personal information through the

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465 use of a user-enabled global privacy control, such as a browser
466 plug-in or privacy setting, device setting, or other mechanism,
467 which communicates or signals the consumer's choice to opt out.

468 (14) A business shall make available, in a manner
469 reasonably accessible to consumers whose personal information
470 the business collects through its website or online service, a
471 notice that does all of the following:

472 (a) Identifies the categories of personal information that
473 the business collects through its website or online service
474 about consumers who use or visit the website or online service
475 and the categories of third parties with whom the business may
476 share such personal information.

477 (b) Provides a description of the process, if applicable,
478 for a consumer who uses or visits the website or online service
479 to review and request changes to any of his or her personal
480 information that is collected through the website or online
481 service.

482 (c) Describes the process by which the business notifies
483 consumers who use or visit the website or online service of
484 material changes to the notice.

485 (d) Discloses whether a third party may collect personal
486 information about a consumer's online activities over time and
487 across different websites or online services when the consumer
488 uses the business' website or online service.

489 (e) States the effective date of the notice.

490 Section 5. Section 501.176, Florida Statutes, is created to
491 read:

492 501.176 Exclusions.—

493 (1) The obligations imposed on a business by this act do

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494 not restrict a business' ability to do any of the following:

495 (a) Comply with federal, state, or local laws.

496 (b) Comply with a civil, criminal, or regulatory inquiry or
497 an investigation, a subpoena, or a summons by federal, state, or
498 local authorities.

499 (c) Cooperate with law enforcement agencies concerning
500 conduct or activity that the business, service provider, or
501 third party reasonably and in good faith believes may violate
502 federal, state, or local law.

503 (d) Exercise or defend legal claims.

504 (e) Collect, use, retain, sell, or disclose consumer
505 information that is de-identified or in the aggregate consumer
506 information that relates to a group or category of consumers
507 from which individual consumer identities have been removed.

508 (f) Collect or sell a consumer's personal information if
509 every aspect of that commercial conduct takes place wholly
510 outside of this state. For purposes of this act, commercial
511 conduct takes place wholly outside of this state if the business
512 collected that information while the consumer was outside of
513 this state, no part of the sale of the consumer's personal
514 information occurred in this state, and no personal information
515 collected while the consumer was in this state is sold. This
516 paragraph does not permit a business to store, including on a
517 device, personal information about a consumer when the consumer
518 is in this state and then to collect that personal information
519 when the consumer and stored personal information are outside of
520 this state.

521 (2) This act does not apply to the sale of personal
522 information to or from a consumer reporting agency if that

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information is to be reported in, or used to generate, a consumer report as defined by subdivision (d) of 15 U.S.C. s. 1681a, and use of that information is limited by the federal Fair Credit Reporting Act, 15 U.S.C. s. 1681 et seq.

(3) If a request from a consumer is manifestly unfounded or excessive, in particular because of the request's repetitive character, a business may either charge a reasonable fee, taking into account the administrative costs of providing the information or communication or taking the action requested, or refuse to act on the request and notify the consumer of the reason for refusing the request. The business bears the burden of demonstrating that any verified consumer request is manifestly unfounded or excessive.

(4) A business that discloses personal information to a service provider is not liable under this act if the service provider receiving the personal information uses it in violation of the restrictions set forth in the act, provided that, at the time of disclosing the personal information, the business does not have actual knowledge, or reason to believe, that the service provider intends to commit such a violation. A service provider is likewise not liable under this act for the obligations of a business for which it provides services as set forth in this act.

(5) This act may not be construed to require a business to reidentify or otherwise link information that is not maintained in a manner that would be considered personal information.

(6) The rights afforded to consumers and the obligations imposed on a business in this act may not adversely affect the rights and freedoms of other consumers.

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Section 6. Section 501.177, Florida Statutes, is created to read:

501.177 Civil actions; private right of action; Attorney General; rules.—

(1) If any business violates any provision of this act, the consumer may initiate a civil action for any of the following:

(a) Recovery of damages of at least \$100 and less than \$750 per consumer per incident or actual damages, whichever is greater.

(b) Injunctive or declaratory relief.

(c) Reasonable costs of enforcement, including a reasonable attorney fee.

(d) Any other relief the court deems proper.

(2) (a) The Department of Legal Affairs shall adopt rules to enforce this act. If the department has reason to believe that a business, directly or indirectly, has violated or is violating this section, the department may institute an appropriate legal proceeding against the business.

(b) The trial court, upon a showing that any business, directly or indirectly, has violated or is violating this act, may take any of the following actions:

1. Issue a temporary or permanent injunction.

2. Impose a civil penalty not to exceed \$5,000 for each violation. If the consumer was under 16 years of age at the time of the violation, the court may triple the civil penalty.

3. Award reasonable costs of enforcement, including a reasonable attorney fee.

4. Grant such other relief as the court may deem appropriate.

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Section 7. This act shall take effect July 1, 2021.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7064

INTRODUCER: Commerce and Tourism Committee

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

DATE: March 23, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Harmsen	McKay		Submitted as Comm. Bill/Fav

I. Summary:

SPB 7064 creates a public records exemption for information received by the Department of Legal Affairs (DLA) pursuant to a notification of a violation under the Florida Privacy Protection Act or received pursuant to an investigation made by the DLA or a law enforcement agency.

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

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

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

The bill provides for the repeal of the exemption on October 2, 2026, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect on the same date that linked bill SB 1734 (implementing the Florida Privacy Protection Act) takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. Present Situation:

Access to Public Records - Generally

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

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

Executive Agency Records – The Public Records Act

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

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

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

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

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

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

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

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

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

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

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

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

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

Open Government Sunset Review Act

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

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the

⁸ Section 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST. art. I, s. 24(c).

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

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

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

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

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

¹⁶ Section 119.15, F.S.

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

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

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

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

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

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

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

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

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

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

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

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

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

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

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

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

Florida Privacy Protection Act

SB 1734 creates the Florida Privacy Protection Act (Act). The Act grants consumers specific rights relating to their personal information, namely (1) the right to opt-out of the sale or sharing of their personal information, and (2) the right to correct or delete their personal information held by a business.

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

The Act grants the Florida Department of Legal Affairs (DLA) (also known as the Office of the Attorney General) authority to institute appropriate legal proceedings against businesses that it believes have violated or are violating the Act.

As created, then, any information obtained by the DLA during an investigation of the Act is subject to disclosure under ch. 119, F.S. This may present a hurdle to the DLA’s investigation and enforcement because it will stifle the disclosure of pertinent information from law enforcement or consumers to the DLA.³³ Additionally, the release of consumer personal information could subject them to identity theft or further harm.

III. Effect of Proposed Changes:

SPB 7064 makes information received by the DLA pursuant to a notification of a violation of certain statutory requirements or received by the DLA pursuant to an investigation by the DLA or a law enforcement agency confidential and exempt.

³⁰ Section 68.083(8), F.S.

³¹ Section 501.171(11), F.S.

³² Section 501.2065, F.S.

³³ Florida Department of Law Enforcement, *HB 1239 Agency Analysis* (Mar. 6, 2019), (on file with the Senate Committee on Commerce and Tourism).

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

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

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

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

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

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

This provision will be subject to an Open Government Sunset Review in accordance with s. 119.15, F.S., and will stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill will become effective on the same date that SB 1734 (2021) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public records exemption for certain information held by the DLA during its investigations of violations of the Florida Privacy Protection Act, and maintains the exemption indefinitely for specific personal information and business information. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 501.177 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.

FOR CONSIDERATION By the Committee on Commerce and Tourism

577-02811-21

20217064pb

A bill to be entitled

An act relating to public records; amending s. 501.177, F.S.; providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs and law enforcement agencies of certain data privacy violations; defining the term "proprietary information"; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (3) is added to section 501.177, Florida Statutes, as created by SB 1734, 2021 Regular Session, to read:

501.177 Civil actions; private right of action; Attorney General; rules.—

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

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be

Page 1 of 5

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

577-02811-21

20217064pb

disclosed by the department:

1. In the furtherance of official duties and responsibilities;

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

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

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

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

2. Personal information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in a business' data security.

5. Information that would disclose a business' proprietary information.

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

1. Means information that:

a. Is owned or controlled by the business.

Page 2 of 5

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

577-02811-21

20217064pb

b. Is intended to be private and is treated by the business as private because disclosure would harm the business or its business operations.

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

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

2. Includes:

a. Trade secrets as defined in s. 688.002.

b. Competitive interests, the disclosure of which would impair the competitive business of the business who is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

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

(1) A notification of a violation of this act may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and

577-02811-21

20217064pb

impair the ability of the department to effectively and efficiently administer its duties pursuant to s. 501.177, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) The Legislature finds that it is a public necessity to continue to protect from public disclosure all information to which another public record exemption applies once an investigation is completed or ceases to be active. Release of such information by the department would undo the specific statutory exemption protecting that information.

(3) An investigation of a data privacy violation is likely to result in the gathering of sensitive personal information, including social security numbers, identification numbers, and personal financial information. Such information could be used for the purpose of identity theft. In addition, release of such information could subject possible victims of data privacy violations to further harm.

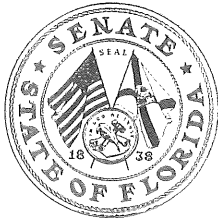
(4) Notices received by the department and information received during an investigation of a covered business' violations of this act are likely to contain proprietary information, including trade secrets, about the security of the system. The release of the proprietary information could result in the identification of the system's vulnerabilities, which could ultimately lead to the improper access of personal information held by the covered business. In addition, a trade secret derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its

577-02811-21

20217064pb

117 disclosure or use. Allowing public access to proprietary
118 information, including a trade secret, through a public records
119 request could destroy the value of the proprietary information
120 and cause a financial loss to the business submitting the
121 information. Release of such information could weaken the
122 position of the entity supplying the proprietary information in
123 the marketplace.

124 Section 3. This act shall take effect on the same date that
125 SB 1734 or similar legislation takes effect, if such legislation
126 is adopted in the same legislative session or an extension
127 thereof and becomes a law.



SENATOR JENNIFER BRADLEY
5th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary

SELECT COMMITTEE:
Select Committee on Pandemic
Preparedness and Response

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

March 2, 2021

Senator Ed Hooper, Chairman
Senate Committee on Commerce and Tourism
310 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Mr. Chairman:

I respectfully request that Senate Bill 1312 be placed on the committee's agenda at your earliest convenience. The bill creates a grant program through which the zoo and aquariums can apply for state funding.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Bradley". The signature is fluid and cursive, with the first name "Jennifer" being more prominent than the last name "Bradley".

Jennifer Bradley

cc: Todd McKay
Madeline Reeve

REPLY TO:

- ☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/22/21

Meeting Date

SB 1312

Bill Number (if applicable)

Topic ZOOLOGICAL & AQUARIUM GRANT PROGRAM

587156

Amendment Barcode (if applicable)

Name GENE MCTEE

Job Title _____

Address 215 S. MONROE STREET #306

Street

Phone (904) 461-7110

PLT

City

FL

State

32301

Zip

Email GENE@GMAIL.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SEA WORLD PARKS & ENTERTAINMENT

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)

2/22/21

Meeting Date

SB 1312

Bill Number (if applicable)

Topic ZOOLOGICAL & AQUARIUM GRANT PROGRAM

Amendment Barcode (if applicable)

Name GENE NCGEE

Job Title _____

Address 215 S. MONROE ST. # 306

Street

Phone (352) 441-7110

TLH

City

FL

State

32301

Zip

Email GENE@GMAILLOBBY.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SEA WORLD PARKS & ENTERTAINMENT

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

03/22/2021

Meeting Date

1312

Bill Number (if applicable)

Topic Zoological and Aquarium Grant Program

Amendment Barcode (if applicable)

Name Liam McClay

Job Title Associate VP of Governmental Affairs

Address 3000 NW 83rd St

Phone _____

Street

Gainesville

FL

32606

Email liam.mcclay@sfcollge.edu

City

State

Zip

Speaking: ☒ For ☒ Against ☐ Information

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

Representing Santa Fe College

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.

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S-001 (10/14/14)

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Reset Form

THE FLORIDA SENATE
APPEARANCE RECORD

3/22/2021

Meeting Date

1312

Bill Number (if applicable)

Topic Zoological and Aquarium Grant Program

Amendment Barcode (if applicable)

Name Megan Fay

Job Title Lobbyist

Address 124 West Jefferson Street

Phone 850-222-9075

Street

Tallahassee

FL

32301

Email megan@cccfla.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Brevard Zoo

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 Commerce and Tourism

BILL: SB 1312

INTRODUCER: Senator Bradley

SUBJECT: Zoological and Aquarium Grant Program

DATE: March 23, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1312 creates a grant program to support zoos and aquariums in Florida accredited by the Association of Zoos and Aquariums or the Alliance of Marine Mammal Parks and Aquariums, to be administered by the Department of Economic Opportunity. Grants may be used for capital expenditures, operational support, and educational, conservation, and research initiatives.

The bill takes effect July 1, 2021.

II. Present Situation:

Fish and Wildlife Conservation Commission

The Fish and Wildlife Conservation Commission (FWC) is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources. Under Art. IV, s. 9 of the State Constitution, the FWC is granted the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, freshwater aquatic life, and marine life.

The FWC issues permits required by Florida law for the possession, exhibition, and sale of wildlife; commercial and private facilities, including zoos and alligator farms, must have permits

for many types of native and nonnative animals.¹ The FWC is also responsible for adopting caging and housing requirements for wildlife facilities.²

Zoo and Aquarium Accreditation

Several organizations accredit zoos and aquariums in Florida, namely the Association of Zoos and Aquariums, the Alliance of Marine Mammal Parks and Aquariums, the Zoological Association of America, and the World Association of Zoos and Aquariums. However, zoos and aquariums are not required to be accredited by any organization; unaccredited facilities are typically smaller, privately owned facilities.

Association of Zoos and Aquariums

The Association of Zoos and Aquariums (AZA), a 501(c)3 organization, is an independent accrediting organization that represents more than 240 zoos and aquariums worldwide. Facilities wishing to be accredited must meet certain standards for animal welfare, care, and management; the AZA's Accreditation Commission also evaluates a facility's veterinary program, involvement in conservation and research, education programs, safety policies, finances, governing authority, and support organizations. AZA-accredited zoos and aquariums must reapply for accreditation every 5 years.³

There are currently 20 AZA-accredited zoos and aquariums in Florida, including:⁴

- Brevard Zoo, Melbourne;
- Busch Gardens Tampa Bay, Tampa;
- Central Florida Zoo and Botanical Gardens, Sanford;
- Discovery Cove, Orlando;
- Disney's Animal Kingdom, Lake Buena Vista;
- Jacksonville Zoo and Gardens, Jacksonville;
- Lion Country Safari, Loxahatchee;
- Lubee Bat Conservancy, Gainesville;
- Mote Marine Laboratory and Aquarium, Sarasota;
- Naples Zoo, Naples;
- Palm Beach Zoo, West Palm Beach;
- Santa Fe College Teaching Zoo, Gainesville;
- Sea Life Orlando Aquarium, Orlando;
- SeaWorld, Orlando;
- St. Augustine Alligator Farm, St. Augustine;
- The Florida Aquarium, Tampa;
- The Seas, Lake Buena Vista;
- White Oak Conservation Center, Yulee;

¹ See s. 379.3761, F.S.

² Fish and Wildlife Conservation Commission, *Captive Wildlife*, available at <https://myfwc.com/license/captive-wildlife/> (last visited Mar. 23, 2021).

³ Association of Zoos and Aquariums, *Accreditation Basics*, available at <https://www.aza.org/becoming-accredited> (last visited Mar. 23, 2021).

⁴ Association of Zoos and Aquariums, *Currently Accredited Zoos and Aquariums*, available at <https://www.aza.org/current-accreditation-list?locale=en> (last visited Mar. 23, 2021).

- Zoo Miami, Miami; and
- ZooTampa at Lowry Park, Tampa.

