

Tab 1	CS/SB 562 by BI, Stargel (CO-INTRODUCERS) Gaetz; (Similar to H 0713) Consumer Debt Collection					
428910	A	S	CM, Hutson	Delete L.19 - 36:		01/29 04:00 PM
860884	AA	S	CM, Latvala	After L.40:		02/01 01:57 PM
127862	A	S L	CM, Ring	Delete L.22 - 36:		02/01 02:39 PM

Tab 2	CS/SB 846 by EP, Abruzzo; (Similar to CS/H 0681) Divers-down Warning Devices					
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Tab 3	CS/SB 960 by TR, Bradley; (Similar to H 1087) Protection of Motor Vehicle Dealers' Consumer Data					
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Tab 4	SB 1236 by Garcia; (Similar to H 0721) Small Business Saturday Sales Tax Holiday					
821662	A	S	CM, Hutson	Delete L.33:		01/29 04:00 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Detert, Chair
Senator Thompson, Vice Chair

MEETING DATE: Monday, February 1, 2016
TIME: 4:00—6:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Detert, Chair; Senator Thompson, Vice Chair; Senators Bean, Hutson, Latvala, Richter, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 562 Banking and Insurance / Stargel (Similar H 713)	Consumer Debt Collection; Providing that a person attempting to collect a debt is not liable for a violation of prohibited communication practices if the debtor or the debtor's attorney fails to provide certain notice or information; requiring specified information to be included in the written notice; authorizing a debtor's attorney to provide written notice to an original creditor under certain circumstances, etc.	BI 01/19/2016 Fav/CS CM 02/01/2016 FP
2	CS/SB 846 Environmental Preservation and Conservation / Abruzzo (Similar CS/H 681)	Divers-down Warning Devices; Revising the definitions of the terms "divers-down buoy," "divers-down flag," and "divers-down symbol"; expanding the types of indicators or devices allowed to be used to signal the presence of submerged divers; specifying requirements for divers-down warning devices, etc.	EP 01/20/2016 Fav/CS CM 02/01/2016 RC
3	CS/SB 960 Transportation / Bradley (Similar H 1087)	Protection of Motor Vehicle Dealers' Consumer Data; Requiring that a licensee or a third party comply with certain restrictions on reuse or disclosure of consumer data received from a motor vehicle dealer; requiring that upon request of a motor vehicle dealer a licensee provide a list of the consumer data obtained and all persons to whom any of the data has been disclosed, subject to certain requirements; requiring the licensee to indemnify the motor vehicle dealer for certain claims or damages, etc.	TR 01/20/2016 Fav/CS CM 02/01/2016 RC

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, February 1, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1236 Garcia (Similar H 721)	Small Business Saturday Sales Tax Holiday; Providing that the tax levied under ch. 212, F.S., is not required to be collected on the sale of items or articles of certain tangible personal property by certain small businesses during a specified period, etc.	
		CM 02/01/2016 FT AP	

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 562

INTRODUCER: Banking and Insurance Committee and Senators Stargel and Gaetz

SUBJECT: Consumer Debt Collection

DATE: January 29, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 562 amends a provision of the Florida Consumer Collection Practices Act (FCCPA), which regulates consumer collection practices in order to protect consumers from deceptive, unfair, or abusive collection practices. The FCCPA prohibits a person collecting a consumer debt from communicating with a debtor if the person knows that a debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address. However, current law contains three exceptions to this prohibition, thus allowing the communication under the following circumstances: 1) the debtor's attorney fails to respond within 30 days to a communication from the person; 2) the debtor's attorney consents to a direct communication with the debtor; or 3) the debtor initiates the communication.

The bill provides that an original creditor collecting a debt is not liable for communicating with a debtor, who is known to be represented by an attorney, if the debtor's attorney fails to provide the original creditor with notice of representation by either a written notice sent by certified mail or by virtue of pleadings and other filings in a filed action. The bill also states that the written notice must be sent to the address designated on the billing statements from the original creditor or to the registered agent of the original creditor, and the notice must state the debtor is represented by an attorney with respect to such debt and disclose the attorney's name and address.

II. Present Situation:

Federal and state debt collection laws provide consumer protection against deceptive, unfair, or abusive collection practices that may occur before the debtor is sued, as well as during the litigation process.

Consumer debt covers personal debt such as mortgages, credit cards, medical debts, and other debts mainly for individual, family, or household purposes. Depending on the terms of the loan, a grace period may be provided before a debt becomes delinquent. Generally, most credit issuers will attempt to collect on a delinquent debt between 120-180 days after delinquency, before it is deemed uncollectible and is “charged off” corporate accounts. Typically, the charged-off debt is then either assigned or sold to a third-party collection agency or collection law firm, which use a variety of collection methods and judgment remedies to recover the asset, subject to applicable statutes of limitations. These remedies enable creditors to minimize losses due to nonpayment by borrowers, and help ensure the availability and affordability of consumer credit.

Between 2001 and 2013, on average, 10.1 percent of outstanding credit card debt was reported as being more than 90 days delinquent. In contrast, for the same period, 8.0 percent of student loans and 3.8 percent of mortgage loans were reported as being more than 90 days delinquent.¹ In 2013, the proportion of American consumers with at least one account in third-party collections stood at 14 percent and the total amount collected from them by third-party debt collectors was approximately \$55 billion.²

In 2014, the federal Consumer Financial Protection Bureau processed over 88,300 debt collection complaints, positioning debt collection as the leading source of consumer complaints.³ Approximately 2 percent of these complaints related to a consumer being contacted directly, instead of the debt collector contacting their attorney.⁴

Federal Fair Debt Collection Practices Act

The Federal Trade Commission (FTC)⁵ and the Consumer Financial Protection Bureau⁶ are the primary federal enforcement agencies of the Fair Debt Collection Practices Act (FDCPA).⁷ The intent of the FDCPA is to protect consumers from harmful debt collection practices and to protect ethical collectors from an unfair competitive disadvantage. The FDCPA establishes standards of conduct for the collection industry by prohibiting abusive, deceptive, and unfair debt collection practices. The FDCPA applies to third-party debt collectors, which includes contingency agencies, collection law firms, and debt buyers. A violation of the FDCPA carries a penalty of up to \$1,000 per violation.⁸

¹ Viktor Fedaseyev, WORKING PAPER NO. 15-23, DEBT COLLECTION AGENCIES AND THE SUPPLY OF CONSUMER CREDIT (Federal Reserve Bank of Philadelphia 2014).

² Viktor Fedaseyev and Robert Hunt, WORKING PAPER NO. 15-43 THE ECONOMICS OF DEBT COLLECTION: ENFORCEMENT OF CONSUMER CREDIT CONTRACTS, (Federal Reserve Bank of Philadelphia 2015).

³ Consumer Financial Protection Bureau, *Fair Debt Collection Practices Act, Annual Report 2014* (March 2015).

⁴ *Id.*

⁵ 15 U.S.C. s. 41, *et seq.*

⁶ 12 U.S.C. s. 5481, *et seq.*

⁷ 15 U.S.C. s. 1692, *et seq.*

⁸ 15 U.S.C. s. 1692, *et seq.*

Florida Consumer Collection Practices Act

In Florida, consumer debt collection practices are regulated by the FDCPA and the Florida Consumer Collection Practices Act (FCCPA).⁹ The FCCPA gives regulatory oversight authority to the Office of Financial Regulation (OFR). Further, the act authorizes the Attorney General to initiate enforcement actions against out-of-state consumer debt collectors that violate the FCCPA.¹⁰ Both acts provide private civil remedies to debtors for violations; if successful, the debtor may recover actual and statutory damages and reasonable attorney's fees and costs.¹¹ If the court finds that the suit fails to raise justiciable issue of law or fact, the debtor is liable for court costs and reasonable attorney's fees incurred by the defendant.¹²

The FCCPA prohibits many of the same debt collection practices prohibited by the FDCPA. However, the FCCPA was created to provide requirements and regulations in addition to the federal law in order to be more protective of consumers and debtors.¹³ For instance, the FDCPA excludes original creditors from its provisions while the FCCPA has been construed to apply to both debt collectors and original creditors.¹⁴ The FCCPA provides greater protection than the FDCPA because it forbids *any person*, rather than only debt collectors, from practicing certain consumer debt collection practices.¹⁵

Communication with Debtor Represented by Counsel

Both the federal and state laws generally prohibit a debt collector from communicating with a debtor when the debt collector knows the debtor is represented by an attorney.¹⁶ However, the FCCPA prohibits *any person* collecting consumer debts from communicating with a debtor if:

the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the debtor's attorney fails to respond within 30 days to a communication from the person, unless the debtor's attorney consents to a direct communication with the debtor, or unless the debtor initiates the communication.¹⁷

Therefore, Florida law currently prohibits any person from knowingly communicating with a debtor who is represented by an attorney, unless: 1) the debtor's attorney fails to respond within

⁹ Part VI of ch. 559, F.S.

