

Tab 1	CS/SB 954 by JU, Bean; (Compare to H 00625) Attorney Compensation					
Tab 2	SB 1072 by Baxley; (Compare to H 01223) Online Marketplace Transparency					
Tab 3	SB 1176 by Stewart (CO-INTRODUCERS) Bracy; (Identical to H 00855) Barber Services					
Tab 4	SB 1246 by Rodrigues; (Identical to H 00863) Capital Investment Tax Credit					
Tab 5	SB 1882 by Rodrigues; (Identical to H 01343) Issuance of Licenses to Carry Concealed Weapons or Firearms					
Tab 6	SB 1906 by Brodeur (CO-INTRODUCERS) Taddeo, Stewart, Garcia, Gruters; (Compare to H 00207) Reemployment Assistance					
565626	A	S	UNFAV	CM, Torres	Delete L.15 - 66:	03/30 02:03 PM
810712	A	S	RCS	CM, Brodeur	Delete L.15 - 17:	03/30 02:03 PM
608332	A	S	UNFAV	CM, Powell	Delete L.15 - 17:	03/30 02:03 PM
238872	A	S	UNFAV	CM, Powell	Before L.15:	03/30 02:03 PM
321614	A	S	WD	CM, Powell	Delete L.15 - 17:	03/30 02:03 PM
774460	A	S	UNFAV	CM, Powell	Delete L.15 - 37:	03/30 02:03 PM
Tab 7	SB 1758 by Brandes; (Compare to CS/H 01351) Money Services Businesses					
Tab 8	SB 1390 by Gruters; (Identical to H 01125) Capital Investment Tax Credit					
301108	D	S	RCS	CM, Gruters	Delete everything after	03/30 02:05 PM
Tab 9	SB 1682 by Gruters; (Compare to CS/H 01307) Telephone Solicitation					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM

Senator Hooper, Chair
Senator Wright, Vice Chair

MEETING DATE: Monday, March 29, 2021

TIME: 3:30—6:00 p.m.

PLACE: *Toni Jennings Committee Room*, 110 Senate Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A1 AT THE DONALD L TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	CS/SB 954 Judiciary / Bean (Compare H 625)	Attorney Compensation; Requiring an attorney who accepts certain engagements to obtain a fee disclosure statement signed by the person responsible for administering an estate; deleting provisions relating to the determination of reasonable compensation for attorneys of personal representatives; deleting provisions relating to the determination of reasonable compensation for attorneys of trustees, etc. JU 03/15/2021 Fav/CS CM 03/29/2021 Favorable RC	Favorable Yeas 9 Nays 2
2	SB 1072 Baxley (Compare H 1223)	Online Marketplace Transparency; Requiring online marketplaces to require high-volume third-party sellers using their service to provide certain information to the online marketplace within a specified timeframe; requiring the online marketplace to verify such information, or changes to such information, within a specified timeframe; requiring the online marketplace to suspend certain sellers who do not provide such a certification or updated information; authorizing the Department of Legal Affairs to adopt rules; preempting the regulation of the disclosure of such information to the state, etc. CM 03/29/2021 Favorable JU RC	Favorable Yeas 7 Nays 3
3	SB 1176 Stewart (Identical H 855)	Barber Services; Authorizing a barber to shampoo, cut, or arrange hair in a location other than a registered barbershop without specified arrangements, etc. RI 03/16/2021 Favorable CM 03/29/2021 Favorable RC	Favorable Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, March 29, 2021, 3:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1246 Rodrigues (Identical H 863)	Capital Investment Tax Credit; Authorizing passenger car rental companies and travel agencies that meet certain criteria in a specified year to use unused tax credits for certain purposes, etc. CM 03/29/2021 Favorable FT AP	Favorable Yeas 10 Nays 0
5	SB 1882 Rodrigues (Identical H 1343)	Issuance of Licenses to Carry Concealed Weapons or Firearms; Requiring the Department of Agriculture and Consumer Services to continually maintain an online application process for the issuance of licenses; prohibiting the department from arbitrarily or subjectively restricting access to the online application process, etc. CM 03/29/2021 Temporarily Postponed GO AP	Temporarily Postponed
6	SB 1906 Brodeur (Compare H 207, H 1617, S 466, S 592, S 644, S 910, S 1996)	Reemployment Assistance; Increasing the weekly benefit amounts an individual may receive; increasing the cap on the total benefit amount an individual is entitled to receive during a benefit year, etc. CM 03/29/2021 Fav/CS ATD AP	Fav/CS Yeas 9 Nays 1
7	SB 1758 Brandes (Compare CS/H 1351)	Money Services Businesses; Revising exceptions for a licensee during the Financial Technology Sandbox period; revising and providing definitions; prohibiting certain activities by a person without obtaining a license; providing requirements for a money transmitter that receives virtual currency; excluding virtual currency in the calculation of permissible investments, etc. BI 03/16/2021 Favorable CM 03/29/2021 Favorable RC	Favorable Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, March 29, 2021, 3:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1390 Gruters (Identical H 1125)	Capital Investment Tax Credit; Defining the terms "intellectual property" and "strategic priority project"; providing a credit against the corporate income tax, the sales and use tax, or a stated combination of the two taxes to a qualifying business that establishes a qualifying project for the creation of intellectual property which meets certain capital investment criteria; providing a credit against the corporate income tax, the sales and use tax, or a stated combination of the two taxes to a qualifying business that establishes a strategic priority project that meets certain capital investment criteria, etc. CM 03/29/2021 Fav/CS FT AP	Fav/CS Yeas 11 Nays 0
9	SB 1682 Gruters (Compare CS/H 1307)	Telephone Solicitation; Prohibiting certain telephonic sales calls without the prior express written consent of the called party; removing provisions authorizing the use of certain automated telephone dialing systems; authorizing a court to increase an award for willful and knowing violations, etc. CM 03/29/2021 Favorable RI RC	Favorable Yeas 11 Nays 0

Other Related Meeting Documents



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: March 15, 2021

I respectfully request that **Senate Bill #954**, relating to Attorney Compensation, be placed on the:

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

A handwritten signature in blue ink that reads "Aaron Bean". The signature is written in a cursive, flowing style.

Senator Aaron Bean
Florida Senate, District 4

3/29/21

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

954

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Martha Edenfield

Job Title

Address 106 E. Colleg Ave, Suite 1200

Phone 850-999-4100

Street

Tallahassee

FL

32301

Email medenfield@deanmead.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Real Property, Probate and Trust Law Section of the Florida Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 954

INTRODUCER: Judiciary Committee and Senator Bean

SUBJECT: Attorney Compensation

DATE: March 26, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 954 removes the estate-value-based fee schedule that is currently in place for attorneys in a probate or trust administration.

Currently, the fee schedule provides that an attorney's fee is presumed reasonable if it conforms to a calculation based on a percentage of the value of the estate or trust. A judge may increase or decrease the compensation of an attorney upon petition by an interested party.

The bill removes the presumption that a fee based on the fee schedule is reasonable and requires an attorney to obtain a fee disclosure statement from a prospective client in a probate or other administration. This disclosure statement is intended to inform a prospective client that the fee is subject to negotiation and not required to be based on the value of the estate. The disclosure also provides that selection of the attorney is at the discretion of the personal representative.

The bill takes effect July 1, 2021.

II. Present Situation:

Probate Administration

Probate is a court supervised process for identifying and gathering the assets of a deceased person, paying his or her debts, and distributing those assets to beneficiaries.¹ A personal representative is appointed to execute this process, and the representative may retain an attorney using funds from the estate.²

Section 733.6171, F.S., provides that an attorney for the personal representative is entitled to reasonable compensation for his or her services payable from the estate without a court order. The attorney, the personal representative, and the heirs to the estate may agree to the specific compensation of the attorney. Section 733.6171, F.S., identifies a schedule of fees for the attorney which are presumed to be reasonable, as follows:

Compensable Value of the Estate	Reasonable Compensation
\$40,000 or less	\$1,500
\$40,000 - \$70,000	\$2,250
\$70,000 - \$100,000	\$3,000
> \$100,000	\$3,000 + 3% on the next \$900,000
\$1,000,000 - \$3,000,000	2.5% for all above \$1 million and not exceeding \$3 million
\$3,000,000 - \$5,000,000	2% for all above \$3 million and not exceeding \$5 million
\$5,000,000 – \$10,000,000	1.5% for all above \$5 million and not exceeding \$10 million
> \$10,000,000	1% for all above \$10 million

An attorney for the personal representative may receive further compensation for any extraordinary service. What constitutes an extraordinary service may depend on a number of factors like the size of the estate and the number of beneficiaries. Extraordinary services may include, but are not limited to:

- A will contest;
- Will drafting and construction;
- A proceeding for the determination of beneficiaries;
- A contested claim;
- An elective share proceeding;
- Apportionment of estate taxes;
- An adversarial proceeding;
- Litigation by or against the estate;
- Representation during an audit;
- Tax advice on post mortem planning;
- Review of estate tax return and preparation of other associated returns;

¹ The Florida Bar, *Consumer Pamphlet: Probate in Florida*, What is Probate? available at <https://www.floridabar.org/public/consumer/pamphlet026/#whatisprobate> (last visited Mar. 26, 2021).

² Section 733.106(2) & (3), F.S.

- Preparation of the estate's federal tax return;
- Purchase, sale, lease, or encumbrance of real property by the personal representative;
- Legal advice regarding the decedent's business or commercial activity;
- Legal advice regarding claims for damage to environment or similar proceedings;
- Legal advice related to homestead status of real property;
- Involvement in fiduciary, employee, or attorney compensation disputes; or
- Administration of assets not subject to administration in Florida.³

Upon the petition of any interested party, the court may increase or decrease the compensation for ordinary services of the attorney or award compensation for the performance of extraordinary services. When making a determination regarding reasonable compensation, the court must consider the:

- Promptness, efficiency, and skill with which the administration was handled by the attorney;
- Responsibilities assumed by and the potential liabilities of the attorney;
- Nature and value of the assets;
- Benefits or detriments resulting to the estate or interested parties from the attorney's services;
- Complexity or simplicity of the administration and the novelty of the issues presented;
- Attorney's participation in tax planning for the estate and the estate's beneficiaries and tax return preparation, review, or approval;
- Nature of the probate, nonprobate, and exempt asset, the expenses of administration, the liabilities of the decedent, and the compensation paid to other professionals and fiduciaries;
- Delay in payment of the compensation after the services were furnished; and
- Other relevant factors the court deems appropriate.⁴

Fees and costs awarded under s. 733.106, F.S., are payable from the estate. The court has the discretion to assess the burden of the fees paid from the estate to the part of the estate of the person who should be equitably charged for the fees.⁵ However, the assessment is limited to the value of that person's interest in the estate. If the fees and costs awarded are in excess of the person's share of the estate, there is no personal liability for the fees and costs on the part of such person.⁶

Trust Administration

Section 736.1007, F.S., authorizes the trustee of a revocable trust to retain an attorney in connection with the initial administration of the trust,⁷ and the attorney is entitled to reasonable compensation for the legal services provided, payable from the assets of the trust, without a court order.⁸ Current law also provides that a trustee and the attorney may agree to compensation

³ Section 733.6171(4), F.S.

⁴ Section 733.6171(5), F.S.

⁵ Section 733.106(4), F.S.

⁶ *Dourado v. Chousa*, 604 So. 2d 864, 866 (Fla. 5th DCA 1992).

⁷ Section 736.1007(8), F.S., defines "initial trust administration" to mean administration of a revocable trust during the period that begins with the death of the settlor and ends on the final distribution of trust assets outright or to continuing trusts created under the trust agreement but, if an estate tax return is required, not until after issuance of an estate tax closing letter or other evidence of termination of the estate tax proceeding. This initial period is not intended to include continued regular administration of the trust.

⁸ Section 736.1007(1), F.S., is subject to s. 736.0802(10), F.S.

outside of the manner or amount provided under s. 736.1007, F.S., and the agreement is not binding on a person who bears the impact of the compensation unless that person is a party to or otherwise consents to be bound by the agreement.⁹

For ordinary services of all attorneys employed to advise a trustee concerning the trustee's duties in the initial trust administration, compensation is presumed to be reasonable if it is based on the value of the trust assets immediately following the settlor's death and the income earned by the trust during initial administration at the rate of 75 percent of the schedule provided in s. 733.6171(3)(a)-(h).¹⁰

Ordinary services of the attorney in an initial trust administration include legal advice and representation concerning the trustee's duties relating to the following:

- Review of the trust instrument and each amendment for legal sufficiency and interpretation;
- Implementation of substitution of the successor trustee;
- Persons who must or should be served with required notices and the method and timing of such service;
- The obligation of a successor to require a former trustee to provide an accounting;
- The trustee's duty to protect, insure, and manage trust assets and the trustee's liability relating to these duties;
- The trustee's duty regarding investments imposed by the prudent investor rule;
- The trustee's obligation to inform and account to beneficiaries and the method of satisfaction of such obligations, the liability of the trust and trustee to the settlor's creditors, and the advisability or necessity for probate proceedings to bar creditors;
- Contributions due to the personal representative of the settlor's estate for payment of expenses of administration and obligations of the settlor's estate;
- Identifying tax returns required to be filed by the trustee, the trustee's liability for payment of taxes, and the due date of returns;
- Filing a nontaxable affidavit, if not filed by a personal representative;
- Order of payment of expenses of administration of the trust and order and priority of abatement of trust distributions;
- Distribution of income or principal to beneficiaries or funding of further trusts provided in the governing instrument;
- Preparation of any legal documents required to effect distribution;
- Fiduciary duties, avoidance of self-dealing, conflicts of interest, duty of impartiality, and obligations to beneficiaries;
- If there is a conflict of interest between a trustee who is a beneficiary and other beneficiaries of the trust, advice to the trustee on limitations of certain authority of the trustee regarding discretionary distributions or exercise of certain powers and alternatives for appointment of an independent trustee and appropriate procedures; and
- Procedures for the trustee's discharge from liability for administration of the trust on termination or resignation.¹¹

⁹ Section 736.1007(1), F.S. The statute provides that the agreement may provide that the trustee is not individually liable for the attorney fees and costs.

¹⁰ Section 736.1007(2), F.S.

¹¹ Section 736.1007(4), F.S.

For extraordinary services, the attorney for the trustee must be allowed further reasonable compensation.¹² Extraordinary services may include the following:¹³

- Involvement in a trust contest, trust construction, a proceeding for determination of beneficiaries, a contested claim, elective share proceedings, apportionment of estate taxes, or other adversary proceedings or litigation by or against the trust;
- Representation of the trustee in an audit or any proceeding for adjustment, determination, or collection of any taxes;
- Tax advice on postmortem tax planning;¹⁴
- Review of an estate tax return and preparation or review of other tax returns required to be filed by the trustee;
- Preparation of decedent's federal estate tax return;¹⁵
- Purchase, sale, lease, or encumbrance of real property by the trustee or involvement in zoning, land use, environmental, or other similar matters;
- Legal advice regarding carrying on of decedent's business or conducting other commercial activity by the trustee;
- Legal advice regarding claims for damage to the environment or related procedures;
- Legal advice regarding homestead status of trust real property or proceedings involving the status;
- Involvement in fiduciary, employee, or attorney compensation disputes; and
- Considerations of special valuation of trust assets, including discounts for blockage, minority interests, lack of marketability, and environmental liability.¹⁶

The court may increase or decrease the compensation for ordinary services of the attorney or award compensation for extraordinary services if the facts or particular circumstances warrant.¹⁷ In determining reasonable compensation, the court must consider all of the following factors:

- The promptness, efficiency, and skill with which the initial administration was handled by the attorney;
- The responsibilities assumed by, and potential liabilities of, the attorney;
- The nature and value of the assets that are affected by the decedent's death;
- The benefits or detriments resulting to the trust or the trust's beneficiaries from the attorney's services;
- The complexity or simplicity of the administration and the novelty of issues presented;

¹² See Section 736.1007(5), F.S.

¹³ *Id.*

¹⁴ Section 736.1007(5)(c), F.S., provides that tax advice on postmortem tax planning, includes, but is not limited to, disclaimer, renunciation of fiduciary commission, alternate valuation date, allocation of administrative expenses between tax returns, the QTIP or reverse QTIP election, allocation of GST exemption, qualification for Internal Revenue Code ss. 303 and 6166 privileges, deduction of last illness expenses, distribution planning, asset basis considerations, throwback rules, handling income or deductions in respect of a decedent, valuation discounts, special use and other valuation, handling employee benefit or retirement proceeds, prompt assessment request, or request for release from personal liability for payment of tax.

¹⁵ Section 736.1007(5)(e), F.S., provides that if the estate tax return is prepared by the attorney, a fee of one-half of 1 percent up to a value of \$10 million and one-fourth of 1 percent on the value in excess of \$10 million, of the gross estate as finally determined for federal estate tax purposes, is presumed to be reasonable compensation for the attorney for this service. These fees shall include services for routine audit of the return, not beyond the examining agent level, if required.

¹⁶ See Section 736.1007(5), F.S.

¹⁷ See Section 736.1007(6), F.S.

- The attorney's participation in tax planning for the estate, the trust, and the trust's beneficiaries and tax return preparation or review and approval;
- The nature of the trust assets, the expenses of administration, and the claims payable by the trust and the compensation paid to other professionals and fiduciaries;
- Any delay in payment of the compensation after the services were furnished; and
- Any other relevant factors.¹⁸

If a separate written agreement regarding compensation exists between the attorney and the settlor, the attorney must furnish a copy to the trustee prior to the commencement of employment and, if employed, must promptly serve a copy on all interested persons.¹⁹ The trustee is not obligated to employ the attorney and the attorney is not obligated to accept representation but, if the attorney who is a party to the agreement or who drafted the trust is employed, the compensation paid must not exceed the amount provided in the agreement.²⁰

Other Rules

Attorneys are also bound by the Rules Regulating the Florida Bar when considering compensation from any client.²¹ Under the Bar rules, an attorney may not charge a clearly excessive fee or cost.

A fee or cost is clearly excessive when:

- (1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney; or
- (2) the fee or cost is sought or secured by the attorney by means of intentional misrepresentation or fraud upon the client, a nonclient party, or any court, as to either entitlement to, or amount of, the fee.²²

Reasonable fees, according to the Bar rules, are determined by taking into account:

- The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly;
- The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- The fee customarily charged in the locality for similar legal services;
- The amount involved and the results obtained;
- The time limitations imposed by the client or by the circumstances;
- The nature and length of the professional relationship with the client;
- The experience, reputation, and ability of the lawyer or lawyers performing the services; and

¹⁸ *Id.*

¹⁹ *See* Section 736.1007(7), F.S.

²⁰ *Id.*

²¹ Fla. Bar Code Prof. Resp. 4-1.5.

²² *Id.*

- Whether the fee is fixed or contingent.²³

Reasonable costs, such as witness costs, may be considered by taking into account:

- The nature and extent of the disclosure made to the client about the costs;
- Whether a specific agreement exists between the lawyer and client as to the costs a client is expected to pay and how a cost is calculated that is charged to a client;
- The actual amount charged by third party providers of services to the attorney;
- Whether specific costs can be identified and allocated to an individual client or a reasonable basis exists to estimate the costs charged;
- The reasonable charges for providing in-house service to a client if the cost is an in-house charge for services; and
- The relationship and past course of conduct between the lawyer and the client.²⁴

Background

In 1988, Florida passed legislation that covered the reasonable compensation of personal representatives as well as attorneys, accountants, appraisers, and other agents employed by the personal representative.²⁵ The statute provided that reasonable compensation must be based on one or more of the following:

- The time and labor required;
- The novelty and the difficulty of the questions involved, and the skill requisite to perform the service properly;
- The likelihood that the acceptance of the particular employment will preclude other employment by the person;
- The fee customarily charged in the locality for similar services;
- The nature and value of the assets of the estate, the amount of income earned by the estate, and the responsibilities and potential liabilities assumed by the person;
- The final results obtained;
- The time limitations imposed by the circumstances;
- The nature and length of the professional relationship with the decedent; and
- The experience, reputation, diligence, and ability of the person performing the service.²⁶

In 1993, the Legislature created s. 733.6171, F.S., to differentiate the compensation of attorneys from others retained by a personal representative covered separately in s. 733.617, F.S.²⁷ In contrast to the 1988 compensation structure, the new legislation allowed for attorney compensation to be based on the value of the estate along with the work hours contributed.²⁸ Additionally, the statute allowed for two types of compensations: ordinary and extraordinary.²⁹ The statute provided that an attorney's compensation based on the above standard could be increased or decreased by a court upon petition by an interested party. In determining reasonable

²³ Fla. Bar Code Prof. Resp. 4-1.5(b)(1).

²⁴ Fla. Bar Code Prof. Resp. 4-1.5(b)(2).

²⁵ See ch. 88-340, Laws of Fla.

²⁶ *Id.*

²⁷ See ch. 93-257, Laws of Fla.

²⁸ *Id.*

²⁹ *Id.*

compensation, the court weighed factors that were similar to those in the 1988 statute. Thus, although a fee determined using the above guidelines was presumed reasonable, it was not definitive.³⁰

In 1995, the Legislature amended s. 733.6171, F.S., to provide a fee structure. Specifically, compensation based on the value of the estate and the income earned by the estate was presumed reasonable based on a fee schedule similar to the current schedule.³¹ An attorney could be further compensated for any “extraordinary services,” such as more complex estates that may involve tax preparation or contested claims.³² The amendment still provided that compensation may be increased or decreased by a court upon petition by an interested party.³³

III. Effect of Proposed Changes:

The bill removes the estate-value-based fee schedule that is currently in place for attorneys in a probate or trust administration. Under current law, a fee based on the fee schedule for compensation for ordinary services is presumed reasonable. An attorney could receive further compensation if he or she provided certain extraordinary services.³⁴ Likewise, a court could increase or decrease compensation based on the particularities of a case. The bill removes these provisions.³⁵

The bill creates a duty for an attorney to obtain a fee disclosure statement when representing an estate during a probate or other administration. The fee disclosure statement will give notice to the client that the fee is not required to be based on the value of the estate and is subject to negotiation. Additionally, the disclosure must specify that the selection of an attorney is at the discretion of the personal representative and that the personal representative is not required to select the attorney who drafted the will.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³⁰ One court, for example, awarded \$60,000 as opposed to \$265,236.57 as calculated under the statute. The court reasoned “the statute’s only requirement is that attorneys receive reasonable compensation” and that the higher fee included under the calculation may not be reasonable considering the amount of time and skill required for the estate in question. *See Sitomer v. First of Am. Bank-Cent.*, 667 So. 2d 456, 458 (Fla. 4th DCA 1996).