The AZA estimates that Florida's AZA-accredited zoos and aquariums directly and indirectly contribute approximately \$1.5 billion to Florida's economy, in addition to supporting over 15,000 jobs.⁵

Alliance of Marine Mammal Parks and Aquariums

The Alliance of Marine Mammal Parks and Aquariums (AMMPA) is an international accrediting body for marine parks, aquariums, zoos, and research facilities dedicated to conservation. Members of the AMMPA must meet certain standards of animal health and wellness, applied animal behavior, training and enrichment, water and environmental quality, population sustainability, transportation, scientific research and conservation, and public education. AMMPA-accredited facilities must demonstrate their ability to meet these requirements every 5 years in order to retain accreditation.⁶

There are currently 11 AMMPA-accredited facilities in Florida, including:⁷

- Discovery Cove, Orlando;
- Disney's Animal Program at The Seas, Lake Buena Vista;
- Dolphin Connection, Duck Key;
- Dolphin Research Center, Inc., Grassy Key;
- Dolphins Plus Bayside, Key Largo;
- Gulf World Marine Park, Panama City Beach;
- Gulfarium Marine Adventure Park, Fort Walton Beach;
- Marineland Dolphin Adventure, St. Augustine;
- Miami Seaquarium, Miami;
- SeaWorld, Orlando; and
- Theater of the Sea, Islamorada.

III. Effect of Proposed Changes:

The bill creates s. 288.1259, F.S., a grant program to support zoos and aquariums in Florida accredited by the Association of Zoos and Aquariums or the Alliance of Marine Mammal Parks and Aquariums. Grants may be used for capital expenditures, operational support, and educational, conservation, and research initiatives.

The DEO is authorized to adopt rules establishing the grant program's application requirements, in addition to a timeline for submission of applications, a timeline for announcing awards, and

⁵ Association of Zoos and Aquariums, *Economic Impact of Spending for Operations and Construction in 2014* by AZA-Accredited Zoos and Aquariums, available at https://assets.speakcdn.com/assets/2332/aza_economic_impact_report_2014.pdf (last visited Mar. 23, 2021).

⁶ Alliance of Marine Mammal Parks and Aquariums, *AMMPA Accreditation Standards and Guidelines*, available at <https://www.ammpa.org/sites/default/files/files/Resource%20Library/AMMPA-StandardsAndGuidelines-Feb2020.pdf> (last visited Mar. 23, 2021).

⁷ Alliance of Marine Mammal Parks and Aquariums, *Our Members*, available at <https://www.ammpa.org/about/our-members> (last visited Mar. 23, 2021).

any other procedures necessary to administer the grant program. The DEO has the final approval authority for the grant program.

The bill takes effect July 1, 2021.

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:

The state government of Florida is divided into the legislative, executive and judicial branches. Pursuant to Article II, s. 3 of the State Constitution, “[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” Two fundamental prohibitions are contained in the separation of powers doctrine in Florida. The first is that no branch may encroach upon the powers of the other; the second is that no branch may delegate to another branch its constitutionally assigned power.⁸ Under the nondelegation doctrine, the Legislature “may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law.”⁹ The Legislature must promulgate standards sufficient to guide administrative agencies in the performance of their duties.¹⁰

The bill specifies no standards the DEO must use in determining which applicants should receive grant funds, or how much funding each successful grant applicant should receive.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁸ *Chiles v. Children A, B, C, D, E & F*, 589 So.2d 260, 266 (Fla.1991).

⁹ *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26, 29 (Fla. 1st DCA 2008) (citing *Sims v. State*, 754 So.2d 657, 668 (2000)).

¹⁰ *Florida Dep’t. of State, Div. of Elections v. Martin*, 916 So.2d 763 (Fla. 2005).

B. Private Sector Impact:

Grant recipients will incur benefits in the amount of their grant awards.

C. Government Sector Impact:

Indeterminate. The bill does not provide an appropriation for the grant program. The DEO may incur costs associated with administering the program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Similar legislation creating grant programs typically specifies that grants are subject to legislative appropriation.

VIII. Statutes Affected:

This bill creates section 288.1259 of the Florida Statutes.

IX. Additional Information:

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

CS by Commerce and Tourism on March 23, 2021:

The committee substitute provides that facilities accredited by the Alliance of Marine Mammal Parks and Aquariums are eligible for the grant program created by the bill.

B. Amendments:

None.



587156

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2021	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 21
and insert:
Aquariums or the Alliance of Marine Mammal Parks and Aquariums.
Grant funds awarded to a facility may be used for

By Senator Bradley

5-01783-21

20211312__

A bill to be entitled

An act relating to a zoological and aquarium grant program; creating s. 288.1259, F.S.; authorizing the Department of Economic Opportunity to establish a grant program for the support of zoos and aquariums located within the state; providing eligibility requirements; authorizing the use of grant funds for certain purposes; requiring the department to adopt rules; providing that the department has final grant approval authority; providing an effective date.

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

Section 1. Section 288.1259, Florida Statutes, is created to read:

288.1259 Zoological and aquarium grant program.—

(1) The department is authorized to establish a grant program for the support of zoos and aquariums located within the state. To be eligible for grant funding under this section, the facility must be accredited by the Association of Zoos and Aquariums. Grant funds awarded to a facility may be used for capital expenditures, operational support, and educational, conservation, and research initiatives.

(2) The department shall adopt rules establishing grant application requirements, a timeline for submission of grant applications, a timeline for announcement of awards, and any procedures necessary for the prudent administration of the grant program.

(3) The department has final approval authority for grants

Page 1 of 2

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

5-01783-21

20211312__

made under this section.

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

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: March 15, 2021

I respectfully request that **Senate Bill #266**, relating to Home-based Businesses, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping underline.

Senator Keith Perry
Florida Senate, District 8

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

Reset Form

March 22, 2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

266

Bill Number (if applicable)

Topic _____

Name Tim Nungesser

Amendment Barcode (if applicable)

Job Title Legislative Director

Address 110 East Jefferson Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-445-5367

Email Tim.nungesser@nfib.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing NFIB

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

3/22/2021
Meeting Date

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

SB 266
Bill Number (if applicable)

Topic HOME BASED BUSINESSES

Name CHRISTIAN CAMARA

Amendment Barcode (if applicable)

Job Title _____

Address PO Box 122
Street

Phone 305 608 4300

VALLHASSE FL 32302
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing INSTITUTE FOR JUSTICE

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

3/22/21
Meeting Date

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

266
Bill Number (if applicable)

Topic Home Based Businesses

Amendment Barcode (if applicable)

Name DIEGO ECHEVERRI "Ech-uh-very"

Job Title Legislative Liaison

Address _____ Phone _____
Street

City _____ State _____ Zip _____ Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

3-22-21

Meeting Date

266

Bill Number (if applicable)

Topic HOME-BASED BUSIN PRESENTATION

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Miami-Dade County

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

3.22.21

Meeting Date

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

SB 0266

Bill Number (if applicable)

Topic HOME BUSINESS

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing JAMES MADISON INSTITUTE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE
APPEARANCE RECORD

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Into the record by the Chair.

3/22/21

Meeting Date

Topic Amendment to Home Based Business

Name Jane West, Esq.

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Email jwest@1000ff.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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into the record by the Chair.

THE FLORIDA SENATE
APPEARANCE RECORD

March 22, 2021

Meeting Date

266

Bill Number (if applicable)

203018

Amendment Barcode (if applicable)

Topic _____

Name Tim Nungesser

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing NFIB

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.

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CS 001 (10/14/14)

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Into the record by the Chair.

THE FLORIDA SENATE

APPEARANCE RECORD

3/22/2021

Meeting Date

266

Bill Number (if applicable)

203018

Amendment Barcode (if applicable)

Topic Home-based Businesses

Name David Cruz

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Zip

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Email dcruz@flcities.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida League of Cities, Inc.

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.

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S-001 (10/14/14)

This information was not read
into the record by the Chair.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/21
Meeting Date

266

Bill Number (if applicable)

203018

Amendment Barcode (if applicable)

Topic Home Based Businesses

Name DIEGO ECHEVERRI

Job Title

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 American for Prosperity

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.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 266

INTRODUCER: Community Affairs Committee and Senator Perry and others

SUBJECT: Home-based Businesses

DATE: March 19, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	Fav/CS
2.	McKay	McKay	CM	Favorable
3.			RC	

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

CS/SB 266 preempts areas of regulation for home-based businesses to the state and forbids counties and municipalities from prohibiting, restricting, regulating, or licensing a home-based business in a manner that is different from other businesses in a local government's jurisdiction. By operation of law, state preemption would cause existing local government ordinances in areas of law restricted by the bill to become null and void.

The bill includes criteria that home-based businesses must meet to operate in an area zoned for residential use. To be considered a home-based business under the bill's criteria, a business must be consistent with a dwelling unit's residential character, subordinate to the use of the dwelling for residential purposes, require no external modifications that detract from the residential appearance, and use no equipment or process that creates noise, vibration, heat, smoke, dust, glare, fumes, odors, or electrical or electronic interference detectable by neighbors.

The bill also include requirements a home-based businesses must comply with to operate in an area zoned for residential use. Namely, a home-based business may only have two non-resident employees or independent contractors and involve activities secondary to the property's use as a residential dwelling. Also, a home-based business must comply with all local regulations related to parking, hours of operation, and business activities conducted outside of the primary residential structure, and all relevant local, state, and federal regulations regarding the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids.

The bill maintains that a local government may still impose local business taxes under ch. 205, F.S., and provides that the home-based business state regulations do not supersede any current or future declaration of condominium adopted pursuant to ch. 718, F.S., cooperative document adopted pursuant to ch. 719, F.S., or declaration of covenants adopted pursuant to ch. 720, F.S.

These limitations on home-based businesses resemble current home occupation ordinances imposed by local governments.

The bill takes effect on July 1, 2021.

II. Present Situation:

Home Rule Powers and Preemption

The Florida Constitution

The Florida Constitution establishes and describes the duties, powers, structure, function, and limitations of government in Florida. Article VIII, section 1 of the Florida Constitution, endows counties and municipalities the power of self-government or home rule power. Under the home rule power, local governments have broad authority to exercise the state's sovereign police powers and legislate on any matter that is not inconsistent with the federal and state constitution and laws.

Counties

A county without a charter has such power of self-government as provided by general or special law and may enact county ordinances not inconsistent with general law.¹ Counties operating under county charters have all the powers of local self-government not inconsistent with general law or with special law approved by a vote of the electors.² General law authorizes counties “the power to carry on county government”³ and to “perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law.”⁴

Municipalities

Municipalities may be established or abolished, and their charters amended by general or special law. Municipalities have governmental, corporate, and proprietary powers to conduct municipal government, perform municipal functions, and render municipal services. They may exercise any of these powers for municipal purposes except as otherwise provided by law.⁵ Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,⁶ acknowledges these constitutional grants

¹ FLA. CONST. art. VIII, s. 1(f).

² *Id.* at (g).

³ Section 125.01(1), F.S.

⁴ *Id.* at (w).

⁵ FLA. CONST. art. VIII, s. 2.

⁶ Section 166.011, F.S.

of police powers and better defines municipal powers of self-government.⁷ Chapter 166, F.S., provides municipalities with broad home rule powers to act in a manner not inconsistent with the Florida Constitution, general and special law, and a charter for the county in which the municipality is located.⁸

State Preemption

Although local governments have broad home rule powers, the state legislature may preempt this self-government power and preclude local governments from exercising legislative authority in particular areas of law.⁹ Florida law recognizes two types of preemption: express and implied.

Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹⁰ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.¹¹ In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.¹² On the other hand, implied preemption is found where the local legislation would present the danger of conflicting with the state's pervasive regulatory scheme.¹³ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area to the state, and there are strong public policy reasons for doing so.¹⁴ In cases determining the validity of ordinances enacted in the face of express and implied state preemption, the effect has been to find such ordinances null, void, and unenforceable.¹⁵

Community Planning

State police powers are derived from the Tenth Amendment to the U.S. Constitution, which affords states all rights and powers “not delegated to the United States.”¹⁶ Under this provision, states have police powers to establish and enforce laws protecting the public's welfare, safety, and health.¹⁷ These police powers provide counties and municipalities the authority to enact comprehensive zoning plans to lay out zones or districts where potential uses of real property may be forbidden or restricted.¹⁸ A local government's ability to regulate and restrict the use of private property through community planning is not unlimited and must, ultimately, bear a substantial relation to the public health, safety, morals or general welfare.¹⁹

⁷ Florida House of Representatives, Publications, *The Local Government Formation Manual 2017-2018*, p. 16, available at: <http://www.myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2017&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf>. (last visited Mar. 19, 2021).

⁸ Section 166.021(4), F.S.

⁹ Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

¹⁰ See *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

¹¹ *Mulligan*, 934 So.2d at 1243.

¹² *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

¹³ See *GLA & Assocs., Inc. v. City of Boca Raton*, 855 So. 2d 278, 282 (Fla. 4th DCA 2003).

¹⁴ *Id.*

¹⁵ *Thomas v. State*, 614 So.2d 468, 470 (Fla.1993); *Hillsborough County v. Fla. Rest. Ass'n*, 603 So.2d 587, 591 (Fla. 2d DCA 1992) (“If [a county] has enacted such an inconsistent ordinance, the ordinance must be declared null and void.”)

¹⁶ U.S. CONST. amend. X.

¹⁷ See *NFIB v. Sebelius*, 567 U.S. 519, 535-536 (2012).

¹⁸ *Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S. Ct. 1536 (1974)

¹⁹ See *State of Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116, 121 (1928).

Section 163.3167, F.S. of the Community Planning Act²⁰ statutorily requires incorporated municipalities and counties to prepare and maintain a comprehensive plan to set out the regulations and policies governing land within a community. Comprehensive plans address both physical elements of land and buildings and the land uses permitted therein. Under s.163.3177, F.S., comprehensive plans are required to include elements that address the distribution, extent, and location of various land uses within a community. Some of the statute's land uses include residential, commercial, industrial, agricultural, recreational, conservation education, public, historic, and mixed-use categories.²¹

Residential Use Restrictions

Community zoning plans typically contain two significant distinctions of property use: residential and commercial. Property zoned for residential use requires residents to use a building or premises therein as a dwelling.²²

Areas zoned for residential use may exclude other nonresidential buildings and uses. Residential use ordinances allow local governments to deny land uses not customary to a home or dwelling. Courts have opined that residential land use restrictions serve the public health, safety, morals, and general welfare by providing an attractive community, lessening congestion, increasing safety, and preventing overcrowding, among other things.²³ Although local governments may use similar definitions of residential use in an ordinance, counties and municipalities are free to decide the specific uses or terms allowed for this land.

As a practical matter, residential use restrictions largely exclude property uses that include most commercial or business operations. Residential use areas are often cordoned off from business zones to promote the state's interest in preserving the quality of home life for the community and ensuring residential neighborhoods' safety.²⁴ The traditional purpose for this categorical separation of residential and business uses has been to prevent unwanted secondary effects of a business operating in a residential area.²⁵

Home Occupation Ordinances

Although local governments have the authority to discriminate between commercial and residential land uses, local governments have historically persevered the right for individuals to use residential dwellings to conduct business for certain activities deemed home occupations. Home occupation provisions are widely incorporated in residential land use ordinances and are

²⁰ See ch. 163, part II, F.S.

²¹ Section 163.3177, F.S.

²² Black's Law Dictionary 505 (6th ed. 1990) (*Dwelling* is defined as: "The house or other structure in which a person or persons live; a residence; abode; habitation; the apartment or building, or group of buildings, occupied by a family as a place of residence. Structure used as place of habitation.")

²³ *Flava Works, Inc. v. City of Miami*, 800 F.Supp.2d 1182 (S.D. Fla. 2011).

²⁴ *Voyeur Dorm, L.C. v. City of Tampa, Fla.*, 265 F.3d 1232 (11th Cir. 2001).

²⁵ In *Village of Euclid, Ohio v. Amber Realty Co.*, 272 U.S. 365 (1926) (upholding the constitutionality of a broad residential zoning restriction on all land uses that did not constitute a single-family dwelling), the 1926 Supreme Court describes numerous secondary effects of allowing businesses to operate in a residential zone and states the benefits of exclusion.

considered an accessory use²⁶ to a residential property. The overarching premise of home occupation provisions is that residents may use a dwelling for business activities secondary to residential uses and don't disturb the residential character of the property. There is no enumerated right to or precise definition of a home occupation in Florida law. Local governments have the home rule power to include home occupation provisions in land use ordinances and define the provision as they see fit.

Current home occupation ordinances vary on the types of businesses allowed, the activities authorized, and the permitting and taxes imposed. Common home occupation regulation areas include residential character requirements, licensing/permitting/certification, permitted home occupations, prohibited home occupations, signage, employees, traffic and parking, storage and sale of merchandise, and floor area used for the home occupation.