¹⁰ Section 559.565, F.S.

¹¹ Section 559.77(1), F.S., provides that any person who fails to comply with any provision of this section is liable for actual damages and additional statutory damages as the court may allow, but not exceeding \$1,000, together with court costs and reasonable attorney fees incurred by the plaintiff. In determining the defendant's liability for additional statutory damages, the court must consider the nature of the defendant's noncompliance, the frequency and persistence of the noncompliance, and the extent to which the noncompliance was intentional. Section 559.77(1), F.S., also addresses class action lawsuits.

¹² 15 U.S.C. s. 1692j and s. 559.77, F.S., respectively. Section 559.77(3), F.S., provides that a person is not liable in any action under this section if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid such errors.

¹³ Section 559.552, F.S.

¹⁴ *Craig v. Park Fin. of Broward County, Inc.*, 390 F. Supp 2d 1150, 1154 (M.D. Fla. 2005).

¹⁵ Section 559.72, F.S.

¹⁶ 15 U.S.C. 1692c and s. 559.72(18), F.S.

¹⁷ Section 559.72(18), F.S.

30 days to a communication from the person; 2) the debtor's attorney consents to a direct communication with the debtor; or 3) the debtor initiates the communication.

III. Effect of Proposed Changes:

Section 1 amends s. 559.72(18), F.S., to provide that an original creditor collecting a debt is not liable for communicating with a debtor, who is known to be represented by an attorney, if the debtor's attorney fails to provide the original creditor with notice of representation by either a written notice sent by certified mail or by virtue of pleadings and other filings in a filed action. The bill also states that the written notice must be sent to the address designated on the billing statements from the original creditor or to the registered agent of the original creditor, and the notice must state the debtor is represented by an attorney with respect to such debt and disclose the attorney's name and address.

Section 2 provides the act is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Debtors may incur additional costs associated with the requirement to use certified mail to provide the notice of attorney representation. Original creditors may benefit by having notice of attorney representation delivered by certified mail, which will ensure the notice is received at the proper address; thus, they will be less likely to violate the statute and incur associated fines.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The term “original creditor” is not defined in part VI of ch. 559.72, F.S. The terms “creditor” and “debt collector” are defined.¹⁸

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 559.72 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 Banking and Insurance on January 19, 2016:

The CS provides the following changes;

- Reinstates current law, which provides a prohibition on contacting a debtor when the person collecting the debt knows that the debtor is represented by an attorney with respect to the debt and, though lacking actual knowledge of the name and address of the debtor’s attorney, the person is otherwise able to “*readily ascertain*” the name and address of the debtor’s attorney.
- Provides that the prohibition against an original creditor contacting the debtor would also not apply if the debtor’s attorney fails to provide notice of representation by certified mail at the address designated on the billing statement by the original creditor or to the registered agent of the original creditor. A debtor’s attorney may also provide notice of representation to an original creditor by virtue of pleadings and other filings in a filed action.
- Eliminates the provision allowing the Office of Financial Regulation to adopt rules for notice of representation and receipt of response.

- B. **Amendments:**

None.

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

¹⁸ A “debt collector” is generally defined as any person who uses any instrumentality of interstate commerce in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. A “creditor” is defined as “any person who offers or extends credit creating a debt or to whom a debt is owed,” but excludes persons that receives debt, through assignment or transfer, for the purpose of collecting the debt on behalf of another. *See* ss. 559.55(7) and 559.55(5), F.S.



428910

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 19 - 36

and insert:

(18) Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the debtor's attorney fails to respond within 30 days to a communication from the person, ~~unless~~ the debtor's attorney consents to a direct communication with the



428910

11 debtor, or ~~unless~~ the debtor initiates the communication. A
12 debtor, individually, may notify such person of attorney
13 representation by way of any reasonable means, including verbal
14 notice.

15 (a) An original creditor is not liable for a violation of
16 this subsection if the debtor or debtor's attorney fails to
17 provide notification of representation. With respect to
18 notification of representation by a debtor's attorney, an
19 original creditor has knowledge that a debtor is represented by
20 an attorney if the attorney representing the debtor has provided
21 notification of such representation by:

22 1. Service of pleadings in a filed action;
23 2. Providing written notice of representation by certified
24 mail to the registered agent of the original creditor which
25 states that the debtor is represented by an attorney with
26 respect to such debt and which discloses the attorney's name and
27 address; or

28 3. Providing notice of representation by mail, facsimile,
29 e-mail, or other electronic format designated by the creditor on
30 a billing statement which states that the debtor is represented
31 by an attorney with respect to such debt and which discloses the
32 attorney's name and address. The original creditor shall
33 designate at least one of the following communication methods on
34 a billing statement: a mailing address facsimile, e-mail, or
35 other electronic format.

36 (b) For purposes of this subsection, an original creditor
37 must cease direct communication with the debtor subject to the
38 limitations and exceptions of this subsection within 5 business
39 days upon receiving notice of representation from the attorney



428910

40 representing the debtor.

41

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

43 And the title is amended as follows:

44 Delete lines 3 - 10

45 and insert:

46 s. 559.72, F.S.; authorizing a debtor to individually
47 notify a person that is represented by an attorney
48 under certain circumstances; providing that an
49 original creditor is not liable for a violation of
50 prohibited communication practices if the debtor or
51 the debtor's attorney fails to provide certain notice
52 or information; providing notification requirements;
53 providing that an original creditor must cease direct
54 communication with the debtor under certain
55 circumstances; providing an



860884

LEGISLATIVE ACTION

Senate

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House

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

1 **Senate Amendment to Amendment (428910) (with title**
2 **amendment)**

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4 After line 40
5 insert:

6 (20) Use any false representation or deceptive or unfair
7 means to collect or attempt to collect any debt or to obtain
8 information concerning a consumer.

9
10 ===== T I T L E A M E N D M E N T =====



860884

11 And the title is amended as follows:
12 Delete line 55
13 and insert:
14 circumstances; prohibiting a person from using false
15 representation or deceptive or unfair means to collect
16 debts or information; providing an



127862

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with directory and title amendments)

Delete lines 22 - 36

and insert:

such attorney's name and address. A debtor, individually, may notify such person of attorney representation by way of any reasonable means, including verbal notice.

(a) This subsection does not apply if: ~~unless~~

1. The debtor's attorney fails to respond within 30 days to a communication from the person; ~~unless~~



127862

11 2. The debtor's attorney consents to a direct communication
12 with the debtor;⁷ or

13 3. ~~unless~~ The debtor initiates the communication.

14 (b) For purposes of this subsection, if notice of attorney
15 representation is provided by a debtor's attorney, a creditor
16 has knowledge that a debtor is represented by an attorney if the
17 attorney representing the debtor has provided notice of such
18 representation by:

19 1. Service of pleadings or other papers, such as a Notice
20 of Appearance in a filed action;

21 2. Providing written notice of representation by mail to
22 the registered agent of the creditor which states that the
23 debtor is represented by an attorney with respect to such debt
24 and which discloses the attorney's name and address; or

25 3. Providing notice of representation by mail, facsimile,
26 e-mail, or other electronic format designated by the creditor on
27 a billing statement or other written correspondence stating that
28 the debtor is represented by an attorney with respect to such
29 debt and stating the attorney's name and address. The creditor
30 must designate a mailing address on the billing statement or
31 other written correspondence for receipt of notice of attorney
32 representation. The creditor may designate a facsimile number, a
33 regularly monitored e-mail address, or other electronic means
34 for receipt of notice of attorney representation.

35 (20) Use any false representation or deceptive or unfair
36 means to collect or attempt to collect any debt or to obtain
37 information concerning a consumer.

