

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**COMMERCE AND TOURISM**  
**Senator Montford, Chair**  
**Senator Gainer, Vice Chair**

**MEETING DATE:** Tuesday, January 9, 2018  
**TIME:** 4:00—5:30 p.m.  
**PLACE:** *Toni Jennings Committee Room, 110 Senate Office Building*

**MEMBERS:** Senator Montford, Chair; Senator Gainer, Vice Chair; Senators Gibson, Hutson, Passidomo, Rodriguez, Stargel, and Young

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 236</b> Book (Similar H 809)	Tax Credit for Baby Changing Tables in Restaurants; Authorizing a sales and use tax credit for restaurants purchasing and installing baby changing tables on their premises; specifying limitations on the credit; authorizing excess amounts of the credit to be taken on future submitted tax returns for a specified timeframe, etc.  CM 01/09/2018 Favorable AFT AP	Favorable Yeas 8 Nays 0
2	<b>CS/SB 296</b> Regulated Industries / Brandes (Compare H 669)	Beverage Law; Repealing provisions relating to limitations on the size of individual wine containers; repealing provisions relating to limitations on the size of individual cider containers; revising provisions authorizing a restaurant to allow a patron to remove bottles of wine from a restaurant for off-premises consumption, etc.  RI 12/07/2017 Fav/CS CM 01/09/2018 Fav/CS RC	Fav/CS Yeas 8 Nays 0
3	<b>SB 760</b> Bean (Identical H 623)	Grounds for Nonrecognition of Out-of-country Foreign Judgments; Providing additional circumstances in which an out-of-country foreign judgment need not be recognized, etc.  JU 12/05/2017 Favorable CM 01/09/2018 Favorable RC	Favorable Yeas 8 Nays 0
4	<b>SB 962</b> Grimsley (Similar H 1267)	Telephone Solicitation; Designating the "Florida Call-Blocking Act"; Authorizing telecommunication providers, with authorization from a subscriber, to block certain calls from reaching the subscriber; authorizing telecommunication providers to rely solely upon caller identification service information to determine originating numbers for the purpose of blocking such calls, etc.  CM 01/09/2018 Fav/CS RC	Fav/CS Yeas 8 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Commerce and Tourism

Tuesday, January 9, 2018, 4:00—5:30 p.m.

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

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: SB 236

INTRODUCER: Senator Book

SUBJECT: Tax Credit for Baby Changing Tables in Restaurants

DATE: January 8, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	_____	_____	<u>AFT</u>	_____
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 236 amends s. 212.08, F.S., to allow a restaurant to receive a tax credit for the purchase of a baby changing table that is installed on its premises. The bill specifies that the tax credit is equal to the lesser of the actual cost of the baby changing table or \$300. A restaurant cannot receive the tax credit for more than two baby changing tables.

The Revenue Estimating Conference (REC) estimates the bill will reduce General Revenue Fund receipts by approximately \$800,000 in Fiscal Year 2018-2019 and by approximately \$800,000 on a recurring basis.

The bill takes effect on July 1, 2018.

**II. Present Situation:**

Florida levies a six percent state sales and use tax on the sale or rental of most tangible personal property, admissions, rentals of transient accommodations, rentals of commercial real estate, and a limited number of services.<sup>1</sup>

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.

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<sup>1</sup> See ch. 212, F.S.

In addition to the state sales and use tax, s. 212.055, F.S., authorizes counties to impose nine local discretionary sales surtaxes.<sup>2</sup> A surtax applies to all transactions occurring in the county that are 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.<sup>3</sup>

Sales tax is added to the price of taxable goods or services and the tax is collected from the purchaser at the time of sale.

### **Baby Changing Tables**

Under current law, there is no sales tax credit for the purchase of a baby changing tables in restaurants and such purchases are subject to state and local sales and use tax under ch. 212, F.S.

#### ***Recent Regulation***

In 2016, the federal Bathrooms Accessible In Every Situation Act (BABIES Act) was signed into law.<sup>4</sup> The BABIES Act requires all publicly accessible, federal buildings to provide changing tables in both male and female restrooms. The state of California recently passed similar legislation requiring state and local public facilities to provide accessible changing stations.<sup>5</sup>

Florida law does not mandate publicly owned state and local buildings, or private businesses, to provide baby changing stations in restrooms. However, Miami-Dade County recently passed an ordinance that requires certain business establishments to provide men and women with accessible baby changing stations.<sup>6</sup>

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

The bill authorizes a tax credit for a restaurant that purchases a baby changing table and installs the baby changing table on its premises. The amount of the tax credit is equal to the cost of the baby changing table or \$300, whichever is less.

The bill specifies that the amount of the baby changing table does not include the cost of installation and that a restaurant cannot receive the tax credit for more than two baby changing tables.

The bill allows a restaurant to take the credit on a subsequent tax return within one year, if the credit is greater than the tax remittance obligation on a single tax return.

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<sup>2</sup> The tax rates, duration of the surtaxes, method of imposition, and proceed uses are individually specified in s. 212.055, F.S.

<sup>3</sup> Section 212.054, F.S.

<sup>4</sup> Pub. L. 114-235.

<sup>5</sup> Assem. Bill No 1127 (CA 2017 Reg. Sess.) (October 13, 2017).

<sup>6</sup> Miami-Dade County Ordinance Sec. 8A-114. For additional information, see Miami-Dade County, *Baby Diaper-Changing Accommodations*, <http://www.miamidade.gov/business/laws-baby-diaper.asp> (last visited Jan. 5, 2018).

**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 mandate requirements do not apply to laws having an insignificant impact,<sup>7</sup> which for Fiscal Year 2017-2018, is \$2.08 million or less.<sup>8</sup>

The REC estimates the bill will likely have an insignificant impact on local governments.<sup>9</sup>

**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 allows a restaurant that purchases and installs baby changing tables to claim a tax credit of up to \$300 for a maximum of two baby changing tables.

**C. Government Sector Impact:**

The Revenue Estimating Conference estimates this bill will reduce General Revenue Fund receipts by \$800,000 in Fiscal Year 2018-2019 and by \$800,000 on a recurring basis. The bill reduces local revenue by \$100,000 in Fiscal Year 2018-2019 and by \$100,000 on a recurring basis.<sup>10</sup>

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<sup>7</sup> 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 visited Jan. 5, 2018).

<sup>8</sup> Based on the Demographic Estimating Conference's population adopted on July 10, 2017. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Jan. 5, 2018).

<sup>9</sup> Office of Economic and Demographic Research, *Revenue Impact Conference Results*, available at [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/\\_pdf/Impact1013.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/Impact1013.pdf) (last visited Jan. 5, 2018).

<sup>10</sup> *Id.*

The bill likely has an insignificant fiscal impact on the Department of Revenue.<sup>11</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill defines “restaurant” as an establishment where food is prepared and sold for immediate consumption on the premises. The definition is broad and may encompass other unintended businesses that sell food for immediate consumption, such as grocery stores or gas stations.

**VIII. Statutes Affected:**

This bill substantially amends Section 212.08 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.

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

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<sup>11</sup> Department of Revenue, *2018 Agency Legislative Bill Analysis SB 236* (September 29, 2017) (on file with the Senate Commerce and Tourism Committee).

By Senator Book

32-00132-18

2018236\_\_

1 A bill to be entitled  
 2 An act relating to a tax credit for baby changing  
 3 tables in restaurants; amending s. 212.08, F.S.;  
 4 defining the terms "baby changing table" and  
 5 "restaurant"; authorizing a sales and use tax credit  
 6 for restaurants purchasing and installing baby  
 7 changing tables on their premises; specifying  
 8 limitations on the credit; authorizing excess amounts  
 9 of the credit to be taken on future submitted tax  
 10 returns for a specified timeframe; providing an  
 11 effective date.

12  
 13 Be It Enacted by the Legislature of the State of Florida:

14  
 15 Section 1. Paragraph (t) is added to subsection (5) of  
 16 section 212.08, Florida Statutes, to read:  
 17 212.08 Sales, rental, use, consumption, distribution, and  
 18 storage tax; specified exemptions.—The sale at retail, the  
 19 rental, the use, the consumption, the distribution, and the  
 20 storage to be used or consumed in this state of the following  
 21 are hereby specifically exempt from the tax imposed by this  
 22 chapter.

23 (5) EXEMPTIONS; ACCOUNT OF USE.—

24 (t) Restaurant tax credit for baby changing tables.—

25 1. As used in this paragraph, the term:

26 a. "Baby changing table" means a table or other device used  
 27 to change a child's diaper or clothes.

28 b. "Restaurant" means an establishment where food is  
 29 prepared and sold for immediate consumption on the premises.

Page 1 of 2

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

32-00132-18

2018236\_\_

30 2. A restaurant that purchases and installs a baby changing  
 31 table on its premises is allowed a credit against the tax  
 32 remitted under this chapter. The credit is equal to the actual  
 33 cost of the baby changing table, not including the cost of  
 34 installation, or \$300, whichever is less. A restaurant may  
 35 receive credits for no more than two baby changing tables.  
 36 3. If a credit under this paragraph is greater than the tax  
 37 remittance obligation on a single tax return, excess amounts may  
 38 be taken as a credit on any tax return submitted within 12  
 39 calendar months after the calendar month the credit was  
 40 initially taken.