³¹ See ch. 95-401, Laws of Fla.

³² *Id.*

³³ *Id.*

³⁴ A non-exhaustive list of extraordinary services eligible for additional compensation for a trust administration is covered in Section 736.1007(5), F.S. For a probate administration, this is covered in Section 733.6171(4), F.S.

³⁵ Fla. Bar Code Prof. Resp. 4-1.5.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may impact consumers involved in probate and estate administrations. By removing the presumption that certain fees are per se reasonable, the bill may encourage negotiated fees or fees based on the work necessary to execute the estate as opposed to the value of the estate or trust.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 2 of the bill amending s. 736.1007, F.S., refers to the “initial administration of the trust,” however, the current definition of “initial trust administration” under s. 736.1007(8), F.S., is deleted in the bill. The meaning of “initial administration of the trust” is potentially unclear.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 733.6171, 736.1007, 733.106, and 736.1005.

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 Judiciary on March 15, 2021:

The committee substitute changes the bill by:

- Repealing the statutory attorney fee schedule for formal estate administration along with its presumption of reasonableness.
- Creating a fee disclosure statement that requires an attorney to make certain disclosures regarding fees when representing an estate in probate.

- B. **Amendments:**

None.

By the Committee on Judiciary; and Senator Bean

590-02877-21

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A bill to be entitled

An act relating to attorney compensation; amending s. 733.6171, F.S.; requiring an attorney who accepts certain engagements to obtain a fee disclosure statement signed by the person responsible for administering an estate; requiring that such disclosure statement contain certain statements; deleting provisions relating to the determination of reasonable compensation for attorneys of personal representatives; deleting provisions relating to petitions to increase or decrease compensation for such attorneys; amending s. 736.1007, F.S.; deleting provisions relating to the determination of reasonable compensation for attorneys of trustees; deleting provisions relating to petitions to increase or decrease compensation for such attorneys; amending ss. 733.106 and 736.1005, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 733.6171, Florida Statutes, is amended to read:

733.6171 Compensation of attorney for the personal representative.—

(1) Attorneys for personal representatives are ~~shall be~~ entitled to reasonable compensation payable from the estate assets without court order. An attorney accepting an engagement to represent an estate in probate or other administration must

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

590-02877-21

2021954c1

obtain a fee disclosure statement signed by the person responsible for administering the estate. Such statement must specify all of the following:

(a) The attorney fee for representing the estate in probate matters is not set by law and is not required to be based on the size of the estate.

(b) The fee is subject to negotiation between the personal representative and the attorney.

(c) The selection of the attorney to represent the estate is at the discretion of the personal representative, and the personal representative is not required to select the attorney who drafted the will.

~~(2) The attorney, the personal representative, and persons bearing the impact of the compensation may agree to compensation determined in a different manner than provided in this section. Compensation may also be determined in a different manner than provided in this section if the manner is disclosed to the parties bearing the impact of the compensation and if no objection is made as provided for in the Florida Probate Rules.~~

~~(3) Compensation for ordinary services of attorneys in formal estate administration is presumed to be reasonable if based on the compensable value of the estate, which is the inventory value of the probate estate assets and the income earned by the estate during the administration as provided in the following schedule:~~

~~(a) One thousand five hundred dollars for estates having a value of \$40,000 or less.~~

~~(b) An additional \$750 for estates having a value of more than \$40,000 and not exceeding \$70,000.~~

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(c) ~~An additional \$750 for estates having a value of more than \$70,000 and not exceeding \$100,000.~~

(d) ~~For estates having a value in excess of \$100,000, at the rate of 3 percent on the next \$900,000.~~

(e) ~~At the rate of 2.5 percent for all above \$1 million and not exceeding \$3 million.~~

(f) ~~At the rate of 2 percent for all above \$3 million and not exceeding \$5 million.~~

(g) ~~At the rate of 1.5 percent for all above \$5 million and not exceeding \$10 million.~~

(h) ~~At the rate of 1 percent for all above \$10 million.~~

(4) ~~In addition to fees for ordinary services, the attorney for the personal representative shall be allowed further reasonable compensation for any extraordinary service. What is an extraordinary service may vary depending on many factors, including the size of the estate. Extraordinary services may include, but are not limited to:~~

(a) ~~Involvement in a will contest, will construction, a proceeding for determination of beneficiaries, a contested claim, elective share proceeding, apportionment of estate taxes, or any adversarial proceeding or litigation by or against the estate.~~

(b) ~~Representation of the personal representative in audit or any proceeding for adjustment, determination, or collection of any taxes.~~

(c) ~~Tax advice on postmortem tax planning, including, but not limited to, disclaimer, renunciation of fiduciary commission, alternate valuation date, allocation of administrative expenses between tax returns, the QTIP or reverse~~

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~~QTIP election, allocation of GST exemption, qualification for Internal Revenue Code ss. 6166 and 303 privileges, deduction of last illness expenses, fiscal year planning, distribution planning, asset basis considerations, handling income or deductions in respect of a decedent, valuation discounts, special use and other valuation, handling employee benefit or retirement proceeds, prompt assessment request, or request for release of personal liability for payment of tax.~~

(d) ~~Review of estate tax return and preparation or review of other tax returns required to be filed by the personal representative.~~

(e) ~~Preparation of the estate's federal estate tax return. If this return is prepared by the attorney, a fee of one half of 1 percent up to a value of \$10 million and one-fourth of 1 percent on the value in excess of \$10 million of the gross estate as finally determined for federal estate tax purposes, is presumed to be reasonable compensation for the attorney for this service. These fees shall include services for routine audit of the return, not beyond the examining agent level, if required.~~

(f) ~~Purchase, sale, lease, or encumbrance of real property by the personal representative or involvement in zoning, land use, environmental, or other similar matters.~~

(g) ~~Legal advice regarding carrying on of the decedent's business or conducting other commercial activity by the personal representative.~~

(h) ~~Legal advice regarding claims for damage to the environment or related procedures.~~

(i) ~~Legal advice regarding homestead status of real property or proceedings involving that status and services~~

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related to protected homestead.

(j) Involvement in fiduciary, employee, or attorney compensation disputes.

(k) Proceedings involving ancillary administration of assets not subject to administration in this state.

(5) Upon petition of any interested person, the court may increase or decrease the compensation for ordinary services of the attorney or award compensation for extraordinary services if the facts and circumstances of the particular administration warrant. In determining reasonable compensation, the court shall consider all of the following factors, giving weight to each as it determines to be appropriate:

(a) The promptness, efficiency, and skill with which the administration was handled by the attorney.

(b) The responsibilities assumed by and the potential liabilities of the attorney.

(c) The nature and value of the assets that are affected by the decedent's death.

(d) The benefits or detriments resulting to the estate or interested persons from the attorney's services.

(e) The complexity or simplicity of the administration and the novelty of issues presented.

(f) The attorney's participation in tax planning for the estate and the estate's beneficiaries and tax return preparation, review, or approval.

(g) The nature of the probate, nonprobate, and exempt assets, the expenses of administration, the liabilities of the decedent, and the compensation paid to other professionals and fiduciaries.

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(h) Any delay in payment of the compensation after the services were furnished.

(i) Any other relevant factors.

(2)(6) If a separate written agreement regarding compensation exists between the attorney and the decedent, the attorney must ~~shall~~ furnish a copy to the personal representative prior to commencement of employment, and, if employed, must ~~shall~~ promptly file and serve a copy on all interested persons. ~~Neither~~ A separate agreement or ~~nor~~ a provision in the will suggesting or directing that the personal representative retain a specific attorney does not ~~will~~ obligate the personal representative to employ the attorney or obligate the attorney to accept the representation, but if the attorney who is a party to the agreement or who drafted the will is employed, the compensation paid may ~~shall~~ not exceed the compensation provided in the agreement or in the will.

Section 2. Section 736.1007, Florida Statutes, is amended to read:

736.1007 Trustee's attorney fees.—

(1) If the trustee of a revocable trust retains an attorney to render legal services in connection with the initial administration of the trust, the attorney is entitled to reasonable compensation for those legal services, payable from the assets of the trust, subject to s. 736.0802(10), without court order. ~~The trustee and the attorney may agree to compensation that is determined in a manner or amount other than the manner or amount provided in this section. The agreement is not binding on a person who bears the impact of the compensation unless that person is a party to or otherwise consents to be~~

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bound by the agreement. The agreement may provide that the trustee is not individually liable for the attorney fees and costs.

(2) Unless otherwise agreed, compensation based on the value of the trust assets immediately following the settlor's death and the income earned by the trust during initial administration at the rate of 75 percent of the schedule provided in s. 733.6171(3)(a)-(h) is presumed to be reasonable total compensation for ordinary services of all attorneys employed generally to advise a trustee concerning the trustee's duties in initial trust administration.

(3) An attorney who is retained to render only limited and specifically defined legal services shall be compensated as provided in the retaining agreement. If the amount or method of determining compensation is not provided in the agreement, the attorney is entitled to a reasonable fee, taking into account the factors set forth in subsection (6).

(4) Ordinary services of the attorney in an initial trust administration include legal advice and representation concerning the trustee's duties relating to:

(a) Review of the trust instrument and each amendment for legal sufficiency and interpretation.

(b) Implementation of substitution of the successor trustee.

(c) Persons who must or should be served with required notices and the method and timing of such service.

(d) The obligation of a successor to require a former trustee to provide an accounting.

(e) The trustee's duty to protect, insure, and manage trust

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assets and the trustee's liability relating to these duties.

(f) The trustee's duty regarding investments imposed by the prudent investor rule.

(g) The trustee's obligation to inform and account to beneficiaries and the method of satisfaction of such obligations, the liability of the trust and trustee to the settlor's creditors, and the advisability or necessity for probate proceedings to bar creditors.

(h) Contributions due to the personal representative of the settlor's estate for payment of expenses of administration and obligations of the settlor's estate.

(i) Identifying tax returns required to be filed by the trustee, the trustee's liability for payment of taxes, and the due date of returns.

(j) Filing a nontaxable affidavit, if not filed by a personal representative.

(k) Order of payment of expenses of administration of the trust and order and priority of abatement of trust distributions.

(l) Distribution of income or principal to beneficiaries or funding of further trusts provided in the governing instrument.

(m) Preparation of any legal documents required to effect distribution.

(n) Fiduciary duties, avoidance of self-dealing, conflicts of interest, duty of impartiality, and obligations to beneficiaries.

(o) If there is a conflict of interest between a trustee who is a beneficiary and other beneficiaries of the trust, advice to the trustee on limitations of certain authority of the

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trustee regarding discretionary distributions or exercise of certain powers and alternatives for appointment of an independent trustee and appropriate procedures.

~~(p) Procedures for the trustee's discharge from liability for administration of the trust on termination or resignation.~~

~~(5) In addition to the attorney's fees for ordinary services, the attorney for the trustee shall be allowed further reasonable compensation for any extraordinary service. What constitutes an extraordinary service may vary depending on many factors, including the size of the trust. Extraordinary services may include, but are not limited to:~~

~~(a) Involvement in a trust contest, trust construction, a proceeding for determination of beneficiaries, a contested claim, elective share proceedings, apportionment of estate taxes, or other adversary proceedings or litigation by or against the trust.~~

~~(b) Representation of the trustee in an audit or any proceeding for adjustment, determination, or collection of any taxes.~~

~~(c) Tax advice on postmortem tax planning, including, but not limited to, disclaimer, renunciation of fiduciary commission, alternate valuation date, allocation of administrative expenses between tax returns, the QTIP or reverse QTIP election, allocation of GST exemption, qualification for Internal Revenue Code ss. 303 and 6166 privileges, deduction of last illness expenses, distribution planning, asset basis considerations, throwback rules, handling income or deductions in respect of a decedent, valuation discounts, special use and other valuation, handling employee benefit or retirement~~

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~~proceeds, prompt assessment request, or request for release from personal liability for payment of tax.~~

~~(d) Review of an estate tax return and preparation or review of other tax returns required to be filed by the trustee.~~

~~(e) Preparation of decedent's federal estate tax return. If this return is prepared by the attorney, a fee of one-half of 1 percent up to a value of \$10 million and one-fourth of 1 percent on the value in excess of \$10 million, of the gross estate as finally determined for federal estate tax purposes, is presumed to be reasonable compensation for the attorney for this service. These fees shall include services for routine audit of the return, not beyond the examining agent level, if required.~~

~~(f) Purchase, sale, lease, or encumbrance of real property by the trustee or involvement in zoning, land use, environmental, or other similar matters.~~

~~(g) Legal advice regarding carrying on of decedent's business or conducting other commercial activity by the trustee.~~

~~(h) Legal advice regarding claims for damage to the environment or related procedures.~~

~~(i) Legal advice regarding homestead status of trust real property or proceedings involving the status.~~

~~(j) Involvement in fiduciary, employee, or attorney compensation disputes.~~

~~(k) Considerations of special valuation of trust assets, including discounts for blockage, minority interests, lack of marketability, and environmental liability.~~

~~(6) Upon petition of any interested person in a proceeding to review the compensation paid or to be paid to the attorney for the trustee, the court may increase or decrease the~~

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~~compensation for ordinary services of the attorney for the trustee or award compensation for extraordinary services if the facts and circumstances of the particular administration warrant. In determining reasonable compensation, the court shall consider all of the following factors giving such weight to each as the court may determine to be appropriate:~~

~~(a) The promptness, efficiency, and skill with which the initial administration was handled by the attorney.~~

~~(b) The responsibilities assumed by, and potential liabilities of, the attorney.~~

~~(c) The nature and value of the assets that are affected by the decedent's death.~~

~~(d) The benefits or detriments resulting to the trust or the trust's beneficiaries from the attorney's services.~~

~~(e) The complexity or simplicity of the administration and the novelty of issues presented.~~

~~(f) The attorney's participation in tax planning for the estate, the trust, and the trust's beneficiaries and tax return preparation or review and approval.~~

~~(g) The nature of the trust assets, the expenses of administration, and the claims payable by the trust and the compensation paid to other professionals and fiduciaries.~~

~~(h) Any delay in payment of the compensation after the services were furnished.~~

~~(i) Any other relevant factors.~~

(2)(7) If a separate written agreement regarding compensation exists between the attorney and the settlor, the attorney must ~~shall~~ furnish a copy to the trustee prior to commencement of employment and, if employed, must ~~shall~~ promptly

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file and serve a copy on all interested persons. A separate agreement or a provision in the trust suggesting or directing the trustee to retain a specific attorney does not obligate the trustee to employ the attorney or obligate the attorney to accept the representation but, if the attorney who is a party to the agreement or who drafted the trust is employed, the compensation paid may ~~shall~~ not exceed the compensation provided in the agreement.

~~(8) As used in this section, the term "initial trust administration" means administration of a revocable trust during the period that begins with the death of the settlor and ends on the final distribution of trust assets outright or to continuing trusts created under the trust agreement but, if an estate tax return is required, not until after issuance of an estate tax closing letter or other evidence of termination of the estate tax proceeding. This initial period is not intended to include continued regular administration of the trust.~~

Section 3. Subsection (4) of section 733.106, Florida Statutes, is amended to read:

733.106 Costs and attorney fees.—

(4) If costs and attorney fees are to be paid from the estate under this section, ~~s. 733.6171(4)~~, s. 736.1005, or s. 736.1006, the court, in its discretion, may direct from what part of the estate they shall be paid.

(a) If the court directs an assessment against a person's part of the estate and such part is insufficient to fully pay the assessment, the court may direct payment from the person's part of a trust, if any, if a pour-over will is involved and the matter is interrelated with the trust.

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(b) All or any part of the costs and attorney fees to be paid from the estate may be assessed against one or more persons' part of the estate in such proportions as the court finds to be just and proper.

(c) In the exercise of its discretion, the court may consider the following factors:

1. The relative impact of an assessment on the estimated value of each person's part of the estate.

2. The amount of costs and attorney fees to be assessed against a person's part of the estate.

3. The extent to which a person whose part of the estate is to be assessed, individually or through counsel, actively participated in the proceeding.

4. The potential benefit or detriment to a person's part of the estate expected from the outcome of the proceeding.

5. The relative strength or weakness of the merits of the claims, defenses, or objections, if any, asserted by a person whose part of the estate is to be assessed.

6. Whether a person whose part of the estate is to be assessed was a prevailing party with respect to one or more claims, defenses, or objections.

7. Whether a person whose part of the estate is to be assessed unjustly caused an increase in the amount of costs and attorney fees incurred by the personal representative or another interested person in connection with the proceeding.

8. Any other relevant fact, circumstance, or equity.

(d) The court may assess a person's part of the estate without finding that the person engaged in bad faith, wrongdoing, or frivolousness.

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Section 4. Subsection (2) of section 736.1005, Florida Statutes, is amended to read:

736.1005 Attorney fees for services to the trust.—

(2) If attorney fees are to be paid from the trust under subsection (1), ~~s. 736.1007(5)(a)~~, or s. 733.106(4)(a), the court, in its discretion, may direct from what part of the trust the fees shall be paid.

(a) All or any part of the attorney fees to be paid from the trust may be assessed against one or more persons' part of the trust in such proportions as the court finds to be just and proper.

(b) In the exercise of its discretion, the court may consider the following factors:

1. The relative impact of an assessment on the estimated value of each person's part of the trust.

2. The amount of attorney fees to be assessed against a person's part of the trust.

3. The extent to which a person whose part of the trust is to be assessed, individually or through counsel, actively participated in the proceeding.

4. The potential benefit or detriment to a person's part of the trust expected from the outcome of the proceeding.

5. The relative strength or weakness of the merits of the claims, defenses, or objections, if any, asserted by a person whose part of the trust is to be assessed.

6. Whether a person whose part of the trust is to be assessed was a prevailing party with respect to one or more claims, defenses, or objections.

7. Whether a person whose part of the trust is to be

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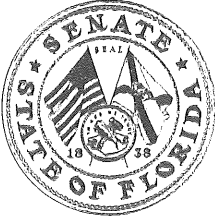
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407 assessed unjustly caused an increase in the amount of attorney
408 fees incurred by the trustee or another person in connection
409 with the proceeding.

410 8. Any other relevant fact, circumstance, or equity.

411 (c) The court may assess a person's part of the trust
412 without finding that the person engaged in bad faith,
413 wrongdoing, or frivolousness.

414 Section 5. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee,
Alternating Chair

SENATOR DENNIS BAXLEY
12th District

February 15, 2021

The Honorable Chair Ed Hooper
302 Senate Office Building
Tallahassee, FL 32399

Dear Chair Hooper,

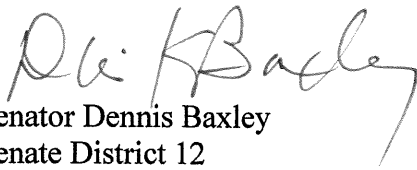
I would like to request SB 1072 Online Marketplace Transparency be heard in the next Commerce & Tourism Committee meeting.

Organized retail crime poses enormous risks to workers, consumers, and retail businesses. Florida businesses lose millions of dollars each year due to organized retail crime and now this is even more devastating at a time when many are struggling to stay afloat due to COVID-19.

SB 1072 is common sense legislation that requires online marketplaces to verify and authenticate the identity of third parties who sell a "high volume" of products on their platforms. The bill defines "High Volume Third Party Sellers"--we are not talking about selling a mirror or something you might find at a yard sale on Facebook Marketplace -- a high volume seller is a seller that during a 12-month period, has had 200 or more sales totaling \$5,000 or more in gross revenue. If an online marketplace does not comply, it would be a violation of the Deceptive and Unfair Trade Practices Act and enforced by the Attorney General's office.

I appreciate your favorable consideration.

Onward & Upward,


Senator Dennis Baxley
Senate District 12

DKB/dd

cc: Todd McKay, Staff Director

REPLY TO:

- ☐ 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
- ☐ 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
- ☐ 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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THE FLORIDA SENATE

APPEARANCE RECORD

3.29.21

Meeting Date

SB 1072

Bill Number (if applicable)

Topic Online Marketplace Transparency

Amendment Barcode (if applicable)

Name Paul Keller

Job Title Multi-Store Asset Protection Manager (MAPM)

Address 3200 Capital Circle NE

Phone 904.612.2425

Street

Tallahassee

FL

32308

City

State

Zip

Email paul_i_keller@homedepot.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing The Home Depot

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

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THE FLORIDA SENATE

APPEARANCE RECORD

March 29, 2021

Meeting Date

1072

Bill Number (if applicable)

Topic Online Marketplace Transparency

Amendment Barcode (if applicable)

Name Grace Lovett

Job Title VP Governmental Affairs

Address 227 S. Adams Street

Phone 850-222-4082

Street

Tallahassee

FL

32301

Email Grace@frf.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/29/21

Meeting Date

1072

Bill Number (if applicable)

Topic Marketplace Transparency

Amendment Barcode (if applicable)

Name Sally West

Job Title Regional Director

Address 3810 Buck Lake Rd

Phone 224-723-2650

Tallahassee, FL 32317

City

State

Zip

Email Sally.West@Walgreens.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Walgreens

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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CS 001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21

Meeting Date

SB 1072

Bill Number (if applicable)

Topic Online Marketplace Transparency

Amendment Barcode (if applicable)

Name Greg Black

Job Title Lobbyist

Address PO Box 838

Phone 8505098022

Street

Tallahassee

FL

32302

Email Greg@WaypointStrat.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing International Council of Shopping Centers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/29/21
Meeting Date

SB 1072
Bill Number (if applicable)

Topic SB 1072 - Online Marketplace Transparency

Amendment Barcode (if applicable)

Name Servando Esparza

Job Title Executive Director

Address 208 West 14th St Phone 817 891 8598
Street
Austin Tx 78701 Email Sesparza@technet.org
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Tech Net

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

This form is part of the public record for this meeting

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21 3:30PM

Meeting Date

SB 1072

Bill Number (if applicable)

Topic SB 1072 - Online Marketplace Transparency

Amendment Barcode (if applicable)

Name Alli Liby-Schoonover

Job Title Senior Policy Advisor

Address 119 S. Monroe St. # 200

Phone 850-205-9000

Street

TLH

FL

32301

Email ALS@MHDFirm.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing eBay

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21

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

SB 1072

Meeting Date

Bill Number (if applicable)

Topic

On Line Market Place Transparency

Amendment Barcode (if applicable)

Name

David Surdan

Job Title

Retired Senator Citizen of Florida

Address

Street

City

State

Zip

Phone

Email

16 Wintergreen Dr
Fruitland Park FL

34731

goldendave1955@gmail.com

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Self & wife Sandi

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1072

INTRODUCER: Senator Baxley

SUBJECT: Online Marketplace Transparency

DATE: March 26, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Favorable
2.			JU	
3.			RC	

I. Summary:

The bill creates s. 559.953, F.S., which establishes that an online marketplace must require high-volume third-party sellers to provide the online marketplace with verification and disclosure information.