38
39 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====



127862

40 And the directory clause is amended as follows:

41 Delete line 16

42 and insert:

43 Statutes, is amended, and subsection (20) is added to that
44 section, to read:

45

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

47 And the title is amended as follows:

48 Delete lines 3 - 10

49 and insert:

50 s. 559.72, F.S.; authorizing a debtor to individually
51 notify a person that the debtor is represented by an
52 attorney under certain circumstances; providing
53 exceptions to prohibited communications practices if
54 the debtor or the debtor's attorney fails to provide
55 certain notice or information; providing notification
56 requirements; prohibiting a creditor from using false
57 representation or deceptive or unfair means to collect
58 debts or information; providing an

By the Committee on Banking and Insurance; and Senators Stargel
and Gaetz

597-02312-16

2016562c1

1 A bill to be entitled
2 An act relating to consumer debt collection; amending
3 s. 559.72, F.S.; providing that a person attempting to
4 collect a debt is not liable for a violation of
5 prohibited communication practices if the debtor or
6 the debtor's attorney fails to provide certain notice
7 or information; requiring specified information to be
8 included in the written notice; authorizing a debtor's
9 attorney to provide written notice to an original
10 creditor under certain circumstances; providing an
11 effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Subsection (18) of section 559.72, Florida
16 Statutes, is amended to read:
17 559.72 Prohibited practices generally.—In collecting
18 consumer debts, no person shall:
19 (18) Communicate with a debtor if the person has knowledge
20 ~~knows~~ that the debtor is represented by an attorney with respect
21 to such debt and has knowledge of, or can readily ascertain,
22 such attorney's name and address, unless the debtor's attorney
23 fails to respond within 30 days to a communication from the
24 person, ~~unless~~ the debtor's attorney consents to a direct
25 communication with the debtor, or ~~unless~~ the debtor initiates
26 the communication. Furthermore, an original creditor is not
27 liable for a violation of this subsection if the debtor's
28 attorney fails to provide written notice of representation by
29 certified mail to the address designated on the billing
30 statements from the original creditor or to the registered agent
31 of the original creditor. Such written notice of representation

Page 1 of 2

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

597-02312-16

2016562c1

32 must state that the debtor is represented by an attorney with
33 respect to such debt and disclose the attorney's name and
34 address. A debtor's attorney may also provide notice of
35 representation to an original creditor by virtue of pleadings
36 and other filings in a filed action.

37 Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic
Security
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL

15th District

January 21, 2016

The Honorable Nancy Detert
Senate Commerce and Tourism Committee, Chair
416 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Detert:

I respectfully request that SB 562, related to *Consumer Debt Collection*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: Todd McKay/ Staff Director
Patty Blackburn/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 846

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Abruzzo

SUBJECT: Divers-down Warning Devices

DATE: January 29, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	Fav/CS
2.	Askey	McKay	CM	Pre-meeting
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 846 revises the requirements relating to divers-down flags and buoys. The bill defines the term “divers-down warning device” and revises the specification requirements for “divers-down flags” to expand the types of devices that divers must use to alert vessels that submerged divers are in the area.

II. Present Situation:

Diving in Florida

Florida’s coastlines, coral reefs, and springs provide a variety of dive sites and attract numerous visitors to the state each year. The waters of the state provide countless diving opportunities including shore-entry diving, wreck diving, cave diving, manatee sighting, and treasure hunting.¹ Section 327.331(1)(a), F.S., defines a “diver” as “any person who is wholly or partially submerged in the waters of the state and is equipped with a facemask and snorkel or underwater breathing apparatus.” To protect divers from collisions with boaters, all divers are required to prominently display a divers-down flag or buoy in the area in which diving occurs, other than when diving in an area customarily used for swimming only.²

¹ See generally, Visit Florida website, *Florida’s Best Diving Spots*, (Dec. 2004), available at: <http://www.visitflorida.com/en-us/articles/2004/december/42-floridas-best-diving-spots.html> (last visited January 28, 2016).

² Section 327.331(2), F.S.

Boating Accidents Involving Divers

According to the Fish and Wildlife Conservation Commission (FWC), from 2010 to 2014 there were 18 boating accidents reported to the FWC resulting in personal injuries or death involving divers or snorkelers in areas where a dive flag or buoy would be required. Of those there were:

- 6 accidents involving the diver being struck by another vessel and the dive flag was properly displayed. These accidents resulted in 7 injuries.
- 3 accidents involving the diver being struck by another vessel but a dive flag was not displayed, or not properly displayed. These accidents resulted in 1 fatality and 3 injuries.
- 9 accidents involved the diver being injured by their own vessel, either during boarding or the operator controlling the engine around them. These accidents resulted in 9 injuries.³

Florida's Diver Law

To protect divers from vessels when they are diving, s. 327.331, F.S., regulates the types of warning devices that may be used and how and when they must be displayed. A divers-down flag must meet all of the following specifications:

- The flag must be square or rectangular. If rectangular, the length must not be less than the height, or more than 25 percent longer than the height.⁴
- The flag must have a wire or other stiffener to hold it fully unfurled and extended in the absence of a wind or breeze.⁵
- The flag must consist of a divers-down symbol⁶ on each side with a white diagonal stripe that begins at the top staff-side of the flag and extends diagonally to the lower opposite corner.⁷
- The minimum size for a divers-down flag that is displayed from a vessel or structure is 20 inches by 24 inches.⁸
- The minimum size for a divers-down flag that is displayed on a buoy or float towed by the diver is 12 inches by 12 inches.⁹



Figure 1

In 2014, s. 327.331, F.S., was amended to authorize divers to use divers-down buoys.¹⁰ The term “divers-down buoy” is defined as “a buoyant device, other than a vessel, which displays a divers-down symbol of at least 12 inches by 12 inches on three or four flat sides.”¹¹

A diver may display a divers-down flag from a vessel or from a buoy.¹² If the divers-down flag is displayed from a vessel it must be displayed from the highest point of the vessel or such other location that provides that the visibility of the divers-down flag is not obstructed in any

³ FWC, *Senate Bill 846 Agency Legislative Bill Analysis*, pg. 3 (Jan. 4, 2016) (on file with the Senate Environmental Preservation and Conservation Committee).

⁴ Section 327.331(1)(c)1., F.S.

⁵ *Id.*

⁶ *See e.g.*, Figure 1.

⁷ Section 327.331(1)(c)2., F.S.

⁸ Section 327.331(1)(c)3., F.S.

⁹ *Id.*

¹⁰ Ch. 2014-138, s. 1, Laws of Fla.

¹¹ Section 327.331(1)(b), F.S.

¹² Section 327.331, F.S.; *see also*, *Lanza v. Schriefer*, 2010 WL 2754327 (S.D. Fla. 2010) (finding that the statute does not require display of a divers-down flag on the vessel and on a buoy).

direction.¹³ A divers-down buoy may not be used or displayed onboard a vessel and must be prominently visible on the water's surface when in use.¹⁴

On rivers, inlets, and navigation channels, divers are required to make a reasonable effort to stay within 100 feet of a divers-down flag or buoy and a person operating a vessel must make a reasonable effort to maintain a distance of at least 100 feet from a divers-down flag or buoy.¹⁵ On all waters other than rivers, inlets, and navigation channels, divers must make a reasonable effort to stay within 300 feet of a divers-down flag or buoy and a person operating a vessel must make a reasonable effort to maintain a distance of at least 300 feet from any divers-down flag or buoy.¹⁶ If a vessel, other than a law enforcement vessel or rescue vessel, approaches within 100 feet of divers-down flag or buoy on a river, inlet, or navigation channel, or within 300 feet of a divers-down flag or buoy on waters other than a river, inlet, or navigation channel, the person operating the vessel must proceed no faster than is necessary to maintain headway and steerage.¹⁷

FWC-approved boater education or safety courses are required to include a component regarding diving vessels, awareness of divers in the water, divers-down flags and buoys, and the requirements of s. 327.331, F.S.¹⁸ A violation relating to divers-down flags and buoys, except for a violation rising to the level of reckless or careless operation of a vessel, is a noncriminal infraction.¹⁹ The civil penalty for a noncriminal infraction is \$50.²⁰

III. Effect of Proposed Changes:

CS/SB 846 amends s. 327.331, F.S., to define the term "divers-down warning device" to include divers-down flags, buoys, or other similar warning devices. This new term will provide divers with additional choices for signaling to boaters that there are divers in the water while remaining compliant with Florida law. The bill replaces the term "flag or buoy" with "warning device." A "divers-down warning device" must:

- Contain a divers-down symbol that is at least 12 inches by 12 inches in dimension when displayed from the water or is at least 20 by 24 inches when displayed from a vessel;
- Be designed for, and used by, divers and dive vessels as a means to notify nearby boaters of the presence of a diver in the waters of the immediate area; and
- Be prominently visible when in use.

Additionally, the bill revises the specification requirements for "divers-down flags." The bill clarifies that the "divers-down symbol" may be displayed on each face of the flag, rather than on each side. The bill authorizes "divers-down flags" to have more than one white diagonal stripe. However, if there are multiple stripes, the bill requires that all stripes be oriented in the same direction. Instead of requiring the flag to have a wire or other stiffener, the bill authorizes the

¹³ Section 327.331(1)(c), F.S.