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

Page 2 of 2

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on the  
Environment and Natural Resources, *Chair*  
Appropriations  
Appropriations Subcommittee on Health and  
Human Services  
Education  
Environmental Preservation and  
Conservation  
Health Policy  
Rules

### SENATOR LAUREN BOOK

*Democratic Leader Pro Tempore*  
32nd District

September 25, 2017

Chairman Bill Montford  
Committee on Commerce and Tourism  
310 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chairman Montford,

I respectfully request that you place SB 236, relating to Tax Credit for Baby Changing Tables in Restaurants, on the agenda of the Committee on Commerce and Tourism at your earliest convenience.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Lauren Book".

Senator Lauren Book  
Senate District 32

cc: Todd McKay, Staff Director  
Gabriela Denton, Administrative Assistant

#### REPLY TO:

- 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
- 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**JOE NEGRON**  
President of the Senate

**ANITERE FLORES**  
President Pro Tempore



THE FLORIDA SENATE

APPEARANCE RECORD

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

01/09/18

Meeting Date

230

Bill Number (if applicable)

Topic Tax Credit for Baby Changing Tables in Restaurants

Amendment Barcode (if applicable)

Name Richard Turner

Job Title Senior VP of Legal & Legislative Affairs

Address 230 S. Adams St.

Phone 850-224-2250

Tallahassee FL 32301

Email rturner@flra.org

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Florida Restaurant & Lodging Association

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

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

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

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

# APPEARANCE RECORD

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

1-9-17

Meeting Date

236

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Lance Lozano

Job Title Chief Operating Officer

Address 116 S. Monroe St

Phone 850-528-4526

Tallahassee FL 32301

City State Zip

Email llozano@fuba.org

Speaking:  For  Against  Information

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

Representing Florida United Businesses Assoc.

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.)

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

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BILL: CS/SB 296

INTRODUCER: Regulated Industries Committee and Senator Brandes

SUBJECT: Beverage Law

DATE: January 10, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<b>Fav/CS</b>
2.	<u>Swift</u>	<u>McKay</u>	<u>CM</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 296 repeals the limits on the size of a wine container, which in current law may not hold more than one gallon, unless the container is reusable and holds 5.16 gallons.

The bill also repeals the limits on the size of a cider container, which in current law may not hold more than 32 ounces of cider. However, current law permits cider to be packaged and sold in bulk, in kegs or barrels, or in any individual container of one gallon or more of cider, regardless of container type.

The bill amends the current provision that permits a restaurant patron to take home a partially consumed bottle of wine under certain conditions. It revises the requirement that a restaurant patron must purchase and consume a full course meal (consisting of an entrée, salad or vegetable, beverage, and bread) in order to be able to take home a partially consumed bottle of wine. The bill replaces that requirement with a requirement that a restaurant patron purchase only a meal with the bottle of wine.

The bill revises the current requirement for craft distilleries to produce no more than 75,000 gallons annually. It increases the limit to 250,000 gallons or fewer and limits the amount allowed to be sold on property to 75,000 gallons.

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

## II. Present Situation:

### Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation administers and enforces<sup>1</sup> the Beverage Law,<sup>2</sup> which regulates the manufacture, distribution, and sale of wine, beer, and liquor<sup>3</sup>. The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

### Wine and Cider Containers

Section 564.05, F.S., prohibits the sale of wine in an individual container that holds more than one gallon of wine. However, wine may be sold in a reusable container of 5.16 gallons. Distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size. Any person who violates the prohibition in s. 564.05, F.S., commits a second degree misdemeanor.<sup>4</sup>

Section 564.055, F.S., prohibits the sale of cider<sup>5</sup> at retail in any individual container of more than 32 ounces of cider. However, cider may be packaged and sold in bulk, in kegs or barrels, or in any individual container of one gallon or more of cider, regardless of container type.

### Restaurants - Off-Premises Consumption of Wine

Restaurants licensed to sell wine on the premises may permit patrons to remove one bottle of wine for consumption off the licensed premises under the following conditions:

- The patron must have purchased a full-course meal consisting of a salad or vegetable, entrée, a beverage, and bread and consumed a portion of the bottle of wine with the meal;
- Before the partially-consumed bottle of wine is removed from the premises, the bottle must be securely resealed by the licensee, or the licensee's employee, and placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed;
- A dated receipt for the wine and meal must be attached to the container; and
- The container must be placed in a locked glove compartment, trunk, or other area behind the last upright seat of a motor vehicle that does not have a trunk.<sup>6</sup>

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<sup>1</sup> Section 561.02, F.S.

<sup>2</sup> Section 561.01(6), F.S., provides that the "Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

<sup>3</sup> See s. 561.14, F.S.

<sup>4</sup> Section 775.082(4), F.S., provides the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083(1)(e), F.S., provides the penalty for a misdemeanor of the second degree is a fine not to exceed \$500.

<sup>5</sup> Section 564.06(4), F.S., provides that "cider" is "made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears, including but not limited to flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must, that contain not less than one-half of 1 percent of alcohol by volume and not more than 7 percent of alcohol by volume." "Must" is the expressed juice of a fruit before and during fermentation. See <https://www.merriam-webster.com/dictionary/must> (last visited January 4, 2018).

<sup>6</sup> Section 564.09, F.S.

## Distilleries and Craft Distilleries

Section 565.01, F.S., defines the terms “liquor,” “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors” to mean “that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.”

A “distillery” is a manufacturer of distilled spirits,<sup>7</sup> and a “craft distillery” is a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. A craft distillery must notify the division in writing of its decision to qualify as a craft distillery.<sup>8</sup>

All distilleries engaged solely in the business of manufacturing distilled spirits, or engaged in the business of blending and rectifying<sup>9</sup> distilled spirits must pay a state license tax for each plant or branch operating in Florida. Distilleries pay \$4,000 annually for the license tax and craft distilleries pay \$1,000. Persons who engage in the business of distilling spirits may also rectify and blend spirituous liquors without paying an additional license tax.<sup>10</sup>

## Retail Sales by Distilleries

A craft distillery is allowed to sell to consumers branded products<sup>11</sup> distilled on the licensed premises. The products must be in factory-sealed containers that are filled at the distillery and sold for off-premises consumption.<sup>12</sup> The sales must occur at the distillery’s souvenir gift shop located on private property contiguous to the licensed distillery premises. The craft distillery is not required to obtain, in addition to its manufacturer’s license, a vendor’s license in order to sell distilled spirits to consumers.

A craft distillery must report to the division within five business days after it has reached the 75,000-gallon production limit and cease making sales to consumers on the day after it reaches the production limit.<sup>13</sup>

A craft distillery may not ship, arrange to ship, or deliver distilled spirits to consumers, but may ship, arrange to ship, or deliver distilled spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.<sup>14</sup>

A craft distillery may not transfer its license or any ownership interest to any individual or entity with a direct or indirect interest in another distillery licensed in any other state, territory, or

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<sup>7</sup> Section 565.03(1)(c), F.S.

<sup>8</sup> Section 565.03(1)(b), F.S.

<sup>9</sup> Merriam-Webster defines rectify as the purification (of alcohol) especially by repeated or fractional distillation, *available at* <http://www.merriam-webster.com/dictionary/rectify> (last visited January 10, 2018).

<sup>10</sup> Section 565.03(3), F.S.

<sup>11</sup> Section 565.03(1)(a), F.S., defines “branded product” to mean “any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations.”

<sup>12</sup> Section 565.03(2)(c), F.S.

<sup>13</sup> Section 565.03(2)(c)3., F.S.

<sup>14</sup> Section 565.03(2)(c)4., F.S.

country.<sup>15</sup> However, a craft distillery may be affiliated with another distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or in any other state, territory, or country.<sup>16</sup>

A craft distillery must submit beverage excise taxes on distilled spirits sold to consumers in its monthly report to the division.<sup>17</sup>

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

#### **Wine Containers**

**Section 1** repeals the wine container size limits in s. 564.05, F.S.

#### **Cider Containers**

**Section 2** repeals the cider container size limits in s. 564.055, F.S.

#### **Restaurants - Off-Premises Consumption of Wine**

**Section 3** amends s. 564.09, F.S., to revise the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to take home a partially consumed bottle of wine. The bill retains the requirement that the restaurant patron purchase a meal with the bottle of wine.

#### **Craft Distilleries**

**Section 4** amends s. 565.03, F.S., to revise the requirement that craft distilleries may only produce up to 75,000 gallons annually, instead allowing for 250,000 or fewer gallons annually. The bill retains the limitation that no more than 75,000 gallons may be sold at the craft distillery's souvenir shop.

#### **Effective Date**

**Section 5** provides the bill takes effect July 1, 2018.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>15</sup> Section 565.03(2)(c)5., F.S.

<sup>16</sup> Section 565.03(2)(c)6., F.S.

<sup>17</sup> Section 565.03(5), F.S. Section 565.12, F.S., requires manufactures and distributors to pay an excise tax on alcoholic beverages, with the tax rate per gallon depending on the percent of alcohol by volume of the beverage. Section 565.13, F.S., requires every distributor selling spirituous beverages within the state to pay the tax to the division monthly on or before the 10th day of the following month.

**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:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The provisions repealing the limits on the size of wine containers and revising the conditions under which a restaurant patron may be permitted to take home a partially consumed bottle of wine in CS/SB 296 are substantively identical to provisions in CS/CS/SB 388 (2017 Regular Session), by the Rules Committee, Regulated Industries Committee, and Senator Hutson, which were amended onto the bill by the Rules Committee and passed by the Senate.<sup>18</sup> The provisions in CS/SB 296 also were passed by the Regulated Industries Committee in CS/SB 400 during the 2017 Regular Session.<sup>19</sup>

**VIII. Statutes Affected:**

This bill repeals the following sections of the Florida Statutes: 564.05 and 564.055.