The bill provides that a violation of s. 559.953, F.S., constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act, and the Department of Legal Affairs may adopt rules to collect and verify the required information. Additionally, regulation under s. 559.953, F.S., is preempted to the Department of Legal Affairs.

The bill takes effect July 1, 2021.

II. Present Situation:

Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

History and Purpose of FDUTPA

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) became law in 1973.¹ The FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.² The FDUTPA is based on federal law, and s. 501.204(2), F.S., provides that it is the intent of the Legislature that due consideration and great weight must be given to the

¹ Ch. 73-124, Laws of Fla.; codified at part II of ch. 501, F.S.

² See s. 501.202, F.S. Trade or commerce means the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. "Trade or commerce" shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity. See s. 501.203(8), F.S.

interpretations of the Federal Trade Commission and the federal courts relating to section 5 of the Federal Trade Commission Act.³

The State Attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.⁴ The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction.⁵ The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.⁶ Consumers may also file suit through private actions.⁷

Remedies under the FDUTPA

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders; and
- Civil penalties of up to \$10,000 per willful violation.⁸

Remedies for private parties are limited to the following:

- A declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation; and
- Actual damages, attorney fees and court costs, where a person has suffered a loss due to a FDUTPA violation.⁹

Federal Unfair and Deceptive Trade Practices

The Federal Trade Commission's (FTC's) unfair and deceptive trade practices regulations prohibit unfair¹⁰ or deceptive¹¹ acts or practices in or affecting commerce.¹² The FTC's regulations include "Truth In Advertising" guidelines, which require advertisements to be

³ See s 501.204(2), F.S.

⁴ See ss. 501.203(2), 501.206, and 501.207, F.S.

⁵ Section 501.203(2), F.S.

⁶ *Id.*

⁷ Section 501.211, F.S.

⁸ Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. Section 501.2105, F.S.

⁹ Section 501.211(1) and (2), F.S.

¹⁰ An "unfair" practice is unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. See 15 U.S.C. Sec. 45(n).

¹¹ A "deceptive" practice involves a material representation, omission or practice that is likely to mislead a consumer acting reasonably in the circumstances. See FTC Policy Statement on Deception (Oct. 14, 1983) available at https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf (last visited March 26, 2021). See also Federal Trade Commission, *A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority* (revised, Oct. 2019) available at <https://www.ftc.gov/about-ftc/what-we-do/enforcement-authority> (last visited March 26, 2021).

¹² 15 U.S.C. s. 45(a)(1).

truthful, not misleading, and, when appropriate, backed by scientific evidence.¹³ To enforce these regulations, the FTC takes law enforcement actions, provides consumer and business education, issues reports and policy guidance, leads workshops, and participates in other forums.¹⁴

The FTC also provides “online shopping” guidance to consumers.¹⁵ The guidance includes confirming an online seller’s physical address and phone number, scrutinizing details provided about a product, paying with credit card, keeping records of any transaction, and protecting personal information.¹⁶ Additionally, the FTC offers resources on how to compare products online, as well as where to go to report online shopping fraud.¹⁷

E-commerce Marketplace

As e-commerce grows, the sale of counterfeit goods alongside authentic products continues to be a concern.¹⁸ In 2020, the Department of Homeland Security published a report detailing potential strategies and policies to combat the trade of counterfeit goods.¹⁹ According to the report, e-commerce platforms enable counterfeiters to produce products at lower prices, while also reaching a larger number of potential customers.²⁰ The report points to a scenario where third-party marketplace websites contain photos of the real product, fake reviews of the counterfeit product, and other information designed to mislead consumers.²¹

The report also discusses how the online marketplace is changing consumer attitudes and perceptions.²² For instance, shopping online makes it harder for consumers to identify what the report calls traditional “red flag” indicators, which has the potential to cause safety risks when consumers rely on false claims that certain products have health or safety certificates.²³ The report points out that this dynamic creates a lack of consumer trust, as well as harming the reputation of brands or businesses.²⁴

In 2019, the Organization for Economic Cooperation and Development (OECD) in partnership with the EU Intellectual Property Office (EUIPO) also published a study detailing trends in

¹³ Federal Trade Commission, *Truth In Advertising*, available at <https://www.ftc.gov/news-events/media-resources/truth-advertising> (last visited March 26, 2021).

¹⁴ Federal Trade Commission, *Protecting Consumers from Fraud and Deception*, available at <https://www.ftc.gov/news-events/media-resources/truth-advertising/protecting-consumers> (last visited March 26, 2021).

¹⁵ See Federal Trade Commission, *Shopping Online*, available at <https://www.consumer.ftc.gov/articles/0020-shopping-online> (last visited March 26, 2021).

¹⁶ *Id.*

¹⁷ *Id.* See also Federal Trade Commission, *Comparing Products Online*, available at <https://www.consumer.ftc.gov/shopping> (last visited March 26, 2021).

¹⁸ See Department of Homeland Security, *Combating Trafficking in Counterfeit and Pirated Goods* (Jan. 24, 2020), available at https://www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf (last visited March 26, 2021).

¹⁹ *Id.*

²⁰ *Id.* at 21.

²¹ *Id.* at 22.

²² *Id.* at 14.

²³ *Id.* at 15.

²⁴ *Id.*

counterfeit and pirated goods.²⁵ According to the OECD, trade in fake goods infringe on trademarks and copyright, while also potentially harming the health and safety of consumers.²⁶ The OECD reported that counterfeit and pirated goods were steadily rising, and in March of 2019, accounted for 3.3% of global trade.²⁷

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.²⁸

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.²⁹ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.³⁰ In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.³¹

In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.³² Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.³³ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.³⁴ Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.³⁵

III. Effect of Proposed Changes:

The bill creates s. 559.953, F.S., and provides the following definitions:

- “High-volume third-party seller” means a participant in an online marketplace who is a third-party seller and who, in any continuous 12-month period during the previous 24-months, has

²⁵ See Organization for Economic Cooperation and Development, *Trends in Trade in Counterfeit and Pirated Goods* (2019), available at https://read.oecd-ilibrary.org/trade/trends-in-trade-in-counterfeit-and-pirated-goods_g2g9f533-en#page1 (last visited March 26, 2021).

²⁶ See Organization for Economic Cooperation and Development, *Trade in Fake Goods is now 3.3% of World Trading and Rising* (March 18, 2019), available at www.oecd.org/newsroom/trade-in-fake-goods-is-now-33-of-world-trade-and-rising.htm (last visited March 26, 2021).

²⁷ *Id.*

²⁸ See James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

²⁹ See *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

³⁰ *Mulligan*, 934 So.2d at 1243.

³¹ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

³² See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

³³ *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

³⁴ *Id.*

³⁵ *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

entered into 200 or more discrete sales or transactions of new or unused consumer products resulting in the accumulation of an aggregate total of \$5,000 or more in gross revenues;

- “Third-party seller” means any seller, independent of an operator, a facilitator, or an owner of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the United States through an online marketplace; and
- “Seller” means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace.

The bill establishes that an online marketplace must require high-volume third-party sellers to provide the online marketplace³⁶ with the following information within 24 hours after becoming a high-volume third-party seller:

- Bank account information, which requires the online marketplace, a payment processor, or another third party contacted by the online marketplace seller to directly confirm the accuracy of such information;
- Contact information;³⁷
- A business tax identification number or, if the high-volume third party seller does not have a business tax identification number, a taxpayer identification number; and
- Whether the high-volume third-party seller is exclusively advertising or offering a consumer product³⁸ on the online marketplace, or if the high-volume third-party seller is currently advertising or offering for sale the same consumer product on any Internet websites other than the online marketplace.

The bill provides that the online marketplace must verify³⁹ the information the high-volume third-party seller provides under s. 559.953(2)(a), F.S., within 3 days after receiving the information.⁴⁰

The bill requires the online marketplace to annually notify each high-volume third-party seller that they must inform the online marketplace of any changes to the information provided by the seller within 3 days after receiving the notification.⁴¹

³⁶ “Online marketplace” means any electronically based or accessed platform that includes features that allow for, facilitate, or enable third-party sellers to engage in the sale, purchase, storage, shipping, or delivery of or payment for a consumer product in the United States, and hosts one or more third-party sellers.

³⁷ Contact information includes: (1) if the high-volume third-party seller is an individual, a copy of a government-issued photo identification for the individual which includes the individual’s name and physical address; (2) if the high-volume third-party seller is not an individual, either a copy of a government-issued photo identification for an individual acting on behalf of the high-volume third-party seller which includes the individual’s name and physical address of the high-volume third-party seller; and (3) a working e-mail address and working phone number.

³⁸ “Consumer product” means any tangible personal property that is distributed in commerce and normally used for personal, family, or household purposes. This includes property intended to be attached or installed in any real property without regard to whether it is so attached or installed.

³⁹ “Verify” means to confirm information provided to an online marketplace as provided under s. 559.953(2), F.S., by the use of a third-party or proprietary identity verification system that has the capability to confirm a seller’s name, e-mail address, physical address, and phone number, or a combination of two-factor authentication, public records search, and the presentation of a government-issued identification.

⁴⁰ If the seller provides any changes to the information, the online marketplace must verify the changes within 3 days after receiving the information.

⁴¹ The online marketplace must include in the notification direction to each high-volume third-party seller to electronically certify either that the seller’s information is unchanged or that the seller is providing changes to the information. The high-

The bill establishes that an online marketplace must require a high-volume third-party seller to disclose to consumers in a conspicuous manner the identity of the high-volume third-party seller⁴² and any other information determined to be necessary to address circumvention or evasion.

The bill provides that upon request of a high-volume third-party seller, an online marketplace may allow partial disclosure of the identity information required in the following situations:

- If the high-volume third-party seller demonstrates to the online marketplace that the seller does not have a business address and only has a residential street address, the online marketplace may direct the high-volume third-party seller to disclose only the country, and if applicable, the state where the high-volume third-party seller resides on the product listing, and may inform consumers that there is no business address available for the seller and that consumer inquiries should be submitted to the seller by phone or e-mail;
- If the high-volume third-party seller demonstrates to the online marketplace that the seller is a business that has a physical address for product returns, the online marketplace may direct the high-volume third-party seller to disclose the seller's physical address for product returns; and
- If a high-volume third-party seller demonstrates to the online marketplace that the seller does not have a phone number other than a personal phone number, the online marketplace must inform consumers that there is no phone number available for the seller and that consumer inquiries should be submitted to the seller's e-mail address.⁴³

The bill requires an online marketplace to conspicuously, on the product listing of any high-volume third-party seller, disclose to consumers a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the online marketplace and a message encouraging individuals seeking to purchase products to report suspicious activity to the online marketplace.

The bill provides that an online marketplace that warehouses, distributes, or otherwise fulfills a consumer product order must disclose to the consumer the identification of any high-volume third-party seller supplying the consumer product if it is different than the seller listed on the product listing page.

The bill establishes that a violation of s. 559.953, F.S., constitutes a violation of the Deceptive and Unfair Trade Practices Act,⁴⁴ and the Department of Legal Affairs may adopt rules to collect and verify the required information.

volume third-party seller's participation on the marketplace must be suspended until they have certified that their information is unchanged or has provided any changed information and the information has been verified.

⁴² The identification must include the full name of the seller; the full physical address of the seller; whether the seller also engages in manufacturing; importing, or reselling of consumer products; and contact information for the seller, including a working phone number and a working e-mail address.

⁴³ If an online marketplace becomes aware that a high-volume third-party seller has made a false representation in order to justify the provision of a partial disclosure or has requested and received a provision for partial disclosure and has not provided responsive answers within a reasonable timeframe to consumer inquiries submitted to the seller by phone or e-mail, the online marketplace must withdraw its provision for partial disclosure and require the full disclosure.

⁴⁴ See part II of ch. 501, F.S.

The bill provides that the regulation under s. 559.953, F.S., is preempted to the Department of Legal Affairs.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Marketplace providers will be required to verify high volume third-party sellers, as well as require certain disclosures. This will potentially provide more safety within the online marketplace.

C. Government Sector Impact:

This bill will potentially lead to an increase in the investigations and enforcement actions undertaken by the Department of Legal Affairs relating to violations of the provisions of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates the following section of the Florida Statutes: 559.953.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

By Senator Baxley

12-01091A-21

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1 A bill to be entitled
 2 An act relating to online marketplace transparency;
 3 creating s. 559.953, F.S.; defining terms; requiring
 4 online marketplaces to require high-volume third-party
 5 sellers using their service to provide certain
 6 information to the online marketplace within a
 7 specified timeframe; requiring the online marketplace
 8 to verify such information, or changes to such
 9 information, within a specified timeframe; providing
 10 that information on valid government-issued tax
 11 documents is presumed to be verified as of the
 12 issuance date; requiring an online marketplace to
 13 update and require certification of the updated
 14 information at least annually; requiring the online
 15 marketplace to suspend certain sellers who do not
 16 provide such a certification or updated information;
 17 requiring online marketplaces to require high-volume
 18 third-party sellers to disclose certain information in
 19 a conspicuous manner on the product's listing or
 20 through a link on the product's listing; authorizing
 21 an online marketplace to allow partial disclosure of
 22 the identity of a high-volume third-party seller under
 23 certain circumstances; requiring the online
 24 marketplace to revoke the partial disclosure
 25 authorization under certain circumstances; requiring
 26 disclosure of suppliers; providing for enforcement;
 27 authorizing the Department of Legal Affairs to adopt
 28 rules; preempting the regulation of the disclosure of
 29 such information to the state; providing an effective

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

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30 date.
 31
 32 Be It Enacted by the Legislature of the State of Florida:
 33
 34 Section 1. Section 559.953, Florida Statutes, is created to
 35 read:
 36 559.953 Disclosure of information by online marketplaces.—
 37 (1) DEFINITIONS.—As used in this section, the term:
 38 (a) "Consumer product" means any tangible personal property
 39 that is distributed in commerce and normally used for personal,
 40 family, or household purposes. The term includes property
 41 intended to be attached to or installed in any real property
 42 without regard to whether it is so attached or installed.
 43 (b) "High-volume third-party seller" means a participant in
 44 an online marketplace who is a third-party seller and who, in
 45 any continuous 12-month period during the previous 24 months,
 46 has entered into 200 or more discrete sales or transactions of
 47 new or unused consumer products resulting in the accumulation of
 48 an aggregate total of \$5,000 or more in gross revenues.
 49 (c) "Online marketplace" means any electronically based or
 50 accessed platform that:
 51 1. Includes features that allow for, facilitate, or enable
 52 third-party sellers to engage in the sale, purchase, storage,
 53 shipping, or delivery of or payment for a consumer product in
 54 the United States; and
 55 2. Hosts one or more third-party sellers.
 56 (d) "Seller" means a person who sells, offers to sell, or
 57 contracts to sell a consumer product through an online
 58 marketplace.

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(e) "Third-party seller" means any seller, independent of an operator, a facilitator, or an owner of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the United States through an online marketplace. The term does not include a seller who:

1. Is a business entity that has made available to the general public the entity's name, business address, and working contact information;

2. Has an ongoing contractual relationship with the owner of the online marketplace to provide for the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products; and

3. Has provided to the online marketplace identifying information that has been verified.

(f) "Verify" means to confirm information provided to an online marketplace pursuant to this section by the use of:

1. A third-party or proprietary identity verification system that has the capability to confirm a seller's name, e-mail address, physical address, and phone number; or

2. A combination of two-factor authentication, public records search, and the presentation of a government-issued identification.

(2) VERIFICATION.—

(a) An online marketplace shall require that any high-volume third-party seller on the online marketplace provide the online marketplace with all of the following information within 24 hours after becoming a high-volume third-party seller:

1. Bank account information. The online marketplace, a payment processor, or another third party contacted by the

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online marketplace must directly confirm the accuracy of such information. If the high-volume third-party seller does not have a bank account, the seller may provide the name of the payee for payments issued by the online marketplace to the high-volume third-party seller. The seller may provide such bank account or payee information to the online marketplace or to a payment processor or other third party contracted by the online marketplace to maintain such information, provided that the online marketplace may obtain such information on demand from such payment processor or other third party.

2. Contact information, including all of the following:

a. If the high-volume third-party seller is an individual, a copy of a government-issued photo identification for the individual which includes the individual's name and physical address.

b. If the high-volume third-party seller is not an individual, either a copy of a government-issued photo identification for an individual acting on behalf of the high-volume third-party seller which includes the individual's name and physical address, or a copy of a government-issued record or tax document that includes the business name and physical address of the high-volume third-party seller.

c. A working e-mail address and working phone number.

3. A business tax identification number or, if the high-volume third-party seller does not have a business tax identification number, a taxpayer identification number.

4. Whether the high-volume third-party seller is exclusively advertising or offering a consumer product on the online marketplace, or if the high-volume third-party seller is

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117 currently advertising or offering for sale the same consumer
 118 product on any Internet websites other than the online
 119 marketplace.

120 (b) The online marketplace shall verify the information the
 121 high-volume third-party seller provides under this subsection
 122 within 3 days after receiving such information. If the seller
 123 provides any changes to the information, the online marketplace
 124 shall verify such changes within 3 days after receiving the
 125 information. If a high-volume third-party seller provides a copy
 126 of a valid government-issued tax document, information contained
 127 within such tax document shall be presumed to be verified as of
 128 the date of issuance of such record or document.

129 (c) The online marketplace shall, on at least an annual
 130 basis, notify each high-volume third-party seller on the online
 131 marketplace that the seller must inform the online marketplace
 132 of any changes to the information provided by the seller
 133 pursuant to this subsection within 3 days after receiving the
 134 notification and shall instruct each high-volume third-party
 135 seller, as part of the notification, to electronically certify
 136 either that the seller's information is unchanged or that the
 137 seller is providing changes to the information. If the online
 138 marketplace becomes aware that a high-volume third-party seller
 139 has not certified that the seller's information is unchanged or
 140 has not provided such changed information within 3 days after
 141 receiving such notification, the online marketplace shall
 142 suspend the high-volume third-party seller's participation on
 143 the marketplace until the seller either has certified that the
 144 seller's information is unchanged or has provided such changed
 145 information and the information has been verified.

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146 (3) DISCLOSURE.—

147 (a) An online marketplace shall require a high-volume
 148 third-party seller to provide, and shall disclose to consumers
 149 in a conspicuous manner either on the product listing or, for
 150 information other than the seller's full name, through a
 151 conspicuously placed link on the product listing, all of the
 152 following information:

153 1. Subject to paragraph (b), the identity of the high-
 154 volume third-party seller. Such identification must include the
 155 full name of the seller; the full physical address of the
 156 seller; whether the seller also engages in the manufacturing,
 157 importing, or reselling of consumer products; and contact
 158 information for the seller, including a working phone number and
 159 working e-mail address. Such working e-mail address may be
 160 provided to the high-volume third-party seller by the online
 161 marketplace.

162 2. Any other information determined to be necessary to
 163 address circumvention or evasion of the requirements of this
 164 paragraph, provided that the additional information is limited
 165 to what is necessary to address such circumvention or evasion.

166 (b) Subject to paragraph (c), upon the request of a high-
 167 volume third-party seller, an online marketplace may provide for
 168 partial disclosure of the identity information required under
 169 subparagraph (a)1. in the following situations:

170 1. If the high-volume third-party seller demonstrates to
 171 the online marketplace that the seller does not have a business
 172 address and only has a residential street address, the online
 173 marketplace may direct the high-volume third-party seller to
 174 disclose only the country and, if applicable, the state in which

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the high-volume third-party seller resides on the product listing, and may inform consumers that there is no business address available for the seller and that consumer inquiries should be submitted to the seller by phone or e-mail.

2. If the high-volume third-party seller demonstrates to the online marketplace that the seller is a business that has a physical address for product returns, the online marketplace may direct the high-volume third-party seller to disclose the seller's physical address for product returns.

3. If a high-volume third-party seller demonstrates to the online marketplace that the seller does not have a phone number other than a personal phone number, the online marketplace shall inform consumers that there is no phone number available for the seller and that consumer inquiries should be submitted to the seller's e-mail address.

(c) If an online marketplace becomes aware that a high-volume third-party seller has made a false representation to the online marketplace in order to justify the provision of a partial disclosure under paragraph (b) or that a high-volume third-party seller who has requested and received a provision for a partial disclosure under paragraph (b) has not provided responsive answers within a reasonable timeframe to consumer inquiries submitted to the seller by phone or e-mail, the online marketplace shall withdraw its provision for partial disclosure and require the full disclosure of the high-volume third-party seller's identity information required under subparagraph (a)1. within 3 business days to the high-volume third-party seller.

(d) An online marketplace shall disclose to consumers, in a conspicuous manner on the product listing of any high-volume

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third-party seller, a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the online marketplace and a message encouraging individuals seeking products for purchase to report suspicious activity to the online marketplace.

(e) An online marketplace that warehouses, distributes, or otherwise fulfills a consumer product order shall disclose to the consumer the identification of any high-volume third-party seller supplying the consumer product if different than the seller listed on the product listing page.

(4) ENFORCEMENT.—A violation of this section constitutes a violation of the Deceptive and Unfair Trade Practices Act under part II of chapter 501. A person who violates this section is subject to the penalties and remedies provided therein.

(5) RULES.—The Department of Legal Affairs may adopt rules with respect to collecting and verifying information under this section, provided that such regulations are limited to what is necessary to collect and verify such information.

(6) PREEMPTION.—The regulation of the requirement for online marketplaces to verify information from high-volume third-party sellers on a one-time or ongoing basis or disclose information to consumers is preempted to the department. A local governmental entity may not establish, mandate, or otherwise require the verification or disclosure of such information.

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



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: March 17, 2021

I respectfully request that **Senate Bill #1176**, relating to Barber Services, be placed on the:

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

A handwritten signature in cursive script that reads "Linda Stewart".