¹⁴ Section 327.331(2), F.S.

¹⁵ Section 327.331(4), F.S.

¹⁶ Section 327.331(5), F.S.

¹⁷ Section 327.331(6), F.S.

¹⁸ Section 327.395(3), F.S.

¹⁹ Section 327.73, F.S.

²⁰ *Id.*

flag to be otherwise constructed to ensure that the flag remains fully unfurled and extended in absence of a wind or breeze.

While the bill retains the size requirements for divers-down symbols that are displayed on the water (12 inches by 12 inches), the bill removes the requirement that buoys or floats used to display a divers-down flag be towed by the diver.

The bill requires a divers-down warning device that is displayed from a vessel to be displayed from the highest point of the vessel or another location that ensures that the visibility of the divers-down warning device is not obstructed from any direction.

The bill amends ss. 327.395 and 327.73, F.S., to replace the term “divers-down flags and buoys” with “divers-down warning devices.”

The bill reenacts s. 327.33(1), F.S., relating to the reckless or careless operation of a vessel, to incorporate the amendments made to s. 327.331, F.S.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

As the bill expands the types of devices that may be used to satisfy Florida’s diver laws, businesses manufacturing or selling devices that were not previously authorized may experience an indeterminate increase in revenue from the sales of such devices. Alternatively, businesses that only manufacture devices that were previously authorized may experience an indeterminate decrease in sales and revenue from increased competition for device sales. The bill does not impose any additional requirements on

divers, it only expands the types of devices that may be used and, therefore, the bill does not have an impact on consumers.

C. **Government Sector Impact:**

The Fish and Wildlife Conservation Commission (FWC) will have to update and print boating safety and educational materials to incorporate divers-down warning devices, but FWC anticipates that these costs are expected to be minimal and can be absorbed with existing resources.²¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.331, 327.395, 327.73.

This bill reenacts section 327.33 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.)

CS by Environmental Preservation and Conservation on January 20, 2016:

The CS clarifies that a divers-down warning device displayed from a vessel must be displayed from the highest point of the vessel or another location that ensures that the visibility of the divers-down warning device is not obstructed from any direction.

B. **Amendments:**

None.

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

²¹ FWC, *Senate Bill 846 Agency Legislative Bill Analysis*, pg. 5 (Jan. 4, 2016) (on file with the Senate Environmental Preservation and Conservation Committee).

By the Committee on Environmental Preservation and Conservation;
and Senator Abruzzo

592-02358-16

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A bill to be entitled

An act relating to divers-down warning devices;
amending s. 327.331, F.S.; revising the definitions of
the terms "divers-down buoy," "divers-down flag," and
"divers-down symbol"; defining the term "divers-down
warning device"; expanding the types of indicators or
devices allowed to be used to signal the presence of
submerged divers; specifying requirements for divers-
down warning devices; amending ss. 327.395 and 327.73,
F.S.; conforming provisions to changes made by the
act; reenacting s. 327.33(1), F.S., relating to
reckless or careless operation of a vessel, to
incorporate the amendment made to s. 327.331, F.S., in
a reference thereto; providing an effective date.

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

Section 1. Section 327.331, Florida Statutes, is amended to
read:

327.331 Divers; definitions; divers-down warning device
~~flag or buoy~~ required; obstruction to navigation of certain
waters; penalty.—

(1) As used in this section:

(a) "Diver" means a person who is wholly or partially
submerged in the waters of the state and is equipped with a face
mask and snorkel or underwater breathing apparatus.

(b) "Divers-down buoy" means a buoyant device, other than a
vessel, which displays a divers-down symbol ~~of at least 12~~
~~inches by 12 inches~~ on three or four flat sides, ~~which is~~
~~prominently visible on the water's surface when in use.~~

(c) "Divers-down flag" means a flag that displays a divers-

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~~down symbol and that meets the following specifications:~~

~~1. Is~~ The flag must be square or rectangular. If
~~rectangular, the length must not be less than the height, or~~
~~more than 25 percent longer than the height. The flag must have~~
~~a wire or other stiffener to hold it fully unfurled and extended~~
~~in the absence of a wind or breeze.~~

~~2. The flag must consist of and has~~ a divers-down symbol on
~~each face.~~ side

~~2. Has with~~ a white diagonal stripes on each face which
~~begin stripe that begins at the top, staff-side of the flag and~~
~~extend extends~~ diagonally to the lower opposite corner.

~~3. If rectangular, is of a length that is not less than the~~
~~height or more than 25 percent longer than the height.~~

~~4. Has a wire, or other stiffener, or is otherwise~~
~~constructed to ensure that it remains fully unfurled and~~
~~extended in the absence of a wind or breeze.~~

~~3. The minimum size for any divers-down flag displayed on a~~
~~buoy or float towed by the diver is 12 inches by 12 inches. The~~
~~minimum size for any divers-down flag displayed from a vessel or~~
~~structure is 20 inches by 24 inches.~~

~~4. Any divers-down flag displayed from a vessel must be~~
~~displayed from the highest point of the vessel or such other~~
~~location which provides that the visibility of the divers-down~~
~~flag is not obstructed in any direction.~~

(d) "Divers-down symbol" means a rectangular or square red
symbol with a white diagonal stripe. If rectangular, the length
~~may must~~ not be less than the height or more than 25 percent
longer than the height. The width of the stripe must be 25
percent of the height of the symbol and the stripes must be

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61 oriented in the same direction if multiple stripes are
62 displayed.

63 (e) "Divers-down warning device" means a divers-down flag,
64 buoy, or other similar warning device that:

65 1. Contains a divers-down symbol that is at least 12 inches
66 by 12 inches in dimension when displayed from the water or at
67 least 20 by 24 inches in dimension when displayed from a vessel;

68 2. Is designed for, and used by, divers and dive vessels as
69 a means to notify nearby boaters of the presence of a diver in
70 the waters of the immediate area; and

71 3. Is prominently visible when in use.

72 (f) (e) "Underwater breathing apparatus" means any
73 apparatus, whether self-contained or connected to a distant
74 source of air or other gas, whereby a person wholly or partially
75 submerged in water is enabled to obtain or reuse air or any
76 other gas or gases for breathing without returning to the
77 surface of the water.

78 (2) All divers must prominently display a divers-down
79 warning device ~~flag or buoy~~ in the area in which the diving
80 occurs, other than when diving in an area customarily used for
81 swimming only. A divers-down buoy may not be used or displayed
82 onboard a vessel.

83 (3) A diver or group of divers may not display one or more
84 divers-down warning devices ~~flags or buoys~~ on a river, inlet, or
85 navigation channel, except in case of emergency, in a manner
86 that ~~which shall~~ unreasonably ~~constitutes~~ constitute a
87 navigational hazard.

88 (4) Divers shall make reasonable efforts to stay within 100
89 feet of a divers-down warning device ~~flag or buoy~~ on rivers,

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90 inlets, and navigation channels. A person operating a vessel on
91 a river, inlet, or navigation channel must make a reasonable
92 effort to maintain a distance of at least 100 feet from any
93 divers-down warning device ~~flag or buoy~~.

94 (5) Divers must make reasonable efforts to stay within 300
95 feet of a divers-down warning device ~~flag or buoy~~ on all waters
96 other than rivers, inlets, and navigation channels. A person
97 operating a vessel on waters other than a river, inlet, or
98 navigation channel must make a reasonable effort to maintain a
99 distance of at least 300 feet from any divers-down warning
100 device ~~flag or buoy~~.

101 (6) A vessel other than a law-enforcement ~~law enforcement~~
102 or rescue vessel that approaches within 100 feet of a divers-
103 down warning device ~~flag or buoy~~ on a river, inlet, or
104 navigation channel, or within 300 feet of a divers-down warning
105 device ~~flag or buoy~~ on waters other than a river, inlet, or
106 navigation channel, must proceed no faster than is necessary to
107 maintain headway and steerageway.

108 (7) A divers-down warning device ~~flag or buoy~~ may not be
109 displayed once all divers are aboard or ashore. A person may not
110 operate any vessel displaying a divers-down warning device ~~flag~~
111 unless the vessel has one or more divers in the water.

112 (8) A divers-down warning device displayed from a vessel
113 must be displayed from the highest point of the vessel or
114 another location that ensures that the visibility of the divers-
115 down warning device is not obstructed from any direction.

116 (9) (8) Except as provided in s. 327.33, a violation of this
117 section is a noncriminal infraction punishable as provided in s.
118 327.73.