This bill substantially amends sections 564.09 and 565.03 of the Florida Statutes.

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<sup>18</sup> See Amendment #379250 (2017 Regular Session) offered by Senator Brandes in the Rules Committee on April 12, 2017. The Senate passed CS/CS/SB 388 on April 19, 2017, by a vote of 36-1. (Subsequently, CS/CS/SB 388 was amended by the House of Representatives to remove provisions unrelated to provisions in SB 296 and died in Returning Messages.)

<sup>19</sup> See Substitute Amendment #323682 and Amendment #193132 to Substitute Amendment #323682 (both offered by Senator Brandes) to SB 400 by Senator Perry, which were adopted by the Regulated Industries Committee on March 16, 2016. (Those provisions subsequently were removed from CS/CS/SB 400 by Amendment #887606 offered by Senator Perry, which was adopted by the Senate on April 27, 2017. CS/CS/CS/HB 689 (2017 Regular Session) was substituted for CS/CS/SB 400 and CS/CS/SB 400 then was laid on the table. CS/CS/CS/HB 689 was enacted into law as Ch. 2017-137, Laws of Fla.)

**IX. Additional Information:**

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

**CS by Regulated Industries Committee on December 7, 2017:**

The committee substitute:

- Removes from the bill the provision permitting the sale of cider in 32 ounce, 64 ounce, or one gallon growlers in the same manner and with the same restrictions applicable to malt beverages;
- Repeals s. 564.055, F.S., relating to the container size limitations for cider; and
- Removes from the bill the provision that would permit a restaurant patron to take home a partially consumed and resealed bottle of beer.

**CS by Commerce and Tourism Committee on January 9, 2018:**

- Adds to the bill the provision that craft distilleries may now produce 250,000 or fewer gallons and retain their craft distillery status.
- Retains the provision that craft distilleries may only sell up to 75,000 gallons at their souvenir shop.

- B. **Amendments:**

None.





546694

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/09/2018	.	
	.	
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The Committee on Commerce and Tourism (Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 38

and insert:

Section 4. Paragraph (b) of subsection (1) and paragraph (c) of subsection (2) of section 565.03, Florida Statutes, are amended to read:

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers of alcoholic beverages; vendor licenses and fees; distilleries and craft distilleries.—



546694

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

12 (b) "Craft distillery" means a licensed distillery that  
13 produces 250,000 ~~75,000~~ or fewer gallons per calendar year of  
14 distilled spirits on its premises and is designated as a craft  
15 distillery by ~~has notified~~ the division upon notification in  
16 writing of its decision to qualify as a craft distillery.

17 (2)

18 (c) A craft distillery licensed under this section may sell  
19 to consumers, at its souvenir gift shop, up to 75,000 gallons  
20 per calendar year of branded products distilled on its premises  
21 in this state in factory-sealed containers that are filled at  
22 the distillery for off-premises consumption. Such sales are  
23 authorized only on private property contiguous to the licensed  
24 distillery premises in this state and included on the sketch or  
25 diagram defining the licensed premises submitted with the  
26 distillery's license application. All sketch or diagram  
27 revisions by the distillery shall require the division's  
28 approval verifying that the souvenir gift shop location operated  
29 by the licensed distillery is owned or leased by the distillery  
30 and on property contiguous to the distillery's production  
31 building in this state.

32 1. A craft distillery may not sell any factory-sealed  
33 individual containers of spirits except in face-to-face sales  
34 transactions with consumers who are making a purchase of no more  
35 than six individual containers of each branded product.

36 2. Each container sold in face-to-face transactions with  
37 consumers must comply with the container limits in s. 565.10,  
38 per calendar year for the consumer's personal use and not for  
39 resale and who are present at the distillery's licensed premises



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40 in this state.

41 3. A craft distillery must report to the division within 5  
42 days after it reaches the production limitations provided in  
43 paragraph (1)(b). Any retail sales to consumers at the craft  
44 distillery's licensed premises are prohibited beginning the day  
45 after it reaches the production limitation.

46 4. A craft distillery may not ship or arrange to ship any  
47 of its distilled spirits to consumers and may sell and deliver  
48 only to consumers within the state in a face-to-face transaction  
49 at the distillery property. However, a craft distiller licensed  
50 under this section may ship, arrange to ship, or deliver such  
51 spirits to manufacturers of distilled spirits, wholesale  
52 distributors of distilled spirits, state or federal bonded  
53 warehouses, and exporters.

54 5. Except as provided in subparagraph 6., it is unlawful to  
55 transfer a distillery license for a distillery that produces  
56 250,000 ~~75,000~~ or fewer gallons per calendar year of distilled  
57 spirits on its premises or any ownership interest in such  
58 license to an individual or entity that has a direct or indirect  
59 ownership interest in any distillery licensed in this state;  
60 another state, territory, or country; or by the United States  
61 government to manufacture, blend, or rectify distilled spirits  
62 for beverage purposes.

63 6. A craft distillery shall not have its ownership  
64 affiliated with another distillery, unless such distillery  
65 produces 250,000 ~~75,000~~ or fewer gallons per calendar year of  
66 distilled spirits on each of its premises in this state or in  
67 another state, territory, or country.

68 7. A craft distillery may transfer up to 75,000 gallons per



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69 calendar year of distilled spirits it manufactures from its  
70 federal bonded space, nonbonded space at its licensed premises,  
71 or storage areas to its souvenir gift shop.

72 Section 5. This act shall take effect July 1, 2018.

73

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

75 And the title is amended as follows:

76 Delete line 9

77 and insert:

78 for off-premises consumption; amending s. 565.03,  
79 F.S.; redefining the term "craft distillery";  
80 providing limitations on retail sales by a craft  
81 distillery to consumers; providing that it is unlawful  
82 to transfer a distillery license, or ownership in a  
83 distillery license, for certain distilleries to  
84 certain individuals or entities; prohibiting a craft  
85 distillery from having its ownership affiliated with  
86 certain other distilleries; authorizing a craft  
87 distillery to transfer distilled spirits from certain  
88 locations to its souvenir gift shop; providing an  
89 effective

By the Committee on Regulated Industries; and Senator Brandes

580-01836-18

2018296c1

1 A bill to be entitled  
 2 An act relating to the Beverage Law; repealing s.  
 3 564.05, F.S., relating to limitations on the size of  
 4 individual wine containers; repealing s. 564.055,  
 5 F.S., relating to limitations on the size of  
 6 individual cider containers; amending s. 564.09, F.S.;  
 7 revising provisions authorizing a restaurant to allow  
 8 a patron to remove bottles of wine from a restaurant  
 9 for off-premises consumption; providing an effective  
 10 date.  
 11  
 12 Be It Enacted by the Legislature of the State of Florida:  
 13  
 14 Section 1. Section 564.05, Florida Statutes, is repealed.  
 15 Section 2. Section 564.055, Florida Statutes, is repealed.  
 16 Section 3. Section 564.09, Florida Statutes, is amended to  
 17 read:  
 18 564.09 Restaurants; off-premises consumption of wine.—  
 19 Notwithstanding any other provision of law, a restaurant  
 20 licensed to sell wine on the premises may permit a patron to  
 21 remove one unsealed bottle of wine for consumption off the  
 22 premises if the patron has purchased a ~~full-course~~ meal  
 23 ~~consisting of a salad or vegetable, entree, a beverage, and~~  
 24 ~~bread~~ and consumed a portion of the bottle of wine ~~with such~~  
 25 ~~meal~~ on the restaurant premises. A partially consumed bottle of  
 26 wine that is to be removed from the premises must be securely  
 27 resealed by the licensee or its employees before removal from  
 28 the premises. The partially consumed bottle of wine shall be  
 29 placed in a bag or other container that is secured in such a

Page 1 of 2

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

580-01836-18

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30 manner that it is visibly apparent if the container has been  
 31 subsequently opened or tampered with, and a dated receipt for  
 32 the bottle of wine and ~~full-course~~ meal shall be provided by the  
 33 licensee and attached to the container. If transported in a  
 34 motor vehicle, the container with the resealed bottle of wine  
 35 must be placed in a locked glove compartment, a locked trunk, or  
 36 the area behind the last upright seat of a motor vehicle that is  
 37 not equipped with a trunk.  
 38 Section 4. This act shall take effect July 1, 2018.

Page 2 of 2

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

01/09/18

Meeting Date

290

Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Richard Turner

Job Title Senior VP of Legal & Legislative Affairs

Address 230 S. Adams St.

Phone 850-224-2250

Street

Tallahassee

FL

32301

Email rturner@frla.org

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Restaurant & Lodging Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

# THE FLORIDA SENATE APPEARANCE RECORD

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

9 January 2018

SB 296

*Meeting Date*

*Bill Number (if applicable)*

Topic beverage law

*Amendment Barcode (if applicable)*

Name Jason Unger

Job Title lobbyist registration

Address 301 S. Bronough Street, Ste. 600

Phone 850-577-9090

*Street*

Tallahassee

FL

32301

Email jason.unger@gray-robinson.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Seavin, Inc. (Lakeridge and San Sebastian Wineries)

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.***

# APPEARANCE RECORD

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

January 9, 2018  
Meeting Date

296  
Bill Number (if applicable)

Topic Alcoholic Beverages

Amendment Barcode (if applicable)

Name Josh Aubuchon

Job Title attorney

Address 315 South Calhoun  
Street

Phone 222-7000

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 Brewers Guild

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.**



# APPEARANCE RECORD

Jan. 9, 2018

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

SB 296

Bill Number (if applicable)

Meeting Date

A 546694

Amendment Barcode (if applicable)

Topic Craft Distilleries

Name Scott Ashley

Job Title President & General Counsel

Address 215 S. Monroe St. #800-A

Phone (850) 681-8700

Street

Talla, FL 32301

City

State

Zip

Email scott@wsdfloida.co

Speaking:  For  Against  Information

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

Representing Wine & Spirits Distributors 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.