Senator Linda Stewart
Florida Senate, District 13

THE FLORIDA SENATE
APPEARANCE RECORD

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

29 May 21
Meeting Date

1126
Bill Number (if applicable)

Topic Barbers

Amendment Barcode (if applicable)

Name Diego Echeverri

Job Title Legislative Liaison

Address _____ Phone _____
Street

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S 001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/29/2021
Meeting Date

1176
Bill Number (if applicable)

Topic BARBER SERVICES

Amendment Barcode (if applicable)

Name CESAR GRAJALES

Job Title PUBLIC AFFAIRS DIRECTOR

Address 200 WEST COLLEGE AVE

Phone 786.260.9283

Street

TALLAHASSEE

City

FL

State

Zip

Email cgrajales@delibac.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing THE LIBRE INITIATIVE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/29

Meeting Date

1176

Bill Number (if applicable)

Topic _____

Name CHRISTIAN CAHILL

Job Title _____

Address _____
Street

Phone 305 608 4300

Email _____

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing INSTITUTE FOR JUSTICE

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1176

INTRODUCER: Senator Stewart

SUBJECT: Barber Services

DATE: March 26, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable
2.	Reeve	McKay	CM	Favorable
3.			RC	

I. Summary:

SB 1176 permits a barber to shampoo, cut, or arrange hair in a location other than a registered barbershop without arranging the barber service through a registered barbershop. Current law requires arrangements for the performance of barber services in a location other than a registered barbershop to be made through a registered barbershop.

The bill takes effect July 1, 2021.

II. Present Situation:

Barbering in Florida

Barbers and barbershops in Florida are regulated by ch. 476, F.S., known as the Barbers' Act (act), and licensed by the Barber's Board (board) under the Department of Business and Professional Regulation (DBPR).

The act defines barbering as any of the following practices when done for payment by the public: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard, or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.¹

¹ Section 476.034(2), F.S. The term does not include those services when done for the treatment of disease or physical or mental ailments.

Licensing

An applicant for licensure as a barber must pass an examination. To be eligible to take the examination, an applicant must:²

- Be at least 16 years of age;
- Pay the application fee;³ and
- Hold an active valid license to practice barbering in another state for at least 1 year and not qualify for licensure by endorsement,⁴ or have received a minimum of 900 hours of specified training at a certain barbering school or program.

The board is authorized to establish by rule a procedure for a barber school or program to certify that an applicant is qualified to take the examination after completing a minimum of 600 actual school hours. If such an applicant passes the examination, the required 900 training hours is deemed satisfied; failing the examination requires the applicant to complete the full 900 hours.⁵

Alternatively, a person may apply for and receive a “restricted license,” which authorizes the licensee to practice only in areas in which they have demonstrated competency pursuant to the rules of the board. An applicant for a restricted license must:⁶

- Complete a restricted barber course at a barbering school or program; or
- Hold, or have held within the last 5 years, an active barber license in another state; or
- Have held a Florida barber license declared null and void for failure to renew the license.⁷

Applicants must not have been disciplined relating to the practice of barbering in the past 5 years and must pass a written examination on the laws and rules governing the practice of barbering in Florida, as established by the board.⁸

Barbers must complete an education course by the board on HIV and AIDS as part of licensure or biennial license renewal.⁹

Performance of Barber Services

A barbershop, defined as “any place of business wherein the practice of barbering is carried on,”¹⁰ must be licensed by the DBPR in order to operate. Barbershops are inspected periodically by the DBPR in accordance with sanitary standards set forth by the board.¹¹

Generally, barber services may only be performed by licensed barbers in registered barbershops.¹² However, the board may establish rules allowing a licensed barber to perform

² Section 476.114(2), F.S.

³ See Fla. Admin. Code R. 61G3-20.002.

⁴ See s. 476.144(5), F.S.

⁵ *Supra* note 2.

⁶ Section 476.144(6), F.S.

⁷ Section 476.154, F.S., requires each barber that continues in active practice to renew their license biennially.

⁸ *Supra* note 6.

⁹ Section 455.2228, F.S.

¹⁰ Section 476.034(3), F.S.

¹¹ Section 476.184, F.S.

¹² Section 476.188(1), F.S.

barber services in a location other than a registered barbershop, such as a nursing home, hospital, or residence, when a client or resident of such a facility is unable to go to a registered barbershop due to ill health.¹³

Arrangements for the performance of such barber services in a location other than a registered barbershop must be made through a registered barbershop.¹⁴ The registered barbershop must record the name of the client and the address at which the services are to be performed in the appointment book of the barbershop, which must remain at the barbershop and made available to any investigator or inspector of the DBPR.¹⁵

Licensed barbers may perform barber services for a manufacturer trade show demonstration, for an education seminar, or in connection with the motion picture, fashion photography, theatrical, or television industries at a location other than a registered barbershop without arranging the services through a registered barbershop.¹⁶

Cosmetology in Florida

Generally, cosmetology services must be performed by a cosmetologist or a specialist in a licensed cosmetology salon. However, cosmetologists and specialists are permitted to perform hair shampooing, hair cutting, hair arranging, nail polish removal, nail filing, nail buffing, and nail cleansing in a location other than a licensed salon.¹⁷

A cosmetologist or specialist was previously prohibited from performing cosmetology services outside a salon except in limited circumstances and was required to make arrangements through a salon for services provided outside the salon, similar to the current requirements for barbers. In 2020, the law was changed to allow cosmetologists and specialists to perform a limited number of cosmetology services outside of a salon and to do so without making such arrangements through a salon.¹⁸

III. Effect of Proposed Changes:

The bill amends s. 476.188, F.S., to permit a barber to shampoo, cut, or arrange hair in a location other than a registered barber shop without arranging the barber service through a registered barbershop.

The bill takes effect July 1, 2021.

¹³ If such services are performed on employees or persons who do not reside in the facility, or any other nonqualified persons, the location must be a licensed barbershop. *See* Fla. Admin. Code R. 61G3-19.010(2).

¹⁴ Section 476.188(2), F.S.

¹⁵ Fla. Admin. Code R. 61G3-19.010(1).

¹⁶ Section 476.188(3), F.S.

¹⁷ Section 477.0263, F.S.

¹⁸ Chapter 2020-160, s. 37, Laws of Fla.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 476.188 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

By Senator Stewart

13-00976-21

20211176__

A bill to be entitled

An act relating to barber services; amending s.
476.188, F.S.; authorizing a barber to shampoo, cut,
or arrange hair in a location other than a registered
barbershop without specified arrangements; providing
an effective date.

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

Section 1. Subsection (2) of section 476.188, Florida
Statutes, is amended to read:

476.188 Barber services to be performed in registered
barbershop; exception.—

(2) Pursuant to rules established by the board, barber
services may be performed by a licensed barber in a location
other than a registered barbershop, including, but not limited
to, a nursing home, hospital, or residence, when a client for
reasons of ill health is unable to go to a registered
barbershop. Arrangements for the performance of barber services
in a location other than a registered barbershop shall be made
only through a registered barbershop. However, a barber may
shampoo, cut, or arrange hair in a location other than a
registered barbershop without such arrangements.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR RAY WESLEY RODRIGUES

27th District

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Banking and Insurance
Finance and Tax
Judiciary
Regulated Industries

JOINT COMMITTEES:

Joint Select Committee on Collective Bargaining,
Alternating Chair
Joint Committee on Public Counsel Oversight

February 18, 2021

The Honorable Ed Hooper
Senate Commerce and Tourism, Chair
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 1246 – Capital Investment Tax Credit

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to place SB 1246, relating to the capital investment tax credit, on the next committee agenda.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Ray Rodrigues".

Ray Rodrigues
Senate District 27

Cc: Todd McKay, Staff Director
Kathryn Vigrass, Administrative Assistant

REPLY TO:

- ☐ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21

Meeting Date

1246

Bill Number (if applicable)

Topic Capital Investment Tax Credit

Amendment Barcode (if applicable)

Name Jim East

Job Title Vice President, Government Relations

Address 8501 Williams Road

Phone (918) 605-6701

Street

Estero, FL

33928

Email Jim.East@hertz.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing The Hertz Corporation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1246

INTRODUCER: Senator Rodrigues

SUBJECT: Capital Investment Tax Credit

DATE: March 26, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	Favorable
2.			FT	
3.			AP	

I. Summary:

SB 1246 amends s. 220.191, F.S., to permit certain qualifying travel agency or passenger car rental businesses to carry over 50 percent of their unused capital investment tax credits from calendar year 2020 if the business's gross receipts between April 1 and December 31, 2020, were 50 percent lower than its receipts from the same period in 2019.

A business may transfer its tax credits to another taxpayer, use its tax credits against amounts payable for sales and use tax liability, or apply its unused tax credits against corporate income tax payments for tax years beginning January 1, 2021, and ending December 31, 2025.

The Revenue Estimating Conference determined the bill will reduce General Revenue Fund receipts by \$1.7 million and reduce local government receipts by \$600,000 in Fiscal Year 2021-2022.

The bill takes effect July 1, 2021.

II. Present Situation:

Capital Investment Tax Credit

The Capital Investment Tax Credit (CITC), established by the Legislature in 1998 to attract and grow capital-intensive industries in the state, provides an annual tax credit against corporate income tax or insurance premium tax liabilities generated by a qualifying project.¹

Eligible Projects

Section 220.191(1)(g), F.S., defines the projects that are eligible for the program. They include:

¹ Chapter 98-61, Law of Fla.

- A new or expanded facility in a designated high-impact sector² that creates at least 100 new jobs. High-impact sector projects fall into one of three tiers, depending on the project's cumulative capital investment;
- A new or expanded facility in a target industry³ that creates or retains at least 1,000 jobs, provided that at least 100 of those jobs are new, pay an annual average wage of at least 130 percent of the average private sector wage in the area, and result in a cumulative capital investment of at least \$100 million; and
- A new or expanded headquarters facility located in an enterprise zone and brownfield area that creates at least 1,500 jobs which on average pay at least 200 percent of the statewide average annual private sector wage and makes a cumulative capital investment in this state of at least \$250 million.

Tax Credits Allowable

Qualified businesses are generally allowed an annual tax credit equal to 5 percent of a project's eligible capital costs generated by a project for up to 20 years.⁴

The annual tax credit limit for the three tiers of high-impact sector projects may not exceed the following percentages of the annual corporate income or insurance premium tax liability generated by or arising out of a qualifying project:⁵

- 100 percent for a qualifying project which results in a cumulative capital investment of at least \$100 million;
- 75 percent for a qualifying project which results in a cumulative capital investment of at least \$50 million but less than \$100 million; or
- 50 percent for a qualifying project which results in a cumulative capital investment of at least \$25 million but less than \$50 million.

Target industry projects are eligible for an annual credit equal to one-half of the increase in the tax liability arising out of the project without regard to the amount of eligible capital costs, but may only receive a tax credit for 5 years.⁶

Headquarters facility projects may take an annual credit equal to the lesser of 5 percent of the project's eligible capital costs or \$15 million. Tax credits for headquarters facility projects may only be applied against corporate income tax liability.⁷

² The sectors currently designated as high impact are clean energy, life sciences, financial services, information technology, silicon technology, transportation equipment manufacturing, and corporate headquarters. See Department of Economic Opportunity, *2020 Annual Incentives Report*, 52, available at https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited Mar. 26, 2021).

³ The current qualified target industries are aviation and aerospace; corporate headquarters; clean technology; defense and homeland security; financial and professional services; global logistics and trade; information technology; life sciences; manufacturing; and research and development. See Department of Economic Opportunity, *2020 Annual Incentives Report*, 12, available at https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited Mar. 26, 2021).

⁴ Section 220.191(2)(a), F.S. Eligible capital costs include all expenses incurred in the acquisition, construction, installation, and equipping of a project from the beginning of construction to the commencement of operations.

⁵ *Id.*

⁶ Section 220.191(1)(g)2., F.S.

⁷ Section 220.191(3)(a), F.S.

Tax Credit Carryover and Transfer

Only recipients of a tax credit associated with a corporate headquarters facility project or certain high-impact sector projects are permitted to carry forward unused credit. If the full tax credit associated with a corporate headquarters facility is not used in any one year, the taxpayer can carry the unused credit forward to any year within the normal 20-year window.⁸ A high-impact sector business that meets the \$100 million capital investment threshold that was unable to fully use its available credit between years 1 and 20 is permitted to use that credit in years 21 through 30 following the commencement of operations.⁹

Generally, tax credits may not be transferred or sold to other businesses. However, if a qualifying project establishes a new solar panel manufacturing facility that generates at least 400 jobs within 6 months of commencing operations and pays those jobs at least \$50,000, it may transfer its annual tax credit to another business. A business receiving the transferred credits may only use the credits in the year received.¹⁰

Issuance of Tax Credits

The Department of Economic Opportunity (DEO) must certify a business as eligible to receive a tax credit before the commencement of operations of a qualifying project. If a business is certified, the DEO will enter into an agreement with the business that specifies the planned commencement date of operations and the total amount of credit the business can expect if the project proceeds as planned. Agreements are drafted so that a qualified business's annual credit amount begins on the date of commencement of operations, beginning the 20-year credit period. If for some reason operations do not commence on time, the 20-year window is not adjusted.¹¹

Before receiving a tax credit each year, a qualifying business must achieve and maintain its minimum employment goals beginning with the commencement of operations of a qualifying project.¹²

Economic Impact

According to the DEO, there were 61 active CITC awardees with 32 reporting performance as of Fiscal Year 2019-2020; the DEO confirmed 2,887 jobs created and over \$308 million in capital investment in said fiscal year.¹³ Over \$67 million in tax credits were approved to be claimed by qualified business in calendar year 2019.¹⁴

⁸ Section 220.191(3)(b), F.S.

⁹ Section 220.191(2)(d), F.S.

¹⁰ Section 220.191(2)(c), F.S.

¹¹ Florida Senate Committee on Finance and Tax, *Issue Brief 2012-2014: Review of the Capital Investment Tax Credit* (September 2011), available at <https://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-204ft.pdf> (last visited Mar. 26, 2021).

¹² Section 220.191(4), F.S.

¹³ Department of Economic Opportunity, *2020 Annual Incentives Report*, 8, available at https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited Mar. 26, 2021).

¹⁴ *Id.* at 49.

III. Effect of Proposed Changes:

The bill permits businesses that operate within the standard industrial classification codes of 4724, travel agencies, or 7514, passenger car rentals, to carry over unused capital investment tax credits generated from the 2020 calendar year. A business may use up to 50 percent of its unused tax credits in the tax year beginning January 1, 2021, if its gross total receipts between April 1 and December 31, 2020, were 50 percent lower than its receipts from the same period in 2019.

A business may either:

- Transfer its unused tax credits to another taxpayer subject to corporate income taxes;
- Use its unused tax credits against amounts payable to the Department of Revenue, either as consumer or dealer, for sales and use tax liability; or
- Apply its unused tax credits against corporate income tax payments for tax years beginning January 1, 2021, and ending December 31, 2025.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,^{15, 16} which is \$2.2 million or less for Fiscal Year 2021-2022.¹⁷

The Revenue Estimating Conference determined that the bill will reduce local government receipts by \$600,000 in Fiscal Year 2021-2022 only.¹⁸ Therefore, the mandate provisions of Art. VII, s. 18 of the State Constitution do not apply.

¹⁵ FLA. CONST. art. VII, s. 18(d).

¹⁶ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$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 Mar. 26, 2021).

¹⁷ Based on the Demographic Estimating Conference's population adopted on November 13, 2020. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Mar. 26, 2021).

¹⁸ Office of Economic and Demographic Research, *Revenue Estimating Conference Report: SB 1246* (2021), 203-204, available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/Impact0319.pdf (last visited Mar. 26, 2021).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

The Revenue Estimating Conference determined that the bill will reduce General Revenue Fund receipts by \$1.7 million and reduce local government receipts by \$600,000 in Fiscal Year 2021-2022 only.¹⁹

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Revenue estimates that it will require \$93,990 in nonrecurring funds to modify its software and databases in order to implement the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 28-30 allow a qualifying business to apply its unused tax credits against corporate income tax payments for tax years beginning January 1, 2021, and ending December 31, 2025. It is unclear if taxpayers can only use their carried-forward credits in any one tax year between January 1, 2021, and December 31, 2025, or if they may use the credits during multiple tax years within that period.

¹⁹ *Id.*

It is unclear if the carryover provisions created by the bill apply only to taxpayers who file taxes based on the calendar year, or if taxpayers who file taxes in tax years beginning or ending within the 2020 calendar year.

Lines 23-24 permit a business to transfer its unused tax credits to another taxpayer subject to corporate income tax, but the bill does not specify a period of time during which the recipient of a transferred tax credit must use the credit.

The Department of Revenue requests emergency rulemaking authority in order to establish rules on how a taxpayer would document a credit transfer or carryover.

VIII. Statutes Affected:

This bill substantially amends section 220.191 of the Florida Statutes.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

By Senator Rodrigues

27-01848-21

20211246__

A bill to be entitled

An act relating to capital investment tax credit; amending s. 220.191, F.S.; authorizing passenger car rental companies and travel agencies that meet certain criteria in a specified year to use unused tax credits for certain purposes; providing an effective date.

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

Section 1. Subsection (9) is added to section 220.191, Florida Statutes, to read:

220.191 Capital investment tax credit.—

(9) In addition to any methods authorized to carry forward unused tax credits in this section and for the 2020 calendar year only, any qualifying business that operated a company within the standard industrial classification codes of 4724 or 7514 which ended the year with unused tax credits as otherwise authorized under this section, and whose total gross receipts between April 1, 2020, and December 31, 2020, were 50 percent less when compared to the same period in 2019, may use up to 50 percent of the unused tax credits in the tax year beginning January 1, 2021, by:

(a) Transferring its unused tax credits to another taxpayer subject to the tax imposed under this chapter;

(b) Using its unused tax credits against amounts payable to the department, either as consumer or dealer, for sales or use taxes imposed under chapter 212; or

(c) Applying its unused tax credits against corporate income tax payments for tax years beginning January 1, 2021, and

Page 1 of 2

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

27-01848-21

20211246__

ending December 31, 2025.

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

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Banking and Insurance
Finance and Tax
Judiciary
Regulated Industries

JOINT COMMITTEES:

Joint Select Committee on Collective Bargaining,
Alternating Chair
Joint Committee on Public Counsel Oversight

SENATOR RAY WESLEY RODRIGUES

27th District

March 9, 2021

The Honorable Ed Hooper
Senate Commerce and Tourism, Chair
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 1882 – Issuance of Licenses to Carry Concealed Weapons or Firearms

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to place SB 1882, relating to the issuance of licenses to carry concealed weapons or firearms, on the next committee agenda.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Ray Rodrigues".

Ray Rodrigues
Senate District 27

Cc: Todd McKay, Staff Director
Kathryn Vigrass, Administrative Assistant

REPLY TO:

- ☐ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

Commerce + Tourism

THE FLORIDA SENATE

APPEARANCE RECORD

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

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

3/29/2021

Meeting Date

SB1882

Bill Number (if applicable)

Topic Licenses to Carry

Name TRISH NEELY

Job Title DIRECTOR

Address 2024 SHANGRI LA LANE

Street

TALLY

City

FL

State

32303

Zip

Phone 850 322 3317

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing LEAGUE WOMEN VOTERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1882

INTRODUCER: Senator Rodrigues

SUBJECT: Issuance of Licenses to Carry Concealed Weapons or Firearms

DATE: March 26, 2021

REVISED: _____

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

I. Summary:

SB 1882 requires the Department of Agriculture and Consumer Services (Department) to continually maintain an online application process to facilitate the issuance of concealed weapon or firearm licenses pursuant to s. 790.06, F.S. Additionally, the bill provides that the Department cannot “arbitrarily or subjectively” restrict access to its online application process.

The bill provides that the court presiding over a civil action to enforce any provision of s. 790.06, F.S., must award attorney fees and costs, in addition to any other relief, to the prevailing plaintiff.

The bill takes effect July 1, 2021.

II. Present Situation:

The U.S. Constitution protects the right to bear arms, stating “the right of the people to keep and bear Arms shall not be infringed.”¹ The Florida Constitution more specifically guarantees the right of the people to keep and bear arms in self-defense.² Generally, Florida law authorizes a person to own, possess, and lawfully use firearms and other weapons³ without a license, if the person is not statutorily prohibited and such ownership, possession, or use occurs in a lawful manner and location.⁴

¹ U.S. CONST. amend. II.

² FLA. CONST. art. 1, s. 8.

³ A weapon is a knife, metallic knuckles, slugshot, billie club, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt bladed table knife. Section 790.001(13), F.S.

⁴ Section 790.25, F.S.

The Division of Licensing (Division) within the Department of Agriculture and Consumer Services (Department) issues concealed weapon or firearm licenses pursuant to s. 790.06, F.S.⁵ In fiscal year 2020, the Department received 231,350 applications for new concealed weapon or firearm licenses and issued 186,446.⁶ The Division works in conjunction with local tax collector's offices to accept concealed weapon or firearm license applications or renewals for processing.⁷

Application Process

An applicant for a concealed weapon or firearm license may apply through the Department's website, by mail to the Department, or by physical submission to either one of the Department's regional offices or an approved tax collector's office.⁸ The applicant must submit an application, a license fee, a color photograph of him or herself, proof of training or other certificate of proficiency with a firearm, and a full set of his or her fingerprints (for original applicants only; in-state-renewals do not require fingerprint submission).⁹

An applicant can have his or her fingerprints taken at one of the Department's regional offices, an approved tax collector's office, or a local sheriff's office or police department.¹⁰ An applicant may submit fingerprints via an online application, if his or her fingerprints were taken in an electronic format. According to the Department, all of its regional offices, most sheriff's offices, and some local police departments offer electronic fingerprint scanning, but local tax collectors are not currently offering the electronic service. Applicants who reside outside of Florida or who are not able to obtain electronic fingerprint services, may submit an original fingerprint card via mail delivery to the Department.¹¹

Upon receipt of an application, the Department must issue a license to carry a concealed weapon or firearm if the applicant:¹²

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;

⁵ See generally, Dep't. of Ag. and Consumer Servs., *Applying for a Concealed Weapon License*, <https://www.fdacs.gov/Consumer-Resources/Concealed-Weapon-License/Applying-for-a-Concealed-Weapon-License#bymail> (last visited Mar. 26, 2021).

⁶ Dep't. of Ag. and Consumer Servs., *Concealed Weapon or Firearm License Reports: Applications and Dispositions by County- July 1, 2020 through June 30, 2021*, https://www.fdacs.gov/content/download/92523/file/07012020_06302021_cw_annual.pdf (last visited Mar. 26, 2021).

⁷ Section 790.0625, F.S., permits the Department to enter into agreements with local tax collector offices to accept applications. Section 790.06, F.S., governs the Department's role in accepting and processing applications.

⁸ Florida Department of Agriculture and Consumer Services, *Applying for a Concealed Weapon License: Ways to Apply*, <https://www.fdacs.gov/Consumer-Resources/Concealed-Weapon-License/Applying-for-a-Concealed-Weapon-License> (last visited Mar. 26, 2021).

⁹ Section 790.06(5), F.S.