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119 Section 2. Subsection (3) of section 327.395, Florida
120 Statutes, is amended to read:

121 327.395 Boating safety identification cards.—

122 (3) Any commission-approved boater education or boater
123 safety course, course-equivalency examination developed or
124 approved by the commission, or temporary certificate examination
125 developed or approved by the commission must include a component
126 regarding diving vessels, awareness of divers in the water,
127 divers-down warning devices ~~flags and buoys~~, and the
128 requirements of s. 327.331.

129 Section 3. Paragraph (u) of subsection (1) of section
130 327.73, Florida Statutes, is amended to read:

131 327.73 Noncriminal infractions.—

132 (1) Violations of the following provisions of the vessel
133 laws of this state are noncriminal infractions:

134 (u) Section 327.331, relating to divers-down warning
135 devices ~~flags and buoys~~, except for violations meeting the
136 requirements of s. 327.33.

137

138 Any person cited for a violation of any provision of this
139 subsection shall be deemed to be charged with a noncriminal
140 infraction, shall be cited for such an infraction, and shall be
141 cited to appear before the county court. The civil penalty for
142 any such infraction is \$50, except as otherwise provided in this
143 section. Any person who fails to appear or otherwise properly
144 respond to a uniform boating citation shall, in addition to the
145 charge relating to the violation of the boating laws of this
146 state, be charged with the offense of failing to respond to such
147 citation and, upon conviction, be guilty of a misdemeanor of the

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148 second degree, punishable as provided in s. 775.082 or s.
149 775.083. A written warning to this effect shall be provided at
150 the time such uniform boating citation is issued.

151 Section 4. For the purpose of incorporating the amendment
152 made by this act to section 327.331, Florida Statutes, in a
153 reference thereto, subsection (1) of section 327.33, Florida
154 Statutes, is reenacted to read:

155 327.33 Reckless or careless operation of vessel.—

156 (1) It is unlawful to operate a vessel in a reckless
157 manner. A person is guilty of reckless operation of a vessel who
158 operates any vessel, or manipulates any water skis, aquaplane,
159 or similar device, in willful or wanton disregard for the safety
160 of persons or property at a speed or in a manner as to endanger,
161 or likely to endanger, life or limb, or damage the property of,
162 or injure any person. Reckless operation of a vessel includes,
163 but is not limited to, a violation of s. 327.331(6). Any person
164 who violates a provision of this subsection commits a
165 misdemeanor of the first degree, punishable as provided in s.
166 775.082 or s. 775.083.

167

Section 5. This act shall take effect July 1, 2016.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Communications, Energy, and Public Utilities
Community Affairs
Fiscal Policy
Regulated Industries

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Alternating Chair*

SENATOR JOSEPH ABRUZZO
Minority Whip
25th District

January 20th, 2016

The Honorable Nancy C. Detert
416 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairwoman Detert:

I respectfully request **Senate Bill 846, Divers-Down Warning Devices**, be considered for placement on the Commerce and Tourism committee agenda. This piece of legislation expands the types of indicators or devices allowed to be used to signal the presence of submerged divers to further ensure their safety.

Please feel free to notify me if I can provide you with any additional information. Thank you in advance for your consideration.

Sincerely,

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

Joseph Abruzzo

Cc: Todd McKay, *Staff Director*

REPLY TO:

- 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774 FAX: (888) 284-6495
- 110 Dr. Martin Luther King, Jr. Boulevard, Belle Glade, Florida 33430-3900 (561) 829-1410
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 960

INTRODUCER: Transportation Committee and Senator Bradley

SUBJECT: Protection of Motor Vehicle Dealers' Consumer Data

DATE: January 29, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Eichin	TR	Fav/CS
2.	Harmsen	McKay	CM	Pre-meeting
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 960 requires motor vehicle manufacturers, distributors, or importers (collectively referred to as "licensees"), and third parties acting on behalf of a licensee, to comply with certain use restrictions for consumer data that is provided to them by a motor vehicle dealer (dealer).

Specifically, the bill:

- Requires licensees to comply with, and not knowingly cause a dealer to violate, all laws governing the reuse or disclosure of consumer data, and to provide a written statement that specifies the licensee's methods used to safeguard consumer data;
- Makes licensees responsible for provision, upon a dealers request, of a written list of consumer data obtained by a licensee from the dealer, and a written list of all persons to whom the consumer data has been provided to during the previous 6 months, with specific exemptions;
- Prohibits licensees from requiring a dealer to grant the licensee, or a third party acting on behalf of the licensee, direct access to the dealer's data management system in order for the licensee to collect consumer data;
- Provides for methods by which a licensee may be granted permission by a dealer to directly access the dealer's consumer data; and
- Requires the licensee to indemnify the dealer for any third-party claims asserted against or damages incurred by the dealer as a result of the licensee's or third party's access, use, or disclosure of the consumer data.

The bill also provides that any person who institutes a cause of action against a licensee for a violation of the prohibitions or requirements established in the bill, has the burden of proving that the violation was willful or with sufficient frequency to establish a pattern of wrongdoing.

The bill takes effect upon becoming law.

II. Present Situation:

Florida has substantially regulated motor vehicle manufacturers and motor vehicle dealers since before 1950.¹ Initially, the Florida Legislature approached the issue by implementing only consumer protections aimed at preventing consumer abuse by dealers.² In 1970, the Legislature passed more comprehensive legislation, embodied in ch. 320, F.S.,³ which regulates the contractual relationship between manufacturers and dealers,⁴ requires the licensing of manufacturers, and regulates numerous aspects of the contracts between manufacturers and dealers.

Florida Automobile Dealers Act

A manufacturer, factory branch, distributor, or importer (licensee) must be licensed under s. 320.61(1), F.S., to engage in business in Florida. Sections 320.60-320.70, F.S., the “Florida Automobile Dealers Act”⁵ (act), primarily regulate the contractual business relationship between dealers and licensees, and provide for the licensure of manufacturers, factory branches, distributors, or importers. The act specifies, in part:

- The conditions and situations under which the Department of Highway Safety and Motor Vehicles (DHSMV) may deny, suspend, or revoke a regulated license;
- The process, timing, and notice requirements for licensees who wish to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a request;
- The procedures a licensee must follow to add a dealership in an area already served by a franchised dealer, the protest process, and the DHSMV’s role in these circumstances;
- The damages that can be assessed against a licensee who is in violation of Florida Statutes; and
- The DHSMV’s authority to adopt rules to implement these sections of law.

Applicability

Section 320.6992, F.S., provides that the act shall apply to all presently existing or future systems of distribution of motor vehicles in Florida, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. Generally, all agreements that are renewed, amended, or entered into subsequent to

¹ Chapter 9157, L.O.F. (1923); Chapter 20236, L.O.F. (1941).

² Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 Fla. St. Univ. Law Rev. 1058, 1064 (2002), <http://law-wss-01.law.fsu.edu/journals/lawreview/downloads/293/Forehand.pdf> (last visited Jan. 29, 2016).

³ See ch. 70-424, L.O.F.

⁴ See s. 320.60(11), F.S.

⁵ Walter E. Forehand, *supra* note 2, at 1065.

October 1, 1988, are governed by the act, including amendments to the act, unless specifically providing otherwise.

In 2009, the DHSMV held in an administrative proceeding that amendments to the act do not apply to dealers whose franchise agreements were signed prior to the effective date of various amendments to the act.⁶ The DHSMV has indicated that it will apply the *Motorsports* holding to every amendment to the act. This may result in different protections accruing to dealers, depending on when they signed their franchise agreements.

Civil Damages

Section 320.697, F.S., provides that any person who suffers pecuniary loss or is otherwise affected by a licensee's violation of the act has a cause of action against the licensee for damages and may recover damages and attorney's fees, notwithstanding any other remedies under the act. The licensee has the burden to prove that such violation did not occur upon a prima facie showing by the person bringing the action.

Consumer Data Protection

Consumer data can refer to a variety of information, including, but not limited to:

- Personal-identifying data: name, address, telephone number, or email address;
- Demographic data: age, race, occupation, income, or education;
- Retail data: purchase history, credit card numbers, or bank account information; and
- Government data: social security or driver license numbers.

In the United States there is no all-encompassing law regulating the acquisition, storage, or use of consumer data in general terms. However, partial regulations do exist in state and federal law, including in the Federal Trade Commission (FTC) Privacy and Safeguards Rule, the Gramm-Leach-Bliley Act, and state law.