The following excerpts are examples of local government ordinances addressing the common areas of home occupation regulation:

- Jacksonville limits home occupations to small-scale, limited businesses that do not detract from the residential character of the neighborhood, and limits the floor area that may be used by the home occupation.²⁷
- Orlando requires home occupations to obtain an occupational license, and the applicant must also submit detailed information relating to the physical space of the home.²⁸ Orlando also prohibits certain specified occupations.²⁹
- Miami limits home occupations to specified occupations, and occupations that do not generate high vehicular demand.³⁰
- Miami-Dade County prohibits on-site signage related to the home occupation.³¹
- Winter Park prohibits employees other than family members living in the house, and prohibits the use of accessory buildings.³²
- Clearwater requires traffic generated by the home occupation to be no greater in volume than regular residential traffic, limits the use of commercial vehicles, and prohibits parking by marked vehicles on the property.³³
- Tampa prohibits the storage or sale of merchandise, and prohibits the conduct of a home-based business in any accessory building;³⁴
- Volusia County limits home-based businesses to no more than 25 percent of the habitable floor area of the residence.³⁵

²⁶ Black's Law Dictionary 15 (6th ed. 1990) (*accessory use* is "a use which is dependent on or pertains to principal or main use; a use which is subordinate to, clearly incidental to, customary in connection with, and ordinarily located on same lot with, principle use").

²⁷ Jacksonville, FL., Sec. 656.369(c)(1).

²⁸ Orlando, FL., Sec. 58.941.

²⁹ Orlando, FL., Sec. 58.939.

³⁰ Miami, FL., Sec. 622.7.2.

³¹ Miami-Dade County, FL., Sec. 33-25.1(A)4.

³² Winter Park, FL., Sec. 58-71(5).

³³ Clearwater, FL., Sec. 3-1102.A.5 – 7.

³⁴ Tampa, FL., Ch. 27, art. VI, div. 2, s. 27-282.5.

³⁵ Volusia County, FL., Ch. 72, art. II, div. 8, s. 72-283.

- Naples prohibits the conduct of retail, wholesale, or warehousing activities at a home-based business.³⁶
- Gainesville limits a home-based business to no more than one automobile used for the home-based business parked on the premises within view of surrounding properties, and limits the amount and size of the signage on that automobile.³⁷

Another common component of home occupation ordinances is the method of enforcing these restrictions. Typically, local government code enforcement divisions are tasked with the enforcement of home occupation ordinances. Other community residents may report violations to a code enforcement officer, who usually provides the violator with a warning about the behavior. If the restricted behavior continues, local governments have the authority to issue a civil infraction or penalty that the violator may contest in court. Repeated refusal to cease code violations could result in a local government issuing misdemeanor fines as described in s. 775.083, F.S.

Florida Business Address

To establish a formal business organization in Florida, an individual must file specific paperwork with the Florida Department of State, Division of Corporations. Regardless of the corporate business structure, Florida law requires that the business provide the street address of its principal place of business, register agent, and persons owning the business.³⁸ Residential property may be used as a principal place of business for these corporate filings. It is unclear how using a residential home address as a principal place of business for state corporate filings is interpreted in the context of home occupation ordinances.

III. Effect of Proposed Changes:

The bill creates s. 559.955, F.S., to preempt areas of regulation for home-based businesses to the state. The bill forbids counties and municipalities from prohibiting, restricting, regulating, or licensing a home-based business in a manner that is different from other businesses in a local government's jurisdiction. By operation of law, state preemption would cause existing local government ordinances in areas of law restricted by the bill to become null and void.

To be considered a home-based business under the bill, a business must meet the following:

- Be consistent with a dwelling unit's residential character.
- Be subordinate to the use of the dwelling for residential purposes.
- Require no external modifications that detract from the residential appearance.
- Use no equipment or process that creates noise, vibration, heat, smoke, dust, glare, fumes, odors, or electrical or electronic interference detectable by neighbors.

Additionally, a home-based business must meet the following requirements:

- May only have two non-resident employees or independent contractors.
- May only involve activities secondary to the property's use as a residential dwelling.

³⁶ Naples, FL., Ch. 56, art. III, s. 56-92.

³⁷ Gainesville, FL., Ch. 30, art. V, div. 2, s. 30-5.37.

³⁸ See s. 605.0201, F.S. (limited liability company); s. 607.0202, F.S. (corporation); s. 620.1111, F.S. (partnership).

- Comply with all state and local parking regulations.
- Comply with local regulations for hours of operation and business activities conducted outside of the primary residential structure.
- Comply with all relevant local, state, and federal regulations regarding the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids.

The bill clarifies that local governments may still impose local business taxes on home-based businesses under ch. 205, F.S. The bill also provides that the home-based business state regulations do not supersede any current or future declaration of condominium adopted pursuant to chapter 718, cooperative document adopted pursuant to chapter 719, or declaration of covenants adopted pursuant to chapter 720.

The bill takes effect on July 1, 2021.

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:

Restricting the number and types of persons allowed to engage in otherwise legal activities³⁹ conducted wholly within the confines of a private dwelling may unconstitutionally infringe on an individual's freedom of association⁴⁰ and right to

³⁹ See *Henry v. Board of County Com'rs of Putnam County*, 509 So.2d 1221 (Fla. 5th DCA 1987)(describing that there is a considerable distinction between regulating the use of land and prohibiting the advertising for, and business use of, telephone located on residential property); see also *Coca-Cola Co., Food Division, Polk County v. State, Dept. of Citrus*, 406 So.2d 1079 (Fla.1981)(wherein the Florida Supreme Court discussed first amendment protection of commercial speech).

⁴⁰ "Our decisions establish that the First and Fourteenth Amendments protect the freedom to choose one's associates. Constitutional protection is extended, not only to modes of association that are political in the usual sense, but also to those that pertain to the social and economic benefit of the members... The freedom of association is often inextricably entwined with the constitutionally guaranteed right of privacy. The right to establish a home is an essential part of the liberty guaranteed by the Fourteenth Amendment. And the Constitution secures to an individual a freedom to satisfy his intellectual and emotional needs in the privacy of his own home." See *Village of Belle Terre v. Boraas*, 416 U.S. 1, 15 (1974)(Justice Marshall, dissenting; quotations and citations omitted).

privacy.⁴¹ If these fundamental rights are implicated, the judiciary may require the State to demonstrate that limiting the number and types of persons allowed to work at a home-based business serves a compelling State interest and accomplishes its goals through the use of the least intrusive means.⁴²

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

For small and family-owned businesses that operate in a local government jurisdiction with a more severe restriction on home occupations, the bill may provide a net positive fiscal impact by allowing these businesses to avoid the costs associated with commercial property. Notwithstanding, this positive fiscal impact may be negatively correlated to the market demand for small-scale commercial real estate.

C. Government Sector Impact:

The bill may have a negative fiscal impact on local governments that charge fees related to home occupations.

VI. Technical Deficiencies:

The term “only” on line 68 should be removed for clarity.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following section 559.955 of the Florida Statutes.

⁴¹ Courts have long recognized that the boundaries of a home create a constitutionally protected zone of privacy. See *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965). The Florida Constitution contains an explicit right to privacy which affords Florida citizens greater protection in the area of privacy than does the federal Constitution. See *State v. J.P.*, 907 So.2d 1101, 1115 (Fla. 2004).

⁴² See *State v. J.P.*, at 1109. See also *Winfield v. Div. of Pari-Mutuel Wagering*, 477 So.2d 544 (Fla.1985)(explaining that where law intrudes on fundamental right to privacy guaranteed in Florida's Constitution, the State must demonstrate that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means).

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

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

CS by Community Affairs on March 10, 2021:

The committee substitute revises the criteria and requirements a business must meet to be considered a home-based business and allowed to operate in a residential zone. The committee substitute retains the bill's core elements but makes several technical and substantive changes to provide more detailed and precise descriptions of home-based business restrictions.

It also clarifies that the bill's regulations do not supersede any current or future declaration of condominium adopted pursuant to ch. 718, F.S., cooperative document adopted pursuant to ch. 719, F.S., or declaration of covenants adopted pursuant to ch. 720, F.S.

B. Amendments:

None.



203018

LEGISLATIVE ACTION

Senate	.	House
Comm: FC	.	
03/23/2021	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 33 - 78
and insert:

1. The business is subordinate to the use of the dwelling unit for residential purposes and requires no external modifications that detract from the residential appearance of the dwelling unit and that are visible from the street or neighboring properties; and

2. The business uses no equipment or process that creates



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11 noise, vibration, heat, smoke, dust, glare, fumes, or odors that
12 can be observed from the street and without the aid of detection
13 equipment.

14 (b) A home-based business must meet all of the following
15 requirements:

16 1. The employees of the home-based business who work at the
17 residential dwelling must also reside in the residential
18 dwelling, except that up to a total of two employees or
19 independent contractors who do not reside at the residential
20 dwelling may work at the business.

21 2. Traffic and parking generated by the business may not be
22 any greater in volume than the volume that would normally be
23 expected at a similar residence where no business is conducted.
24 Local governments may regulate the use of vehicles operated or
25 parked at the businesses or on a street right-of-way, provided
26 that the regulations are no more stringent than regulations for
27 a residence where no business is conducted.

28 3. Business activities related to hours of operation and
29 business activities conducted outside of the primary residential
30 structure, including exterior signage displays or exterior
31 storage, must comply with all local regulations. However, local
32 governments may not restrict hours of operation between 8 a.m.
33 and 8 p.m.

34 4. The activities of the home-based business must be
35 secondary to the property's use as a residential dwelling.

36 5. All home-based business activities must comply with any
37 relevant local, state, and federal regulations with respect to
38 the use, storage, or disposal of any corrosive, combustible, or
39 other hazardous or flammable materials or liquids. Any local



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regulations on the business relating to the use, storage, or disposal of such materials or liquids may not be more stringent than regulations for a residence where no business is conducted.

(3) A home-based business that operates from a residential property as provided in subsection (2):

(a) May operate in an area zoned for residential use;

(b) May not be prohibited, restricted, regulated, or licensed in a manner that is different from other businesses in a local government's jurisdiction; and

(c) Is only subject to applicable business taxes under chapter 205 in the county and municipality in which the home-based business is located.

(4) Local governments may not enact or enforce any ordinance, regulation, or policy, or take any action to otherwise regulate a home-based business, other than as provided in this section.

(5) This section does not supersede any current or future declaration of condominium adopted pursuant to chapter 718, cooperative document adopted pursuant to chapter 719, or declaration of covenants adopted pursuant to chapter 720.

(6) (a) This section does not prohibit local governments from enacting or enforcing noise ordinances, provided that such ordinances are not more stringent for home-based businesses than for residences where no business is conducted.

(b) This section does not prohibit local governments from enacting or enforcing ordinances regulating the parking or storage of heavy equipment that can be viewed from the street. For purposes of this paragraph, the term "heavy equipment" does not include passenger vehicles.



203018

69

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

71 And the title is amended as follows:

72 Delete line 6

73 and insert:

74 requirements for home-based businesses; providing

75 requirements and prohibitions relating to local

76 government regulations affecting home-based

77 businesses; authorizing a

By the Committee on Community Affairs; and Senators Perry and Baxley

578-02661-21

2021266c1

A bill to be entitled

An act relating to home-based businesses; creating s. 559.955, F.S.; providing legislative findings and intent; specifying conditions under which a business is considered a home-based business; providing requirements for home-based businesses; authorizing a home-based business to operate in a residential zone under certain circumstances; specifying that home-based businesses are subject to certain business taxes; prohibiting a local government from taking certain actions relating to home-based businesses; providing construction; providing an effective date.

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

Section 1. Section 559.955, Florida Statutes, is created to read:

559.955 Home-based businesses; legislative findings and intent; preemption.—

(1) It is the intent of the Legislature to encourage small and home-based business enterprises. To that end, the Legislature finds that:

(a) Small and home-based businesses are a critical part of the economy of this state and provide unique and valuable benefits to the communities in which they are located.

(b) Residential property is often the most valuable asset owned by a potential small business entrepreneur.

(c) Residential property can be put to beneficial use by potential small business entrepreneurs in ways that are

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consistent with residential use.

(2) (a) For purposes of this section, a business is considered a home-based business if:

1. The business is consistent with the residential character of the dwelling unit;

2. The business is subordinate to the use of the dwelling unit for residential purposes and requires no external modifications that detract from the residential appearance of the dwelling unit; and

3. The business uses no equipment or process that creates noise, vibration, heat, smoke, dust, glare, fumes, odors, or electrical or electronic interference detectable by neighbors.

(b) A home-based business must meet all of the following requirements:

1. The employees of the home-based business who work at the residential dwelling must also reside in the residential dwelling, except that up to a total of two employees or independent contractors who do not reside at the residential dwelling may work at the business.

2. Parking related to the business activities of the home-based business must comply with all local or state parking regulations.

3. Business activities related to hours of operation and business activities conducted outside of the primary residential structure, including exterior signage displays or exterior storage, must comply with all local regulations.

4. The activities of the home-based business must be secondary to the property's use as a residential dwelling.

5. All home-based business activities must comply with any

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relevant local, state, and federal regulations with respect to the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids.

(3) A home-based business that operates from a residential property as provided in subsection (2):

(a) May operate in an area zoned for residential use;

(b) May not be prohibited, restricted, regulated, or licensed in a manner that is different from other businesses in a local government's jurisdiction; and

(c) Is only subject to applicable business taxes under chapter 205 in the county and municipality in which the home-based business is located.

(4) Local governments may not enact or enforce any ordinance, regulation, or policy, or take any action to otherwise regulate a home-based business, other than as provided in this section.

(5) This section does not supersede any current or future declaration of condominium adopted pursuant to chapter 718, cooperative document adopted pursuant to chapter 719, or declaration of covenants adopted pursuant to chapter 720.

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/22/2021

Meeting Date

SB 1140

Bill Number (if applicable)

Topic SB 1140 - Unlawful Use of DNA

Amendment Barcode (if applicable)

Name Ritchie Engelhardt

Job Title Director of Government Affairs

Address 119 S. Monroe St., Suite 200

Phone 850-205-9000

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TLH

FL

32301

Email rengelhardt@ancestry.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Ancestry.com

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.

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 1140

INTRODUCER: Senators Rodrigues and Garcia

SUBJECT: Unlawful Use of DNA

DATE: March 19, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Looke	Brown	HP	Favorable
2. McMillan	McKay	CM	Favorable
3. _____	_____	RC	_____

I. Summary:

SB 1140 establishes three new crimes related to the unlawful use of deoxyribose nucleic acid (DNA). The bill provides that:

- It is a first degree misdemeanor for a person to willfully, and without authorization, collect or retain another person's DNA sample with the intent to perform DNA analysis.
- It is a third degree felony for a person to willfully, and without authorization, submit another person's DNA sample for DNA analysis or to conduct or procure the conducting of another person's DNA analysis.
- It is a third degree felony for a person to willfully, and without authorization, disclose another person's DNA analysis results to a third party.

The bill specifies that each instance of the above crimes constitutes a separate violation which entails a separate penalty. The bill defines the terms "authorization," "DNA analysis," and "DNA sample" and provides exceptions for criminal investigations and prosecutions, determining paternity under ss. 409.256 or 742.12(1), F.S., and performing any activity authorized in s. 943.325, F.S., pertaining to the criminal DNA database.

The bill also amends s. 760.40, F.S., which is the current law governing DNA privacy, to conform to the changes made by the bill.

The Legislature's Office of Economic and Demographic Research (EDR) estimates that the bill will have a "positive insignificant" prison bed impact (an increase in 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill provides an effective date of October 1, 2021.

II. Present Situation:

DNA

DNA, or deoxyribose nucleic acid, is the hereditary material in humans and almost all other organisms. Nearly every cell in a person's body has the same DNA, unique to that person. Most DNA is located in the cell nucleus (where it is called nuclear DNA), but a small amount of DNA can also be found in the mitochondria (where it is called mitochondrial DNA or mtDNA). Mitochondria are structures within cells that convert the energy from food into a form that cells can use.

The information in DNA is stored as a code made up of four chemical bases: adenine (A), guanine (G), cytosine (C), and thymine (T). Human DNA consists of about three billion bases, and more than 99 percent of those bases are the same in all people. The order, or sequence, of these bases determines the information available for building and maintaining an organism, similar to the way in which letters of the alphabet appear in a certain order to form words and sentences.