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.)

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

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BILL: SB 760

INTRODUCER: Senator Bean

SUBJECT: Grounds for Nonrecognition of Out-of-country Foreign Judgments

DATE: January 8, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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## I. Summary:

SB 760 amends the Uniform Out-of-country Foreign Money-Judgment Recognition Act (act), codified in ch. 55, F.S., to add two additional permissive grounds for nonrecognition of a foreign money judgment by a Florida court. The act currently provides three mandatory grounds for nonrecognition and eight permissive grounds for nonrecognition of a foreign judgment.

The additional permissive grounds allow a Florida court to decline to recognize a foreign judgment if:

- There is substantial doubt about the integrity of the particular foreign court with respect to the judgment; or
- The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

The bill takes effect upon becoming law.

## II. Present Situation:

### **Recognition and Enforcement of Foreign Judgments**

Florida law codifies the common law principle of comity for recognizing and enforcing final money judgments rendered by a foreign, out-of-country court.

#### *Common Law Comity Principles*

Under the full faith and credit clause of the United States Constitution, judgments of any state or federal court within the United States are automatically enforceable in any other state or federal court.<sup>1</sup> However, the enforcement of a foreign judgment obtained in another country is not

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<sup>1</sup> U.S. CONST. art. IV, s. 1.

subject to the full faith and credit clause. Instead, the recognition of foreign judgments is generally governed by the principles of international comity.

“Comity is ‘the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.’”<sup>2</sup> The purpose of granting comity is similar to the application of *res judicata* in that “once the parties have had an opportunity to present their cases fully and fairly before a court of competent jurisdiction, the results of the litigation process should be final” and given conclusive effect.<sup>3</sup>

However, there is no absolute obligation by a U.S. court to extend comity to a foreign judgment.<sup>4</sup> Rather, comity is an affirmative defense that the party seeking recognition of a foreign judgment has the burden of proving.<sup>5</sup>

The principles governing comity analysis were first set forth by the United States Supreme Court in *Hilton v. Guyot* in 1895, when the Court considered the enforceability of a French judgment in the United States.<sup>6</sup> These governing principles have since been summarized as follows:

Under principles of international comity, a foreign court’s judgment on a matter is conclusive in a federal court when (1) the foreign judgment was rendered by a court of competent jurisdiction, which had jurisdiction over the cause and the parties, (2) the judgment is supported by due allegations and proof, (3) the relevant parties had an opportunity to be heard, (4) the foreign court follows procedural rules, and (5) the foreign proceedings are stated in a clear and formal record. . . .

Under the law of the United States, a foreign judgment cannot be enforced in a U.S. court unless it was obtained under a system with procedures compatible with the requirements of due process of law.<sup>7</sup>

The principles of comity are now regarded as common law in the United States.<sup>8</sup>

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<sup>2</sup> *Int’l Transactions, LTD. v. Embotelladora Agral Regiomontana*, 347 F.3d 589, 593-94 (5th Cir. 2003) (quoting and citing *Hilton v. Guyot*, 159 U.S. 113, 163-64, 205-06 (1895)).

<sup>3</sup> *Id.* (citing *Cunard S.S. Co. v. Salen Reefer Services AB*, 773 F.2d 452, 457 (2d Cir.1985)).

<sup>4</sup> *Hilton*, 159 U.S. at 163-64.

<sup>5</sup> *Int’l Transactions, LTD.*, 347 F.3d at 594 (citing *Allstate Life Ins. Co. v. Linter Group Ltd.*, 994 F.2d 996, 999 (2d Cir. 1993)).

<sup>6</sup> *Hilton*, 159 U.S. at 163-64.

<sup>7</sup> *Int’l Transactions, LTD.*, 347 F.3d at 594 (citing *Hilton* at 159).

<sup>8</sup> *Mujica v. AirScan Inc.*, 771 F.3d 580, 597 (9th Cir. 2014) (“The federal common law doctrine of international comity is applicable to these state law claims notwithstanding the general rule that federal courts apply California’s substantive law when sitting in diversity.”); Nat’l Conference of Comm’rs on Uniform State Laws, *Uniform Foreign Money-Judgments Recognition Act*, 1 (1962) available at <http://www.uniformlaws.org/shared/docs/foreign%20money%20judgments%20recognition/ufmjra%20final%20act.pdf> (last visited Jan. 5, 2018).

### *Comity and Due Process*

At the center of the comity analysis is the constitutionally guaranteed right to due process of law. The Constitutions of the United States<sup>9</sup> and Florida<sup>10</sup> guarantee that no person shall be deprived of life, liberty, or property without due process of law. Due process has been described as envisioning

a court that hears before it condemns, proceeds upon inquiry, and renders judgment only after proper consideration of issues advanced by adversarial parties. In this respect the term ‘due process’ embodies a fundamental conception of fairness that derives ultimately from the natural rights of all individuals. Procedural due process, therefore, requires adequate notice and an opportunity to be heard at a meaningful time and in a meaningful manner.<sup>11</sup>

Due process in the U.S. requires courts and judges to be neutral and impartial.<sup>12</sup>

### **Codification of Common Law Comity Principles in Uniform State Laws**

Comity principles have not been codified at the federal level. With the exception of foreign defamation suits,<sup>13</sup> there is no federal statute<sup>14</sup> or treaty<sup>15</sup> governing the recognition or enforcement of foreign judgments.<sup>16</sup> Rather, recognition and enforcement of foreign judgments in the United States is governed either by common law principles of international comity as developed in case law following *Hinton* or by state law.<sup>17</sup>

Most states have adopted either the 1962 Uniform Foreign Money Judgments Recognition Act (1962 Act) or the 2005 Uniform Foreign-Country Money Judgments Recognition Act (2005 Act) drafted by the National Conference of Commissioners on Uniform State Laws (Uniform Law

<sup>9</sup> U.S. CONST. amend. V; U.S. CONST. amend. XIV, § 1.

<sup>10</sup> FLA. CONST. art. I, s. 9.

<sup>11</sup> *Luckey v. State*, 979 So. 2d 353, 355–56 (Fla. 5th DCA 2008) (quoting *Jones v. State*, 740 So.2d 520, 523 (Fla.1999), accord *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971); *Scull v. State*, 569 So.2d 1251, 1252 (Fla.1990)) (internal quotations and citations omitted).

<sup>12</sup> *Tumey v. State of Ohio*, 273 U.S. 510, 522 (1927) (“That officers acting in a judicial or quasi judicial capacity are disqualified by their interest in the controversy to be decided is of course the general rule.”).

<sup>13</sup> 28 U.S.C. s. 4102 (2010).

<sup>14</sup> The American Law Institute (ALI) has proposed a federal statute. See ALI, *Recognition and Enforcement of Foreign Judgments: Analysis and Proposed Federal Statute*, available at <https://www.ali.org/publications/show/recognition-and-enforcement-foreign-judgments-analysis-and-proposed-federal-statute/> (last visited Jan. 5, 2018).

<sup>15</sup> Hague Convention On Choice Of Court Agreements, signed Jan. 19, 2009, 44 I.L.M. 1294 (2005). The Hague Convention Choice of Laws was signed by the United States in 2009 but does not appear to have been ratified to date. See HCCH, *Status Table 37: Convention of 30 June 2005 on Choice of Court Agreements*, available at <https://www.hcch.net/en/instruments/conventions/status-table/?cid=98> (last visited Jan. 5, 2018).

<sup>16</sup> Violeta I. Balan, *Recognition and Enforcement of Foreign Judgments in the United States: The Need for Federal Legislation*, 37 J. MARSHALL L. REV. 229, 234-35 (2003).

<sup>17</sup> *Id.*

Commission).<sup>18</sup> The aim of these uniform laws is to codify the common law principles of comity and promote reciprocal recognition of money judgments in foreign countries.<sup>19</sup>

### ***The 1962 Act***

The prefatory comment to the 1962 Act indicates that, while the 1962 Act sets out rules that have been applied by a majority of U.S. courts, the 1962 Act contemplates a degree of flexibility among various jurisdictions. The prefatory comment notes that the 1962 Act does not necessarily “go as far” as some court decisions, and that courts are still privileged to give a foreign judgment greater effect than required by the 1962 Act.<sup>20</sup> The prefatory note also contemplates that some states would not wholesale adopt the 1962 Act as written, and that each state would have to provide a procedural mechanism for enforcement.<sup>21</sup>

### ***Florida’s Version of the 1962 Act***

In 1994, Florida adopted the 1962 Act and enacted it as the Uniform Out-of-country<sup>22</sup> Foreign Money–Judgment Recognition Act (act).<sup>23</sup> The act, codified in ss. 55.601-55.607, F.S., applies “to any out-of-country foreign judgment<sup>24</sup> that is final and conclusive<sup>25</sup> and enforceable where rendered.”<sup>26</sup> “The Act effectively replaces the common law principles of comity for recognizing foreign judgments, at least to the extent of any differences between the Act and the common law.”<sup>27</sup>

Under the act, “a foreign judgment is *prima facie* enforceable if it ‘is final, conclusive, and enforceable where rendered, even though an appeal therefrom is pending or is subject to appeal.’”<sup>28</sup> “Once the party seeking to enforce the judgment follows the filing and notice

<sup>18</sup> The Uniform Law Commission is a non-profit organization comprised of state commissions on uniform laws from each state and certain U.S. territories. The purpose of the Uniform Law Commission is to “study and review the law of the states to determine which areas of law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable.” Uniform Law Comm’n, Nat’l Conference of Comm’rs on Uniform State Laws, *Organization*, available at <http://www.uniformlaws.org/Narrative.aspx?title=About%20the%20ULC> (last visited Jan. 5, 2018).