Gramm-Leach Bliley Act (GLBA)⁷

The GLBA, also known as the Financial Services Modernization Act of 1999, implemented law regarding the protection and disclosure of nonpublic personal information obtained by financial institutions, limitations on reuse of information, and privacy notice requirements. The GLBA gives the Federal Trade Commission (FTC) authority to prescribe rules necessary to carry out certain purposes of the GLBA.⁸

⁶ See *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-0935 (Fla. DOAH Dec. 9, 2009). The DHSMV ruled that a 2006 amendment to the Florida Automobile Dealers Act does not apply to a dealer terminated in 2008 because the dealer's franchise agreement was entered into prior to the effective date of the amendment. This Final Order was initially appealed but was later voluntarily dismissed. See also, *In re Am. Suzuki Motor Corp.*, 494 B.R. 466, 480 (Bankr. C.D. Cal. 2013).

⁷ 15 U.S.C. ss. 6801 *et. seq.*

⁸ 15 U.S.C. s. 6804

The FTC is the chief federal agency on privacy policy and enforcement.⁹ The FTC's Privacy Rule (Privacy Rule)¹⁰ is a principle part of the GLBA, and applies to vehicle dealers who extend credit to someone, arrange for someone to finance or lease a car, or provide financial advice or counseling to individuals.¹¹ Personal information collected by a dealer to provide these services is covered under the Privacy Rule, which outlines when privacy notices must be given to consumers, what information must be included in the privacy notices, limitations on the disclosure and reuse of non-public personal information, and opt-out requirements.¹²

The FTC's Safeguards Rule, also part of the GLBA, outlines standards for safeguarding customer information.¹³ The rule requires service providers who, through their services to a financial institution, handle or are permitted access to customer information to have a written security plan to protect the confidentiality and integrity of customer data.¹⁴

Florida Information Protection Act of 2014¹⁵

The Florida Information Protection Act of 2014 provides the procedure for protection and security of confidential personal information¹⁶ that is in the possession of covered entities.¹⁷ Covered entities, governmental entities, and third-party agents are required to take reasonable measures to protect and secure electronic data containing personal information. When the security of a data system is breached, a covered entity must provide notice to the Department of Legal Affairs and affected individuals, unless an investigation and consultation with relevant law enforcement agencies determines the breach has not and will not likely result in identity theft or financial harm to the individuals whose personal information has been accessed.¹⁸ If a covered entity fails to provide the required notices, it may face civil penalties.

⁹ Federal Trade Commission, *Protecting Consumer Privacy*, <https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy> (last visited Jan. 29, 2016).

¹⁰ 16 C.F.R., §§ 313.1-313.3.

¹¹ Federal Trade Commission, *FTC's Privacy Rule and Auto Dealers: FAQ*, (January 2005), <https://www.ftc.gov/tips-advice/business-center/guidance/ftcs-privacy-rule-auto-dealers-faqs> (last visited Jan. 29, 2016).

¹² See 16 C.F.R. § 313.

¹³ See 16 C.F.R. § 314.

¹⁴ *Id.*

¹⁵ Section 501.171, F.S.

¹⁶ "Personal information" includes an individual's first name or first initial and last name in combination with one of the following: a social security number; driver license or identification card number, passport number, military identification number, or other number issued by a governmental entity used to verify identity; a financial account number or credit or debit card number, in combination with any required security code, access code, or password needed to permit access to the financial account; an individual's medical history, mental or physical condition, or medical treatment or diagnosis; or an individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer. A user name or e-mail address, in combination with a password or security question and answer is also considered "personal information." Information that is publicly available from a federal, state, or local governmental entity or information that is encrypted, secured, or modified by a method or technology that removes personally identifiable information is not considered "personal information."

¹⁷ 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.

¹⁸ Section 501.171(4), F.S.

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 320.646, F.S., within the “Florida Automobile Dealers Act” to provide protection for consumer data that is collected by a motor vehicle dealer.

Definitions

The bill defines “consumer data” as “nonpublic personal information” as used in 15 U.S.C. s. 6809(4), which means personally identifiable financial information that is:

- Provided by a consumer to a financial institution, or
- That results from any transaction with the consumer or service performed for the consumer, or
- Obtained by the financial institution in any way.

For purposes of this bill, the personally identifiable financial information (consumer data) must have been collected by a motor vehicle dealer *and* have been directly provided to the licensee or third party. It does not, therefore, include consumer data that has been obtained by a licensee from any other source, or that was otherwise publicly available.

The bill also defines “data management system” as any computer hardware or software system that is owned, leased, or licensed by a motor vehicle dealer.

Compliance with Privacy Regulations

The bill requires a licensee or a third party acting on behalf of the licensee who receives consumer data from a motor vehicle dealer to comply with, and not knowingly cause a dealer to violate, all restrictions on the reuse or disclosure of data established by state and federal law. In the interest of such compliance, a dealer may require a licensee to provide a written description of the licensee’s or third party’s procedures adopted to safeguard consumer data. The licensee’s safeguard procedures must meet, at a minimum, the requirements of the GLBA.

The dealer may also request that a licensee document the consumer data obtained by the licensee or third party from the dealer, in addition to a list of all persons to whom the data has been provided during the preceding 6 months. Both lists must indicate the specific fields of consumer data that were provided to each person. A licensee may exempt the following information from his or her documentation, however:

- The name of a service provider, subcontractor, or consultant, and data provided to him or her, if that person in the course of his or her performance of services on behalf of or for the benefit of the licensee or dealer, agreed to comply with applicable consumer data laws; and
- The name of a person or data provided to him or her, if the dealer has consented in writing that such person may receive consumer data.

A dealer’s request for a list of released data may only be made once every 6 months.

Access to Consumer Data

The bill permits a licensee to be granted direct access to a dealer’s consumer data but only by written document that is separate and apart from the franchise agreement between the two

parties. Conversely, the licensee may not under any circumstances, require that a dealer grant the licensee or a third party access to his or her data management system to collect consumer data. In these cases, the dealer is permitted to furnish consumer data to the licensee in a widely accepted file format and through a third-party dealer who is selected by the dealer.

Civil Claims

Section 1 also requires licensees to compensate dealers for any third-party claims against or damages incurred by the dealer as a result of the licensee's or third party's access, use, or disclosure of the consumer data.

The bill provides that in any cause of action against a licensee for prohibitions or requirements within the bill, the person bringing the action has the burden of proving that the violation was willful or with sufficient frequency to establish a pattern of wrongdoing with respect to such person's consumer data.

Section 2 reenacts s. 320.6992, F.S., to incorporate the newly created section.

Section 3 provides that the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill could positively impact motor vehicle dealers who will be compensated by a licensee for any damages incurred as a result of the licensee's or a third party's access, use, or disclosure of consumer data. For that reason, as well as the additional restrictions placed upon licensees in obtaining consumer data from a dealer, the bill could have a negative impact on the licensees.

C. Government Sector Impact:

The bill does not appear to have an impact on state or local government.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 320.646 of the Florida Statutes.

This bill reenacts section 320.6992 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 Transportation on January 20, 2016:

The CS:

- Changes the definition of “consumer data” from information collected or record created by a motor vehicle dealer which contains personal information from which the consumer’s identity could be derived, to the definition of “nonpublic personal information” as defined in 15 U.S.C. s. 6809(4), collected by the dealer and provided to the licensee or third party acting on behalf of the licensee.
- Adds that the definition of “consumer data” does not include the same or similar data obtained by a licensee from any source other than the dealer.
- Clarifies in the bill that the consumer data restrictions apply to a third party *acting on behalf of the licensee*.
- Adds that a licensee may not *knowingly* cause a dealer to violate any applicable restrictions on the reuse or disclosure of consumer data.
- Adds *upon request* from the dealer, the licensee or third party acting on behalf of the licensee must provide a written statement describing the established procedures to safeguard consumer data.
- Regarding the dealer requesting a list of consumer data obtained by the licensee and all persons the dealer’s consumer data has been provided to by the licensee or third party acting on behalf of the licensee, the CS lowers the preceding period of time the list must include, from 12 to 6 months.
- Adds that the list need not include a licensee’s service providers, subcontractors or consultants acting in the course of his or her performance of services on behalf of or for the benefit of the licensee or dealer, or the data provided, if the person also has agreed to comply with applicable consumer data laws. The list also need not include

persons or the data provided to a person if the dealer has consented in writing that such person may receive consumer data.

- Makes a technical change regarding widely accepted file formats, from comma delineated to comma delimited.
- Concerning a dealer granting a licensee access to the dealer's data management system to obtain consumer data, the CS adds the dealer must provide the licensee 30 days' written notice to withdraw such consent.
- Adds a section to the bill providing in any cause of action against a licensee for prohibitions or requirements within the bill, the person bringing the action has the burden of proving that the violation was willful or with sufficient frequency to establish a pattern of wrongdoing.