DNA bases pair-up with each other, A with T and C with G, to form units called base pairs. Each base is also attached to a sugar molecule and a phosphate molecule. Together, a base, sugar, and phosphate are called a nucleotide. Nucleotides are arranged in two long strands that form a spiral called a double helix. The structure of the double helix is somewhat like a ladder, with the base pairs forming the ladder's rungs and the sugar and phosphate molecules forming the vertical sidepieces of the ladder.

An important property of DNA is that it can replicate, or make copies of itself. Each strand of DNA in the double helix can serve as a pattern for duplicating the sequence of bases. This is critical when cells divide because each new cell needs to have an exact copy of the DNA present in the old cell.¹

Genetics and Genomics

Genetics is a term that refers to the study of genes and their roles in inheritance. In other words, it is the way that certain traits or conditions are passed down from one generation to another. Genetics involves the scientific study of genes and their effects. Genes (units of heredity) carry the instructions for making proteins, which direct the activities of cells and functions of the body. Examples of genetic or inherited disorders include cystic fibrosis, Huntington's disease, and phenylketonuria.

Genomics is a more recent term that describes the study of all of a person's genes (the genome), including interactions of those genes with each other and with the person's environment. Genomics includes the scientific study of complex diseases such as heart disease, asthma, diabetes, and cancer because these diseases are typically caused by a combination of genetic and

¹ MedlinePlus, *What is DNA?*, available at <https://medlineplus.gov/genetics/understanding/basics/dna/>, (last visited March 19, 2021).

environmental factors rather than by individual genes. Genomics is offering new possibilities for therapies and treatments for some complex diseases, as well as new diagnostic methods.²

Genetic Testing

Genetic testing is a type of medical test that identifies changes in chromosomes, genes, or proteins. The results of a genetic test can confirm or rule out a suspected genetic condition, as well as help determine the chance of developing or passing on a genetic disorder. More than 1,000 genetic tests are currently in use, and more are being developed. The following methods can be used for genetic testing:

- Molecular genetic tests (or gene tests) study single genes or short lengths of DNA to identify variations or mutations that lead to a genetic disorder;
- Chromosomal genetic tests analyze whole chromosomes or long lengths of DNA to see if there are large genetic changes, such as an extra copy of a chromosome, that cause a genetic condition; and
- Biochemical genetic tests study the amount or activity level of proteins; abnormalities in either can indicate changes to the DNA that result in a genetic disorder.³

Direct-to-Consumer Genetic Testing

In recent years, direct-to-consumer (DTC) genetic testing options have become widely available online and in stores. A DTC genetic test kit allows a person to spit into a tube or swab the inside of his or her mouth to obtain DNA, mail the sample off, and receive an analysis. According to an October 2020 Consumer Reports survey, about one in five Americans has taken a DTC genetic test.⁴ Some of the most common brands, such as 23andMe and Ancestry, offer a variety of information, including matching a person with unknown relatives, determining what country a person's ancestors are from, revealing a person's risk of having certain illnesses, and even suggesting what diet is best.⁵ However, in addition to potentially useful insights, the tests can reveal information a person may prefer not to know, and once a person's genetic data is shared, it can potentially be sold or used to discriminate against him or her.⁶ The U.S. Food and Drug Administration (FDA) reviews some DTC genetic tests, but in general, the FDA does not review tests intended for non-medical, general wellness, or low risk medical purposes or to help a person explore his or her ancestry.⁷

² *Genetics vs. Genomics Fact Sheet*, National Human Genome Research Institute, available at <https://www.genome.gov/about-genomics/fact-sheets/Genetics-vs-Genomics>, (last visited March 19, 2021).

³ *What is Genetic Testing?*, MedlinePlus, available at <https://medlineplus.gov/genetics/understanding/testing/genetic-testing/>, (last visited Mar. 5, 2021).

⁴ Catherine Roberts, *Read This Before You Buy a Genetic Testing Kit*, Consumer Reports, (Feb. 2, 2021) <https://www.consumerreports.org/genetic-testing/genetic-testing-kit-read-this-before-you-buy/> (last visited March 19, 2021).

⁵ *Id.*

⁶ *Id.*

⁷ FDA, *Direct-to-Consumer Test*, (Dec. 12, 2019) <https://www.fda.gov/medical-devices/vitro-diagnostics/direct-consumer-tests#list> (last visited March 19, 2021).

Surreptitious Genetic Testing

Surreptitious genetic testing is testing without the knowledge of the person being tested, and creates a potential threat to the privacy of that person's genomic information.⁸ Some companies offering DNA testing allow consumers to obtain genetic analyses of various biological samples without requiring the consent of the individual or individuals being tested.⁹ A variety of tests can be done using these DNA samples, including health-related testing and parentage determination.¹⁰

There is no federal law prohibiting surreptitious testing. Currently about half of the states in the U.S. have laws or regulations governing genomic privacy and illegitimate uses of genomic data.¹¹ However, there is great variation in these laws. While some states prohibit the unauthorized acquisition or analysis of genetic information, others prohibit only unauthorized disclosure.¹² They also differ regarding the enforcement of these laws.¹³

Florida's DNA Privacy Law

Except for purposes of criminal prosecution, for purposes of determining paternity,¹⁴ and for purposes of acquiring specimens,¹⁵ s. 760.40, F.S., requires DNA analysis¹⁶ to be performed only with informed consent. Results of a DNA analysis, whether held by a public or private entity, are the exclusive property of the person tested, are confidential, and may not be disclosed without the consent of the person tested.¹⁷ The information is also exempt from public records laws if held by a public entity.¹⁸ A violation of the above requirements is a misdemeanor of the third degree.¹⁹ Section 760.40, F.S., also requires that a person who performs DNA analysis or receives records, results, or findings of a DNA analysis must provide the person tested with notice²⁰ that the analysis was performed or that the information was received.²¹

⁸ See American Medical Association Journal of Ethics, *Shedding Privacy Along with our Genetic Material: What Constitutes Adequate Legal Protection Against Surreptitious Genetic Testing?* (March of 2016), available at <https://journalofethics.ama-assn.org/sites/journalofethics.ama-assn.org/files/2018-05/pfor2-1603.pdf> (last visited March 19, 2021).

⁹ Privacy in Genomics, National Human Genome Research Institute, available at <https://www.genome.gov/about-genomics/policy-issues/Privacy>, (last visited March 19, 2021).

¹⁰ *Id.*

¹¹ For details on state laws regulating DNA usage available at <https://www.genome.gov/about-genomics/policy-issues/Genome-Statute-Legislation-Database>, (last visited March 19, 2021).

¹² Privacy in Genomics, National Human Genome Research Institute, available at <https://www.genome.gov/about-genomics/policy-issues/Privacy>, (last visited March 19, 2021).

¹³ *Id.*

¹⁴ See ss. 409.256, F.S., and 742.12(1), F.S.

¹⁵ See s. 943.325, F.S.

¹⁶ Defined as "the medical and biological examination and analysis of a person to identify the presence and composition of genes in that person's body. The term includes DNA typing and genetic testing."

¹⁷ See s. 760.40, F.S.

¹⁸ *Id.*

¹⁹ *Id.* Punishable as provided in ss. 775.082 or 775.083, F.S.

²⁰ The bill provides that the notice must state that upon the request of the person tested, the information will be made available to his or her physician, state whether the information was used in any decision to grant or deny any insurance, employment, mortgage, loan, credit, or educational opportunity. Also, if the information was used in any decision that resulted in a denial, the analysis must be repeated to verify the accuracy of the first analysis, and if the first analysis is found to be inaccurate, the denial must be reviewed.

²¹ See s. 760.40, F.S.

III. Effect of Proposed Changes:

The bill creates s. 817.5655, F.S., to prohibit certain unlawful uses of DNA. The bill defines the following terms:

- “Authorization” to mean the informed and written consent of the person whose DNA is to be extracted or analyzed, or the informed and written consent of the person’s legal guardian or authorized representative;
- “DNA analysis” to mean the medical and biological examination and analysis of a person to identify the presence and composition of genes in that person’s body, which includes DNA typing and genetic testing; and
- “DNA sample” to mean any human biological specimen from which DNA can be extracted, or the DNA extracted from such specimen.

The bill establishes three new crimes as follows:

- It is a misdemeanor of the first degree²² for a person to willfully, and without authorization, collect or retain another person’s DNA sample with the intent to perform DNA analysis;
- It is a felony of the third degree²³ for a person to willfully, and without authorization, submit another person’s DNA sample for DNA analysis or to conduct or procure the conducting of another person’s DNA analysis; and
- It is a felony of the third²⁴ degree for a person to willfully, and without authorization, disclose another person’s DNA analysis results to a third party.

The bill specifies that each instance of collection, retention, submission, analysis, or disclosure constitutes a separate violation for which a separate penalty is authorized. The bill provides exceptions to the prohibitions established in the bill for the following:

- A criminal investigation or prosecution;
- Determining paternity under s. 409.256, F.S., or s. 742.12(1), F.S.; and
- Performing any activity authorized under s. 943.325, F.S., related to Florida’s criminal DNA database.

The bill amends s. 760.40, F.S., to conform provisions to changes made by the bill.

The bill provides an effective date of October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill creates new criminal offenses relating to the unlawful use of DNA. Criminal laws are exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

²² See ss. 775.082 and 775.083, F.S.

²³ See ss. 775.082, 775.083, and 775.084, F.S.

²⁴ *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR) estimates that the bill will have a "positive insignificant" prison bed impact (an increase in 10 or fewer prison beds).²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill defines the term "authorization" to mean the informed and written consent of the person whose DNA is to be extracted or analyzed, or the informed and written consent of the person's legal guardian or authorized representative. However, the bill does not specify what information must be given to a person in order for that person to be informed before providing written consent. Given that the failure to provide adequate information to the person who is providing written consent may constitute a criminal act, it may be advisable to specify what information must be given to a person prior to that person providing his or her consent.

²⁵ See Office of Economic & Demographic Research, *Complete 2021 Conference Results*, available at <http://edr.state.fl.us/content/conferences/criminaljusticeimpact/index.cfm> (last visited March 19, 2021).

The bill prohibits a person from willfully, and without authorization, disclosing another person's DNA analysis results to a third party. Given the broad nature of this crime and the specific requirements for obtaining authorization established by the bill, it may be possible for a person to commit this crime unintentionally. For example, it is possible that a husband may have violated this section by disclosing his wife's DNA analysis results to their children even if the husband had his wife's prior authorization by spoken word.

VIII. Statutes Affected:

The bill substantially amends section 760.40 of the Florida Statutes.

The bill creates section 817.5655 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Rodrigues

27-01195A-21

20211140__

A bill to be entitled

An act relating to unlawful use of DNA; amending s. 760.40, F.S.; prohibiting DNA analysis and disclosure of DNA analysis results without authorization; removing criminal penalties; creating s. 817.5655, F.S.; defining terms; prohibiting the collection or retention of a DNA sample of another person without authorization for specified purposes; prohibiting specified DNA analysis and disclosure of DNA analysis results without authorization; providing criminal penalties; providing exceptions; providing an effective date.

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

Section 1. Subsection (2) of section 760.40, Florida Statutes, is amended to read:

760.40 Genetic testing; authorization informed consent; confidentiality; penalties; notice of use of results.—

(2) ~~(a) Except for purposes of criminal prosecution, except for purposes of determining paternity as provided in s. 409.256 or s. 742.12(1), and except for purposes of acquiring specimens as provided in s. 943.325, DNA analysis may be performed only with authorization, as defined in s. 817.5655 the informed consent of the person to be tested, and the results of such DNA analysis, whether held by a public or private entity, are the exclusive property of the person tested, are confidential, and may not be disclosed without authorization the consent of the person tested. Such information held by a public entity is~~

Page 1 of 3

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

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exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(b) A person who violates paragraph (a) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~

Section 2. Section 817.5655, Florida Statutes, is created to read:

817.5655 Unlawful use of DNA; penalties; exceptions.—

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

(a) "Authorization" means the informed and written consent of the person whose DNA is to be extracted or analyzed, or the informed and written consent of the person's legal guardian or authorized representative.

(b) "DNA analysis" means the medical and biological examination and analysis of a person to identify the presence and composition of genes in that person's body. The term includes DNA typing and genetic testing.

(c) "DNA sample" means any human biological specimen from which DNA can be extracted, or the DNA extracted from such specimen.

(2) It is unlawful for a person to willfully, and without authorization, collect or retain another person's DNA sample with the intent to perform DNA analysis. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) It is unlawful for a person to willfully, and without authorization, submit another person's DNA sample for DNA analysis or to conduct or procure the conducting of another person's DNA analysis. A person who violates this subsection

Page 2 of 3

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27-01195A-21

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59 commits a felony of the third degree, punishable as provided in
60 s. 775.082, s. 775.083 or s. 775.084.

61 (4) It is unlawful for a person to willfully, and without
62 authorization, disclose another person's DNA analysis results to
63 a third party. A person who violates this subsection commits a
64 felony of the third degree, punishable as provided in s.
65 775.082, s. 775.083 or s. 775.084.

66 (5) Each instance of collection or retention, submission or
67 analysis or disclosure in violation of this section constitutes
68 a separate violation for which a separate penalty is authorized.

69 (6) This section does not apply to a DNA sample, a DNA
70 analysis, or the results of a DNA analysis used for the purposes
71 of:

72 (a) Criminal investigation or prosecution;

73 (b) Determining paternity under s. 409.256 or s. 742.12(1);

74 or

75 (c) Performing any activity authorized under s. 943.325.

76 Section 3. This act shall take effect October 1, 2021.



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: March 9, 2021

I respectfully request that **Senate Bill 1294**, relating to Cottage Food Operations, be placed on the:

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

A handwritten signature in cursive script that reads "Jason Brodeur".

Senator Jason Brodeur
Florida Senate, District 9

THE FLORIDA SENATE

APPEARANCE RECORD

3/22/2021

Meeting Date

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

SB 1294

Bill Number (if applicable)

Topic COTTAGE FOODS

Amendment Barcode (if applicable)

Name CHRISTIAN CANARA

Job Title

Address PO Box 122

Phone 305 608 4300

Street TALLAHASSEE FL 32302

City State Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing INSTITUTE FOR JUSTICE

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.

THE FLORIDA SENATE

APPEARANCE RECORD

3/22/21

Meeting Date

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

1294

Bill Number (if applicable)

Topic Cottage Food

Amendment Barcode (if applicable)

Name DIEGO ECHEVERRI

Job Title legislative Liaison

Address

Phone

Street

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.22.21

Meeting Date

SB 1294

Bill Number (if applicable)

Topic COTTAGE FOOD OPERATIONS

Amendment Barcode (if applicable)

Name BILL MATTOX

Job Title JMI

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TRH

City

FL

State

32301

Zip

Email bmattox@jamesmadison.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing JAMES MADISON INSTITUTE

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.

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Reset Form

March 22, 2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

1294

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

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Phone 850-445-5367

Street

Tallahassee

FL

32301

Email Tim.nungesser@nfib.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NFIB

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.

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 1294

INTRODUCER: Senator Brodeur

SUBJECT: Cottage Food Operations

DATE: March 19, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2. <u>Reeve</u>	<u>McKay</u>	<u>CM</u>	Favorable
3. _____	_____	<u>RC</u>	_____

I. Summary:

SB 1294 revises the regulations on cottage food operations and cottage food sales. A cottage food operation is a natural person who produces or packages cottage food products, defined by the Department of Agriculture as any food that is not a potentially hazardous food, at his or her residence.

The bill allows individual cottage food operations to sell, offer for sale, and accept payment for cottage food products as a business entity. The bill also allows cottage food products to be sold, offered for sale, and paid for by mail order, and permits cottage food products to be delivered by mail.

Cottage food operations are exempt from food permitting requirements if the cottage food seller complies with s. 500.80, F.S., and has annual gross sales of up to \$50,000. The bill increases the maximum allowable gross sales to \$250,000.

The bill preempts the regulation of cottage food operations to the state.

The bill provides that this act may be cited as the “Home Sweet Home Act.”

The bill takes effect July 1, 2021.