¹⁰ Section 790.06(5)(c), F.S.

¹¹ Dep't. of Ag. and Consumer Servs., *Online Concealed Weapon or Firearm License Application Fingerprint Submission Instructions*, https://laso.freshfromflorida.com/documentTemplates/LASO_FP_Instructions.pdf (last visited Mar. 26, 2021).

¹² Section 790.06(2), F.S.

- Is 21 years of age or older;
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competence with a firearm;¹³
- Has not been adjudicated an incapacitated person in a guardianship proceeding, unless he or she has been granted relief from firearms disabilities by a court or pursuant to state law;
- Has not been committed to a mental institution, unless he or she has been granted relief from firearms disabilities by a court or pursuant to state law;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;
- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

Cessation of Application Service

On March 20, 2020, the Department closed its regional and state offices to public access due to public health concerns relating to COVID-19.¹⁴ The Department's regional office closures continued through June 2020.¹⁵ These office closures precluded the fingerprinting of applicants and submission of applications at the Department's regional offices.

The Department also began delaying the acceptance of online and in-person initial concealed weapon or firearm license applications on March 20, 2020.¹⁶ The Department states that it closed its online application process "to prevent frustration from applicants submitting online applications but unable to obtain fingerprints [from one of the three sources permitted under s.

¹³ See s. 790.06(2)(h), F.S., for the list of courses and other means of demonstrating competency, and for the required documentation that one must present to the state relative to this provision.

¹⁴ Dep't. of Ag. and Consumer Servs., *Acceptance of New Concealed Weapons License Applications Delayed During COVID-19* (Mar. 20, 2020), <https://www.fdacs.gov/News-Events/Press-Releases/2020-Press-Releases/Acceptance-of-New-Concealed-Weapons-License-Applications-Delayed-During-COVID-19> (last visited Mar. 26, 2021).

¹⁵ Dep't. of Ag. and Consumer Servs., *Commissioner Nikki Fried Announces Reopening of Tallahassee Regional Office, Return of Online Concealed Weapons Licensing* (Jun. 11, 2020), <https://www.fdacs.gov/News-Events/Press-Releases/2020-Press-Releases/Commissioner-Nikki-Fried-Announces-Reopening-of-Tallahassee-Regional-Office-Return-of-Online-Concealed-Weapons-Licensing> (last visited Mar. 26, 2021).

¹⁶ *Id.* at 10, *supra*.

790.06(5), F.S.] and who would otherwise be denied.”¹⁷ The Department further stated that it would continue to accept online and mailed renewal applications for concealed weapon or firearm licenses.¹⁸ During the shutdown of its online application portal, the Department displayed a message on its portal that it would accept mailed applications for a concealed weapon or firearm license.¹⁹ The Department re-opened the online application portal on June 15, 2020.²⁰

The Department’s closure of its online application system resulted in a lawsuit to enjoin the Department to resume its acceptance of online applications for concealed weapon or firearm licenses.²¹ The Department succeeded in having the case dismissed on September 28, 2020, but the case appears to be ongoing pursuant to a request by the plaintiff to file an amended pleading.²² However, the amended pleading was due by October 9, 2020, and no filings have been made in the case since October 1, 2020.²³

III. Effect of Proposed Changes:

The bill requires the Department to continually maintain an online application process to facilitate the issuance of concealed weapon or firearm licenses pursuant to s. 790.06, F.S. The bill further provides that the Department cannot “arbitrarily or subjectively” restrict access to its online application process.

Additionally, the bill allows a civil action to enforce the subsection, and requires the court to award the prevailing party reasonable attorney fees and costs upon a finding of a violation by the Department.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁷ Dep’t. of Ag. and Consumer Servs., *Letter from Commissioner Nikki Fried to Attorney General Moody on Concealed Weapon Licenses* (Apr. 23, 2020), <https://www.fdacs.gov/News-Events/Press-Releases/2020-Press-Releases/Letter-from-Commissioner-Nikki-Fried-to-Attorney-General-Moody-on-Concealed-Weapons-Licenses> (last visited Mar. 26, 2021).

¹⁸ *Id.* at 10, *supra*.

¹⁹ *Cliff C. Maloney and Young Americans for Liberty, Inc. v. Fl. Dep’t. of Ag. And Consumer Servs.*, Verified Complaint for Declaratory and Injunctive Relief p 5, Case 2020-CA-888 (Fla. 2d Cir. Ct. 2020)..

²⁰ *Cliff C. Maloney and Young Americans for Liberty, Inc. v. Fl. Dep’t. of Ag. And Consumer Servs.*, Order Granting Defendant’s Motion to Dismiss (Sept. 8, 2020) Case 2020-CA-888 (Fla. 2d Cir. Ct. 2020).

²¹ *See generally*, News Service of Florida, TAMPA BAY TIMES, *After Shutdown Delays Some Florida Concealed Weapon Permits, Lawsuit Charges Rights Were Violated* (May 11, 2020), <https://www.tampabay.com/news/health/2020/05/11/after-shutdown-delays-some-florida-concealed-weapon-permits-lawsuit-charges-rights-were-violated/> (last visited Mar. 26, 2021); *Cliff C. Maloney and Young Americans for Liberty, Inc. v. Fl. Dep’t. of Ag. And Consumer Servs.*, Case 2020-CA-888 (Fla. 2d Cir. Ct. 2020).

²² *Cliff C. Maloney and Young Americans for Liberty, Inc. v. Fl. Dep’t. of Ag. And Consumer Servs.*, Agreed Order on Plaintiffs’ Motion for Extension of Time (Oct. 1, 2020) Case 2020-CA-888 (Fla. 2d Cir. Ct. 2020).

²³ *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

Individuals who prevail in a civil court case against the Department pursuant to allegations made under s. 790.06, F.S., will be awarded attorney fees and costs in addition to any other relief.

C. Government Sector Impact:

The Department may be subject to litigation regarding any shutdown of its online application portal for concealed weapon or firearm licenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill subjects the Department to liability for system failures beyond its control (e.g., power outages, system hack, or routine maintenance).

VIII. Statutes Affected:

This bill substantially section 790.06 of the Florida Statutes

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

By Senator Rodrigues

27-01690-21

20211882__

A bill to be entitled

An act relating to issuance of licenses to carry concealed weapons or firearms; amending s. 790.06, F.S.; requiring the Department of Agriculture and Consumer Services to continually maintain an online application process for the issuance of licenses; prohibiting the department from arbitrarily or subjectively restricting access to the online application process; providing for an award of reasonable costs and attorney fees in successful actions against the department to enforce specified provisions; providing an effective date.

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

Section 1. Subsection (15) of section 790.06, Florida Statutes, is amended to read:

790.06 License to carry concealed weapon or firearm.—

(15)(a) The Legislature finds as a matter of public policy and fact that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed weapons and firearms for self-defense and finds it necessary to occupy the field of regulation of the bearing of concealed weapons or firearms for self-defense to ensure that no honest, law-abiding person who qualifies under the provisions of this section is subjectively or arbitrarily denied his or her rights.

(b) The Department of Agriculture and Consumer Services shall implement and administer ~~the provisions of~~ this section.

The Department of Agriculture and Consumer Services must

Page 1 of 2

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

27-01690-21

20211882__

continually maintain an online application process for the issuance of licenses provided for in this section and may not arbitrarily or subjectively restrict access to the online application process. The Legislature does not delegate to the Department of Agriculture and Consumer Services the authority to regulate or restrict the issuing of licenses provided for in this section, beyond those provisions contained in this section. Subjective or arbitrary actions or rules which encumber the issuing process by placing burdens on the applicant beyond those sworn statements and specified documents detailed in this section or which create restrictions beyond those specified in this section are in conflict with the intent of this section and are prohibited.

(c) In a civil action to enforce any provision of this subsection, upon a finding of a violation by the Department of Agriculture and Consumer Services, the court shall award the prevailing party reasonable attorney fees and costs in addition to any other relief.

(d) This section shall be liberally construed to carry out the constitutional right to bear arms for self-defense. This section is supplemental and additional to existing rights to bear arms, and nothing in this section shall impair or diminish such rights.

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

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: March 5, 2021

I respectfully request that **Senate Bill 1906**, relating to Reemployment Assistance, be placed on the:

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

A handwritten signature in cursive script that reads "Jason Brodeur".

Senator Jason Brodeur
Florida Senate, District 9

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24

Meeting Date

SB 1306

Bill Number (if applicable)

Topic Unemployment

Amendment Barcode (if applicable)

Name Dr. Rich Templin

Job Title _____

Address 135 S. Monroe

Phone 850 - 224 - 6926

Street

Tallahassee

City

FL

State

32301

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida AFL - CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

This form is part of the public record for this meeting

S-001 (10/14/11)

THE FLORIDA SENATE
APPEARANCE RECORD

3/29/0021
Meeting Date

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

1906
Bill Number (if applicable)
565626
Amendment Barcode (if applicable)

Topic Weekly Benefit amount

Name Karen Woodall

Job Title Exec. Director

Address 579 E. Call St.
Street

Phone 850-321-9386

Tallahassee FL 32301
City State Zip

Email fstep@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FI Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

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

3/29/2021

Meeting Date

1906

Bill Number (if applicable)

321614

Amendment Barcode (if applicable)

Topic Benefit eligibility - job search

Name Karen Woodall

Job Title Director

Address 579 E. Call St.

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-321-9386

Email fefef@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing F1 Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/29
Meeting Date

SB 1908
Bill Number (if applicable)

565 626
Amendment Barcode (if applicable)

Topic Unemployment

Name Dr. Rich Templin

Job Title _____

Address 135 S. Monroe Phone _____
Street

Tallahassee FL 32301 Email _____
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/29
Meeting Date

SB 1906
Bill Number (if applicable)

810712
Amendment Barcode (if applicable)

Topic Unemployment

Name Dr. Rich Templin

Job Title _____

Address 135 S. Monroe
Street

Phone _____

Tallahassee FL
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/29/2021
Meeting Date

1906
Bill Number (if applicable)

Topic Benefit eligibility conditions

810712
Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Director

Address 579 E. Coll St.

Phone 850-321-9386

Tallahassee FL 32301
City State Zip

Email fctep@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing F1 Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/29/2021

Meeting Date

1906

Bill Number (if applicable)

608332

Amendment Barcode (if applicable)

Topic Wage threshold - benefit eligibility

Name Karen Woodall

Job Title Director

Address 579 E. Call St.

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-321-9386

Email fcfc@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/29

Meeting Date

608332

Bill Number (if applicable)

1506

Amendment Barcode (if applicable)

Topic Unemployment

Name Dr. Rick Templin

Job Title _____

Address 135 S. Monroe

Street

Tallahassee

City

FL

State

Zip

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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3/29/2021

Meeting Date

1906

Bill Number (if applicable)

238872

Amendment Barcode (if applicable)

Topic disqualification

Name Karen Woodall

Job Title Director

Address 579 E. Call St.

Street

Tallahassee, FL

City

State

Zip

Phone 850-321-9386

Email fstep@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/29/2021

Meeting Date

SB 1906

Bill Number (if applicable)

774460

Amendment Barcode (if applicable)

Topic Alternative Base Period

Name Laren Woodall

Job Title Director

Address 579 E. Call St.

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-321-9386

Email lcfep@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL Center for Fiscal + Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/29/2021
Meeting Date

1906
Bill Number (if applicable)
774460
Amendment Barcode (if applicable)

Topic Alternative Base

Name Karen Woodall

Job Title Exec Director

Address 579 E. Call St.

Phone 850-321-9386

Email fcfep@yahoo.com

Tallahassee FL 32301
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FI Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1906

INTRODUCER: Commerce and Tourism Committee and Senator Brodeur and others

SUBJECT: Reemployment Assistance

DATE: March 30, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1906 changes the state's reemployment assistance weekly benefit amount from a range of \$32 to \$275 per week to \$100 to \$375 per week.

The bill removes the requirement that a claimant must include the telephone number of each prospective employer contacted for each week of unemployment claimed, clarifies that "address" means a website address, a physical address, or an e-mail address for purposes of reporting the address of each prospective employer contacted, and reduces the number of prospective employers that reemployment assistance claimants must contact each week from five to three.

The Revenue Estimating Conference has not yet estimated the impact of the bill.

The bill takes effect July 1, 2021.

II. Present Situation:

Unemployment Compensation Overview

According to the U.S. Department of Labor (USDOL), the Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of

state law.¹ The program is administered as a partnership of the federal government and the states.² The individual states collect unemployment compensation (UC) payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA).³ FUTA collections go to the states for costs of administering state UC and job service programs. In addition, FUTA pays one-half of the cost of extended unemployment benefits (during periods of high unemployment) and provides for a fund from which states may borrow, if necessary, to pay benefits.⁴

States are permitted to set benefit eligibility requirements, the amount and duration of benefits, and the state tax structure, as long as state law does not conflict with FUTA or Social Security Act requirements. Florida's UC program was created by the Legislature in 1937.⁵ The Department of Economic Opportunity (DEO) is the current agency responsible for administering Florida's UC laws, primarily through its Division of Workforce Services. DEO contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collections services.⁶

State Reemployment Assistance Benefits

In Florida, which rebranded the unemployment compensation program as the reemployment assistance (RA) program in 2012,⁷ a qualified claimant may receive RA benefits equal to 25 percent of wages, not to exceed \$6,325 in a benefit year.⁸ Benefits range from a minimum of \$32 per week to a maximum weekly benefit amount⁹ of \$275, for a minimum of 12 weeks and maximum of 23 weeks,¹⁰ depending on the claimant's length of prior employment and wages earned, and the unemployment rate.¹¹

¹ USDOL, *State Unemployment Insurance Benefits*, available at: <https://oui.doleta.gov/unemploy/uifactsheet.asp> (last visited Mar. 30, 2021).

² There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia. USDOL, *Unemployment Compensation, Federal – State Partnership*, available at: <https://oui.doleta.gov/unemploy/pdf/partnership.pdf> (last visited Mar. 30, 2021).

³ FUTA is codified at 26 U.S.C. § 3301-3309.

⁴ USDOL, *Unemployment Insurance Tax Topic*, available at: <https://oui.doleta.gov/unemploy/uitaxtopic.asp#:~:text=FUTA%20taxes%20are%20calculated%20by,times%20the%20employer's%20taxable%20wages.&text=Employers%20who%20pay%20their%20state,tax%20paid%20to%20the%20state> (last visited Mar. 30, 2021).

⁵ Chapter 18402, Laws of Fla.

⁶ Section 443.1316, F.S.

⁷ Ch. 2012-30, Laws of Fla.

⁸ Section 443.111(5), F.S. The maximum amount of benefits available is calculated by multiplying an individual's weekly benefit amount by the number of available benefit weeks.

⁹ Pursuant to s. 443.111(3), F.S., the "weekly benefit amount," is an amount equal to one twenty-sixth of the total wages for insured work paid during the quarter of the base period where the wages paid were highest.

¹⁰ Section 443.111(5)(c), F.S. If the average unemployment rate for the 3 months in the most recent third calendar year quarter is at or below 5 percent, then the maximum weeks of benefits available is 12; for each 0.5 percent that the unemployment rate is above 5 percent, an additional week of benefits becomes available up to 23 weeks at an unemployment rate of 10.5 percent. On January 1, 2021, the maximum weeks of benefits increased from 12 weeks to 19 weeks based on the three month average of July, August, and September of 2020, which was 8.7 percent.

¹¹ The average weekly benefit amount for the first two quarters of 2020 was approximately \$252; the average weekly benefit amount for the third two quarter of 2020 was approximately \$236. USDOL data from report generated at UI Replacement Rates Report, available at: https://oui.doleta.gov/unemploy/ui_replacement_rates.asp (last visited Mar. 30, 2021).

To receive RA benefits, a claimant must meet certain monetary and non-monetary eligibility requirements. Key eligibility requirements involve a claimant's earnings during a certain period of time,¹² the manner in which the claimant became unemployed,¹³ and the claimant's efforts to find new employment.¹⁴

Able and Available for Work

A claimant must meet certain requirements in order to be eligible for benefits for each week of unemployment. These include a finding by DEO that the individual:¹⁵

- Has filed a claim for benefits;
- Is registered to work and reports to the One-Stop Career Center;
- Is reporting required information to the DEO;
- Is able to and available for work;¹⁶
- Contacts at least 5 prospective employers each week or reports to the One-Stop Career Center for reemployment services;
- Participates in reemployment services;
- Has been unemployed for a waiting period of 1 week;
- Has been paid total base period wages equal to the high quarter wages multiplied by 1.5, but at least \$3,400 in the base period; and
- Has submitted a valid social security number to the DEO.

Rule 73B-11.021(2), F.A.C., provides that in order to be eligible for benefits an individual must be able to work and available for work during the major portion of the individual's customary work week. Consequently, individuals whose benefits are not based on full-time work are not required to seek or be available to accept full-time work.

An individual must make a thorough and continued effort to obtain work and take positive actions to become reemployed. To aid unemployed individuals, free reemployment services and assistance are available.¹⁷

DEO's website provides links to local, state, and national employment databases. Claimants are automatically registered with their local One-Stop Career Center when their claims are filed and are required to report to the One-Stop Career Center as directed by the regional workforce board

¹² Section 443.091(g), F.S., requires an individual to have been paid wages for insured work equal to 1.5 times their high quarter wages during their "base period," except that an individual is not eligible to receive benefits if the base period wages are less than \$3,400. Section 443.036, F.S. defines "base period" as the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.

¹³ See s. 443.101, F.S.

¹⁴ Section 443.091(d), F.S., requires RA claimant's to contact at least five prospective employers for each week of unemployment claimed.

¹⁵ Section 443.091(1), F.S.

¹⁶ "Able to work" means physically and mentally capable of performing the duties of the occupation in which work is being sought. "Available for work" means actively seeking and being ready and willing to accept suitable work. See s. 443.036(1) and (6), F.S.

¹⁷ Rule 73B-3.011(12), F.A.C. "Reemployment services" is defined as job search assistance, job and vocational training referrals, employment counseling and testing, labor market information, employability skills enhancement, needs assessment, orientation, and other related services provided by One-Stop Career Centers operated by local regional workforce boards

for reemployment services.¹⁸ The One-Stops provide job search counseling and workshops, occupational and labor market information, referral to potential employers, and job training assistance. Claimants may also receive an e-mail from the Employ Florida Marketplace with information about employment services or available jobs.¹⁹ Additionally, a claimant may be selected to participate in reemployment assistance services, such as the Reemployment Services and Eligibility Assessment (RESEA) program, designed to address the reemployment needs of RA claimants.²⁰

Disqualification for Unemployment Compensation

Section 443.101, F.S., specifies the circumstances under which an individual would be disqualified from receiving RA benefits, to include:

- Voluntarily leaving work without good cause, or being discharged by his or her employing unit for misconduct connected with the work;²¹
- Failing to apply for available suitable work when directed by the DEO or the One-Stop Career Center, to accept suitable work when offered, or to return to suitable self-employment when directed to do so;²²
- Receiving certain types of remuneration;
- Becoming unemployed due to an active labor dispute;
- Receiving unemployment or reemployment assistance from other government sources, with exceptions;
- Making false or fraudulent representations in filing for benefits;
- Unlawful presence in the U.S.;
- Receiving specified pension benefits;
- Termination from employment for a crime punishable by imprisonment, or any dishonest act in connection with his or her work;
- Being a certain type of leased employee;
- Being discharged from employment due to drug use or rejection from a job offer for failing a drug test;
- Becoming unavailable for work due to incarceration or imprisonment; and
- Being discharged for failure without cause to maintain required licenses or registrations.

The statute specifies the duration of the disqualification and the requirements for requalification for an individual's next benefit claim, depending on the reason for the disqualification.

¹⁸ Section 443.091(1)(b), F.S.

¹⁹ Employ Florida Marketplace is a partnership of Workforce Florida, Inc., and the DEO. It provides job-matching and workforce resources. See <https://www.employflorida.com>.

²⁰ RESEA services may include an orientation, initial assessment, labor market information, employability development plan, and work search services. See <https://floridajobs.org/office-directory/division-of-workforce-services/workforce-programs/reemployment-services-and-eligibility-assessment-program> (last visited Mar. 30, 2021). Rule 73B-3.028, F.A.C., provides more information on reemployment services and requirements for participation.

²¹ An individual is not disqualified for voluntarily leaving temporary work to return to full time work, or to relocate with his or her military spouse due to relocation orders, or due to circumstances related to domestic violence.

²² Section 443.101(2), F.S., sets forth the requirements to determine "suitable work."

Financing Unemployment Compensation

State Unemployment Compensation Contributions

Florida sets its own taxable wage base and rate. The funds collected are paid into the UC Trust Fund, which is maintained at the U.S. Treasury.²³ The trust fund is primarily financed through the contributory method—by employers who pay taxes on employee wages.²⁴ Employers' state UC taxes are used solely to pay RA benefits to unemployed Floridians.

Currently, an employer pays taxes on the first \$7,000 of an employee's wages.²⁵ An employer's initial state tax rate is 2.7 percent.²⁶ After an employer is subject to benefit charges for 8-calendar quarters, the standard tax rate is 5.4 percent, but may be adjusted down to a low of 0.1 percent.²⁷ The adjustment in the tax rate is determined by calculating several factors, including benefit charges associated with the employer, socialized costs,²⁸ and the balance of the UC Trust Fund.

Employer contributions are due in the month following the end of the quarter (April 30, July 31, October 31, and January 31). Most employers will have paid the \$7,000 wage base to their employees in the first or second quarter of the year, making their total UC payments due early in the year.

State Unemployment Compensation Contribution – Trust Fund Triggers

Florida's tax calculation method, especially due to the benefit ratio, is closer to a "pay as you go" approach, in which taxes increase rapidly after a surge in benefit costs. Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the UC Trust Fund. The effect triggers the positive fund balance adjustment factor, which consequently increases tax rates for all employers. Conversely, when unemployment is low, the negative fund balance adjustment factor triggers, and tax rates for employers are reduced accordingly.²⁹

²³ Section 443.191, F.S.

²⁴ Nonprofit employers may choose to finance compensation through either the contributory method or the reimbursement method. A reimbursing employer is one who must pay the Unemployment Compensation Trust Fund on a dollar-for-dollar basis for the benefits paid to its former employees. The employer is otherwise not required to make payments to the trust fund. *See* s. 443.1312, F.S. The state and local governments are reimbursing employers. Most employers are contributory employers.

²⁵ Section 443.1217(2), F.S.

²⁶ Section 443.131(2)(a), F.S.

²⁷ Section 443.131(2)(b) and (3)(d), F.S.