B. Amendments:

None.

By the Committee on Transportation; and Senator Bradley

596-02373-16

2016960c1

1 A bill to be entitled
 2 An act relating to protection of motor vehicle
 3 dealers' consumer data; creating s. 320.646, F.S.;
 4 defining the terms "consumer data" and "data
 5 management system"; requiring that a licensee or a
 6 third party comply with certain restrictions on reuse
 7 or disclosure of consumer data received from a motor
 8 vehicle dealer; requiring that such person provide a
 9 written statement to the motor vehicle dealer
 10 delineating the established procedures adopted by the
 11 person which meet or exceed certain requirements to
 12 safeguard consumer data; requiring that upon request
 13 of a motor vehicle dealer a licensee provide a list of
 14 the consumer data obtained and all persons to whom any
 15 of the data has been disclosed, subject to certain
 16 requirements; prohibiting a licensee from requiring a
 17 motor vehicle dealer to grant the licensee or third
 18 party access to the dealer's data management system;
 19 requiring a licensee to permit a motor vehicle dealer
 20 to furnish consumer data in a widely accepted file
 21 format and through a third-party vendor selected by
 22 the motor vehicle dealer; authorizing a licensee to
 23 access or obtain consumer data from a motor vehicle
 24 dealer's data management system with the dealer's
 25 express written consent, subject to certain
 26 requirements; requiring the licensee to indemnify the
 27 motor vehicle dealer for certain claims or damages;
 28 providing that a person bringing a specified cause of
 29 action for certain violations must meet certain
 30 requirements; reenacting s. 320.6992, F.S., relating
 31 to the provisions that apply to established systems of
 32 distribution of motor vehicles in this state, to

Page 1 of 5

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

596-02373-16

2016960c1

33 incorporate s. 320.646, F.S., as created by the act,
 34 in a reference thereto; providing an effective date.
 35

36 Be It Enacted by the Legislature of the State of Florida:
 37

38 Section 1. Section 320.646, Florida Statutes, is created to
 39 read:

40 320.646 Consumer data protection.—

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

42 (a) "Consumer data" means "nonpublic personal information"
 43 as such term is defined in 15 U.S.C. s. 6809(4) collected by a
 44 motor vehicle dealer and which is provided by the motor vehicle
 45 dealer directly to a licensee or third party acting on behalf of
 46 a licensee. Consumer data does not include the same or similar
 47 data which is obtained by a licensee from any other source.

48 (b) "Data management system" means a computer hardware or
 49 software system that is owned, leased, or licensed by a motor
 50 vehicle dealer, including a system of web-based applications,
 51 computer software, or computer hardware, whether located at the
 52 motor vehicle dealership or hosted remotely, and that stores and
 53 provides access to consumer data collected or stored by a motor
 54 vehicle dealer. The term includes, but is not limited to,
 55 dealership management systems and customer relations management
 56 systems.

57 (2) Notwithstanding the provisions of any franchise
 58 agreement, with respect to consumer data a licensee or a third
 59 party acting on behalf of a licensee:

60 (a) Shall comply with all, and not knowingly cause a motor
 61 vehicle dealer to violate any, applicable restrictions on reuse

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62 or disclosure of the consumer data established by federal or
 63 state law and must provide a written statement to the motor
 64 vehicle dealer upon request describing the established
 65 procedures adopted by the licensee or third party acting on
 66 behalf of the licensee which meet or exceed any federal or state
 67 requirements to safeguard the consumer data, including, but not
 68 limited to, those established in the Gramm-Leach-Bliley Act, 15
 69 U.S.C. ss. 6801 et seq.

70 (b) Shall, upon the written request of the motor vehicle
 71 dealer, provide a written list of the consumer data obtained
 72 from the motor vehicle dealer and all persons to whom any
 73 consumer data has been provided by the licensee or a third party
 74 acting on behalf of a licensee during the preceding 6 months.
 75 The dealer may make such a request no more than once every 6
 76 months. The list must indicate the specific fields of consumer
 77 data which were provided to each person. Notwithstanding the
 78 foregoing, such a list need not include:

79 1. A person to whom consumer data was provided, or the
 80 specific consumer data provided to such person, if the person
 81 was, at the time the consumer data was provided, one of the
 82 licensee's service providers, subcontractors or consultants
 83 acting in the course of such person's performance of services on
 84 behalf of or for the benefit of the licensee or motor vehicle
 85 dealer, provided that the licensee has entered into an agreement
 86 with such person requiring that the person comply with the
 87 safeguard requirements of applicable state and federal law,
 88 including, but not limited to, those established in the Gramm-
 89 Leach-Bliley Act, 15 U.S.C. ss. 6801 et seq; or

90 2. A person to whom consumer data was provided, or the

596-02373-16

2016960c1

91 specific consumer data provided to such person, if the motor
 92 vehicle dealer has previously consented in writing to such
 93 person receiving the consumer data provided and the motor
 94 vehicle dealer has not withdrawn such consent in writing.

95 (c) May not require that a motor vehicle dealer grant the
 96 licensee or a third party direct or indirect access to the
 97 dealer's data management system to obtain consumer data. A
 98 licensee must permit a motor vehicle dealer to furnish consumer
 99 data in a widely accepted file format, such as comma delimited,
 100 and through a third-party vendor selected by the motor vehicle
 101 dealer. However, a licensee may access or obtain consumer data
 102 directly from a motor vehicle dealer's data management system
 103 with the express consent of the dealer. The consent must be in
 104 the form of a written document that is separate from the
 105 parties' franchise agreement, is executed by the motor vehicle
 106 dealer, and may be withdrawn by the dealer upon 30 days' written
 107 notice to the licensee.

108 (d) Must indemnify the motor vehicle dealer for any third-
 109 party claims asserted against or damages incurred by the motor
 110 vehicle dealer to the extent caused by access to, use of, or
 111 disclosure of consumer data in violation of this section by the
 112 licensee, a third party acting on behalf of the licensee, or a
 113 third party to whom the licensee has provided consumer data.

114 (3) In any cause of action against a licensee pursuant to
 115 s. 320.697 for a violation of paragraphs (2) (a), (2) (b), or
 116 (2) (c), the person bringing the action has the burden of proving
 117 that the violation was willful or with sufficient frequency to
 118 establish a pattern of wrongdoing with respect to such person's
 119 consumer data.

596-02373-16

2016960c1

120 Section 2. For the purpose of incorporating section
121 320.646, Florida Statutes, as created by this act, in a
122 reference thereto, section 320.6992, Florida Statutes, is
123 reenacted to read:

124 320.6992 Application.—Sections 320.60-320.70, including
125 amendments to ss. 320.60-320.70, apply to all presently existing
126 or hereafter established systems of distribution of motor
127 vehicles in this state, except to the extent that such
128 application would impair valid contractual agreements in
129 violation of the State Constitution or Federal Constitution.
130 Sections 320.60-320.70 do not apply to any judicial or
131 administrative proceeding pending as of October 1, 1988. All
132 agreements renewed, amended, or entered into subsequent to
133 October 1, 1988, shall be governed by ss. 320.60-320.70,
134 including any amendments to ss. 320.60-320.70 which have been or
135 may be from time to time adopted, unless the amendment
136 specifically provides otherwise, and except to the extent that
137 such application would impair valid contractual agreements in
138 violation of the State Constitution or Federal Constitution.

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

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 1236

INTRODUCER: Senator Garcia

SUBJECT: Small Business Saturday Sales Tax Holiday

DATE: January 29, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Pre-meeting
2.			FT	
3.			AP	

I. Summary:

SB 1236 establishes a 1-day sales tax holiday on “Small Business Saturday,” November 26, 2016. During the holiday, a small business dealer may opt not to collect state sales tax and country discretionary sales surtaxes on purchases of tangible personal property that cost \$1,000 or less per item.

The bill defines a small business as a dealer¹ that has registered with the Department of Revenue (DOR), began operating in Florida on or before December 31, 2015, and owed and remitted less than \$200,000 in tax for the 1-year period ending on June 30, 2016, or less than \$200,000 if it began operating after June 30, 2015.

The bill provides DOR a nonrecurring General Revenue Appropriation of \$200,000 in Fiscal Year 2015-2016 to administer the provisions of the act. The Revenue Estimating Conference analyzed similar legislation² and determined that the bill will reduce General Revenue receipts by \$35 million and local government revenues will decrease by \$8.1 million in Fiscal Year 2016-2017.³

The bill takes effect July 1, 2016.