II. Present Situation:

Food Safety Laws

The Division of Food Safety within the Department of Agriculture and Consumer Services (department) ensures that safe, wholesome, and properly labeled food is available to the public through the permitting and inspection of food establishments, and inspection of food products

that are sold or produced in Florida.¹ The department works in cooperation with the United States Department of Agriculture and the Food and Drug Administration to help ensure compliance with both state and federal regulations.²

Cottage Food Operations

A cottage food operation is an unincorporated business operated by a natural person who, under certain conditions and restrictions, produces or packages food that is not potentially hazardous in their residence.³

A cottage food product is any food that is not a potentially hazardous food as defined by department rule which is sold by a cottage food operation in accordance with s. 500.80, F.S.⁴ The department has not adopted a rule defining the term “potentially hazardous food,” but it has adopted the U.S. Food and Drug Administration’s 2017 Food Code (Food Code).⁵

The Food Code defines the term “time/temperature controlled for safety food,” formerly referred to as “potentially hazardous food,” as a “food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.” The term includes:

- Animal food that is raw or heat-treated;
- Plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and
- Garlic-in-oil mixtures that are not modified so that they are unable to support pathogenic micro-organism growth or toxin formation.⁶

The department has identified the following foods as not potentially hazardous and therefore permitted to be produced by a cottage food operation:

- Loaf breads, rolls, biscuits;
- Cakes, pastries, and cookies;
- Honey;
- Jams, jellies, and preserves made from high acid-fruits only;
- Fruit pies and dried fruits;
- Dry herbs, seasonings, and mixtures;
- Homemade pasta;
- Cereals, trail mixes, and granola;

¹ Florida Department of Agriculture and Consumer Services, *Division of Food Safety*, available at <http://www.freshfromflorida.com/Divisions-Offices/Food-Safety> (last visited Mar. 19, 2021). See also ch. 500, F.S., the Florida Food Safety Act.

² Florida Department of Agriculture and Consumer Services, *Food Establishments*, available at <https://www.fdacs.gov/Business-Services/Food/Food-Establishments> (last visited Mar. 19, 2021).

³ Sections 500.03(j), (k), and 500.80, F.S.

⁴ Section 500.03(k), F.S.

⁵ Fla. Admin. Code R. 5K-4.002(4)(a).

⁶ U.S. Food and Drug Administration, 2017 Food Code, subpart 1-201.10, defining “Time/Temperature Control for Safety Food (formerly “potentially hazardous food” (PHF))” Certain foods may be designated as “product assessment required” due to the interaction of their water content and pH values after heat treatment or packaging to control vegetative cells and spores. Such foods are considered TCS food until further study proves otherwise.

- Coated or uncoated nuts;
- Vinegar and flavored vinegars;
- Popcorn and popcorn balls; and
- Nut butters, including almond, peanut, cashew, etc.⁷

Under s. 500.80, F.S., cottage food operations are exempt from food safety production standards, are not subject to inspection by a governmental entity, and are not required to meet state food permitting requirements under s. 500.12, F.S. However, cottage food operations must comply with the cottage food law and limit annual gross sales of cottage food products to less than \$50,000. A cottage food operation must provide the department with written documentation to verify its annual gross sales upon the department's request to do so.

Cottage food operations may sell and accept payments for cottage food products over the Internet, but such products must be delivered in person. Cottage food operations are currently prohibited from selling or delivering cottage food products by mail order or at wholesale.⁸ A cottage food operation may only sell cottage food products that are stored on the premises of the operation.⁹

Cottage food products must be prepackaged with a label that contains:

- The name and address of the cottage food operation;
- The name of the cottage food product;
- The ingredients of the cottage food product, in descending order of predominance by weight;
- The net weight or net volume of the cottage food product;
- Allergen information as specified by federal labeling requirements;
- Appropriate nutritional information as specified by federal labeling requirements, if any nutritional claim is made;¹⁰ and
- The statement, "Made in a cottage food operation that is not subject to Florida's food safety regulation" printed in 10-point type in a color that provides a clear contrast to the background of the label.¹¹

Cottage food operations are not exempt from any state or federal tax law, rule, regulation, or certificate that applies to all cottage food operations,¹² and must comply with all applicable county and municipal laws and ordinances regulating the preparation, processing, storage, and sale of cottage food products.¹³

⁷ See Department of Agriculture and Consumer Services, *Division of Food Safety: Cottage Food Operations (August 2020)*, available at <https://www.fdacs.gov/content/download/70108/file/Cottage-Food-Operations.pdf> (last visited Mar. 19, 2021).

⁸ Section 500.80(2), F.S.

⁹ Section 500.80(4), F.S.

¹⁰ See Food Labeling, 21 C.F.R. § 101.

¹¹ Section 500.80(3), F.S.

¹² Section 500.80(5), F.S.

¹³ Sections 500.80(6), F.S.

Cottage Food Operations Investigations and Complaints

The department may investigate complaints that a cottage food operation has violated an applicable provision of state food products law¹⁴ or rule adopted under such law.¹⁵ Upon receiving a complaint, an officer or employee of the department may inspect the cottage food operation's premises to determine compliance with applicable to state law and departmental rules. An operation's refusal to permit an authorized officer or employee to enter and inspect the premises is grounds for administrative disciplinary action under s. 500.121, F.S.¹⁶

State law regarding cottage food operations does not apply to any person operating under a food permit issued pursuant to s. 500.12, F.S.¹⁷

In 2020, the department responded to 233 consumer complaints regarding unpermitted food establishments, many of which were cottage food operations not complying with the existing food laws.¹⁸

Cottage Food Sales in Other States

Nationwide, 49 states and the District of Columbia have cottage food programs; many states have comparable regulations to the existing cottage food laws in Florida. While not all states have imposed a gross income limit, the average allowable gross income in states with limits ranges from \$15,000 to \$35,000 annually. States without income limits have various prohibitions against mail deliveries and out-of-state sales of cottage food products.¹⁹

III. Effect of Proposed Changes:

The bill expands the definition of "cottage food operation" in s. 500.03(1)(j), F.S., to include entities that produce or package cottage food products at the residence of a natural person with an ownership interest in the entity.

The bill increases the maximum annual gross sales limit for cottage foods operations from \$50,000 to \$250,000.

The bill permits cottage food operations to sell and accept payment for cottage food products by mail order and to deliver cottage food products by mail.

¹⁴ Chapter 500, F.S.

¹⁵ Section 500.80(7)(a), F.S.

¹⁶ Section 500.121, F.S., provides disciplinary procedures for violations of ch. 500, F.S., and applicable rules, including the imposition of Class II administrative fines against a cottage food operation that violates ch. 500, F.S. A violation in the Class II category carries a fine not to exceed \$5,000 for each violation. See s. 570.971(1)(b), F.S.

¹⁷ Section 500.12, F.S., requires a permit issued by the department for any person operating a food establishment or retail food store.

¹⁸ Department of Agriculture and Consumer Services, *Agency Analysis for SB 1294*, (Feb. 23, 2021) (on file with the Senate Committee on Regulated Industries).

¹⁹ *Id.* See also Harvard Food Law and Policy Clinic, *Cottage Food Laws in the United States (August 2018)*, available at https://www.chlpi.org/wp-content/uploads/2013/12/FLPC_Cottage-Foods-Report_August-2018.pdf (last visited Mar. 19, 2021).

The bill also preempts the regulation of cottage food operations to the state. Under the bill, a local law, ordinance, or regulation may not prohibit a cottage food operation or regulate the preparation, processing, storage, and sale of cottage food products by a cottage food operation or from a person's residence.

This act may be cited as the "Home Sweet Home Act."

The bill takes effect July 1, 2021.

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 of Agriculture and Consumer Services indicates that the increase in gross sales limits for cottage food operators may result in increased food safety health events and complaints, and therefore increase the department's workload. The department cannot recover these enforcement expenses because cottage food operations do not pay a permit fee. An increase in the annual gross sales limit will also result in fewer food

establishments permitted and inspected by the department, which may have a negative fiscal impact on the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Increasing the allowable gross sales for cottage food operations would remove larger operations from permitting requirements and inspections for sanitation and compliance with food safety regulations. The department states that, without proper training and oversight, small businesses may expose themselves to greater liability resulting from harming persons through foodborne illnesses.²⁰

VIII. Statutes Affected:

This bill substantially amends sections 500.03 and 500.80 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.

²⁰ *Supra* note 18.

By Senator Brodeur

9-01409-21

20211294__

A bill to be entitled

An act relating to cottage food operations; providing a short title; amending s. 500.03, F.S.; revising the definition of "cottage food operation"; amending s. 500.80, F.S.; increasing the annual gross sales limitation for exempting cottage food operations from certain food and building permitting requirements; authorizing the sale, offer for sale, acceptance of payment, and delivery of cottage food products by mail; preempting the regulation of cottage food operations to the state; prohibiting local governments from prohibiting or regulating cottage food operations; providing an effective date.

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

Section 1. This act may be cited as the "Home Sweet Home Act."

Section 2. Paragraph (j) of subsection (1) of section 500.03, Florida Statutes, is amended to read:

500.03 Definitions; construction; applicability.—

(1) For the purpose of this chapter, the term:

(j) "Cottage food operation" means a natural person or an entity that ~~who~~ produces or packages cottage food products at the his or her residence of the natural person or at the residence of a natural person who has an ownership interest in the entity, and sells such products in accordance with s. 500.80.

Section 3. Paragraph (a) of subsection (1) and subsections

Page 1 of 2

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

9-01409-21

20211294__

(2) and (6) of section 500.80, Florida Statutes, are amended to read:

500.80 Cottage food operations.—

(1) (a) A cottage food operation must comply with the applicable requirements of this chapter but is exempt from the permitting requirements of s. 500.12 if the cottage food operation complies with this section and has annual gross sales of cottage food products that do not exceed \$250,000 ~~\$50,000~~.

(2) A cottage food operation may sell, offer for sale, and accept payment for cottage food products over the Internet or by mail order. ~~Such, but such~~ products may ~~must~~ be delivered in person directly to the consumer, ~~or~~ to a specific event venue, or by mail. A cottage food operation may not sell, offer for sale, or deliver cottage food products ~~by mail order or~~ at wholesale.

(6) The regulation of cottage food operations is preempted to the state. A local law, ordinance, or regulation may not prohibit a cottage food operation or regulate ~~must comply with all applicable county and municipal laws and ordinances regulating~~ the preparation, processing, storage, and sale of cottage food products by a cottage food operation or from a person's residence.

Section 4. This act shall take effect July 1, 2021.

Page 2 of 2

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The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: March 10, 2021

I respectfully request that **Senate Bill #1374**, relating to Small Business Website Development Grant Program, be placed on the:

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

A handwritten signature in black ink, reading "Gary M. Farmer, Jr.", written over a horizontal line.

Senator Gary M. Farmer, Jr.
Florida Senate, District 34

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 1374

INTRODUCER: Senator Farmer

SUBJECT: Small Business Website Development Grant Program

DATE: March 19, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	Favorable
2.			ATD	
3.			AP	

I. Summary:

SB 1374 creates the Small Business Website Development Grant Program (grant program), to be administered by the Department of Economic Opportunity. A small business located in Florida that does not have a website may apply for a one-time grant of up to \$2,500 to be used for the development of a website.

The grant program created by the bill is subject to legislative appropriation.

The bill takes effect July 1, 2021.

II. Present Situation:

According to the Small Business Development Council, Florida's more than 2.5 million small businesses employ nearly half of the state's private sector employees. Of the small businesses with employees, 88 percent are small businesses with fewer than 20 employees;¹ most of these businesses are in technical services, construction, retail trade, and healthcare or social assistance.² Surveys suggest that while the majority of shoppers visit a website before going to a physical store to make a purchase, up to 45 percent of small businesses nationwide do not have a business website.³

¹ Florida Small Business Development Center, *State of Small Business Report: Florida (2020)*, available at https://floridasbdc.org/Reports/2020-State-of-Small-Business/State_of_Small_Business_Florida_2020_FINAL_web.pdf (last visited Mar. 19, 2021).

² U.S. Small Business Administration, *2020 Small Business Profile*, available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04143012/2020-Small-Business-Economic-Profile-FL.pdf> (last visited Mar. 19, 2021).

³ CNBC, *Tech Help Wanted: About Half of Small Businesses Don't Have a Website (June 14, 2017)*, available at <https://www.cnbc.com/2017/06/14/tech-help-wanted-about-half-of-small-businesses-dont-have-a-website.html> (last visited Mar. 19, 2021).

III. Effect of Proposed Changes:

The bill creates s. 288.126, F.S., the Small Business Website Development Grant Program. The grant program is intended to support Florida's economy and stimulate economic growth by assisting small businesses without a website in the development of a website.

Small businesses in the state that do not have website may apply to the DEO for a one-time grant of up to \$2,500. Grants must be used for the development of a website, including costs associated with website development, website maintenance fees, website development education, and other related costs.

The bill defines a "small business" as a business with 25 or fewer full-time equivalent employees.

The DEO is granted rulemaking authority to administer the grant program.

The bill takes effect July 1, 2021.

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:

The state government of Florida is divided into the legislative, executive and judicial branches. Pursuant to Article II, s. 3 of the State Constitution, "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." Two fundamental prohibitions are contained in the separation of powers doctrine in Florida. The first is that no branch may encroach upon the powers of the other; the second is that no branch may delegate to another branch its constitutionally assigned power.⁴ Under the nondelegation doctrine, the Legislature "may not delegate the power to enact a law or the right to exercise unrestricted discretion in

⁴ *Chiles v. Children A, B, C, D, E & F*, 589 So.2d 260, 266 (Fla.1991)

applying the law.”⁵ The Legislature must promulgate standards sufficient to guide administrative agencies in the performance of their duties.⁶

The bill specifies no standards the DEO must use in determining which applicants should receive grant funds, or how much funding each successful grant applicant should receive.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Grant recipients will incur benefits in the amount of their grant awards.

C. Government Sector Impact:

Indeterminate. The grant program created by the bill is subject to legislative appropriation. The DEO may incur costs associated with administering the grant program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 288.126 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.

⁵ *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26, 29 (Fla. 1st DCA 2008) (citing *Sims v. State*, 754 So.2d 657, 668 (2000)).

⁶ *Florida Dep't. of State, Div. of Elections v. Martin*, 916 So.2d 763 (Fla. 2005).

By Senator Farmer

34-01709-21

20211374__

A bill to be entitled

An act relating to the Small Business Website Development Grant Program; creating s. 288.126, F.S.; creating the Small Business Website Development Grant Program within the Department of Economic Opportunity; providing the purpose of the program; defining the term "small business"; requiring the department to provide grants subject to legislative appropriation; authorizing certain small businesses to apply for a grant in a specified amount; requiring that grant funds be used for the development of a website; requiring the department to adopt rules; providing an effective date.

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

Section 1. Section 288.126, Florida Statutes, is created to read:

288.126 Small Business Website Development Grant Program.—

(1) The Small Business Website Development Grant Program is created within the department. The purpose of the program is to support this state's economy and stimulate economic growth by assisting small businesses that do not have a website in the development of a website.

(2) As used in this section, the term "small business" means a business with 25 or fewer full-time equivalent employees.

(3) Subject to legislative appropriation, the department shall provide grants to small businesses in this state that do

Page 1 of 2

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34-01709-21

20211374__

not have a website for the purpose of website development.

(4) A small business in this state that does not have a website may apply to the department for a one-time grant in an amount of \$2,500 or less. Such grant funds must be used for the development of a website, which may include the costs associated with website development, website maintenance fees, website development education, and other related costs.

(5) The department shall adopt rules necessary to administer this section.

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

Page 2 of 2

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GAYLE HARRELL

25th District

COMMITTEES:
Transportation, Chair
Military and Veterans Affairs, Space,
and Domestic Security, Vice Chair
Appropriations Subcommittee on Health and
Human Services
Children, Families, and Elder Affairs
Finance and Tax

SELECT COMMITTEE:
Select Committee on Pandemic
Preparedness and Response

March 5, 2021

Senator Ed Hooper
Commerce and Tourism
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Hooper,

I respectfully request that **SB 1992 – Solicitation of Non-Medical Services** be placed on the next available agenda for the Commerce and Tourism Committee Meeting.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in blue ink that reads "Gayle".