<sup>19</sup> See Nat’l Conference of Comm’rs on Uniform State Laws, *Uniform Foreign Money-Judgments Recognition Act*, 1 (1962) available at <http://www.uniformlaws.org/shared/docs/foreign%20money%20judgments%20recognition/ufmjra%20final%20act.pdf> (last visited Jan. 5, 2018).

<sup>20</sup> See Nat’l Conference of Comm’rs on Uniform State Laws, *Uniform Foreign Money-Judgments Recognition Act*, 1 (1962) available at <http://www.uniformlaws.org/shared/docs/foreign%20money%20judgments%20recognition/ufmjra%20final%20act.pdf> (last visited Jan. 5, 2018).

<sup>21</sup> *Id.*

<sup>22</sup> “Out-of-country” is used to describe “foreign judgments” under sections 55.605-.607, F.S., to distinguish it from “foreign judgments” as that term is used in sections 55.501-.509, F.S. (“Florida Enforcement of Foreign Judgments Act”). Sections 55.501-.509, F.S., applies to judgments rendered in another state or court within the United States and its territories. See s. 55.502(1), F.S.

<sup>23</sup> Chapter 94-239, Laws of Fla.; Sections 55.601-.607, F.S.

<sup>24</sup> Section 55.602, F.S., defines an “out-of-country foreign judgment” as “any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine, or other penalty.”

<sup>25</sup> An out-of-country foreign judgment is conclusive if “it grants or denies recovery of a sum of money.” Section 55.604, F.S.

<sup>26</sup> Section 55.603, F.S.

<sup>27</sup> *Chabert v. Bacquie*, 694 So. 2d 805, 811 (Fla. 4th DCA 1997).

<sup>28</sup> *Osorio v. Dole Food Co.*, 665 F. Supp. 2d 1307, 1323–24 (S.D. Fla. 2009), *aff’d sub nom. Osorio v. Dow Chem. Co.*, 635 F.3d 1277 (11th Cir. 2011) (quoting s. 55.603, F.S.).

requirements of Fla. Stat § 55.604, the judgment will be enforced unless the judgment debtor objects within 30 days.”<sup>29</sup> Out-of-country foreign money judgments:

[C]an be recognized and enforced in this state by filing an authenticated copy of the judgment with the clerk of the court and recording it in the public records in the county where enforcement is sought. The clerk must give notice to the judgment debtor at the address provided by the judgment creditor, and the debtor has thirty days in which to file objections to recognition of the judgment. If no objections are filed, the clerk records a certificate to that effect.

Upon application by either party, the circuit court shall conduct a hearing and enter an appropriate order granting or denying recognition in accordance with the terms of the [1964 Act]. That is an appealable order. After the clerk files the certificate or the court enters an order, the judgment “shall be enforceable in the same manner as the judgment of a court of this state.”<sup>30</sup>

The party seeking enforcement must prove that the foreign money judgment is final, conclusive, and enforceable in the jurisdiction where it was rendered.<sup>31</sup> Once the creditor proves the judgment is enforceable, the burden of proof shifts to the debtor to establish grounds for nonrecognition as set out in section 55.605, F.S.<sup>32</sup>

Section 55.605, F.S., which is based on section 4 of the 1962 Act, provides a number of grounds under which a Florida court may decline to recognize a foreign money judgment.

An out-of-country foreign judgment is not considered “conclusive” and must not be recognized if:

- The judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- The foreign court did not have personal jurisdiction over the defendant; or
- The foreign court did not have jurisdiction over the subject matter.<sup>33</sup>

A court *may* decline to recognize an out-of-country foreign judgment if:

- The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him or her to defend;
- The judgment was obtained by fraud;
- The cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state;
- The judgment conflicts with another final and conclusive order;
- The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court;

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<sup>29</sup> *Id.*

<sup>30</sup> *Le Credit Lyonnais, S.A. v. Nadd*, 741 So. 2d 1165, 1166 (Fla. 5th DCA 1999).

<sup>31</sup> *Osorio*, 665 F. Supp. 2d at 1324 (citing *Kramer v. von Mitschke–Collande*, 5 So.3d 689, 690 (Fla. 3d DCA 2008)).

<sup>32</sup> *Id.*

<sup>33</sup> Section 55.605(1), F.S.

- In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;
- The foreign jurisdiction where judgment was rendered would not give recognition to a similar judgment rendered in this state; or
- The foreign judgment is a defamation judgment obtained outside the United States, unless the state court determines that the foreign court afforded at least as much protection for freedom of speech and press as the Constitutions of the United States and Florida would provide.<sup>34</sup>

### *The 2005 Act*

The 2005 Act is a revision of the 1962 Act. As the Uniform Law Commissioners explained in their prefatory note;

This Act continues the basic policies and approach of the 1962 Act. Its purpose is not to depart from the basic rules or approach of the 1962 Act, which have withstood well the test of time, but rather to update the 1962 Act, to clarify its provisions, and to correct problems created by the interpretation of the provisions of that Act by the courts over the years since its promulgation. Among the more significant issues that have arisen under the 1962 Act which are addressed in this Revised Act are . . . the need to clarify and, to a limited extent, expand upon the grounds for denying recognition in light of differing interpretations of those provisions in the current case law[.]<sup>35</sup>

The commentary to the 2005 Act cites several cases decided between 2000 and 2002 interpreting the first ground for nonrecognition (foreign court system fails to provide impartial courts or compatible due process) under the 1962 Act rather strictly.<sup>36</sup> Notably, two of these cases involve an English creditor, the Society of Lloyd's (Lloyd's). By 2008, Lloyd's withstood due process challenges and successfully received recognition for 25 foreign judgments in the United States.<sup>37</sup> In the 2010 appeal of one such case, *Tropp v. Corporation of Lloyd's*, Tropp sought to avoid recognition of a default judgment entered against him in England on due process grounds. Tropp argued that English law employs a sub-system for claims like his (insurance underwriting realm) that denies due process of law.<sup>38</sup> In rejecting Tropp's argument on appeal, the court followed precedent holding that the "relevant inquiry" under the first ground for nonrecognition in the 1962 Act "is the overall fairness of England's legal system, *which is beyond dispute.*"<sup>39</sup>

<sup>34</sup> Section 55.605(2), F.S. (2009).

<sup>35</sup> See Nat'l Conference of Comm'rs on Uniform State Laws, *Uniform Foreign-Country Money Judgments Recognition Act of 2005*, p. 1, available at [http://www.uniformlaws.org/shared/docs/foreign%20country%20money%20judgments%20recognition/ufcmjra\\_final\\_05.pdf](http://www.uniformlaws.org/shared/docs/foreign%20country%20money%20judgments%20recognition/ufcmjra_final_05.pdf) (last visited Jan. 5, 2018).

<sup>36</sup> *Id.* at p. 13, ¶ 11 (citing *The Society of Lloyd's v. Turner*, 303 F.3d 325, 330 (5th Cir. 2002); *CIBC Mellon Trust Co. v. Mora Hotel Corp.*, N.V., 743 N.Y.S.2d 408, 415 (N.Y. App. 2002); *Society of Lloyd's v. Ashenden*, 233 F.3d 473, 477 (7th Cir. 2000)).

<sup>37</sup> See *Tropp v. Corp. of Lloyd's*, 07 CIV. 414 (NRB), 2008 WL 5758763, at \*1 (S.D.N.Y. Mar. 26, 2008), *aff'd*, 385 Fed. Appx. 36 (2d Cir. 2010) ("This case presents the latest episode in an epic saga between Names such as Tropp and Lloyd's. The story—Dickensian in length and complexity—has been retold countless times by American courts.") (citing *Soc'y of Lloyd's v. Siemon-Netto*, 457 F.3d 94, 96 (D.C.Cir.2006)).

<sup>38</sup> 385 Fed. Appx. 36, 38 (2d Cir. 2010) (quoting *See CIBC Mellon Trust Co. v. Mora Hotel Corp. N.V.*, 100 N.Y.2d 215, 762 N.Y.S.2d 5, 792 N.E.2d 155, 160 (2003))(internal quotations omitted).

<sup>39</sup> *Id.* (emphasis added).



Tropp alternatively (though unsuccessfully) argued that if the judgment was entitled to comity under the 1962 Act, then the 1962 Act violated his federal constitutional rights.<sup>40</sup>

In response to the restrictive view of the 1962 Act expressed in *Tropp* and similar cases, the 2005 Act clarifies that the relevant due process inquiry is not limited only to the systematic analysis of a foreign court system, but also includes the individual fairness of the specific foreign court that rendered the judgment. In other words, rather than establish that the foreign country's entire court system is corrupt or lacking in due process protections, the 2005 Act provides that recognition and enforceability of a foreign judgment may be challenged by establishing that the particular proceeding involved was corrupt or lacking in due process protection.