²⁸ Socialized costs include the noncharge ratio (benefits not attributable to any employer over the last 3 years, also called "overpayments"), the excess payments ratio (that portion of benefit charges which exceed the maximum rate of 5.4 percent), and the fund size factor (requires the trust fund maintain a certain balance, discussed below as "triggers"). *See also* DOR, *Reemployment Tax rate Information: How Rates are Calculated*, available at:

https://floridarevenue.com/taxes/taxesfees/Pages/rt_rate.aspx (last visited Mar. 30, 2021).

²⁹ If the balance of the UC Trust Fund is below 4 percent of the taxable payrolls for the year immediately preceding the calendar year for which the contribution rate is being computed, then a positive adjustment factor is computed. The positive adjustment factor remains in effect for subsequent years until the balance of the UC Trust Fund equals or exceeds 4 percent of the taxable payrolls. However, if the balance of the UC Trust Fund is above 5 percent of the taxable payrolls for the year immediately preceding the calendar year for which the contribution rate is being computed, then a negative adjustment factor must be computed. The negative adjustment factor remains in effect for subsequent years until the balance of the UC Trust Fund exceeds 4 percent but is less than 5 percent of the taxable payrolls of that year. *See* s. 443.131(3)(e), F.S.

The basis for the adjustment factors is the level of the trust fund on September 30 of each calendar year compared to the taxable payrolls for the previous year. Each adjustment factor remains in effect until the balance of the trust fund rises above or falls below the respective trigger percentage.³⁰

Other States

The maximum weekly benefit amount (WBA) and maximum weeks of assistance for unemployment compensation vary by state. For instance, California offers unemployment insurance applicants a maximum WBA of \$450 for up to 26 weeks; Texas offers a maximum WBA of \$535 for up to 26 weeks; New York offers a maximum WBA of \$504 for up to 26 weeks; Georgia offers a maximum WBA of \$365 for up to 20 weeks; North Carolina offers a maximum WBA of \$350 for up to 20 weeks; and Alabama offers a maximum WBA of \$275 for up to 14 weeks.³¹

Federal Unemployment Assistance Related to Covid-19

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law.³² It expanded states' abilities to provide unemployment benefits for workers impacted by the COVID-19 pandemic, and included assistance to workers who are not ordinarily eligible for unemployment benefits.³³ The CARES Act included Federal Pandemic Unemployment Compensation (FPUC),³⁴ Pandemic Unemployment Assistance (PUA),³⁵ and Pandemic Emergency Unemployment Compensation (PEUC)³⁶ to aid individuals whose employment was negatively impacted as a result of COVID-19.³⁷

On December 27, 2020, the federal COVID-19 relief package was extended to provide additional federal unemployment benefits to eligible claimants.³⁸ The package included an additional \$300

³⁰ For tax years 2010 and 2011, the Legislature turned the trust fund trigger "off" to avoid a significant rate increase for employers. Section 3, ch. 2010-1, Laws of Fla.

³¹ See USDOL, Significant Provisions of State Unemployment Insurance Laws Effective July 2020, available at: <https://oui.doleta.gov/unemploy/content/sigpros/2020-2029/July2020.pdf> (last visited Mar. 30, 2021).

³² See USDOL, *Unemployment Insurance Relief During COVID-19 Outbreak*, available at: <https://www.dol.gov/coronavirus/unemployment-insurance> (last visited Mar. 30, 2021).

³³ *Id.*

³⁴ The FPUC provided an additional \$600 per week to any individual eligible under Florida or Federal law for RA requested for the weeks between March 29, 2020 and July 25, 2020.

³⁵ The PUA provided benefits to those not ordinarily eligible for RA. Eligible individuals could receive up to \$275 per week in benefits for up to 39 weeks beginning February 2, 2020 through the week ending December 26, 2020, as well as the additional \$600 of FPUC benefits.

³⁶ The PEUC provided an additional 13 weeks of benefits to individuals who exhausted their regular benefits beginning on March 29, 2020 through the week ending December 26, 2020.

³⁷ See Department of Economic Opportunity, *Reemployment Assistance Resource Guide – COVID-19* at 13, available at: http://floridajobs.org/docs/default-source/reemployment-assistance-center/new-individual-faq-includes-cares-act-final.pdf?sfvrsn=5f2547b0_77 (last visited Mar. 30, 2021).

³⁸ See Department of Economic Opportunity, *COVID-19 Relief Provision – 2021*, available at: http://floridajobs.org/docs/default-source/reemployment-assistance-center/cares-act/covid-19-relief-provisions-2021.pdf?sfvrsn=2f5b4ab0_2 (last visited Mar. 30, 2021).

of FPUC benefits³⁹ for Floridians receiving state or federal RA benefits, an increase of 11 weeks under the PEUC for claimants who exhausted their state RA claim,⁴⁰ and a PUA extension.⁴¹

On March 11, 2021, the American Rescue Plan Act further extended unemployment benefits.⁴² The PEUC and PUA benefit programs are extended to September 6, 2021, and eligible claimants can also receive an additional \$300 under the FPUC.⁴³

Florida also opted to provide benefits under the Mixed Earner Unemployment Compensation (MEUC) program.⁴⁴ MEUC provides an additional \$100 to eligible claimants who receive RA benefits and earned at least \$5,000 from self-employment in the tax year immediately prior to when the claimant filed their initial RA claim.⁴⁵ Additionally, the Federal Lost Wages Assistance (LWA) program provided states with aid through the Federal Emergency Management Agency (FEMA).⁴⁶ This program was available to eligible Floridians for 4 weeks,⁴⁷ and provided an additional \$300.⁴⁸

III. Effect of Proposed Changes:

The bill amends s. 443.111, F.S., to change the state's reemployment assistance weekly benefit amount from a range of \$32 to \$275 per week to \$100 to \$375 per week, and makes the corresponding change for the maximum amount in any benefit year from \$6,325 to \$8,625.

The bill amends s. 443.091(1)(c), F.S., to remove the requirement that a claimant must include the telephone number of each prospective employer contacted for each week of unemployment claimed, and clarifies that "address" means a website address, a physical address, or an e-mail address for purposes of reporting the address of each prospective employer contacted.

³⁹ FPUC is available to eligible claimants for the week beginning December 27, 2020, through the week ending March 13, 2021. *See Id.*

⁴⁰ The PEUC allows up to an additional 24 weeks of benefits. It will also provide claimants with up to \$275 in weekly benefits available beginning December 27, 2020, through the week ending March 13, 2021, plus the FPUC (\$300) payments for weeks requested beginning December 27, 2020, through March 13, 2021. *See Id.*

⁴¹ This extension provides claimants with 50 weeks of PUA from the previous 39 weeks, which is an increase of 11 weeks. Additional weeks of PUA benefits paid pursuant to the Continued Assistance Act are only available for weeks of unemployment beginning on or after December 27, 2020. *See Id.*

⁴² *See* Department of Economic Opportunity, *Weekly Reemployment Assistance Update - March 24*, available at: <https://floridajobs.org/news-center/DEO-Press/2021/03/24/florida-department-of-economic-opportunity-provides-weekly-reemployment-assistance-update---march-24> (last visited Mar. 30, 2021).

⁴³ FPUC is extended through September 6, 2021. *See Id.*

⁴⁴ *See* Department of Economic Opportunity, *COVID-19 Relief Provision – 2021*, available at: http://floridajobs.org/docs/default-source/reemployment-assistance-center/cares-act/covid-19-relief-provisions-2021.pdf?sfvrsn=2f5b4ab0_2 (last visited Mar. 30, 2021).

⁴⁵ MEUC has been extended to Sep. 6, 2021. *See* Department of Economic Opportunity, *Guide for Reemployment Assistance Mixed Earners Unemployment Compensation (MEUC)*, available at: <http://www.floridajobs.org/docs/default-source/reemployment-assistance-center/cares-act/meuc-guide.pdf> (last visited Mar. 30, 2021).

⁴⁶ *See* Department of Economic Opportunity, *Federal Lost Wages Assistance Program FAQs*, available at: https://floridajobs.org/docs/default-source/reemployment-assistance-center/cares-act/lost-wages-assistance-faq.pdf?sfvrsn=9add4bb0_10 (last visited Mar. 30, 2021).

⁴⁷ LWA was available the week ending August 1, 2020 through the week ending August 22, 2020. Applicants had to be eligible for state or federal Reemployment Assistance benefits, be unemployed or partially unemployed due to COVID-19 and have a weekly benefit amount of at least \$100 in a state or Federal Reemployment Assistance. *See Id.*

⁴⁸ *Id.*

The bill amends s. 443.091(1)(d), F.S., to reduce the number of prospective employers that reemployment assistance claimants must contact each week from five to three, and provides that a claimant may meet this work search requirement by submitting a resume through an online job search service.

The bill reenacts related provisions in ss. 443.041 and 443.1116, F.S., to incorporate the amendments made by the bill.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

To the extent that the increase in the weekly benefit amount increases the amount of funds paid out to claimants from the Unemployment Compensation Trust Fund, it may require employer tax contributions be increased.

The Revenue Estimating Conference has not yet estimated the revenue impact of the bill.

B. Private Sector Impact:

Eligible reemployment assistance claimants could receive higher RA benefits.

Reimbursable employers, such as charities, could experience an increase in costs consistent with the amount of increased reemployment assistance claims paid.

C. Government Sector Impact:

Governmental employers could experience an increase in costs consistent with the amount of increased reemployment assistance claims paid.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 443.111, 443.041, and 443.1116 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on March 29, 2021:

The committee substitute removes the requirement that a claimant must include the telephone number of each prospective employer contacted for each week of unemployment claimed, and clarifies that “address” means a website address, a physical address, or an e-mail address for purposes of reporting the address of each prospective employer contacted.

The committee substitute reduces the number of prospective employers that reemployment assistance claimants must contact each week from five to three, and provides that a claimant may meet this work search requirement by submitting a resume through an online job search service.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/30/2021	.	
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The Committee on Commerce and Tourism (Torres) recommended the following:

Senate Amendment (with title amendment)

Delete lines 15 - 66

and insert:

Section 1. Subsection (3) and paragraphs (b) and (c) of subsection (5) of section 443.111, Florida Statutes, are amended to read:

443.111 Payment of benefits.—

(3) WEEKLY BENEFIT AMOUNT.—An individual's "weekly benefit amount" is an amount equal to one twenty-sixth of the total



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wages for insured work paid during that quarter of the base period in which the total wages paid were the highest, but not less than \$100 ~~\$32~~ or more than \$500 ~~\$275~~. The weekly benefit amount, if not a multiple of \$1, is rounded downward to the nearest full dollar amount. The maximum weekly benefit amount in effect at the time the claimant establishes an individual weekly benefit amount is the maximum benefit amount applicable throughout the claimant's benefit year.

(5) DURATION OF BENEFITS.—

(b) Each otherwise eligible individual is entitled during any benefit year to a total amount of benefits equal to 25 percent of the total wages in his or her base period, not to exceed \$13,000 ~~\$6,325~~ or the product arrived at by multiplying the weekly benefit amount with the number of weeks determined in paragraph (c), whichever is less. However, the total amount of benefits, if not a multiple of \$1, is rounded downward to the nearest full dollar amount. These benefits are payable at a weekly rate no greater than the weekly benefit amount.

(c) For claims submitted during a calendar year, the duration of benefits is limited to twenty-six weeks÷

~~1. Twelve weeks if this state's average unemployment rate is at or below 5 percent.~~

~~2. An additional week in addition to the 12 weeks for each 0.5 percent increment in this state's average unemployment rate above 5 percent.~~

~~3. Up to a maximum of 23 weeks if this state's average unemployment rate equals or exceeds 10.5 percent.~~

Section 2. For the purpose of incorporating the amendment made by this act to section 443.111, Florida Statutes, in a



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reference thereto, paragraph (b) of subsection (2) of section 443.041, Florida Statutes, is reenacted to read:

443.041 Waiver of rights; fees; privileged communications.—

(2) FEES.—

(b) An attorney at law representing a claimant for benefits in any district court of appeal of this state or in the Supreme Court of Florida is entitled to counsel fees payable by the department as set by the court if the petition for review or appeal is initiated by the claimant and results in a decision awarding more benefits than provided in the decision from which appeal was taken. The amount of the fee may not exceed 50 percent of the total amount of regular benefits permitted under s. 443.111(5)(b) during the benefit year.

Section 3. For the purpose of incorporating the amendment made by this act to section 443.111, Florida Statutes, in a reference thereto, subsections (6) and (7) and paragraph (a) of subsection (8) of section 443.1116, Florida Statutes, are reenacted to read:

443.1116 Short-time compensation.—

(6) WEEKLY SHORT-TIME COMPENSATION BENEFIT AMOUNT.—The weekly short-time compensation benefit amount payable to an individual is equal to the product of her or his weekly benefit amount as provided in s. 443.111(3) and the ratio of the number of normal weekly hours of work for which the employer would not compensate the individual to the individual's normal weekly hours of work. The benefit amount, if not a multiple of \$1, is rounded downward to the next lower multiple of \$1.

(7) TOTAL SHORT-TIME COMPENSATION BENEFIT AMOUNT.—An individual may not be paid benefits under this section in any



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69 benefit year for more than the maximum entitlement provided in
70 s. 443.111(5), and an individual may not be paid short-time
71 compensation benefits for more than 26 weeks in any benefit
72 year.

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 lines 6 - 7

77 and insert:

78 to receive during a benefit year; revising the
79 duration of benefits; reenacting ss. 443.041(2)(b) and
80 443.1116(6), (7), and (8)(a), F.S.,



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
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The Committee on Commerce and Tourism (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete lines 15 - 17

and insert:

Section 1. Paragraphs (c) and (d) of subsection (1) of section 443.091, Florida Statutes, are amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:



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(c) To make continued claims for benefits, she or he is reporting to the department in accordance with this paragraph and department rules. Department rules may not conflict with s. 443.111(1)(b), which requires that each claimant continue to report regardless of any pending appeal relating to her or his eligibility or disqualification for benefits.

1. For each week of unemployment claimed, each report must, at a minimum, include the name ~~and~~, address, ~~and telephone number~~ of each prospective employer contacted, or the date the claimant reported to a one-stop career center, pursuant to paragraph (d). For the purposes of this subparagraph, the term "address" means a website address, a physical address, or an e-mail address.

2. The department shall offer an online assessment aimed at identifying an individual's skills, abilities, and career aptitude. The skills assessment must be voluntary, and the department shall allow a claimant to choose whether to take the skills assessment. The online assessment shall be made available to any person seeking services from a local workforce development board or a one-stop career center.

a. If the claimant chooses to take the online assessment, the outcome of the assessment shall be made available to the claimant, local workforce development board, and one-stop career center. The department, local workforce development board, or one-stop career center shall use the assessment to develop a plan for referring individuals to training and employment opportunities. Aggregate data on assessment outcomes may be made available to CareerSource Florida, Inc., and Enterprise Florida, Inc., for use in the development of policies related to



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education and training programs that will ensure that businesses in this state have access to a skilled and competent workforce.

b. Individuals shall be informed of and offered services through the one-stop delivery system, including career counseling, the provision of skill match and job market information, and skills upgrade and other training opportunities, and shall be encouraged to participate in such services at no cost to the individuals. The department shall coordinate with CareerSource Florida, Inc., the local workforce development boards, and the one-stop career centers to identify, develop, and use best practices for improving the skills of individuals who choose to participate in skills upgrade and other training opportunities. The department may contract with an entity to create the online assessment in accordance with the competitive bidding requirements in s. 287.057. The online assessment must work seamlessly with the Reemployment Assistance Claims and Benefits Information System.

(d) She or he is able to work and is available for work. In order to assess eligibility for a claimed week of unemployment, the department shall develop criteria to determine a claimant's ability to work and availability for work. A claimant must be actively seeking work in order to be considered available for work. This means engaging in systematic and sustained efforts to find work, including contacting at least three ~~five~~ prospective employers for each week of unemployment claimed. For the purposes of meeting the requirements of this paragraph, a claimant may contact a prospective employer by submitting a resume to an employer through an online job search service. A claimant who submits a resume to at least three employers



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through an online job search service satisfies the work search requirements of this paragraph. The department may require the claimant to provide proof of such efforts to the one-stop career center as part of reemployment services. A claimant's proof of work search efforts may not include the same prospective employer at the same location in 3 consecutive weeks, unless the employer has indicated since the time of the initial contact that the employer is hiring. The department shall conduct random reviews of work search information provided by claimants. As an alternative to contacting at least three ~~five~~ prospective employers for any week of unemployment claimed, a claimant may, for that same week, report in person to a one-stop career center to meet with a representative of the center and access reemployment services of the center. The center shall keep a record of the services or information provided to the claimant and shall provide the records to the department upon request by the department. However:

1. Notwithstanding any other provision of this paragraph or paragraphs (b) and (e), an otherwise eligible individual may not be denied benefits for any week because she or he is in training with the approval of the department, or by reason of s. 443.101(2) relating to failure to apply for, or refusal to accept, suitable work. Training may be approved by the department in accordance with criteria prescribed by rule. A claimant's eligibility during approved training is contingent upon satisfying eligibility conditions prescribed by rule.

2. Notwithstanding any other provision of this chapter, an otherwise eligible individual who is in training approved under s. 236(a)(1) of the Trade Act of 1974, as amended, may not be



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determined ineligible or disqualified for benefits due to enrollment in such training or because of leaving work that is not suitable employment to enter such training. As used in this subparagraph, the term "suitable employment" means work of a substantially equal or higher skill level than the worker's past adversely affected employment, as defined for purposes of the Trade Act of 1974, as amended, the wages for which are at least 80 percent of the worker's average weekly wage as determined for purposes of the Trade Act of 1974, as amended.

3. Notwithstanding any other provision of this section, an otherwise eligible individual may not be denied benefits for any week because she or he is before any state or federal court pursuant to a lawfully issued summons to appear for jury duty.

4. Union members who customarily obtain employment through a union hiring hall may satisfy the work search requirements of this paragraph by reporting daily to their union hall.

5. The work search requirements of this paragraph do not apply to persons who are unemployed as a result of a temporary layoff or who are claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.

6. In small counties as defined in s. 120.52(19), a claimant engaging in systematic and sustained efforts to find work must contact at least three prospective employers for each week of unemployment claimed.

7. The work search requirements of this paragraph do not apply to persons required to participate in reemployment services under paragraph (e).

Section 2. Subsection (3) and paragraph (b) of subsection (5) of section 443.111, Florida Statutes, are amended, and



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paragraph (b) of subsection (1) is republished, to read:

443.111 Payment of benefits.—

(1) MANNER OF PAYMENT.—Benefits are payable from the fund in accordance with rules adopted by the Department of Economic Opportunity, subject to the following requirements:

(b) As required under s. 443.091(1), each claimant must report at least biweekly to receive reemployment assistance benefits and to attest to the fact that she or he is able and available for work, has not refused suitable work, is seeking work and has met the requirements of s. 443.091(1)(d), and, if she or he has worked, to report earnings from that work. Each claimant must continue to report regardless of any appeal or pending appeal relating to her or his eligibility or disqualification for benefits.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Between lines 2 and 3
insert:

s. 443.091, F.S.; revising requirements for
reemployment assistance benefits eligibility; amending



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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/30/2021	.	
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The Committee on Commerce and Tourism (Powell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 15 - 17

and insert:

Section 1. Paragraph (g) of subsection (1) of section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:



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(g) She or he has been paid wages for insured work equal to 1.5 times her or his high quarter wages during her or his base period, except that an unemployed individual is not eligible to receive benefits if the base period wages are less than \$1,200 ~~\$3,400~~.

Section 2. Paragraph (b) of subsection (2), subsection (3), and paragraph (b) of subsection (5) of section 443.111, Florida Statutes, are amended to read:

443.111 Payment of benefits.—

(2) QUALIFYING REQUIREMENTS.—To establish a benefit year for reemployment assistance benefits, an individual must have:

(b) Minimum total base period wage credits equal to the high quarter wages multiplied by 1.5, but at least \$1,200 ~~\$3,400~~ in the base period.

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

And the title is amended as follows:

Delete line 3

and insert:

s. 443.091, F.S.; revising an eligibility requirement for receiving reemployment assistance benefits; amending s. 443.111, F.S.; revising a qualifying requirement for individuals seeking to establish a benefit year for reemployment assistance; increasing the weekly benefit



238872

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/30/2021	.	
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The Committee on Commerce and Tourism (Powell) recommended the following:

Senate Amendment (with title amendment)

Before line 15

insert:

Section 1. Paragraph (d) of subsection (1) of section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:



238872

(d) She or he is able to work and is available for work. In order to assess eligibility for a claimed week of unemployment, the department shall develop criteria to determine a claimant's ability to work and availability for work. A claimant must be actively seeking work in order to be considered available for work. This means engaging in systematic and sustained efforts to find work, including contacting at least five prospective employers for each week of unemployment claimed. The department may require the claimant to provide proof of such efforts to the one-stop career center as part of reemployment services. A claimant's proof of work search efforts may not include the same prospective employer at the same location in 3 consecutive weeks, unless the employer has indicated since the time of the initial contact that the employer is hiring. The department shall conduct random reviews of work search information provided by claimants. As an alternative to contacting at least five prospective employers for any week of unemployment claimed, a claimant may, for that same week, report in person to a one-stop career center to meet with a representative of the center and access reemployment services of the center. The center shall keep a record of the services or information provided to the claimant and shall provide the records to the department upon request by the department. However:

1. Notwithstanding any other provision of this paragraph, an individual who is otherwise eligible for benefits may not be deemed ineligible for benefits for any week if his or her ability to work, or availability to work, is precluded by the claimant's:

a. Lack of available transportation to work;



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b. Sickness or disability;

c. Caring for a family member or a child; or

d. Pregnancy.

2. Notwithstanding any other provision of this paragraph or paragraphs (b) and (e), an otherwise eligible individual may not be denied benefits for any week because she or he is in training with the approval of the department, or by reason of s.

443.101(2) relating to failure to apply for, or refusal to accept, suitable work. Training may be approved by the department in accordance with criteria prescribed by rule. A claimant's eligibility during approved training is contingent upon satisfying eligibility conditions prescribed by rule.

~~3.2.~~ Notwithstanding any other provision of this chapter, an otherwise eligible individual who is in training approved under s. 236(a)(1) of the Trade Act of 1974, as amended, may not be determined ineligible or disqualified for benefits due to enrollment in such training or because of leaving work that is not suitable employment to enter such training. As used in this subparagraph, the term "suitable employment" means work of a substantially equal or higher skill level than the worker's past adversely affected employment, as defined for purposes of the Trade Act of 1974, as amended, the wages for which are at least 80 percent of the worker's average weekly wage as determined for purposes of the Trade Act of 1974, as amended.