Senator Gayle Harrell
Senate District 25

Cc: Todd McKay, Staff Director
Kathryn Viggrass, Committee Administrative Assistant

REPLY TO:

- ☐ 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019
- ☐ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

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

THE FLORIDA SENATE

APPEARANCE RECORD

03.22.21

Meeting Date

1992

Bill Number (if applicable)

Topic Solicitation of Nonmedical Services

Amendment Barcode (if applicable)

Name William Large

Job Title President

Address 210 South Monroe Street

Phone 850-222-0170

Street

Tallahassee

FL

32301

Email William@fljustice.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Justice Reform Institute

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)

3/22/21
Meeting Date

1992

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jared Willis

Job Title Mgr Gov Relations Strategos

Address 200 W College Ave Ste 201
Street

Phone 284-1996

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Alliance for Patient Access

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

3/22/21

Meeting Date

1992

Bill Number (if applicable)

Topic Solicitation of Nonmedical Services

Amendment Barcode (if applicable)

Name Steve Winn

Job Title Executive Director

Address 2544 Blirstone Pines Dr

Phone 878-7364

Street

Tallahassee

FL

32301

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Osteopathic Medical 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.

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THE FLORIDA SENATE

APPEARANCE RECORD

3/22/21

Meeting Date

SB 1992

Bill Number (if applicable)

Topic Solicitation of Nonmedical Services

Name George Feijoo

Amendment Barcode (if applicable)

Job Title Consultant

Address 108 S Monroe St.

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-681-0024

Email grfeijoo@flapartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing U.S. Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

3/22/2021

Meeting Date

SB 1992

Bill Number (if applicable)

Topic Solicitation of Nonmedical Services

Amendment Barcode (if applicable)

Name Marnie George

Job Title Sr. Advisor - Buchanan Ingersoll & Rooney

Address 101 N. Monroe Street, Suite 1090

Phone (850) 510-8866

Street

Tallahassee

FL

32303

City

State

Zip

Email marnie.george@bipc.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ 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 ☒ 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 hearing.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/21
Meeting Date

1992

Bill Number (if applicable)

Topic _____

Name Toni Large

Job Title _____

Address 1100 Brookwood Dr
Street

Phone 556-1461

City _____ State _____ Zip _____

Email toni@largestrategies.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Society of Rheumatology

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.

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

March 22, 2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

1992

Bill Number (if applicable)

Topic Solicitation of Nonmedical Services

Name Michael Carlson

Amendment Barcode (if applicable)

Job Title President

Address 215 S. Monroe St. Ste. 835

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-544-9576

Email michael.carlson@piff.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Personal Insurance Federation of Florida, Inc.

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.

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

3/22/21

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

SB 1992

Bill Number (if applicable)

Topic Solicitation of non-medical services

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Senior Policy Director

Address 136 S Bronough Street

Phone 850-521-1200

Street

Tallahassee

FL

32301

City

State

Zip

Email cjohnson@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

This form is part of the public record for this meeting

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 1992

INTRODUCER: Senator Harrell

SUBJECT: Solicitation of Nonmedical Services

DATE: March 19, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Favorable
2.			JU	
3.			RC	

I. Summary:

The bill creates s. 501.2106, F.S., which provides that it is a deceptive and unfair trade practice for a person to submit or approve the submittal of a nonmedical solicitation for publication, broadcast, or dissemination, or to pay for or otherwise sponsor a nonmedical solicitation if the solicitation meets or fails to meet specified criteria, including the following:

- Fails to clearly disclose the phrase, “this is a paid advertisement for nonmedical services;”
- Includes terminology implying that the advertisement is a public alert or announcement;
- Displays a logo in a manner implying affiliation with a governmental agency;
- Includes terminology implying that the product has been recalled;
- Fails to clearly disclose the individual or entity that will provide professional services; and
- Fails to include any required disclosure.

The bill creates s. 877.025, F.S., which provides that a person who is soliciting professional services may not use, cause to be used, obtain, sell, transfer, or disclose to another person an individual’s protected health information, without the individual’s written authorization.

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. However, since the bill creates a new second degree felony, it will likely have a positive indeterminate (i.e., unquantifiable increase) prison bed impact on the Department of Corrections. The bill also creates a new misdemeanor, which will likely have a positive indeterminate (i.e., unquantifiable increase) jail bed impact on counties.

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

II. Present Situation:

Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

History and Purpose of FDUTPA

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) became law in 1973.¹ The FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.² The FDUTPA is based on federal law, and s. 501.204(2), F.S., provides that it is the intent of the Legislature that due consideration and great weight must be given to the interpretations of the Federal Trade Commission and the federal courts relating to section 5 of the Federal Trade Commission Act.³

The State Attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.⁴ The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction.⁵ The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.⁶ Consumers may also file suit through private actions.⁷

Remedies under the FDUTPA

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders; and
- Civil penalties of up to \$10,000 per willful violation.⁸

Remedies for private parties are limited to the following:

- A declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation; and
- Actual damages, attorney fees and court costs, where a person has suffered a loss due to a FDUTPA violation.⁹

¹ Ch. 73-124, Laws of Fla.; codified at part II of ch. 501, F.S.

² See s. 501.202, F.S. Trade or commerce means the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. "Trade or commerce" shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity. See s. 501.203(8), F.S.

³ See s 501.204(2), F.S.

⁴ See ss. 501.203(2), 501.206, and 501.207, F.S.

⁵ Section 501.203(2), F.S.

⁶ *Id.*

⁷ Section 501.211, F.S.

⁸ Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. Section 501.2105, F.S.

⁹ Section 501.211(1) and (2), F.S.

Federal Unfair and Deceptive Trade Practices

The Federal Trade Commission's (FTC's) unfair and deceptive trade practices regulations prohibit unfair¹⁰ or deceptive¹¹ acts or practices in or affecting commerce.¹² The FTC's regulations include "Truth In Advertising" guidelines, which require advertisements to be truthful, not misleading, and, when appropriate, backed by scientific evidence.¹³ To enforce these regulations, the FTC takes law enforcement actions, provides consumer and business education, issues reports and policy guidance, leads workshops, and participates in other forums.¹⁴

Legal Advertising

Section 15 of Article V of the Florida Constitution vests exclusive jurisdiction in the Florida Supreme Court to regulate admissions to the bar and to discipline admitted attorneys. The Florida Bar approves lawyer advertising, issues advisory opinions interpreting rules, and investigates and prosecutes attorneys for alleged violations.¹⁵ Florida's legal advertising rules apply to all forms of communication soliciting legal services in any print or electronic form.¹⁶ Advertisements in specified media must be submitted to the Legal Division of the Florida Bar at least 20 days prior to dissemination, including print, television, radio, direct mail, and Internet.¹⁷

The Legal Division reviews an advertisement to determine whether it complies with the Florida Bar's advertising rules, and issues an opinion either approving or disapproving the advertisement. The Disciplinary Counsel of the Florida Bar investigates and prosecutes attorneys for alleged violations of the advertising rules.¹⁸

Florida Bar rules require legal advertising to include:

- The name of the lawyer or law firm;¹⁹
- The location of the law practice;²⁰ and

¹⁰ An "unfair" practice is unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. See 15 U.S.C. Sec. 45(n).

¹¹ A "deceptive" practice involves a material representation, omission or practice that is likely to mislead a consumer acting reasonably in the circumstances. See FTC Policy Statement on Deception (Oct. 14, 1983) available at https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf (last visited March 19, 2021). See also Federal Trade Commission, *A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority* (revised, Oct. 2019) available at <https://www.ftc.gov/about-ftc/what-we-do/enforcement-authority> (last visited March 19, 2021).

¹² 15 U.S.C. s. 45(a)(1).

¹³ Federal Trade Commission, *Truth In Advertising*, available at <https://www.ftc.gov/news-events/media-resources/truth-advertising> (last visited March 19, 2021).

¹⁴ Federal Trade Commission, *Protecting Consumers from Fraud and Deception*, available at <https://www.ftc.gov/news-events/media-resources/truth-advertising/protecting-consumers> (last visited March 19, 2021).

¹⁵ The Florida Bar, *Frequently Asked Questions About the Florida Bar*, available at <https://www.floridabar.org/about/faq/> (last visited Mar. 19, 2021).

¹⁶ Fla. Bar Code Prof. Resp. D. R. 4-7.11(a).

¹⁷ Fla. Bar Code Prof. Resp. D. R. 4-7.11.

¹⁸ Fla. Bar Code Prof. Resp. D. R. 4-7.19.

¹⁹ Fla. Bar Code Prof. Resp. D. R. 4-7.12(a)(1).

²⁰ Fla. Bar Code Prof. Resp. D. R. 4-7.12(a)(2).

- Certain disclosures when relevant, including whether a case will be referred to another lawyer;²¹ a spokesperson in the advertisement is not an employee or member of the law firm;²² or a scene depicted is a dramatization and not an actual event.²³

Required information must be reasonably prominent and clearly legible if written, as well as, clearly audible if spoken aloud.²⁴

Drug Injury Advertising

In 2019, the FTC contacted seven law firms and lead generating companies to express concern about some advertisements that solicit clients for personal injury lawsuits against drug manufacturers, which may be considered deceptive or unfair under federal law.²⁵ The FTC also noted that the Food and Drug Administration's (FDA) Adverse Event Reporting System contained reports of consumers who had viewed advertisements about the prescription drugs they were taking, discontinued those medications, and suffered adverse consequences.²⁶ The FTC warned that advertisements that cause, or are likely to cause, viewers to discontinue their medications may constitute an unfair act or practice.²⁷ The FTC recommended such advertisements include clear and prominent audio and visual disclosures stating that a consumer should not stop taking medication without first consulting a doctor.²⁸

Health Insurance Portability and Accountability Act²⁹ and its Related Rules

The Federal Health Insurance Portability and Accountability Act (HIPAA), protects personal health information (PHI).³⁰ HIPAA's two pertinent implementing rules are the Privacy Rule and the Security Rule.³¹ The Privacy Rule addresses the use and disclosure of an individual's PHI by covered entities.³² Covered entities include the following:

- Health plans;
- Health care providers;
- Health care clearinghouses; and

²¹ Fla. Bar Code Prof. Resp. D. R. 4-7.12(b).

²² Fla. Bar Code Prof. Resp. D. R. 4-7.13(b)(5).

²³ Fla. Bar Code Prof. Resp. D. R. 4-7.13(b)(6).

²⁴ Fla. Bar Code Prof. Resp. D. R. 4-7.12(d).

²⁵ Federal Trade Commission, *FTC Flags Potentially Unlawful TV Ads for Prescription Drug Lawsuits* (Sept. 24, 2019), available at <https://www.ftc.gov/news-events/press-releases/2019/09/ftc-flags-potentially-unlawful-tv-ads-prescription-drug-lawsuits> (last visited Mar. 19, 2021).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ 42 U.S.C. § 1320.

³⁰ Protected health information includes all individually identifiable health information held or transmitted by a covered entity or its business associate. Pub. L. No. 104-191 (1996).

³¹ See Stephen Mulligan, Wilson Freeman, Chris Linebaugh, Congressional Research Service, *Data Protection Law: An Overview* at 10-12 (March 25, 2019), available at <https://crsreports.congress.gov/product/pdf/R/R45631> (last visited March 19, 2021).

³² 45 C.F.R. §160 and 164. See also, Department of Health and Human Services, *Summary of the HIPPA Privacy Rule* (July 26, 2013) available at <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html> (last visited March 19, 2021).

- Business associates of any of the above.³³

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

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

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

The Security Rule applies to the subset of identifiable health information that a covered entity creates, receives, maintains, or transmits in electronic form called "electronic protected health information" (e-PHI).³⁴ The Security Rule does not apply to PHI that is transmitted orally or in writing. A covered entity must comply with the Security Rule by:

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

The Department of Health and Human Services may institute a civil enforcement under HIPAA and may seek civil penalties. A civil penalty varies based on the severity of the violation, the number of people affected, the nature of the data exposed, the length of time a violation was allowed to persist, the prior compliance history of the covered entity, and the knowledge the covered entity had of the violation.³⁵ The Department of Justice may institute criminal proceedings against a violator who knowingly obtained or disclosed PHI. Criminal penalties for a HIPAA violation are triggered when a person obtains PHI for financial gain or under false pretenses.³⁶ The criminal penalty for such HIPAA violations are punishable by up to 10 years imprisonment.³⁷ There is no private cause of action under HIPAA.

III. Effect of Proposed Changes:

The bill creates s. 501.2106, F.S., which provides that it is a deceptive and unfair trade practice for a person³⁸ to submit or approve the submittal of a nonmedical solicitation for publication,

³³ U.S. Department of Health and Human Services, Office for Civil Rights, *Summary of the HIPAA Privacy Rule*, (last rev. May 2003), available at <https://www.hhs.gov/sites/default/files/privacysummary.pdf>. (last visited Mar. 19, 2021).

³⁴ 45 C.F.R. § 164.302-318.

³⁵ HIPAA Journal, *What are the penalties for HIPAA Violations?*, <https://www.hipaajournal.com/what-are-the-penalties-for-hipaa-violations-7096/> (last visited Mar. 19, 2021).

³⁶ *Id.*

³⁷ *Id.*

³⁸ A "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. See s. 1.01(3), F.S.

broadcast, or dissemination, or to pay for or otherwise sponsor a nonmedical solicitation if the solicitation does any of the following:

- Fails to clearly and conspicuously disclose at the outset of the solicitation the phrase, “this is a paid advertisement for nonmedical services;”
- Includes terminology implying that the advertisement is a “medical alert,” “health alert,” “consumer alert,” “public service announcement,” or similar public alert or announcement;
- Displays the logo, or a similar facsimile thereof, of a federal or state governmental agency in a manner implying affiliation with or sponsorship by, a governmental agency;
- Includes terminology, including use of the term “recall” when referring to a product, implying that the product has been recalled when, in fact, the product has not been recalled by a governmental agency or through agreement between a manufacturer and a governmental agency;
- Fails to clearly and conspicuously disclose the individual or entity that will provide professional services to persons responding to the advertisement or how those persons will be referred to such individual or entity;
- Solicits clients who may allege injury from a prescription drug approved or cleared by, or which is the subject of monograph authorized by, the United States (U.S.) Food and Drug Administration (FDA) and fails to clearly and conspicuously disclose, “do not stop taking a prescribed medication without first consulting your doctor,” and “discontinuing a prescribed medication without your doctor’s advice can result in injury or death;”
- Solicits clients who may allege injury from a prescription drug or medical device approved or cleared by, or which is the subject of monograph authorized by, the U.S. FDA and fails to clearly and conspicuously disclose that the drug or medical device remains approved by the U.S. FDA, unless the product is recalled or withdrawn; and
- Fails to present a written disclosure that is clearly legible and, if televised or displayed electronically, is displayed for sufficient time to enable the viewer to easily see and fully read the disclosure, or fails to present a spoken disclosure that is plainly audible and clearly intelligible.

The bill provides the following definitions:

- “Person” means individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations;³⁹
- “Client” means a prospective customer, client, or patron of nonmedical professional services;
- “Nonmedical solicitation” means a paid solicitation for nonmedical professional services which contains information about a drug⁴⁰ or device⁴¹ and which is directed to the public

³⁹ See s. 499.003(15), F.S.

⁴⁰ A “drug” is defined as recognized in the current edition of the United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of those publications, which is intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, intended to affect the structure or any function of the body of humans or other animals, or intended for use as a component of any of the aforementioned articles, and includes active pharmaceutical ingredients, but does not include devices or their nondrug components, parts, or accessories. See s. 499.003(17), F.S.

⁴¹ A “device” is defined as any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including its components, parts, or accessories, which is recognized in the current edition of the United States Pharmacopoeia and National Formulary, or any supplement thereof, intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or intended to affect the structure or any

through television, radio, the Internet, a newspaper or other periodical, an outdoor advertising sign, or another written, electronic, or recorded communication; and

- “Solicit” means to offer to provide professional services by written, recorded, or electronic communication or by in-person, telephone, or real-time electronic contact.

The bill creates s. 877.025, F.S., which is effective October 1, 2021, and provides that a person who is soliciting professional services may not use, cause to be used, obtain, sell, transfer, or disclose to another person an individual’s protected health information,⁴² without the individual’s written authorization.

The bill establishes the following:

- A person who violates s. 877.025, F.S., commits a deceptive and unfair trade practice;
- A person who willfully and knowingly violates s. 877.025, F.S., commits a misdemeanor of the first degree;⁴³ and
- A person who willfully and knowingly violates s. 877.025, F.S., with intent to sell, transfer, or use protected health information for financial gain commits a felony of the second degree.⁴⁴

The bill provides that s. 877.025, F.S., does not apply to the disclosure or use of protected health information to an attorney or by an attorney for use in a judicial or administrative proceeding, or any other use or disclosure otherwise authorized or required by law.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill creates new criminal offenses relating to the unlawful use of protected health information. Criminal laws are exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

B. Public Records/Open Meetings Issues:

None.

function of the body of humans or other animals, and that does not achieve any of its principal intended purposes through chemical action within or on the body of humans or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes. *See* s. 499.003(15), F.S.