### III. Effect of Proposed Changes:

The bill amends s. 55.605(2), F.S., to add two additional grounds for when a court *may* decline to recognize a foreign judgment based on the specific fairness of the particular foreign court that rendered the particular judgment:

- There is substantial doubt about the integrity of the particular foreign court with respect to the judgment; or
- The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

Initially, the two additional grounds appear to cover the same general due process territory as in existing s. 55.605(1)(a), F.S., which specifies that foreign judgments rendered in a country where the court system fails to provide impartial tribunals and due process protections to ensure fundamental fairness, are not conclusive and will not be recognized. The key difference is that existing s. 55.605(1)(a), F.S., addresses “*systematic* unfairness” in a foreign country's court system, whereas the two additional grounds proposed by the bill address “*specific* unfairness” in the proceedings of or by a particular foreign court.<sup>41</sup>

The comments to the 2005 Uniform Foreign-Country Money Judgments Recognition Act (2005 Act) note that, to establish the new grounds of “substantial doubt” about a specific foreign court's “integrity,” the debtor trying to avoid the foreign judgment must show the specific foreign court that rendered the judgment is corrupt. If specific corruption is established, then the foreign judgment may not be recognized.<sup>42</sup>

Likewise, to establish the new due process grounds, a debtor trying to avoid a foreign judgment must show that the particular proceeding in which the judgment was rendered was fundamentally

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<sup>40</sup> *Id.*

<sup>41</sup> See Geoffrey C. Hazard, Jr. and Michael Traynor, *Foreign Judgments: Is “System Fairness” Sufficient or Is “Specific Fairness” Also Required for Recognition and Enforcement?*, PUBLICIST, Vol. 11, Spring 2012 (Apr. 17, 2012), available at <http://bjil.typepad.com/publicist/2012/04/foreign-judgments-is-system-fairness-sufficient-or-is-specific-fairness-also-required-for-recognition-and.html#end> (last visited Jan. 5, 2018); Nat'l Conference of Comm'rs on Uniform State Laws, *Uniform Foreign-Country Money Judgments Recognition Act of 2005, Comment to § 4. Standards for Recognition of Foreign-Country Judgment*, pp. 13-14, available at [http://www.uniformlaws.org/shared/docs/foreign%20country%20money%20judgments%20recognition/ufcmjra\\_final\\_05.pdf](http://www.uniformlaws.org/shared/docs/foreign%20country%20money%20judgments%20recognition/ufcmjra_final_05.pdf) (last visited Jan. 5, 2018).

<sup>42</sup> *Id.*



unfair. If the specific trial or other proceedings leading to the judgment are shown to not be compatible with the requirements of due process of law, the Florida court may decline to recognize the foreign judgment.<sup>43</sup>

### **Immediate Effective Date**

The bill takes effect upon becoming a law. An immediate effective date means that if the bill becomes law, it will apply to existing foreign judgments that have not yet been recognized.

In Florida, newly enacted statutes that impose a new obligation or duty that interferes with vested rights will not be applied retroactively. On the other hand, statutes that relate to procedure only or are remedial in nature are generally applied retroactively to pending cases.<sup>44</sup> In the 1997 case of *Chabert v. Bacquie*,<sup>45</sup> the Fourth District Court of Appeal held that Florida's then recently enacted Uniform Out-of-country Foreign Money–Judgment Recognition Act (Act) applied to cases already pending in Florida courts. The Court reasoned that the Act was remedial in nature, because it codified the already existing common law principles of comity<sup>46</sup> as opposed to announcing a new duty or obligation.<sup>47</sup>

The bill appears to be remedial in nature, because the two additional permissive grounds for nonrecognition of foreign judgments codifies longstanding, individual due process principles. Although an argument could be made that it expands current common law comity principles to recognize “specific fairness” in addition to “systematic fairness,” it is more likely that the new grounds would be deemed remedial in Florida.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

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<sup>43</sup> *Id.*

<sup>44</sup> *Young v. Altenhaus*, 472 So. 2d 1152, 1154 (Fla. 1985). *See also City of Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986)); *Palm Beach County Sheriff's Office v. Sun-Sentinel Co., LLC*, 226 So. 3d 969, 975–76 (Fla. 4th DCA 2017) (following *City of Orlando v. Desjardins* in holding that newly enacted public records exemption was remedial and applied retroactively).

<sup>45</sup> *Bacquie*, 694 So. 2d at 811 (following retroactivity analysis in *City of Orlando v. Desjardins*).

<sup>46</sup> *Id.*

<sup>47</sup> *Altenhaus*, 472 So. 2d at 1154.

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

None.

**B. Private Sector Impact:**

This bill offers greater protection against enforcement of foreign money judgments rendered in other countries by providing additional grounds for challenging enforcement in Florida. Rather than having to establish that the foreign country's entire court system is corrupt or lacking in due process protections, a defendant may challenge the recognition and enforceability of the judgment by establishing that the particular foreign court or proceeding involved was corrupt or lacking in due process protection.

These new provisions may also deter some creditors from filing for recognition of some foreign judgments. On the other hand, proving the new grounds for nonrecognition (corruption or lack of specific fairness and due process) could lead to additional litigation and associated costs.

**C. Government Sector Impact:**

The state court system has not provided information on the fiscal impact of the bill. However, the bill appears unlikely to add significantly to the workload of the courts because the additional bases for challenging a foreign judgment are similar to those grounds already codified in chapter 55, F.S., and recognized in case law.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends Section 55.605 of the Florida Statutes.

**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.

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

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By Senator Bean

4-00749B-18

2018760\_\_

A bill to be entitled

An act relating to grounds for nonrecognition of out-of-country foreign judgments; amending s. 55.605, F.S.; providing additional circumstances in which an out-of-country foreign judgment need not be recognized; providing an effective date.

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

Section 1. Paragraphs (i) and (j) are added to subsection (2) of section 55.605, Florida Statutes, to read:

55.605 Grounds for nonrecognition.—

(2) An out-of-country foreign judgment need not be recognized if:

(i) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(j) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

Section 2. This act shall take effect upon becoming a law.



The Florida Senate

## Committee Agenda Request

**To:** Senator Bill Montford, Chair  
Committee on Commerce and Tourism

**Subject:** Committee Agenda Request

**Date:** December 6, 2017

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I respectfully request that **Senate Bill # 760**, relating to Grounds for Nonrecognition of Out-of-country Foreign Judgements, be placed on the:

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

A handwritten signature in blue ink that reads "Aaron Bean".

\_\_\_\_\_  
Senator Aaron Bean  
Florida Senate, District 4

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/9/18

SB 760

Meeting Date

Bill Number (if applicable)

Topic Out-of-country Foreign Judgements

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

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32301

Email bbevis@aif.com

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Associated Industries of Florida

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

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

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

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

# APPEARANCE RECORD

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

1/9/2018

Meeting Date

SB 760

Bill Number (if applicable)

Topic Foreign Judgments

Amendment Barcode (if applicable)

Name CARLOS MUNIZ

Job Title Attorney, McGuireWoods LLP

Address 204 S. Monroe St.

Phone \_\_\_\_\_

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Tallahassee FL

Email cmuniz@mcguirewoods.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing AIF - information only

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.)

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

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BILL: CS/SB 962

INTRODUCER: Commerce and Tourism Committee and Senator Grimsley

SUBJECT: Telephone Solicitation

DATE: January 10, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 962 allows telephone service providers to block certain phone calls from ringing through to a telephone service subscriber's phone, if authorized by the subscriber.

Telephone service providers may block "spoofed" calls that are made from:

- An inbound-only phone number that a subscriber has requested be blocked;
- An invalid phone number;
- A phone number that has not been allocated to a provider by the North American Numbering Plan Administrator; and
- A phone number that is not used by any telephone subscriber, if the telephone service provider confirms that the number is unused.

Telephone service providers may only block calls in a manner that is consistent with authorization from federal laws and rules.

On November 17, 2017, the Federal Communications Commission adopted a rule that provides similar safe harbor provisions to telephone service providers who preemptively block suspected robocalls. This bill provides state-level authorization for the same call blocking services.



## II. Present Situation:

### Robocalls

A robocall is a phone call that answers with a pre-recorded message, instead of a live person, or any auto dialed phone call.<sup>1,2</sup> The rise of inexpensive technology, such as voice over internet protocol (VoIP) and auto dialers, has allowed robocallers to manipulate telephone technologies to contact a large volume of consumers, and to misrepresent (“spoof”) the phone number from which they are calling. Such robocalls are intended to trick the consumer into accepting a scam sales call, and are usually illegal.<sup>3</sup>

Unwanted phone calls, including robocalls, are consistently among the top consumer complaints filed with the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC).<sup>4</sup> During 2017, the FCC received 181,631 consumer complaints about robocalls, including federal Do Not Call List violations, call spoofing, and solicitations made by an automated recording;<sup>5</sup> the FTC received 3.5 million complaints.<sup>6</sup> One organization estimates that in November 2017, 2.7 billion robocalls were made to U.S. consumers.<sup>7</sup> Florida residents filed 588,021 Do Not Call Registry complaints with the FTC in 2017.<sup>8</sup>

### Telephone Solicitation (Robocall) Laws

The federal Telephone Consumer Protection Act of 1991 (TCPA) restricts the use of auto dialers, prerecorded sales messages, and unsolicited sales calls, text messages, or faxes.

- The National Do Not Call Program (Program), administered by the FTC, in concert with the FCC under the TCPA,<sup>9</sup> prohibits telephone solicitors from contacting a consumer who participates in the Program, unless the calls are:<sup>10</sup>
  - Made with a consumer’s prior, express permission;
  - Informational in nature, such as those made to convey a utility outage, school closing, or flight information; or
  - Made by a tax-exempt organization.

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<sup>1</sup> Federal Trade Commission, *Consumer Information: Robocalls*, <https://www.consumer.ftc.gov/features/feature-0025-robocalls> (last visited Jan. 2, 2018).