~~4.3.~~ Notwithstanding any other provision of this section, an otherwise eligible individual may not be denied benefits for any week because she or he is before any state or federal court pursuant to a lawfully issued summons to appear for jury duty.

~~5.4.~~ Union members who customarily obtain employment



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through a union hiring hall may satisfy the work search requirements of this paragraph by reporting daily to their union hall.

~~6.5.~~ The work search requirements of this paragraph do not apply to persons who are unemployed as a result of a temporary layoff or who are claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.

~~7.6.~~ In small counties as defined in s. 120.52(19), a claimant engaging in systematic and sustained efforts to find work must contact at least three prospective employers for each week of unemployment claimed.

~~8.7.~~ The work search requirements of this paragraph do not apply to persons required to participate in reemployment services under paragraph (e).

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

And the title is amended as follows:

Between lines 2 and 3
insert:

s. 443.091, F.S.; prohibiting otherwise eligible individuals from being deemed ineligible to receive reemployment assistance benefits if their ability or availability to work is precluded by specified circumstances; amending



321614

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/30/2021	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 15 - 17

and insert:

Section 1. Paragraph (d) of subsection (1) of section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:



321614

(d) She or he is able to work and is available for work. In order to assess eligibility for a claimed week of unemployment, the department shall develop criteria to determine a claimant's ability to work and availability for work. A claimant must be actively seeking work in order to be considered available for work. This means engaging in systematic and sustained efforts to find work, including contacting at least three ~~five~~ prospective employers for each week of unemployment claimed. For the purposes of meeting the requirements of this paragraph, a claimant may contact prospective employers by submitting a resume to an employer through an online job search service or a claimant may contact prospective employers through traditional work searches. A claimant who submits a resume to at least three employers through an online job search service satisfies the work search requirements of this paragraph. The department may require the claimant to provide proof of such efforts to the one-stop career center as part of reemployment services. A claimant's proof of work search efforts may not include the same prospective employer at the same location in 3 consecutive weeks, unless the employer has indicated since the time of the initial contact that the employer is hiring. The department shall conduct random reviews of work search information provided by claimants. As an alternative to contacting at least three ~~five~~ prospective employers for any week of unemployment claimed, a claimant may, for that same week, report in person to a one-stop career center to meet with a representative of the center and access reemployment services of the center. The center shall keep a record of the services or information provided to the claimant and shall provide the records to the department upon



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request by the department. However:

1. Notwithstanding any other provision of this paragraph or paragraphs (b) and (e), an otherwise eligible individual may not be denied benefits for any week because she or he is in training with the approval of the department, or by reason of s.

443.101(2) relating to failure to apply for, or refusal to accept, suitable work. Training may be approved by the department in accordance with criteria prescribed by rule. A claimant's eligibility during approved training is contingent upon satisfying eligibility conditions prescribed by rule.

2. Notwithstanding any other provision of this chapter, an otherwise eligible individual who is in training approved under s. 236(a)(1) of the Trade Act of 1974, as amended, may not be determined ineligible or disqualified for benefits due to enrollment in such training or because of leaving work that is not suitable employment to enter such training. As used in this subparagraph, the term "suitable employment" means work of a substantially equal or higher skill level than the worker's past adversely affected employment, as defined for purposes of the Trade Act of 1974, as amended, the wages for which are at least 80 percent of the worker's average weekly wage as determined for purposes of the Trade Act of 1974, as amended.

3. Notwithstanding any other provision of this section, an otherwise eligible individual may not be denied benefits for any week because she or he is before any state or federal court pursuant to a lawfully issued summons to appear for jury duty.

4. Union members who customarily obtain employment through a union hiring hall may satisfy the work search requirements of this paragraph by reporting daily to their union hall.



321614

5. The work search requirements of this paragraph do not apply to persons who are unemployed as a result of a temporary layoff or who are claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.

6. In small counties as defined in s. 120.52(19), a claimant engaging in systematic and sustained efforts to find work must contact at least three prospective employers for each week of unemployment claimed.

7. The work search requirements of this paragraph do not apply to persons required to participate in reemployment services under paragraph (e).

Section 2. Subsection (3) and paragraph (b) of subsection (5) of section 443.111, Florida Statutes, are amended, and paragraph (b) of subsection (1) is republished, to read:

443.111 Payment of benefits.—

(1) MANNER OF PAYMENT.—Benefits are payable from the fund in accordance with rules adopted by the Department of Economic Opportunity, subject to the following requirements:

(b) As required under s. 443.091(1), each claimant must report at least biweekly to receive reemployment assistance benefits and to attest to the fact that she or he is able and available for work, has not refused suitable work, is seeking work and has met the requirements of s. 443.091(1)(d), and, if she or he has worked, to report earnings from that work. Each claimant must continue to report regardless of any appeal or pending appeal relating to her or his eligibility or disqualification for benefits.

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



321614

And the title is amended as follows:

Between lines 2 and 3

insert:

s. 443.091, F.S.; revising requirements for

reemployment assistance benefits eligibility; amending



774460

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/30/2021	.	
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The Committee on Commerce and Tourism (Powell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 15 - 37
and insert:

Section 1. Present subsections (3) through (46) of section 443.036, Florida Statutes, are redesignated as subsections (4) through (47), respectively, a new subsection (3) is added to that section, and present subsection (24) of that section is amended, to read:

443.036 Definitions.—As used in this chapter, the term:



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(3) "Alternative base period" means the four most recently completed calendar quarters before an individual's benefit year, if such quarters qualify the individual for benefits and were not previously used to establish a prior valid benefit year.

~~(25)-(24)~~ "High quarter" means the quarter in an individual's base period, or in the individual's alternative base period if an alternative base period is used for determining benefits eligibility, in which the individual has the greatest amount of wages paid, regardless of the number of employers paying wages in that quarter.

Section 2. Paragraph (g) of subsection (1) of section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:

(g) She or he has been paid wages for insured work equal to 1.5 times her or his high quarter wages during her or his base period, except that an unemployed individual is not eligible to receive benefits if the base period wages are less than \$3,400. If an unemployed individual is ineligible for benefits based on base period wages, his or her wages shall be calculated using the alternative base period, and his or her claim shall be established using such wages.

Section 3. Subsections (2) and (3) and paragraph (b) of subsection (5) of section 443.111, Florida Statutes, are amended to read:

443.111 Payment of benefits.—

(2) QUALIFYING REQUIREMENTS.—



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40 (a) To establish a benefit year for reemployment assistance
41 benefits, an individual must have:

42 1.~~(a)~~ Wage credits in two or more calendar quarters of the
43 individual's base period or alternative base period.

44 2.~~(b)~~ Minimum total base period wage credits equal to the
45 high quarter wages multiplied by 1.5, but at least \$3,400 in the
46 base period, or in the alternative base period if the
47 alternative base period is used for benefits eligibility.

48 (b)1. If a worker is ineligible for benefits based on base
49 period wages, wages for that worker must be calculated using an
50 alternative base period and the claim shall be established using
51 such wages.

52 2. If the wage information for an individual's most
53 recently completed calendar quarter is unavailable to the
54 department from regular quarterly reports of systematically
55 accessible wage information, the department must promptly
56 contact the individual's employer to obtain the wage
57 information.

58 3. Wages that fall within the alternative base period of
59 claims established under this paragraph are not available for
60 reuse in qualifying for any subsequent benefit years.

61 4. The department shall adopt rules to administer this
62 paragraph.

63 (3) WEEKLY BENEFIT AMOUNT.—

64 (a) An individual's "weekly benefit amount" is an amount
65 equal to one twenty-sixth of the total wages for insured work
66 paid during that quarter of the base period in which the total
67 wages paid were the highest, but not less than \$100 ~~\$32~~ or more
68 than \$375 ~~\$275~~. The weekly benefit amount, if not a multiple of



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\$1, is rounded downward to the nearest full dollar amount. The maximum weekly benefit amount in effect at the time the claimant establishes an individual weekly benefit amount is the maximum benefit amount applicable throughout the claimant's benefit year.

(b) The weekly benefit amount shall be based on either the claimant's base period wages or alternative base period wages, whichever period results in the greater benefit amount.

(5) DURATION OF BENEFITS.—

(b) Each otherwise eligible individual is entitled during any benefit year to a total amount of benefits equal to 25 percent of the total wages in his or her base period, not to exceed \$8,625 ~~\$6,325~~ or the product arrived at by multiplying the weekly benefit amount with the number of weeks determined in paragraph (c), whichever is less. However, the total amount of benefits, if not a multiple of \$1, is rounded downward to the nearest full dollar amount. These benefits are payable at a weekly rate no greater than the weekly benefit amount.

Section 4. Paragraph (a) of subsection (4) of section 215.425, Florida Statutes, is amended to read:

215.425 Extra compensation claims prohibited; bonuses; severance pay.—

(4)(a) On or after July 1, 2011, a unit of government that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that contains a provision for severance pay with an officer, agent, employee, or contractor must include the following provisions in the contract:

1. A requirement that severance pay provided may not exceed



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an amount greater than 20 weeks of compensation.

2. A prohibition of provision of severance pay when the officer, agent, employee, or contractor has been fired for misconduct, as defined in s. 443.036(30) ~~s. 443.036(29)~~, by the unit of government.

Section 5. Paragraph (a) of subsection (1) and paragraph (f) of subsection (13) of section 443.1216, Florida Statutes, are amended to read:

443.1216 Employment.—Employment, as defined in s. 443.036, is subject to this chapter under the following conditions:

(1)(a) The employment subject to this chapter includes a service performed, including a service performed in interstate commerce, by:

1. An officer of a corporation.

2. An individual who, under the usual common-law rules applicable in determining the employer-employee relationship, is an employee. However, whenever a client, as defined in s. 443.036(19) ~~s. 443.036(18)~~, which would otherwise be designated as an employing unit has contracted with an employee leasing company to supply it with workers, those workers are considered employees of the employee leasing company. An employee leasing company may lease corporate officers of the client to the client and other workers to the client, except as prohibited by regulations of the Internal Revenue Service. Employees of an employee leasing company must be reported under the employee leasing company's tax identification number and contribution rate for work performed for the employee leasing company.

a. However, except for the internal employees of an employee leasing company, each employee leasing company may make



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a separate one-time election to report and pay contributions under the tax identification number and contribution rate for each client of the employee leasing company. Under the client method, an employee leasing company choosing this option must assign leased employees to the client company that is leasing the employees. The client method is solely a method to report and pay unemployment contributions, and, whichever method is chosen, such election may not impact any other aspect of state law. An employee leasing company that elects the client method must pay contributions at the rates assigned to each client company.

(I) The election applies to all of the employee leasing company's current and future clients.

(II) The employee leasing company must notify the Department of Revenue of its election by July 1, 2012, and such election applies to reports and contributions for the first quarter of the following calendar year. The notification must include:

(A) A list of each client company and the unemployment account number or, if one has not yet been issued, the federal employment identification number, as established by the employee leasing company upon the election to file by client method;

(B) A list of each client company's current and previous employees and their respective social security numbers for the prior 3 state fiscal years or, if the client company has not been a client for the prior 3 state fiscal years, such portion of the prior 3 state fiscal years that the client company has been a client must be supplied;

(C) The wage data and benefit charges associated with each



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client company for the prior 3 state fiscal years or, if the client company has not been a client for the prior 3 state fiscal years, such portion of the prior 3 state fiscal years that the client company has been a client must be supplied. If the client company's employment record is chargeable with benefits for less than 8 calendar quarters while being a client of the employee leasing company, the client company must pay contributions at the initial rate of 2.7 percent; and

(D) The wage data and benefit charges for the prior 3 state fiscal years that cannot be associated with a client company must be reported and charged to the employee leasing company.

(III) Subsequent to choosing the client method, the employee leasing company may not change its reporting method.

(IV) The employee leasing company shall file a Florida Department of Revenue Employer's Quarterly Report for each client company by approved electronic means, and pay all contributions by approved electronic means.

(V) For the purposes of calculating experience rates when the client method is chosen, each client's own benefit charges and wage data experience while with the employee leasing company determines each client's tax rate where the client has been a client of the employee leasing company for at least 8 calendar quarters before the election. The client company shall continue to report the nonleased employees under its tax rate.

(VI) The election is binding on each client of the employee leasing company for as long as a written agreement is in effect between the client and the employee leasing company pursuant to s. 468.525(3)(a). If the relationship between the employee leasing company and the client terminates, the client retains



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the wage and benefit history experienced under the employee leasing company.

(VII) Notwithstanding which election method the employee leasing company chooses, the applicable client company is an employing unit for purposes of s. 443.071. The employee leasing company or any of its officers or agents are liable for any violation of s. 443.071 engaged in by such persons or entities. The applicable client company or any of its officers or agents are liable for any violation of s. 443.071 engaged in by such persons or entities. The employee leasing company or its applicable client company is not liable for any violation of s. 443.071 engaged in by the other party or by the other party's officers or agents.

(VIII) If an employee leasing company fails to select the client method of reporting not later than July 1, 2012, the entity is required to report under the employee leasing company's tax identification number and contribution rate.

(IX) After an employee leasing company is licensed pursuant to part XI of chapter 468, each newly licensed entity has 30 days after the date the license is granted to notify the tax collection service provider in writing of their selection of the client method. A newly licensed employee leasing company that fails to timely select reporting pursuant to the client method of reporting must report under the employee leasing company's tax identification number and contribution rate.

(X) Irrespective of the election, each transfer of trade or business, including workforce, or a portion thereof, between employee leasing companies is subject to the provisions of s. 443.131(3)(g) if, at the time of the transfer, there is common



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ownership, management, or control between the entities.

b. In addition to any other report required to be filed by law, an employee leasing company shall submit a report to the Labor Market Statistics Center within the Department of Economic Opportunity which includes each client establishment and each establishment of the leasing company, or as otherwise directed by the department. The report must include the following information for each establishment:

(I) The trade or establishment name;

(II) The former reemployment assistance account number, if available;

(III) The former federal employer's identification number, if available;

(IV) The industry code recognized and published by the United States Office of Management and Budget, if available;

(V) A description of the client's primary business activity in order to verify or assign an industry code;

(VI) The address of the physical location;

(VII) The number of full-time and part-time employees who worked during, or received pay that was subject to reemployment assistance taxes for, the pay period including the 12th of the month for each month of the quarter;

(VIII) The total wages subject to reemployment assistance taxes paid during the calendar quarter;

(IX) An internal identification code to uniquely identify each establishment of each client;

(X) The month and year that the client entered into the contract for services; and

(XI) The month and year that the client terminated the



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contract for services.

c. The report must be submitted electronically or in a manner otherwise prescribed by the Department of Economic Opportunity in the format specified by the Bureau of Labor Statistics of the United States Department of Labor for its Multiple Worksite Report for Professional Employer Organizations. The report must be provided quarterly to the Labor Market Statistics Center within the department, or as otherwise directed by the department, and must be filed by the last day of the month immediately after the end of the calendar quarter. The information required in sub-sub-subparagraphs b.(X) and (XI) need be provided only in the quarter in which the contract to which it relates was entered into or terminated. The sum of the employment data and the sum of the wage data in this report must match the employment and wages reported in the reemployment assistance quarterly tax and wage report.

d. The department shall adopt rules as necessary to administer this subparagraph, and may administer, collect, enforce, and waive the penalty imposed by s. 443.141(1)(b) for the report required by this subparagraph.

e. For the purposes of this subparagraph, the term "establishment" means any location where business is conducted or where services or industrial operations are performed.

3. An individual other than an individual who is an employee under subparagraph 1. or subparagraph 2., who performs services for remuneration for any person:

a. As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or



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drycleaning services for his or her principal.

b. As a traveling or city salesperson engaged on a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in the business operations. This subparagraph does not apply to an agent-driver or a commission-driver and does not apply to sideline sales activities performed on behalf of a person other than the salesperson's principal.

4. The services described in subparagraph 3. are employment subject to this chapter only if:

a. The contract of service contemplates that substantially all of the services are to be performed personally by the individual;

b. The individual does not have a substantial investment in facilities used in connection with the services, other than facilities used for transportation; and

c. The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(13) The following are exempt from coverage under this chapter:

(f) Service performed in the employ of a public employer as defined in s. 443.036, except as provided in subsection (2), and service performed in the employ of an instrumentality of a public employer as described in s. 443.036(36)(b) or (c) ~~s. 443.036(35)(b) or (c)~~, to the extent that the instrumentality is immune under the United States Constitution from the tax imposed



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by s. 3301 of the Internal Revenue Code for that service.

Section 6. Paragraph (f) of subsection (3) of section 443.131, Florida Statutes, is amended to read:

443.131 Contributions.—

(3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT EXPERIENCE.—

(f) *Transfer of employment records.*—

1. For the purposes of this subsection, two or more employers who are parties to a transfer of business or the subject of a merger, consolidation, or other form of reorganization, effecting a change in legal identity or form, are deemed a single employer and are considered to be one employer with a continuous employment record if the tax collection service provider finds that the successor employer continues to carry on the employing enterprises of all of the predecessor employers and that the successor employer has paid all contributions required of and due from all of the predecessor employers and has assumed liability for all contributions that may become due from all of the predecessor employers. In addition, an employer may not be considered a successor under this subparagraph if the employer purchases a company with a lower rate into which employees with job functions unrelated to the business endeavors of the predecessor are transferred for the purpose of acquiring the low rate and avoiding payment of contributions. As used in this paragraph, notwithstanding s. 443.036(15) ~~s. 443.036(14)~~, the term "contributions" means all indebtedness to the tax collection service provider, including, but not limited to, interest, penalty, collection fee, and service fee. A successor employer



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330 must accept the transfer of all of the predecessor employers'
331 employment records within 30 days after the date of the official
332 notification of liability by succession. If a predecessor
333 employer has unpaid contributions or outstanding quarterly
334 reports, the successor employer must pay the total amount with
335 certified funds within 30 days after the date of the notice
336 listing the total amount due. After the total indebtedness is
337 paid, the tax collection service provider shall transfer the
338 employment records of all of the predecessor employers to the
339 successor employer's employment record. The tax collection
340 service provider shall determine the contribution rate of the
341 combined successor and predecessor employers upon the transfer
342 of the employment records, as prescribed by rule, in order to
343 calculate any change in the contribution rate resulting from the
344 transfer of the employment records.

345 2. Regardless of whether a predecessor employer's
346 employment record is transferred to a successor employer under
347 this paragraph, the tax collection service provider shall treat
348 the predecessor employer, if he or she subsequently employs
349 individuals, as an employer without a previous employment record
350 or, if his or her coverage is terminated under s. 443.121, as a
351 new employing unit.

352 3. The state agency providing reemployment assistance tax
353 collection services may adopt rules governing the partial
354 transfer of experience rating when an employer transfers an
355 identifiable and segregable portion of his or her payrolls and
356 business to a successor employing unit. As a condition of each
357 partial transfer, these rules must require the following to be
358 filed with the tax collection service provider: an application



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by the successor employing unit, an agreement by the predecessor employer, and the evidence required by the tax collection service provider to show the benefit experience and payrolls attributable to the transferred portion through the date of the transfer. These rules must provide that the successor employing unit, if not an employer subject to this chapter, becomes an employer as of the date of the transfer and that the transferred portion of the predecessor employer's employment record is removed from the employment record of the predecessor employer. For each calendar year after the date of the transfer of the employment record in the records of the tax collection service provider, the service provider shall compute the contribution rate payable by the successor employer or employing unit based on his or her employment record, combined with the transferred portion of the predecessor employer's employment record. These rules may also prescribe what contribution rates are payable by the predecessor and successor employers for the period between the date of the transfer of the transferred portion of the predecessor employer's employment record in the records of the tax collection service provider and the first day of the next calendar year.

4. This paragraph does not apply to an employee leasing company and client contractual agreement as defined in s. 443.036, except as provided in s. 443.1216(1)(a)2.a. The tax collection service provider shall, if the contractual agreement is terminated or the employee leasing company fails to submit reports or pay contributions as required by the service provider, treat the client as a new employer without previous employment record unless the client is otherwise eligible for a



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variation from the standard rate.

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

And the title is amended as follows:

Delete lines 3 - 6

and insert:

s. 443.036, F.S.; defining and revising terms for purposes of the Reemployment Assistance Program Law; amending s. 443.091, F.S.; revising conditions under which an individual may qualify for reemployment assistance benefits; amending s. 443.111, F.S.; requiring an alternative base period to be used under certain circumstances when calculating wages in determining qualification for reemployment assistance benefits; requiring the Department of Economic Opportunity to contact an individual's employer if certain wage information is unavailable through specified means; specifying that wages that fall within an alternative base period are not available for reuse in subsequent benefit years; requiring the department to adopt rules; increasing the weekly benefit amounts an individual may receive; providing that weekly benefit amounts be determined based on the greater of the base period or alternative base period; increasing the cap on the total benefit amount an individual is entitled to receive during a benefit year; amending ss. 215.425, 443.1216, and 443.131, F.S.; conforming cross-references; reenacting ss.

By Senator Brodeur

9-01786A-21

20211906__

A bill to be entitled

An act relating to reemployment assistance; amending s. 443.111, F.S.; increasing the weekly benefit amounts an individual may receive; increasing the cap on the total benefit amount an individual is entitled to receive during a benefit year; reenacting ss. 443.041(2)(b) and 443.1116(6) and (8)(a), F.S., relating to fees and short-time compensation, respectively, to incorporate the amendments made to s. 443.111, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (3) and paragraph (b) of subsection (5) of section 443.111, Florida Statutes, are amended to read:

443.111 Payment of benefits.—

(3) WEEKLY BENEFIT AMOUNT.—An individual's "weekly benefit amount" is an amount equal to one twenty-sixth of the total wages for insured work paid during that quarter of the base period in which the total wages paid were the highest, but not less than \$100 ~~\$32~~ or more than \$375 ~~\$275~~. The weekly benefit amount, if not a multiple of \$1, is rounded downward to the nearest full dollar amount. The maximum weekly benefit amount in effect at the time the claimant establishes an individual weekly benefit amount is the maximum benefit amount applicable throughout the claimant's benefit year.

(5) DURATION OF BENEFITS.—

(b) Each otherwise eligible individual is entitled during

Page 1 of 3

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

9-01786A-21

20211906__

any benefit year to a total amount of benefits equal to 25 percent of the total wages in his or her base period, not to exceed \$8,625 ~~\$6,325~~ or the product arrived at by multiplying the weekly benefit amount with the number of weeks determined in paragraph (c), whichever is less. However, the total amount of benefits, if not a multiple of \$1, is rounded downward to the nearest full dollar amount. These benefits are payable at a weekly rate no greater than the weekly benefit amount.