⁴² “Protected health information” means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium, but excludes individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act, in records described at 20 U.S.C. 1232g(a)(4)(B)(iv), in employment records held by a covered entity in its role as employer, and regarding a person who has been deceased for more the 50 years. *See* 45 C.F.R. s. 106.103.

⁴³ A misdemeanor of the first degree is punishable by a definite term of imprisonment not to exceed 1 year and a fine not to exceed \$1,000. *See* ss. 775.082 and 775.083, F.S.

⁴⁴ The bill provides that the term of imprisonment may not exceed 10 years and the fine must be more than \$10,000 but may not exceed \$250,000. *See* ss. 775.082, 775.083, and 775.084, F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

In *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, the Supreme Court held that commercial speech does receive protection under the First Amendment.⁴⁵ The Court based its opinion on the public's right to receive a free flow of commercial information.⁴⁶ Although commercial speech does receive protection, it is below the protection provided to completely protected speech, and states retain the ability to regulate commercial speech that is inherently misleading or that has proven to be misleading in practice.⁴⁷

In *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, the Supreme Court established a three-part test for analyzing the limitations of advertising regulations.⁴⁸ Under the *Central Hudson* test, a state must show that any commercial speech regulation aimed at regulating "non-misleading" commercial speech is in service of a substantial state interest, directly advances that interest, and is no more extensive than necessary to serve that interest.⁴⁹ Although commercial speech regulations must meet the *Central Hudson* test, in *Bates v. State Bar of Arizona*, the Supreme Court held that reasonable time, place, and manner restrictions on advertising is authorized if the content or subject matter is not regulated.⁵⁰

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. However, since the

⁴⁵ See *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 96 S. Ct. 1817 (1976).

⁴⁶ *Id.*

⁴⁷ See *In re R.M.J.*, 102 S. Ct. 929 (1982).

⁴⁸ See *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, 100 S. Ct. 2343 (1980).

⁴⁹ *Id.*

⁵⁰ See *Bates v. State Bar of Arizona*, 97 S. Ct. 2691 (1977).

bill creates a new second degree felony, it will likely have a positive indeterminate (i.e., unquantifiable increase) prison bed impact on the Department of Corrections. The bill also creates a new misdemeanor, which will likely have a positive indeterminate (i.e., unquantifiable increase) jail bed impact on counties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates the following sections of the Florida Statutes: 501.2106 and 877.025.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Harrell

25-01037A-21

20211992__

A bill to be entitled

An act relating to the solicitation of nonmedical services; creating s. 501.2106, F.S.; defining terms; providing that a person who submits or sponsors a nonmedical solicitation that contains certain terminology or fails to include specified disclosures commits a deceptive and unfair trade practice, subject to the penalties and remedies of the Florida Deceptive and Unfair Trade Practices Act; creating s. 877.025, F.S.; defining terms; prohibiting the unauthorized use, sale, or transfer of protected health information for the purpose of soliciting professional services; providing that a person who willfully and knowingly violates such prohibition commits a deceptive and unfair trade practice, subject to the penalties and remedies of the Florida Deceptive and Unfair Trade Practices Act; providing criminal penalties for willful and knowing violations and enhanced criminal penalties for violations committed for financial gain; providing applicability; providing effective dates.

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

Section 1. Section 501.2106, Florida Statutes, is created to read:

501.2106 Nonmedical solicitation; deceptive and unfair trade practices.-

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

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

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(a) "Client" means a prospective customer, client, or patron of nonmedical professional services.

(b) "Nonmedical solicitation" means a paid solicitation for nonmedical professional services which contains information about a drug or device as defined in s. 499.003 and which is directed to the public through television; radio; the Internet, including a domain name; a newspaper or other periodical; an outdoor advertising sign; or another written, electronic, or recorded communication.

(c) "Person" has the same meaning as in s. 1.01(3).

(2) A person who submits or approves the submittal of a nonmedical solicitation for publication, broadcast, or dissemination, or who pays for or otherwise sponsors a nonmedical solicitation, commits a deceptive and unfair trade practice under this part if the solicitation, once published, broadcast, or disseminated, does any of the following:

(a) Fails to clearly and conspicuously disclose at the outset of the solicitation the phrase: "This is a paid advertisement for nonmedical services."

(b) Includes terminology implying that the advertisement is a "medical alert," "health alert," "consumer alert," "public service announcement," or similar public alert or announcement.

(c) Displays the logo, or a similar facsimile thereof, of a federal or state governmental agency in a manner implying affiliation with, or sponsorship by, a governmental agency.

(d) Includes terminology, including use of the term "recall" when referring to a product, implying that the product has been recalled when, in fact, the product has not been recalled by a governmental agency or through agreement between a

Page 2 of 5

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59 manufacturer and a governmental agency.

60 (e) Fails to clearly and conspicuously disclose the sponsor
61 of the advertisement.

62 (f) Fails to clearly and conspicuously disclose the
63 individual or entity that will provide professional services to
64 persons responding to the advertisement or how those persons
65 will be referred to such individual or entity.

66 (g) Solicits clients who may allege injury from a
67 prescription drug approved or cleared by, or which is the
68 subject of a monograph authorized by, the United States Food and
69 Drug Administration and fails to clearly and conspicuously
70 disclose the following warning: "Do not stop taking a prescribed
71 medication without first consulting with your doctor.
72 Discontinuing a prescribed medication without your doctor's
73 advice can result in injury or death."

74 (h) Solicits clients who may allege injury from a
75 prescription drug or medical device approved or cleared by, or
76 which is the subject of a monograph authorized by, the United
77 States Food and Drug Administration and fails to clearly and
78 conspicuously disclose that the drug or medical device remains
79 approved by the United States Food and Drug Administration,
80 unless the product is recalled or withdrawn.

81 (i) Fails to present any disclosure required by this
82 subsection such that:

83 1. A written disclosure is clearly legible and, if
84 televised or displayed electronically, is displayed for
85 sufficient time to enable the viewer to easily see and fully
86 read the disclosure.

87 2. A spoken disclosure is plainly audible and clearly

25-01037A-21

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88 intelligible.

89 Section 2. Effective October 1, 2021, section 877.025,
90 Florida Statutes, is created to read:

91 877.025 Solicitation of nonmedical services; wrongful use
92 or disclosure of protected health information.—

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

94 (a) "Person" has the same meaning as in s. 1.01(3).

95 (b) "Protected health information" has the same meaning as
96 provided in 45 C.F.R. s. 106.103.

97 (c) "Solicit" means to offer to provide professional
98 services by written, recorded, or electronic communication or by
99 in-person, telephone, or real-time electronic contact.

100 (2) A person may not use, cause to be used, obtain, sell,
101 transfer, or disclose to another person an individual's
102 protected health information, without that individual's written
103 authorization, to solicit professional services.

104 (3) (a) A person who violates subsection (2) commits a
105 deceptive and unfair trade practice subject to the penalties and
106 remedies provided in part II of chapter 501.

107 (b) A person who willfully and knowingly violates
108 subsection (2) commits a misdemeanor of the first degree,
109 punishable as provided in s. 775.082 or s. 775.083.

110 (c) A person who willfully and knowingly violates
111 subsection (2) with intent to sell, transfer, or use protected
112 health information for financial gain commits a felony of the
113 second degree, punishable as provided in s. 775.082, s. 775.083,
114 or s. 775.084, except that the term of imprisonment may not
115 exceed 10 years and the fine must be more than \$10,000 but may
116 not exceed \$250,000.

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117 (4) This section does not apply to the disclosure of
118 protected health information to an attorney, or the attorney's
119 use of such protected health information, in any judicial or
120 administrative proceeding or any other use or disclosure
121 otherwise authorized or required by law.

122 Section 3. Except as otherwise expressly provided in this
123 act, this act shall take effect July 1, 2021.



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: March 3, 2021

I respectfully request that **Senate Bill #1542**, relating to Electronic Dissemination of Commercial Recordings and Audiovisual Works, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Danny", is written over a horizontal line.

Senator Danny Burgess
Florida Senate, District 20

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/22/21

Meeting Date

1542

Bill Number (if applicable)

Topic Electronic Dissemination of Commercial Recordings and Audiovisual Works

Amendment Barcode (if applicable)

Name Will McKinley

Job Title President

Address 106 E. College Ave., Suite 1100

Phone (850) 681-1980

Street

Tallahassee, FL 32301

Email will@poolemckinley.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Motion Picture 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 hearing.

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

THE FLORIDA SENATE
APPEARANCE RECORD

3/22/2021

Meeting Date

SB 1542

Bill Number (if applicable)

Topic Electronic Dissemination of Commercial Recordings and Audiovisual Works

Amendment Barcode (if applicable)

Name Edgar Castro

Job Title Lobbyist

Address 9155 S. Dadeland Blvd

Street

Phone (305) 421-6304

Miami

FL

33156

City

State

Zip

Email castro@thesoutherngroup.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Recording Industry Association of America

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 Commerce and Tourism

BILL: SB 1542

INTRODUCER: Senator Burgess

SUBJECT: Electronic Dissemination of Commercial Recordings and Audiovisual Works

DATE: March 19, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Harmsen	McKay	CM	Favorable
2. _____	_____	JU	_____
3. _____	_____	RC	_____

I. Summary:

SB 1542 subjects websites that electronically transmit, make available, or offer a commercial recording or audiovisual work for distribution, *display or performance* to the Florida True Origin of Digital Goods Act. These websites will therefore be required to post their operator's or owner's contact information and will be subject to injunction for failure to do so.

The bill takes effect on July 1, 2021.

II. Present Situation:

Florida True Origin of Digital Goods Act

The True Origin of Digital Goods Act (Act)¹ requires the owners or operators of websites that electronically disseminate commercial recordings or audiovisual works to Florida consumers to clearly post their true and correct name(s), physical address, and telephone number or e-mail address on their website.

A website electronically disseminates a commercial recording or audiovisual work by initiating the transmission of, making available, or otherwise offering it for distribution through the internet or another digital network. Any website that electronically disseminates such works must therefore post the above specific contact information.

An owner, assignee, authorized agent, or licensee of a commercial recording or audiovisual work that appears on a website that lacks its owner's or operator's contact information may bring a private cause of action to obtain a declaratory judgment that the owner or operator's failure violates the Act. The owner, assignee, authorized agent, or licensee of the copyrighted work may

¹ Section 501.155, F.S.

also request an injunction to compel the website to comply with the Act. Prior to bringing a civil action, however, the aggrieved party must first make reasonable efforts to place the website's owner or operator on notice that they are violating the Act and that his or her failure to cure the violation within 14 days may result in the filing of a civil action.

Federal Copyright Law

The owner of original, copyrighted material has the exclusive rights to do and authorize any of the following:

- Reproduce the copyrighted work;
- Prepare derivative works based on the copyrighted work;
- Distribute copies of the copyrighted work to the public by sale, rental, lease, or lending;
- Publicly perform (or control the public performance of) the copyrighted work if it is a literary, musical, dramatic, choreographic, pantomime, motion picture, or other audiovisual copyrighted work;
- Publicly display (or control the public display of) the copyrighted work, if it is a literary, musical, dramatic, choreographic, pantomime, pictorial, graphic, or sculptural work—including individual images of a motion picture or audiovisual work; and
- Publicly perform sound recordings by means of a digital audio transmission.²

A display or performance is publicly available when it is (1) open or transmitted to the public or to any place where a substantial number of persons outside of a family and its friends are gathered, or (2) transmitted or communicated to the public through a device or process—whether or not the viewers view it in the same place or time.³

To display a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process. To perform a work means to recite, render, play, dance, or act it, either directly or by means of any device or process.⁴ Generally, the only distinction between a performance and a display of copyrighted material on the internet is that a performance occurs in a sequential, ongoing manner, while a display is static.⁵

Technological advances, such as faster internet connection and more powerful computer processors, have resulted the proliferation of streaming services, which in turn have made the public performance and display of copyrighted works over the internet more prevalent.⁶ Streaming copyrighted material over the internet has clearly been interpreted to constitute a

² 17 U.S.C. §§ 106-122, Copyrights. See also, U.S. Copyright Office, *Circular 1: Copyright Basics*, pp. 1-2 (Dec. 2019), <https://www.copyright.gov/circls/circ01.pdf> (last visited Mar. 19, 2021).

³ 17 U.S.C. § 101. See also, John Kennedy, Mary Rasenberger, Lorrane Ford, *Internet Law and Practice- Intellectual Property Issues: Copyright: Public Performance and Display*, §12:13 (Nov. 2020).

⁴ 17 U.S.C.A. § 101(4). See also, *Information Law- Digital Copyright and Cyberspace- Network and Internet Issues, Public Display and Performance*, ch. 4 § 4:82 (Dec. 2020).

⁵ *Id.*

⁶ U.S. Department of Commerce Internet Policy Task Force, *White Paper on Remixes, First Sale, and Statutory Damages: Copyright Policy, Creativity, and Innovation in the Digital Economy*, p. 43 (Jan. 2016), <https://www.uspto.gov/sites/default/files/documents/copyrightwhitepaper.pdf> (last visited Mar. 19, 2021). See also, Congressional Research Service, *Illegal Internet Streaming of Copyrighted Content: Legislation in the 112th Congress* (Aug. 29, 2011), <https://www.everycrsreport.com/reports/R41975.html#fn19> (last visited Mar. 19, 2021).

public performance by courts throughout the U.S., but if done with proper authorization to distribute or perform the material from the copyright holder, is permissible under copyright law.⁷

Federal Digital Millennium Copyright Act

The Digital Millennium Copyright Act (DMCA) updated federal copyright law to address the relationship between copyrighted material and the internet. To provide certainty regarding liability for copyright infringement while balancing the rights of copyright holders, the DMCA created the notice-and-takedown system.⁸ This system requires online service providers to expeditiously remove infringing content after receipt of notice from a copyright holder.⁹ As the internet, related consumer activity, and specifically third party posting of copyrighted content continues to grow, so have takedown notices.¹⁰ For example, Google received take down notices for approximately three million URLs in 2013, in 2018, it received notices identifying 882 million URLs to be taken down.¹¹

The DMCA also requires online service providers to designate an agent to receive copyright owners' notices, and provide the agent's contact information on their websites.

Protecting Lawful Streaming Act

The Consolidated Appropriations Act of 2021 created the Protecting Lawful Streaming Act (PLSA),¹² which increases the federal penalty for illegal streaming from a misdemeanor to a felony. Current law penalizes offering copyrighted material for download without specific license or authorization as a felony.

Specifically, the PLSA targets individuals who act (1) willfully, (2) for purposes of commercial advantage or private financial gain, and (3) offer or provide to the public a digital transmission service. Additionally, their digital transmission service must:¹³

- Be primarily designed or provided for the purpose of publicly performing copyright-protected works by digital transmission without the copyright owner's authority;
- Have no commercially-significant purpose or use other than to publicly perform copyright-protected work by an unauthorized digital transmission; or

⁷ See, e.g., *Warner Bros. Entertainment Inc. v. WTV Systems, Inc.*, 824 F. Supp.2d 1003, 1010-1011 (C.D. Cal. 2011). *A&M Records, Inc. v. Napster, Inc.*, 114 F. Supp.2d 896 (N.D. Cal. 2000), *aff'd in relevant part*, 239 F.3d 1004 (9th Cir. 2001).

⁸ 17 U.S.C. § 512 (2)(b)-(d). U.S. Copyright Office, *The Digital Millennium Copyright Act: Section 1202- Copyright Management Information Protection*, <https://www.copyright.gov/dmca/> (last visited Mar. 12, 2021). See also, U.S. Copyright Office, *Section 512 Report*, pp. 1, 8 (May 2020), available at <https://www.copyright.gov/policy/section512/section-512-full-report.pdf> (last visited Mar. 19, 2021).

⁹ U.S. Copyright Office, *Section 512 of Title 17: Resources on Online Service Provider Safe Harbors and Notice-and-Takedown System* (May 21, 2020), <https://www.copyright.gov/512/> (last visited Mar. 19, 2021). See also, 17 U.S.C. §§512(b)-(d).