<sup>2</sup> An auto dialer is equipment that has the capacity to produce or store phone numbers using a random or sequential number generator, and to call those phone numbers. 47 U.S.C. § 227(a)(1).

<sup>3</sup> 47 U.S.C. § 227.

<sup>4</sup> Federal Communications Commission, *Stop Unwanted Calls and Texts* (Dec. 5, 2017), <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Jan. 2, 2018).

<sup>5</sup> *Id.*, see also, Federal Communications Commission, *Consumer Complaints Data- Unwanted Calls*, <https://opendata.fcc.gov/Consumer/Consumer-Complaints-Data-Unwanted-Calls/vakf-fz8e> (last visited Jan. 2, 2018).

<sup>6</sup> Federal Trade Commission, *FTC Testifies Before U.S. Senate Special Committee on Aging on the Continuing Fight to Combat Illegal Robocalls* (Oct. 4, 2017), <https://www.ftc.gov/news-events/press-releases/2017/10/ftc-testifies-us-senate-special-committee-aging-continuing-fight> (last visited Jan. 1, 2018).

<sup>7</sup> YouMail, *Robocall Index*, <https://robocallindex.com/> (last visited Jan. 3, 2018).

<sup>8</sup> *Florida Ranks No. 3 for Rate of Do Not Call Complaints in 2017*, The Tampa Bay Times, Jan. 3, 2018, [http://www.tampabay.com/news/business/corporate/Florida-ranks-No-3-for-rate-of-Do-Not-Call-complaints-in-2017\\_163965427](http://www.tampabay.com/news/business/corporate/Florida-ranks-No-3-for-rate-of-Do-Not-Call-complaints-in-2017_163965427) (last visited Jan. 2, 2018).

<sup>9</sup> Federal Communications Commission, *Stop Unwanted Calls and Texts—The National Do Not Call List*, <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Jan. 3, 2018).

<sup>10</sup> 47 U.S.C. § 227(a)(4); *See also*, 47 C.F.R. § 64.1200 (2012).

- The Florida Department of Agriculture and Consumer Services administers the Florida Do Not Call Act, which prohibits unsolicited phone calls and text messages to a cell phone, and prohibits most prerecorded calls to a landline phone.<sup>11</sup>

The federal Truth in Caller ID Act of 2009 bans most call spoofing by prohibiting the transmission of misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.<sup>12</sup>

## **Industry Actions to Combat Robocalls**

### ***Robocall Strike Force***

Many robocalls are made without regard to the laws in place to prevent them. As a result, the Chairman of the FCC called upon the telephone service industry (industry) to develop and implement responses that could more quickly react to the developments of the robocall problem.<sup>13</sup> In response, the Robocall Strike Force (Strike Force) was created in 2016.<sup>14</sup> The Strike Force, which consists of representatives from the industry, issued a report on its efforts in October 2016.<sup>15</sup> The Strike Force's report outlined:<sup>16</sup>

- Steps the industry had taken to implement telephone service provider authentication of caller identification for calls made over VoIP networks;
- Methods for consumer education about robocalls and the solutions currently available to telephone subscribers on the market, such as the app “nomorobo;”
- The industry's trial implementation of a “Do-Not-Originate” (DNO) list, a compilation of numbers known to be illegitimate, and therefore likely to be used by a robocaller, from which telephone service providers could pull numbers that it would block from being able to complete calls to subscribers.

### ***Do Not Originate List***

On November 17, 2017, the FCC adopted a rule that implements the Strike Force's DNO list proposal.<sup>17</sup> The rule permits telephone service providers to block phone calls made from a number that appears on a DNO list before they reach subscribers' phones. Only the following types of phone numbers may be placed on the DNO list:

- An inbound services-only number that is assigned to a subscriber who requests that the number be blocked;

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<sup>11</sup> See, s. 501.059, F.S.. Florida Department of Agriculture and Consumer Services, *Florida Do Not Call*, <http://www.freshfromflorida.com/Consumer-Resources/Florida-Do-Not-Call> (last visited Jan. 3, 2018).

<sup>12</sup> 47 U.S.C. § 227 (e),

<sup>13</sup> Tom Wheeler, Chairman of the Federal Communications Commission, *Cutting off Robocalls* (Jul. 22, 2016), <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls> (last visited Jan. 2, 2018).

<sup>14</sup> Federal Communications Commission, *First Meeting of Industry-Led Robocall Strike Force*, <https://www.fcc.gov/news-events/events/2016/08/first-meeting-industry-led-robocall-strike-force> (last visited Jan. 3, 2018).

<sup>15</sup> *Robocall Strike Force Report* at p. 2 (Oct. 26, 2016), available at: <https://transition.fcc.gov/cgb/Robocall-Strike-Force-Final-Report.pdf> (last visited Jan. 2, 2018).

<sup>16</sup> *Id.*

<sup>17</sup> Federal Communications Commission, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, FCC Docket No. 17-59, Report and Order and Further Notice of Proposed Rulemaking, at para. 9 (Nov. 16, 2017), available at: <https://www.fcc.gov/document/fcc-adopts-rules-help-block-illegal-robocalls-0> (last visited Jan. 3, 2018).

- A number that is invalid under the North American Number Plan (NANP), such as a single digit repeated (000-000-0000), or one without the required number of digits;<sup>18</sup>
- A number that has not yet been allocated to a telephone services provider by the NANP Administrator; and
- A number that is allocated to a telephone services provider, but has not yet been assigned to a telephone subscriber.

### *Market Options*

The telephone service industry offers various products for consumers to block robocalls from ringing through to his or her phone.<sup>19</sup> These methods include phone software, apps to install on a phone, and services offered by telephone service providers to block suspected robocalls. The FTC promotes the development of solutions by hosting technology challenges, such as the 2015 ‘DetectaRobo Contest’ that offer rewards to those who design tools to block robocalls.<sup>20</sup>

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

Section 1 of the bill permits telephone service providers to preemptively block certain phone calls from ringing through to a telephone service subscriber’s phone, if so authorized by the subscriber.

Telephone service providers may block “spoofed” calls that are made from:

- An inbound-only phone number that a subscriber has requested be blocked;
- An invalid phone number, such as “111-111-1111”;
- A phone number that has not been allocated to a provider by the NANP Administrator or pooling administrator; and
- A phone number that is not used by any telephone subscriber, if the telephone service provider confirms that the number is unused.

The bill also permits telephone service providers to rely on a phone number as reflected on a caller identification service for purposes of blocking that number. However, a telephone service provider may not block an emergency call placed to 911.

Additionally, the bill provides that telephone service providers may only block such calls in a manner that is consistent with authorization from federal laws and rules.

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<sup>18</sup> The NANP was created to organize the nationwide assignment of phone numbers in order to make direct dialing of long distance calls possible, and to eliminate the need for operators. Area codes are an innovation of the NANP. The NANP also pools numbers into numerical blocks of 1,000 numbers each and then allocates those numbers to service providers. *See generally*, North American Numbering Plan Administrator, *About the North American Numbering Plan*, [https://www.nationalnanpa.com/about\\_us/abt\\_nanp.html](https://www.nationalnanpa.com/about_us/abt_nanp.html) (last visited Jan. 2, 2018); 47 CFR § 52.20.

<sup>19</sup> Federal Trade Commission, *Consumer Information: Blocking Unwanted Calls* (June 2016) <https://www.consumer.ftc.gov/articles/0548-blocking-unwanted-calls> (last visited Jan. 3, 2018). *See also*, Federal Communications Commission, *Stop Unwanted Calls and Texts: Web Resources for Blocking Robocalls*, *supra* at 4.

<sup>20</sup> *See* note 1, *supra*.

While some telephone service providers already block such calls,<sup>21</sup> this bill clarifies that such actions will not result in penalties under Florida law.

Section 2 provides an effective date of July 1, 2018.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Economic harm to victims of fraudulent schemes carried out on spoofed phone calls may be reduced.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 365.176 of the Florida Statutes.

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<sup>21</sup> Federal Communications Commission, *Stop Unwanted Calls and Texts—Call Blocking Resources*, <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Jan. 3, 2018).

**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 January 9, 2018:**

The Committee Substitute:

- Transfers the proposed language from ch. 364, F.S., “Telecommunications Companies” to ch. 365, F.S., “Use of Telephone and Facsimile Machines”;
- Permits telephone service providers to block active numbers only if the number is used for inbound calls only, and if the number’s subscriber has requested to block calls that purport to be from its number; and
- Prohibits call blocking of an emergency call placed to 911.

- B. **Amendments:**

None.



603372

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/09/2018	.	
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	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 365.176, Florida Statutes, is created to  
read:

365.176 Florida Call-Blocking Act.—

(1) This section may be cited as the "Florida Call-Blocking  
Act."

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



603372

11           (a) "Caller identification service" means a service that  
12 allows a telephone subscriber to have the telephone number and,  
13 if available, the name of the calling party transmitted  
14 contemporaneously with the telephone call and displayed on a  
15 device in or connected to the subscriber's telephone.

16           (b) "Pooling administrator" means the Thousands-Block  
17 Pooling Administrator as identified in 47 C.F.R. s. 52.20.

18           (c) "Provider" means a telecommunications company that  
19 provides voice communications services to customers in this  
20 state.

21           (3) Consistent with authorization provided by federal law  
22 and rules of the Federal Communications Commission or its  
23 successors, providers operating in this state may block calls in  
24 the following manner:

25           (a) Providers may block a voice call when the subscriber to  
26 which the originating number is assigned has requested that  
27 calls purporting to originate from that number be blocked  
28 because the number is used for inbound calls only.