¹ Section 212.06, F.S., defines the term “dealer” as “every person, as used in this chapter, who imports, or causes to be imported, tangible personal property from any state or foreign country for sale at retail; for use, consumption, or distribution; or for storage to be used or consumed in this state.”

² The EDR analyzed proposed legislation that mandated the Small Business Sales Tax Holiday, rather than allowing it at the small business dealer’s discretion.

³ Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Small Business Saturday Tax Holiday, SB 198*, p. 2, Jan. 22, 2016, Revenue Impact Results, available at:

<http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/pdf/Impact0918.pdf> (last accessed Jan. 29, 2016).

II. Present Situation:

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions⁴, transient rentals⁵, rental of commercial real estate,⁶ and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. There are currently more than 200 exemptions, exclusions, deductions, and credits from the sales and use tax.⁷ Sales tax is added to the price of the taxable goods or service and collected from the purchaser at the time of sale.

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes. The surtax applies to all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by ch. 212, F.S., and on communications services as defined in ch. 202, F.S.⁸ The discretionary sales surtax is based on the tax rate imposed by the county in the county where the taxable goods or services are sold, or delivered into.

In 2015, the Florida Legislature approved the Back to School Sales Tax Holiday, during which the first \$750 of personal computers and related-accessories, \$100 or less on clothing, and \$15 or less on school supplies was exempted from sales and use tax.⁹

In 2010, American Express instituted a Small Business Saturday incentive for their cardholders who shopped at small, independent businesses on the Saturday after "Black Friday."¹⁰ The U.S. Senate passed a resolution recognizing Small Business Saturday and encouraging consumers to shop locally in 2015, but this measure was not voted on by the U.S. House of Representatives.¹¹ It is estimated that consumers spent \$14.3 billion at small, independent businesses on Small Business Saturday in 2014.¹²

III. Effect of Proposed Changes:

The bill establishes a 1-day sales tax holiday, on Saturday, November 26, 2016, to coincide with "Small Business Saturday." During the tax holiday, and at the option of the small business, the total sales price of taxable tangible personal property, not to exceed \$1,000 per purchaser, per small business, is exempt from the state sales tax and county discretionary sales surtaxes.

The bill defines "small business" as one that:

⁴ Section 212.04, F.S.

⁵ Section 212.03, F.S.

⁶ Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities*, available at http://dor.myflorida.com/dor/taxes/sales_tax.html (last visited Feb. 19, 2015).

⁷ See Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, 164-167 (2016).

⁸ The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

⁹ Florida Department of Revenue, "2015 Back-to-School Sales Tax Holiday" (July 1, 2014), available at <http://dor.myflorida.com/Documents/tip15a0105.pdf> (last visited Jan. 29, 2016).

¹⁰ American Express, "Small Business Saturday" <https://www.americanexpress.com/us/content/small-business/shop-small/about/?linknav=us-open-shops-small-homepage-about> (last visited Jan. 29, 2016).

¹¹ A Resolution Recognizing Small Business Saturday, S. Res. 304, 114th Cong. (2015).

¹² Kate Rogers, "Small Business Saturday Could Exceed \$14 Billion" 11/27/2015. Available at <http://www.cnbc.com/2015/11/27/small-business-saturday-could-exceed-14-billion.html>. (Last visited Jan. 29, 2016.)

- Has registered with the DOR;
- Began operation in Florida on or before December 31, 2015; and
- Owed and remitted less than \$200,000 in tax under ch. 212, F.S., to the DOR during either:
 - A 1-year period ending on June 30, 2016, or
 - The period beginning on the date the business began operating in Florida and ending on June 30, 2016, if the business began operating in Florida after June 30, 2015.

Additionally, the bill requires that businesses with multiple locations and eligible to file a consolidated return have owed and remitted less than \$200,000 for all of the business' locations in order to be considered a small business.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of s. 18, Art VII, Florida Constitution, provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2016, is \$2,012,772.30 or less.^{13,14}

The Revenue Estimating Conference estimated that a substantially similar bill will reduce the authority that counties have to raise revenues by \$3.5 million in Fiscal Year 2016-2017.¹⁵

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹³ FLA. CONST. art. VII, s. 18(d).

¹⁴ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last accessed Jan. 29, 2016).

¹⁵ Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Small Business Saturday Tax Holiday, SB 198*, p. 2, Jan. 22, 2016, Revenue Impact Results, available at: <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/pdf/Impact0918.pdf> (last accessed Jan. 29, 2016).

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

The Revenue Estimating Conference analyzed similar legislation and determined that the bill will reduce General Revenue receipts by \$35 million and local government revenues will decrease by \$8.1 million in Fiscal Year 2016-2017.¹⁶

B. Private Sector Impact:

The sales tax holiday may promote retail sales at businesses that qualify under the bill.

C. Government Sector Impact:

The bill provides DOR a nonrecurring General Revenue appropriation of \$200,000 in Fiscal Year 2016-2017, to administer the provisions of the act. The DOR estimates that it can administer the holiday using existing resources, and that the appropriation is therefore unnecessary.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the DOR, small business dealers will have to specifically document their choice whether to participate in the Small Business Saturday tax holiday, and submit such documentation to the DOR as a result of the permissive application of the holiday.¹⁸ This would not be required if the tax holiday were mandatory.

VIII. Statutes Affected:

This bill creates an unnumbered section of Florida law.

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.

¹⁶ Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Small Business Saturday Tax Holiday, SB 198*, p. 2, Jan. 22, 2016, Revenue Impact Results, available at: http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/_pdf/Impact0918.pdf (last accessed Jan. 29, 2016).

¹⁷ Department of Revenue, *SB 1236 Agency Analysis*, (Jan. 8, 2016), on file with the Committee on Commerce and Tourism.

¹⁸ *Id.*

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



821662

LEGISLATIVE ACTION

Senate

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. .
. .
. .
. .

House

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

Senate Amendment

Delete line 33

and insert:

12:01 a.m. on November 26, 2016, through 11:59 p.m. on November

By Senator Garcia

38-00395A-16

20161236__

A bill to be entitled

An act relating to the Small Business Saturday sales tax holiday; defining the term "small business"; providing that the tax levied under ch. 212, F.S., is not required to be collected on the sale of items or articles of certain tangible personal property by certain small businesses during a specified period; authorizing the Department of Revenue to adopt emergency rules; providing an appropriation; providing an effective date.

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

Section 1. Small Business Saturday sales tax holiday.-

(1) As used in this section, the term "small business" means a dealer, as defined in s. 212.06, Florida Statutes, that registered with the Department of Revenue and began operations before December 31, 2015, and that owed and remitted to the Department of Revenue less than \$200,000 in total tax under chapter 212, Florida Statutes, for the 1-year period ending June 30, 2016. If the dealer has not been in operation for an entire year as of June 30, 2016, to qualify as a small business under this section, the dealer must have owed and remitted less than \$200,000 in total tax under chapter 212, Florida Statutes, for the period beginning on the date that the dealer began operations and ending June 30, 2016. If the dealer is eligible to file a consolidated return pursuant to s. 212.11(1)(e), Florida Statutes, the total tax under chapter 212, Florida Statutes, owed and remitted from all of the dealer's places of business must be less than \$200,000 for the applicable period ending June 30, 2016.

(2) A small business, at its option during the period from

Page 1 of 2

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38-00395A-16

20161236__

12:00 a.m. on November 26, 2016, through 11:59 p.m. on November 26, 2016, is not required to collect the tax levied under chapter 212, Florida Statutes, on the sale at retail, as defined in s. 212.02(14), Florida Statutes, of any item or article of tangible personal property, as defined in s. 212.02(19), Florida Statutes, having a sales price of \$1,000 or less per item.

(3) The Department of Revenue may, and all conditions are deemed to be met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer this section.

Section 2. For the 2016-2017 fiscal year, the sum of \$200,000 of nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of administering this act.

Section 3. This act shall take effect July 1, 2016.

Page 2 of 2

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The Florida Senate
State Senator René García
38th District

Please reply to:

□ **District Office:**

1490 West 68 Street
Suite # 201
Hialeah, FL. 33014
Phone# (305) 364-3100

January 13th, 2016

The Honorable Senator Nancy C. Detert
Chair, Committee on Commerce and Tourism
310 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Detert:

Please have this letter serve as my formal request to have **SB 1236: Small Business Saturday Sales Tax Holiday**, be heard in the next possible Commerce and Tourism Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,



State Senator René García
District 38
RG:AD

CC: Todd McKay, Patty Blackburn