¹⁰ See also, U.S. Copyright Office, *Section 512 Report*, pp. 10 (May 2020), available at <https://www.copyright.gov/policy/section512/section-512-full-report.pdf> (last visited Mar. 19, 2021).

¹¹ *Id.* at 31-32, citing Google, *How Google Fights Piracy* (2018), https://www.blog.google/documents/25/GO806_Google_FightsPiracy_eReader_final.pdf (last visited Mar. 19, 2021).

¹² 18 U.S.C. 2319C, "Illicit Digital Transmission Services."

¹³ See generally, Kevin Madigan, Copyright Alliance, *Protecting Lawful Streaming Act Signed Into Law: What you Need to Know* (Jan. 12, 2021), <https://copyrightalliance.org/protecting-lawful-streaming-act-signed/> (last visited Mar. 19, 2021).

- Be intentionally marketed by or at the direction of a person to promote its use in publicly performing copyright-protected works by means of an unauthorized digital transmission.

III. Effect of Proposed Changes:

Section 1 amends s. 501.155, F.S., to expand the definition of “electronic dissemination” to include transmitting, making available, or otherwise offering a commercial recording or audiovisual work for distribution, *display*, or *performance*. As a result, any website that electronically transmits, makes available, or offers a display or performance must post the website operator’s or owner’s contact information and is subject to injunction and other judgments under the Florida True Origin of Digital Goods Act.

The terms “display” and “performance” are not defined by Florida law.

Section 2 provides that the bill takes effect on July 1, 2021.

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:

For a court to exercise jurisdiction over a respondent, it must have subject matter jurisdiction and personal jurisdiction. State courts have general jurisdiction, and therefore a claim made under a state statute meets the subject matter jurisdiction requirement.¹⁴ Personal jurisdiction is a constitutional requirement that a respondent have minimum contacts with the state in which the court sits so that the court may exercise power over the respondent.¹⁵ A non-resident respondent may have sufficient contacts with Florida if he or she commits acts expressly enumerated in Florida’s long-arm statute.¹⁶ Alternately, the non-resident respondent may be subject to a Florida court’s personal jurisdiction because he or she has minimum contacts with the state that are otherwise unrelated to

¹⁴ *Caiazzo v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).

¹⁵ *Id.*

¹⁶ *Id.*; § 48.193, F.S.

matter that brings him or her into court.¹⁷ Examples of sufficient minimum contacts include frequent business travel to the state, owning a company with a Florida office branch, or subjecting oneself to the court's jurisdiction by presenting oneself in the Florida court.¹⁸ These jurisdictional requirements ensure that a respondent has sufficient notice and due process afforded to him or her under the U.S. Constitution before his or her rights are subjected to the court.¹⁹

Whether a non-resident internet company that electronically disseminates commercial recordings or audiovisual works into Florida has sufficient minimum contacts with the state is a fact-specific question that would likely need to be addressed on a case-by-case basis by a court.²⁰

Content-neutral regulations are legitimate if they advance important governmental interests that are not related to suppression of free speech, and do not substantially burden more speech than necessary to further those interests.²¹ However, a law may be determined to be overbroad if a "substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep."²²

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Parties involved in the litigation provided for under the Act will incur costs related to bringing or defending the action.

C. Government Sector Impact:

Florida courts may see an increase in case filings under this law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear whether Florida could assert jurisdiction over foreign websites should an aggrieved party attempt to enforce the disclosure requirements of this bill against a website owner or

¹⁷ *Caiazza v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).

¹⁸ *Id.*

¹⁹ *Id.* at 250-251.

²⁰ See *Caiazza v. American Royal Arts Corp.*, 73 So. 3d 245, (Fla. 4th DCA 2011); *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).

²¹ *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180,189 (U.S. 1997).

²² *U.S. v. Stevens*, 559 U.S. 460 (2010), quoting, *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449, n. 6, (2008).

operator located outside of Florida. It can be assumed that website owners or operators located outside of Florida are not expected to respond to lawsuits or submit willingly to jurisdiction in Florida courts. As such, any proceedings against owners or operators of websites located outside of Florida would be expected to end in default judgments.

Following a default or other declaratory judgment, the aggrieved party could proceed with third party injunctions to discourage Internet service providers, hosting services, payment services, or other Internet website services from working with websites that fail to disclose their personal information required by this bill. For example, ISP Terms of Service Agreements frequently forbid the user website from engaging in illegal activity.

Due to the broad definitions of the terms “commercial recording or audiovisual work,” “electronic dissemination,” “performance,” and “display,” with each word connoting the broadest sense of its meaning, a broad net appears to be cast. As a result, many, if not all, private individuals having a website may be required to disclose their true and correct name, physical address, and telephone number or e-mail address. For example, under these definitions, a teenager who creates her own website for the purpose of posting self-produced recordings or audiovisual works would be required to provide the identifying information. Moreover, the true target for the injunction and further consequences apparently are those websites that do not provide the identifying information.

An individual may be able to display or perform a commercial recording or audiovisual work for distribution to a sufficiently narrow group so that the act does not constitute a “public” display or performance under federal copyright law. However, this bill does not discern between a public or private display or performance.

VIII. Statutes Affected:

This bill substantially amends section 501.155 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Burgess

20-00971-21

20211542__

A bill to be entitled

An act relating to electronic dissemination of commercial recordings and audiovisual works; amending s. 501.155, F.S.; revising the definition of the term "electronic dissemination"; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 501.155, Florida Statutes, is amended to read:

501.155 Electronic dissemination of commercial recordings or audiovisual works; required disclosures; injunctive relief.—

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

(b) "Electronic dissemination" means initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution, display, or performance through the Internet or other digital network, regardless of whether another person has previously electronically disseminated the same commercial recording or audiovisual work.

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

CourtSmart Tag Report

Room: SB 110

Case No.:

Type:

Caption: Senate Commerce Committee **Judge:**

Started: 3/22/2021 3:33:08 PM

Ends: 3/22/2021 5:35:16 PM

Length: 02:02:09

3:33:06 PM Meeting called to order
3:33:19 PM Roll call
3:33:27 PM Quorum is present
3:33:38 PM Comments of Chair
3:34:10 PM Tab 5, CS/SB 266 by Sen. Perry
3:35:15 PM Sen. Garcia, question
3:36:10 PM Response of sponsor
3:36:14 PM Late-filed amendment 203018
3:36:29 PM Sen. Powell objected to introduction of Late-filed amendment 203018
3:36:50 PM Chair Hooper requested a roll call vote on the intro to late-filed amendment
3:37:29 PM 2/3 Majority is required, vote fails
3:38:15 PM Late-filed Amendment 203018 not introduced
3:38:47 PM Speaker, Tim Nungesser, NFIB, for the bill
3:39:56 PM Speaker, Christian Camara, Institute for Justice for the bill
3:41:09 PM Deigo Echeverri, Americans For Prosperity, waive in support
3:41:35 PM Bill Mattox, James Madison Institute, waive in support
3:41:39 PM Jess McCarty, Miami Dade County, waive Against
3:42:12 PM Sen. Powell in debate
3:42:38 PM Sen. Pizzo in debate
3:44:18 PM Chair Hooper comments on bill
3:44:55 PM Sen. Perry close on bill
3:48:16 PM Roll call on CS/SB 266
3:48:42 PM CS/SB 266 passes favorably
3:48:54 PM Tab 1, Confirmation: Dane Eagle, Ex Director for Department of Economic Opportunity
3:49:20 PM Swearing in of Dane Eagle
3:49:35 PM Mr. Eagle addresses committee
3:52:46 PM Sen. Torres question to Mr. Eagle
3:52:57 PM Response of Mr. Eagle
3:53:44 PM Follow up question of Sen. Torres
3:53:54 PM Mr. Eagle response
3:54:56 PM Sen. Pizzo wishes to address John Schrader
3:55:29 PM Mr. Schrader approaches the podium
3:55:57 PM Chair also thanks Mr. Schrader for his continued hard work
3:56:09 PM Sen. Pizzo question to Mr. Eagle
3:57:32 PM Response of Mr. Eagle
3:58:37 PM Closing remarks of Mr. Eagle
3:59:12 PM Motion to recommend confirmation by Sen. Pizzo
3:59:29 PM Roll call
3:59:35 PM Mr. Dane Eagle is confirmed by committee
3:59:54 PM Tab 2, SB 1734 by Sen. Bradley
4:00:27 PM Amendment 482404 by Sen. Bradley
4:05:07 PM Amendment to the amendment 122682 by Sen. Taddeo
4:06:10 PM Sen. Powell, question to Sen. Taddeo
4:06:23 PM Response of Sen Taddeo
4:07:41 PM Speaker, William Large, FL Justice Reform Institute, for amendment
4:09:17 PM Jake Farmer, Florida Retail Federation, waive in support
4:09:35 PM Tim Nungesser, NFIB, waive in support
4:09:41 PM Brewer Bevis, Associated Industries, waive in support
4:09:49 PM Carolyn Johnson, FL Chamber of Commerce, waive in support
4:10:25 PM Sen Bradley speaking re amendment to amendment
4:11:17 PM Sen. Taddeo close on amendment to amendment
4:12:21 PM Amendment (122682) to amendment is not adopted

4:12:32 PM Amendment to Amendment 589178 by Sen. Taddeo
4:13:17 PM Brewster Bevis, waive in support
4:13:26 PM Tim Nungesser, waive in support
4:13:36 PM William Large, speaking for the amendment to amendment
4:16:15 PM Jake Farmer, waive in support
4:16:26 PM Carolyn Johnson, waive in support
4:16:44 PM Sen. Bradley on the amendment to amendment
4:17:12 PM Amendment to amendment, Sen. Taddeo to close
4:19:23 PM Amendment (589178) to amendment is not adopted
4:19:38 PM Back on main amendment 482404
4:19:48 PM Sen. Powell question
4:20:11 PM Sen. Bradley responds
4:22:40 PM Sen. Powell follow up
4:22:50 PM Sen. Bradley in response
4:24:06 PM Sen. Hutson, question to sponsor Bradley
4:24:42 PM Response of sponsor
4:25:33 PM William Large, speaking against the main amendment
4:27:06 PM Sen. Bradley to close on amendment
4:27:23 PM Amendment (482404) adopted
4:27:56 PM William Large, speaking against the bill
4:28:06 PM Speaker Jake Farmer, against the bill
4:29:03 PM Speaker, Anthony Dimarco, FL Bankers Association against the bill
4:31:38 PM Speaker, Brewster Bevis, FL Associated Industries against the bill
4:34:57 PM John Rothell, FL Credit Union Association, waive against bill
4:35:20 PM Michael Carlson, Personal Insurance Federation of FL, waive against bill
4:35:42 PM Sen. Taddeo comments on bill
4:38:28 PM Sen. Torres in debate
4:39:51 PM Sen. Bradley to close on bill
4:43:58 PM Roll call on SB 1734
4:44:10 PM SB 1734 passes as CS favorably
4:44:29 PM Tab 3, SPB 7064 presented by Sen. Bradley
4:45:59 PM Vice Chair Wright makes motion for SPB 7064 to be reported as a committee bill
4:46:08 PM Roll call
4:46:14 PM SPB 7064 is reported favorably
4:46:34 PM Tab 4, SB 1312 by Sen. Bradley
4:47:50 PM Amendment 587156 by Sen. Bradley
4:48:22 PM Gene McGee, Seaworld Parks and Entertainment, waive in support
4:48:42 PM Sponsor waive close on amendment
4:48:50 PM Amendment adopted
4:48:56 PM Back on the bill as amended
4:49:03 PM Gene McGee, Seaworld Parks & Entertainment, waive in support of bill
4:49:10 PM Liam McClay, Santa Fe College, waive in support of bill
4:49:12 PM Megan Fay, Brevard Zoo, waive in support of bill
4:49:13 PM
4:49:40 PM Sen. Bradley close on bill
4:49:49 PM
4:50:00 PM Roll call
4:50:08 PM SB 1312 passes favorably as a CS
4:50:16 PM Tab 9, SB 1992 by Sen. Harrell
4:53:27 PM William Large, FL Justice Reform Institute, speaking for the bill
4:53:49 PM Speaker, Jared Willis, Alliance for Patient Access, for the bill
4:54:08 PM Steve Winn, Florida Osteopathic Medical Association, waive in support of bill
4:54:21 PM George Feijoo, U.S. Chamber of Commerce, waive in support of bill
4:54:28 PM Marnie George, FL Chapter American College of Cardiology, waive in support
4:54:37 PM Toni Large, FL Society of Rheumatology, waive in support
4:54:45 PM Michael Carlson, Personal Insurance Fed. of FL, Inc., waive in support
4:54:53 PM Carolyn Johnson, FL Chamber of Commerce, waive in support
4:55:07 PM Sen. Wright in debate
4:55:35 PM Sen. Harrell close on bill
4:56:02 PM Roll call
4:56:07 PM SB 1992 passes favorably
4:56:34 PM Chair Hooper turned chair over to Vice Chair Wright

4:56:56 PM	Tab 7, SB 1294 by Sen. Brodeur
4:58:07 PM	Sen. Garcia question of sponsor
4:58:21 PM	Response of sponsor
4:59:03 PM	Sen. Garcia follow up
4:59:14 PM	Response of sponsor
4:59:23 PM	Sen. Torres in questions
4:59:40 PM	Response of sponsor
5:00:40 PM	Follow up
5:00:42 PM	Reponse of sponsor
5:01:22 PM	Sen. Torres in questions
5:01:35 PM	Response of sponsor
5:02:07 PM	Sen. Powell question
5:02:46 PM	Response of sponsor
5:03:14 PM	Follow up
5:03:44 PM	Sponsor response
5:04:44 PM	Sen. Powell in questions
5:05:16 PM	Response of sponsor
5:06:07 PM	Sen. Taddeo question
5:06:28 PM	Response of sponsor
5:07:00 PM	Follow up
5:07:23 PM	Response of sponsor
5:08:24 PM	Speaker, Christian Camara, Institute for Justice, for the bill
5:10:06 PM	Sen. Powell, question to speaker
5:11:07 PM	Response of Mr. Camara
5:12:02 PM	Diego Echeverri, Americans For Prosperity, waive in support
5:12:08 PM	Bill Mattox, James Madison Institute, waive in support
5:12:12 PM	Tim Nungesser, NFIB, waive in support
5:12:32 PM	Sen. Torres comment
5:13:31 PM	Sen. Powell comments
5:14:22 PM	Sen. Pizzo comments
5:15:18 PM	Sen. Brodeur close on bill
5:17:15 PM	Roll call
5:17:26 PM	SB 1294 passes favorably
5:17:44 PM	Vice Chair Wright turns chair back over the Chair Hooper
5:18:02 PM	Tab 8, SB 1374 by Sen. Farmer
5:18:16 PM	Sen Farmer explains bill
5:19:40 PM	Sen. Farmer to close on bill
5:19:48 PM	Roll call
5:19:52 PM	SB 1374 passes favorably
5:20:16 PM	Tab 6, SB 1140 by Sen. Rodrigues
5:22:25 PM	Speaker Ritchie Engelhardt, Ancestry.com, for the bill
5:24:27 PM	Sen. Torres question to speaker
5:24:47 PM	Response of speaker
5:25:47 PM	Sen. Rodrigues close on bill
5:26:02 PM	Roll call
5:26:23 PM	SB 1140 passes favorably
5:26:33 PM	Tab 10, SB 1542 by Sen. Burgess
5:27:43 PM	Sen. Taddeo question to sponsor
5:29:03 PM	Questions and follow ups
5:30:36 PM	Sen. Garcia question/comment
5:31:09 PM	Sen. Powell question/comment
5:32:02 PM	Sponsor response
5:32:30 PM	Sen. Garcia also responds
5:32:46 PM	Edgar Castro, Recording Industry Association of America, waives in support
5:32:55 PM	Will McKinley, Motion Picture Association, waives in support
5:33:11 PM	Sen. Burgess closes on bill
5:33:29 PM	Roll call
5:33:42 PM	SB 1542 passes favorably
5:33:55 PM	Sen. Pizzo offers motion to vote after Yea on bills missed: Tabs 3, 4, and 9; Vote After Nay on Tab: 2
5:34:52 PM	Sen. Diaz offers motion to Vote After Yea on bills missed: Tabs 1 and 5
5:34:54 PM	Sen Torres moves adjournment
5:35:03 PM	Meeting adjourned