29           (b) Providers may block calls originating from the  
30 following numbers:

31           1. A number that is not a valid North American Numbering  
32 Plan number;

33           2. A valid North American Numbering Plan number that is not  
34 allocated to a provider by the North American Numbering Plan  
35 Administrator or the pooling administrator; and

36           3. A valid North American Numbering Plan number that is  
37 allocated to a provider by the North American Numbering Plan  
38 Administrator or pooling administrator, but is unused, so long  
39 as the provider blocking the calls is the allocatee of the



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40 number and confirms that the number is unused or has obtained  
41 verification from the allocatee that the number is unused at the  
42 time of the blocking.

43  
44 Providers may not block a voice call pursuant to subparagraph 1.  
45 or subparagraph 2. if the call is an emergency call placed to  
46 911.

47 (4) For purposes of blocking calls from certain originating  
48 numbers as authorized in this section, a provider may rely on  
49 caller identification service information to determine the  
50 originating number.

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

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

54 And the title is amended as follows:

55 Delete everything before the enacting clause  
56 and insert:

57 A bill to be entitled  
58 An act relating to telephone solicitation; creating s.  
59 365.176, F.S.; providing a short title; defining  
60 terms; authorizing telecommunication providers to  
61 block certain calls; prohibiting the blocking of  
62 certain calls; authorizing telecommunication providers  
63 to rely upon caller identification service information  
64 to determine originating numbers for the purpose of  
65 blocking such calls; providing an effective date.



By Senator Grimsley

26-00714A-18

2018962\_\_

1                                   A bill to be entitled  
 2           An act relating to telephone solicitation; creating s.  
 3           364.246, F.S.; providing a short title; defining  
 4           terms; authorizing telecommunication providers, with  
 5           authorization from a subscriber, to block certain  
 6           calls from reaching the subscriber; authorizing  
 7           telecommunication providers to rely solely upon caller  
 8           identification service information to determine  
 9           originating numbers for the purpose of blocking such  
 10          calls; providing an effective date.  
 11  
 12 Be It Enacted by the Legislature of the State of Florida:  
 13  
 14          Section 1. Section 364.246, Florida Statutes, is created to  
 15          read:  
 16          364.246 Florida Call-Blocking Act.—  
 17          (1) This section may be cited as the "Florida Call-Blocking  
 18          Act."  
 19          (2) As used in this section, the term:  
 20          (a) "Caller identification service" means a service that  
 21          allows a telephone subscriber to have the telephone number and,  
 22          if available, the name of the calling party transmitted  
 23          contemporaneously with the telephone call and displayed on a  
 24          device in or connected to the subscriber's telephone.  
 25          (b) "Pooling administrator" means the Thousands-Block  
 26          Pooling Administrator as identified in 47 C.F.R. s. 52.20.  
 27          (c) "Provider" means a telecommunications company that  
 28          provides voice communications services to customers in this  
 29          state.

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

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30                                   (3) Consistent with authorization provided by federal law  
 31                                   and rules of the Federal Communications Commission or its  
 32                                   successors, providers operating in this state may, with  
 33                                   authorization from a subscriber, block calls to the subscriber  
 34                                   in the following manner:  
 35                                   (a) Providers may block calls from specific numbers  
 36                                   identified by the subscriber based on the originating number  
 37                                   shown in the subscriber's caller identification service. Such  
 38                                   calls may be blocked without regard as to whether the calls  
 39                                   actually originate from that number.  
 40                                   (b) Providers may block calls originating from the  
 41                                   following numbers:  
 42                                   1. A number that is not a valid North American Numbering  
 43                                   Plan number;  
 44                                   2. A valid North American Numbering Plan number that is not  
 45                                   allocated to a provider by the North American Numbering Plan  
 46                                   Administrator or the pooling administrator; and  
 47                                   3. A valid North American Numbering Plan number that is  
 48                                   allocated to a provider by the North American Numbering Plan  
 49                                   Administrator or pooling administrator, but that is not assigned  
 50                                   to a subscriber.  
 51                                   (4) For purposes of blocking calls from certain originating  
 52                                   numbers as authorized in this section, a provider may rely on  
 53                                   caller identification service information to determine the  
 54                                   originating number.  
 55                                   Section 2. This act shall take effect July 1, 2018.

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# APPEARANCE RECORD

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

1/9  
Meeting Date

962  
Bill Number (if applicable)

Topic Telephone Solicitation

603372  
Amendment Barcode (if applicable)

Name Casey Reed

Job Title State Director of Leg. Affairs

Address 150 S. MONROE St 400 Phone 591-6002

Street

Tallahassee FL 32301

City

State

Zip

Email CR8243@ATT.com

Speaking:  For  Against  Information

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

Representing AT&T

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.

# CourtSmart Tag Report

Room: EL 110

Caption: Senate Commerce and Tourism

Case No.:

Judge:

Type:

Started: 1/9/2018 4:04:06 PM

Ends: 1/9/2018 4:29:01 PM Length: 00:24:56

4:04:07 PM Meeting called to order by Chair Montford  
4:04:17 PM Roll call by Gabriela Denton  
4:04:26 PM Quorum present  
4:05:00 PM Pledge of Allegiance led by Senator Gibson  
4:05:09 PM Comments from Chair Montford  
4:05:33 PM Introduction of CS/SB 296 by Chair Montford  
4:05:48 PM Explanation of CS/SB 296 by Senator Brandes  
4:06:18 PM Amendment Barcode Number 546694 introduced by Chair Montford  
4:06:40 PM Explanation of Amendment Barcode Number 546694 by Senator Hutson  
4:07:26 PM Comments from Chair Montford  
4:07:35 PM Question from Senator Gibson on Amendment  
4:07:48 PM Response by Senator Hutson  
4:08:52 PM Follow-up question from Senator Gibson  
4:09:03 PM Response by Senator Hutson  
4:09:48 PM Additional question from Senator Gibson  
4:10:02 PM Response by Senator Hutson  
4:10:52 PM Question from Senator Rodriguez  
4:11:08 PM Response by Senator Hutson  
4:11:51 PM Follow-up question from Senator Rodriguez  
4:12:03 PM Response by Senator Hutson  
4:13:21 PM Question from Senator Passidomo  
4:13:31 PM Response from Senator Brandes  
4:14:09 PM Speaker Scott Ashley, President & General Counsel, Wire & Spirits Distributors of Florida  
4:14:30 PM Question from Senator Gibson  
4:15:00 PM Response by Senator Brandes  
4:15:48 PM Debate by Senator Gibson  
4:17:09 PM Closure on Amendment Barcode Number 546694 by Senator Hutson  
4:17:31 PM Amendment Barcode Number 546694 passes  
4:17:38 PM Comments from Chair Montford  
4:17:45 PM Question from Senator Stargel  
4:17:52 PM Response by Senator Brandes  
4:18:06 PM Josh Aubuchon, Attorney, Florida Brewers Guild waives in support  
4:18:11 PM Jason Unger, Seavin, Inc. (Lakeridge and San Sebastian Wineries) waives in support  
4:18:19 PM Richard Turner, Senior Vice President of Legal and Legislative Affairs, Florida Restaurant & Lodging Association waives in support  
4:18:35 PM Closure waived by Senator Brandes  
4:18:48 PM Roll call on CS/CS/SB 296 by Gabriela Denton  
4:18:54 PM CS/SB 296 reported favorably  
4:19:27 PM Senator Stargel welcomed to the Committee by Chair Montford  
4:19:37 PM SB 962 introduced by Chair Montford  
4:19:48 PM Explanation of SB 962 by Senator Grimsley  
4:20:16 PM Explanation of Strike-all Amendment Barcode No. 603372 by Senator Grimsley  
4:21:20 PM Late-filed Amendment introduced by Chair Montford  
4:21:30 PM Casey Reed, State Director of Legislative Affairs, AT&T waives in support of Amendment  
4:21:54 PM Closure waived on Amendment  
4:21:58 PM Amendment Barcode Number 603372 passes  
4:22:08 PM Closure waived by Senator Grimsley  
4:22:21 PM Roll call on CS/SB 962 by Gabriela Denton  
4:22:32 PM CS/SB 962 reported favorably  
4:22:45 PM Introduction of SB 236 by Chair Montford  
4:22:53 PM Explanation of SB 236 by Senator Book  
4:24:47 PM Lance Lazono, Chief Operating Officer, Florida United Business Association waives in support

**4:24:54 PM** Richard Turner, Senior Vice President of Legal and Legislative Affairs, Florida Restaurant & Lodging Association waives in support

**4:25:08 PM** Closure waived by Senator Book

**4:25:20 PM** Roll call on SB 236 by Gabriela Denton

**4:25:29 PM** SB 236 reported favorably

**4:25:44 PM** SB 760 introduced by Chair Montford

**4:25:53 PM** Explanation of SB 760 by Senator Bean

**4:27:07 PM** Question from Senator Rodriguez

**4:27:15 PM** Response by Senator Bean

**4:27:47 PM** Comments by Senator Gainer

**4:27:55 PM** Carlos Muniz, Attorney McGuireWoods LLP, AIF for information only

**4:28:02 PM** Brewster Bevis, Senior Vice President, Associated Industries of Florida waives in support

**4:28:11 PM** Closure waived by Senator Bean

**4:28:19 PM** Roll call on SB 760 by Gabriella Denton

**4:28:29 PM** SB 760 reported favorably

**4:28:41 PM** Comments from Chair Montford

**4:28:54 PM** Senator Stargel moves to adjourn without objection