Section 2. For the purpose of incorporating the amendment made by this act to section 443.111, Florida Statutes, in a reference thereto, paragraph (b) of subsection (2) of section 443.041, Florida Statutes, is reenacted to read:

443.041 Waiver of rights; fees; privileged communications.—

(2) FEES.—

(b) An attorney at law representing a claimant for benefits in any district court of appeal of this state or in the Supreme Court of Florida is entitled to counsel fees payable by the department as set by the court if the petition for review or appeal is initiated by the claimant and results in a decision awarding more benefits than provided in the decision from which appeal was taken. The amount of the fee may not exceed 50 percent of the total amount of regular benefits permitted under s. 443.111(5)(b) during the benefit year.

Section 3. For the purpose of incorporating the amendment made by this act to section 443.111, Florida Statutes, in a reference thereto, subsection (6) and paragraph (a) of subsection (8) of section 443.1116, Florida Statutes, is reenacted to read:

443.1116 Short-time compensation.—

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59 (6) WEEKLY SHORT-TIME COMPENSATION BENEFIT AMOUNT.—The
60 weekly short-time compensation benefit amount payable to an
61 individual is equal to the product of her or his weekly benefit
62 amount as provided in s. 443.111(3) and the ratio of the number
63 of normal weekly hours of work for which the employer would not
64 compensate the individual to the individual's normal weekly
65 hours of work. The benefit amount, if not a multiple of \$1, is
66 rounded downward to the next lower multiple of \$1.

67 (8) EFFECT OF SHORT-TIME COMPENSATION BENEFITS RELATING TO
68 THE PAYMENT OF REGULAR AND EXTENDED BENEFITS.—

69 (a) The short-time compensation benefits paid to an
70 individual shall be deducted from the total benefit amount
71 established for that individual in s. 443.111(5).

72 Section 4. This act shall take effect July 1, 2021.



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: March 16, 2021

I respectfully request that **SJR # 1758**, relating to Money Services Businesses, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal flourish extending to the right.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/29/21

Meeting Date

SB 1758

Bill Number (if applicable)

Topic MONEY SERVICE BUSINESS

Amendment Barcode (if applicable)

Name JOFFREY SHARKEY

Job Title President, Capital Alliance Group

Address 106 E. College Ave. #1110

Street

TLH

City

E

State

32301

Zip

Phone 850 224 1660

Email JOFFREYSHARKEY@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA BLOCKCHAIN ALLIANCE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/2021

Meeting Date

SB 1758

Bill Number (if applicable)

Topic Money Services Businesses

Amendment Barcode (if applicable)

Name Russ Weigel

Job Title Commissioner

Address 200 E Gaines St

Phone 850-410-9601

Street

Tallahassee

FL

32301

City

State

Zip

Email Russell.Weigel@flofr.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Office of Financial Regulation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1758

INTRODUCER: Senator Brandes

SUBJECT: Money Services Businesses

DATE: March 26, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

I. Summary:

SB 1758 makes several amendments to the Money Services Businesses statutes related to virtual currency. The bill:

- Defines virtual currency as a medium of exchange in electronic or digital format that is not currency;
- Subjects money transmitters to licensing requirements when transacting business involving a virtual currency; and
- Prohibits payment instruments sellers from transacting business involving virtual currency.

The bill makes additional revisions to definitions and conforming changes.

The bill takes effect January 1, 2022.

II. Present Situation:

Background on Virtual Currencies

Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and a store of value other than a representation of the U.S. dollar or a foreign currency.¹ Cryptocurrency is a type of virtual currency that utilizes cryptography to secure transactions that are digitally recorded on a distributed ledger, such as a blockchain.² Units of cryptocurrency are generally referred to as coins or tokens. Distributed ledger technology uses independent digital systems to record, share, and synchronize transactions, the details of which are recorded in multiple places at the same time with no central data store or administration functionality.

¹ Internal Revenue Service, Rev. Rul. 2019-24, <https://www.irs.gov/pub/irs-drop/rr-19-24.pdf> (last visited March 26, 2021).

² *See Id.*

U.S. regulators generally agree that virtual currency does not have legal tender status, even when it has an equivalent value in real currency or acts as substitute for real currency, as in the case of convertible virtual currencies like Bitcoin. The U.S. Internal Revenue Service classifies virtual currency as property.³ The U.S. Commodity Futures Trading Commissions (CFTC) classifies virtual currency as a commodity.⁴

While the U.S. Security and Exchange Commission has recently signaled that some virtual currencies may meet the definitions of a security subject to its regulation,⁵ most state securities administrators generally agree that virtual currency is not a security, even when purchased for investment purposes.⁶

Recent actions by Florida to begin addressing virtual currencies highlight the challenges authorities face in keeping up with emerging technologies. In 2017, the Florida Money Laundering Act was amended to include virtual currency,⁷ which is defined to mean a medium of exchange in electronic or digital format that is not a coin or currency of the United States or any other country.⁸ In 2018, the Chief Financial Officer announced the appointment of a cryptocurrency chief for the purpose of ensuring that cryptocurrencies are reliable forms of payment that do not expose Floridians to financial fraud.⁹ The Seminole County Tax Collector's Office in April 2018, began accepting bitcoin and bitcoin cash as payment for new identification cards, license plates, and property taxes.¹⁰ In 2019, the Florida Third District Court of Appeal in *State v. Espinoza*,¹¹ a criminal case involving laundering of a virtual currency, ruled that virtual currency falls within the express definitions of "monetary value" and "payment instruments" under ch. 560, F.S., governing money services businesses, thereby requiring registration of money services businesses engaged in virtual currency transactions.

Florida's Regulation of Money Services Businesses

The Office of Financial Regulation (OFR) is responsible for the administration and enforcement of ch. 560, F.S. Under the law, a person must be licensed or exempt from licensure to engage in

³ Internal Revenue Service, Notice 2014-21, <https://www.irs.gov/pub/irs-drop/n-14-21.pdf> (last visited March 26, 2021).

⁴ U.S. Commodities Futures Trading Commission, *CFTC Backgrounder on Oversight of and Approach to Virtual Currency Futures Markets* (January 4, 2018), https://www.cftc.gov/sites/default/files/idc/groups/public/%40customerprotection/documents/file/backgrounder_virtualcurrency01.pdf (last visited March 26, 2021).

⁵ U.S. Securities and Exchange Commission, *Remarks at the Yahoo Finance All Markets Summit: Crypto* (June 14, 2018)(Statement of Director William Hinman), <https://www.sec.gov/news/speech/speech-hinman-061418> (last visited March 26, 2021).

⁶ North American Securities Administrators Association, *Informed Investor Advisory: Cryptocurrencies*, <https://www.nasaa.org/44848/informed-investor-advisory-cryptocurrencies/> (last visited March 26, 2021).

⁷ Ch. 2017-155, Laws of Fla.

⁸ Section 896.101(2)(j), F.S.

⁹ Department of Financial Services, *CFO Jimmy Patronis: Florida Needs Cryptocurrency Oversight* (June 26, 2018) <https://www.myfloridacfo.com/sitePages/newsroom/pressRelease.aspx?id=5057> (last visited March 26, 2021).

¹⁰ Martin E. Comas, *Seminole Tax Collector Joel Greenberg Hires Blockchain Director as Legislators Study Technology*, Orlando Sentinel (March 4, 2019) <https://www.orlandosentinel.com/news/seminole/os-ne-seminole-tax-collector-greenberg-blockchain-20190304-story.html> (last visited March 26, 2021).

¹¹ *State v. Espinoza*, 264 So.3d 1055 (Fla. 3d DCA 2019).

the activities of a money services business.¹² State and federally chartered financial depository institutions, banks, credit card banks, credit unions, trust companies, associations, and international banking corporations are exempt from licensure under ch. 560, F.S.¹³

Under pt. II of ch. 560, F.S., corporations, limited liability companies, limited liability partnerships, and foreign entities who, for compensation,¹⁴ engage in, or in any manner advertise that they engage in the activities of a “payment instrument seller” or in the activity of a “money transmitter,” must be licensed as a money services business.

Payment Instrument Sellers

A payment instrument seller is a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which sells a payment instrument.¹⁵ A payment instrument is a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value¹⁶ whether or not negotiable, and does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.¹⁷

Current law does not address virtual currency related to payment instrument services under part II of ch. 560, F.S. However in *State v. Espinoza*,¹⁸ the court interpreted the term “monetary value” to contemplate virtual currency under s. 560.105, F.S., governing money services business, thus requiring licensure as a payment instrument seller with the OFR for transactions involving a virtual currency.

Money Transmitters

A money transmitter is a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency,¹⁹ monetary value,²⁰ or payment instruments²¹ for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment

¹² The term “money services business” means any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as a payment instrument seller, foreign currency exchanger, check casher, or money transmitter. *See* Section 560.103(22), F.S.

¹³ Section 560.104, F.S.

¹⁴ The term “compensation” includes profit or loss on the exchange of currency. Section 560.204(1), F.S.

¹⁵ Section 560.103(30), F.S.

¹⁶ The term “monetary value” means a medium of exchange, whether or not redeemable in currency.

¹⁷ Section 560.103(29), F.S.

¹⁸ *State v. Espinoza* at 1067.

¹⁹ The term “currency” means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country. *See* Section 560.103(11), F.S.

²⁰ The term “monetary value” means a medium of exchange, whether or not redeemable in currency. *See* s. 560.103(21), F.S.

²¹ The term “electronic instrument” means a card, tangible object, or other form of electronic payment for the transmission or payment of money or the exchange of monetary value, including a stored value card or device that contains a microprocessor chip, magnetic stripe, or other means for storing information; that is prefunded; and for which the value is decremented upon each use. *See* Section 560.103(14), F.S.

services or other businesses that facilitate such transfer within the United States (U.S.), or to or from the U.S.²² In contrast to the federal definition of money transmitter,²³ Florida's definition does not include a third-party transmission requirement.

Current law does not address virtual currency related to money transmitters under part II of ch. 560, F.S. However in *State v. Espinoza*,²⁴ the court interpreted the term "medium of exchange" within the definition of "monetary value" to contemplate virtual currency under ch. 560, F.S., governing money services business, thus requiring licensure as a money transmitter with the OFR for transactions involving a virtual currency.

Requirements of Payment Instrument Seller and Money Transmitter Applicants

To qualify as a payment instrument seller or money transmitter, an applicant must:

- Submit an application with the OFR and pay a nonrefundable application fee. If the application is approved, the payment instrument seller or money transmitter may, without incurring additional licensing fees, engage in the activities of a check casher or foreign currency exchanger as authorized under pt. III of ch. 560, F.S. Additionally, the payment instrument seller or money transmitter may operate through authorized vendors. Authorized vendors acting within the scope of authority conferred by the licensee are exempt from licensure but are otherwise subject to the provisions of ch. 560, F.S.;
- Submit fingerprints for live-scan processing for persons who have a controlling interest²⁵ in the applicant;
- Demonstrate to the OFR the character and general fitness necessary to command the confidence of the public and warrant the belief that the money services business shall be operated lawfully and fairly;²⁶
- Be legally authorized to do business in Florida;²⁷
- Be registered as a money services business with the Financial Crimes Enforcement Network as required by 31 C.F.R. s. 1022.380, if applicable;²⁸
- Have an anti-money laundering program (AML) which meets the requirements of 31 C.F.R. s. 1022.210.²⁹ The AML program is a licensee's written program designed to deter money laundering and the financing of terrorist activities by requiring certain record-keeping, reporting, and compliance measures; and
- Have a corporate surety bond in an amount between \$50,000 and \$2 million.³⁰ In lieu of a corporate surety bond, an applicant may deposit collateral cash, securities, or alternative security devices with a federally insured financial institution.³¹

²² Section 560.103(23), F.S.

²³ 31 CFR 1010.100(ff)(5)(i)(A)(2014).

²⁴ *State v. Espinoza* at 1067.

²⁵ The term "controlling interest" is defined in section 560.127, F.S.

²⁶ Section 560.1401(1), F.S.

²⁷ Section 560.1401(2), F.S.

²⁸ Section 560.1401(3), F.S.

²⁹ Section 560.1401(4), F.S.

³⁰ Section 560.209(3)(a), F.S.

³¹ Section 560.209(4), F.S.

Requirements of Payment Instrument Seller and Money Transmitter Licensees

A licensee must at all times maintain a net worth of at least \$100,000 and an additional \$10,000 per location in Florida, up to a maximum of \$2 million.³²

Pursuant to s. 560.123, F.S., the Florida Control of Money Laundering in Money Services Business Act, a licensee is required to maintain certain records of each transaction involving currency or payments instruments in order to deter the use of a money services business to conceal proceeds from criminal activity and to ensure the availability of such records for criminal, tax, or regulatory investigations or proceedings.

Additionally, a licensee must keep records of each transaction occurring in Florida which it knows to involve currency or other payment instruments having a greater value than \$10,000, to involve the proceeds of specified unlawful activity, or to be designed to evade the reporting requirements of s. 560.123, F.S., and ch. 896, F.S.³³

Permissive Investments

A licensee must at all times possess permissible investments (e.g. cash, certificates of deposit, shares in a money market mutual fund, etc.) with an aggregate market value, calculated in accordance with generally accepted accounting principles, of at least the aggregate face amount of all outstanding money transmissions and payment instruments issued or sold by the licensee or an authorized vendor in the U.S.³⁴ The OFR may waive the permissible investments requirement if the dollar value of a licensee's outstanding payment instruments and money transmitted do not exceed the bond or collateral deposit posted by the licensee.³⁵

Permissible investments include:

- Cash;
- Certificates of deposit or other deposit liabilities of a domestic or foreign financial institution;
- Bankers' acceptances eligible for purchase by member banks of the Federal Reserve System;
- An investment bearing a rating of one of the three highest grades as defined by a nationally recognized rating service of such securities;
- Investment securities that are obligations of the U.S., its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the U.S., or any obligations of any state or municipality, or any political subdivision thereof;
- Shares in a money market mutual fund;
- A demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;
- Receivables that are due to a licensee from the licensee's authorized vendors except those that are more than 90 days past due or are doubtful of collection; and
- Any other investment approved by rule.

³² Section 560.209(1), F.S.

³³ Section 560.209(3), F.S.

³⁴ Section 560.210(1), F.S.

³⁵ Section 560.210(3), F.S.

Current law does not address virtual currency for accounting and investment purposes under s. 560.210, F.S.

Financial Technology Sandbox

In 2020, the Legislature created the Financial Technology Sandbox within the Office of Financial Regulation to allow financial technology innovators to test new products and services in a supervised, flexible, regulatory sandbox using exceptions to specified general law and waivers of the corresponding rule requirements under defined conditions.³⁶

Currently, Financial Technology Sandbox licensees are exempt from the licensing requirements for payment instrument sellers and money transmitters under s. 560.204(1), F.S., only to the extent that the requirements would prohibit a licensee from engaging in, or advertising that it engages in, the selling or issuing of payment instruments or in the activity of a money transmitter during the 24-month³⁷ sandbox period.³⁸

III. Effect of Proposed Changes:

Section 1 amends s. 559.952, F.S., related to licensing exceptions for payment instrument sellers under the Financial Technology Sandbox, to conform with changes made to the referenced licensing requirement statute in Section 3 of the bill.

Section 2 amends s. 560.103, F.S., to define “virtual currency” to mean a medium of exchange in electronic or digital format that is not currency as defined in subsection (11). “Currency” is the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. The term “virtual currency” does not include a medium of exchange in electronic or digital format that is used:

- Solely within online gaming platforms with no market or application outside such gaming platforms; or
- Exclusively as part of a consumer affinity or rewards program and can be applied solely as payment for purchases with the issuer or other designated merchants, but cannot be converted into or redeemed for currency, monetary value, or virtual currency.

The bill amends s. 560.103(14), F.S., to revise the definition of “electronic instrument” by inserting references to currency.

The bill amends s. 560.103(21), F.S., to revise the definition of “monetary value” by inserting references to virtual currency, distinguishing it from currency.

The bill amends s. 560.103(23), F.S., to revise the definition of “money transmitter” by inserting references to payment instrument, virtual currency, currency, monetary value, and payment instruments and inserting a third-party transmission requirement. This revision has the effect of

³⁶ See s. 559.952, F.S.

³⁷ Section 559.952(3)(k), F.S.

³⁸ Section 559.952(4)(11), F.S.

subjecting a money transmitter to licensing requirements for transactions involving a virtual currency.

The bill amends s. 560.103(29), F.S., to revise the definition of “payment instrument” by inserting references to methods of transmission and exchange and inserting references to currency. This revision, paired with the other revisions to definitions in this section, has the effect of prohibiting payment instrument sellers from selling, issuing, providing, or delivering virtual currency.

The bill amends s. 560.103(35), F.S., to revise the definition of “stored value” by inserting references to currency.

Section 3 amends s. 560.204, F.S., to make a technical change to a reference to payment instrument sellers and to revise the definition of “compensation” by inserting references to monetary value and virtual currency.

Section 4 amends s. 560.210, F.S., related to permissible investments, to require a money transmitter to hold virtual currency in the same type and amount as owed or obligated to the other location of person. The held virtual currency may not be calculated as a permissible investment for purposes of equaling the aggregate face amount of all outstanding money transmission issued by the licensee.

Section 5 provides an effective date of January 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

Section 560.143, F.S., requires the following fees for money services businesses:

- For initial licensure:
 - Application fee of \$375.
 - Fingerprinting fees, to authorized live scan vendors, that average \$65 per individual with a controlling interest.
 - Fingerprint retention fees as required by rule - \$6 per individual with a controlling interest.
- Bi-annual renewal fees:
 - \$750 renewal fee
 - Fingerprint retention fees as required by rule - \$6 per individual with a controlling interest.

Additionally, licensees are required to reimburse the OFR for examination expenses. The average examination fee imposed by the office for fiscal year 2019-20 (pre-COVID) was \$3800.³⁹ This fee would be imposed on average once every five years.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 559.952, 560.103, 560.204, and 560.210.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

³⁹ Office of Financial Regulation, *Bill Analysis of SB 1758* (March 5, 2021)(On file with the Senate Committee on Banking and Insurance.

B. Amendments:

None.

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

By Senator Brandes

24-01390-21

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A bill to be entitled

An act relating to money services businesses; amending s. 559.952, F.S.; revising exceptions for a licensee during the Financial Technology Sandbox period; amending s. 560.103, F.S.; revising and providing definitions; amending s. 560.204, F.S.; prohibiting certain activities by a person without obtaining a license; revising the definition of the term "compensation"; amending s. 560.210, F.S.; providing requirements for a money transmitter that receives virtual currency; excluding virtual currency in the calculation of permissible investments; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 559.952, Florida Statutes, is amended to read:

559.952 Financial Technology Sandbox.—

(4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE REQUIREMENTS.—

(a) Notwithstanding any other law, upon approval of a Financial Technology Sandbox application, the following provisions and corresponding rule requirements are not applicable to the licensee during the sandbox period:

1. Section 516.03(1), except for the application fee, the investigation fee, the requirement to provide the social security numbers of control persons, evidence of liquid assets of at least \$25,000, and the office's authority to investigate

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the applicant's background. The office may prorate the license renewal fee for an extension granted under subsection (7).

2. Section 516.05(1) and (2), except that the office shall investigate the applicant's background.

3. Section 560.109, only to the extent that the section requires the office to examine a licensee at least once every 5 years.

4. Section 560.118(2).

5. Section 560.125(1), only to the extent that the subsection would prohibit a licensee from engaging in the business of a money transmitter or payment instrument seller during the sandbox period.

6. Section 560.125(2), only to the extent that the subsection would prohibit a licensee from appointing an authorized vendor during the sandbox period. Any authorized vendor of such a licensee during the sandbox period remains liable to the holder or remitter.

7. Section 560.128.

8. Section 560.141, except for s. 560.141(1)(a)1., 3., 7.-10. and (b), (c), and (d).

9. Section 560.142(1) and (2), except that the office may prorate, but may not entirely eliminate, the license renewal fees in s. 560.143 for an extension granted under subsection (7).

10. Section 560.143(2), only to the extent necessary for proration of the renewal fee under subparagraph 9.

11. Section 560.204(1), only to the extent that the subsection would prohibit a licensee from engaging in, or advertising that it engages in, ~~the selling or issuing of~~

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~~payment instruments or in the activity of a payment instrument seller or~~ money transmitter during the sandbox period.

12. Section 560.205(2).

13. Section 560.208(2).

14. Section 560.209, only to the extent that the office may modify, but may not entirely eliminate, the net worth, corporate surety bond, and collateral deposit amounts required under that section. The modified amounts must be in such lower amounts that the office determines to be commensurate with the factors under paragraph (5)(c) and the maximum number of consumers authorized to receive the financial product or service under this section.

Section 2. Subsections (14), (21), (23), (29), and (35) of section 560.103, Florida Statutes, are amended, and subsection (36) is added to that section, to read:

560.103 Definitions.—As used in this chapter, the term:

(14) "Electronic instrument" means a card, tangible object, or other form of electronic payment used for the transmission, ~~or payment, of money or the exchange of~~ currency or monetary value, including a stored value card or device that contains a microprocessor chip, magnetic stripe, or other means for storing information; that is prefunded; and for which the value is decremented upon each use.

(21) "Monetary value" means a medium of exchange, other than virtual currency, regardless of whether it is ~~or not~~ redeemable in currency.

(23) "Money transmitter" means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, a ~~or~~ payment instrument, or virtual

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~~currency instruments~~ for the purpose of acting as an intermediary to transmit currency, monetary value, a payment instrument, or virtual currency from one person to another location or person transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.

(29) "Payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument utilized for the transmission, exchange, or payment of currency ~~money,~~ or monetary value, regardless of whether it is ~~or not~~ negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.

(35) "Stored value" means currency funds or monetary value represented in digital electronic format, regardless of whether it is ~~or not~~ specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically.

(36) "Virtual currency" means a medium of exchange in electronic or digital format that is not currency as defined in subsection (11). The term does not include a medium of exchange in electronic or digital format that is used:

(a) Solely within online gaming platforms with no market or application outside such gaming platforms; or

(b) Exclusively as part of a consumer affinity or rewards program and can be applied solely as payment for purchases with the issuer or other designated merchants, but cannot be

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converted into or redeemed for currency, monetary value, or
virtual currency.

Section 3. Subsection (1) of section 560.204, Florida
Statutes, is amended to read:

560.204 License required.—

(1) Unless exempted, a person may not engage in, or in any
manner advertise that they engage in, ~~the selling or issuing of~~
~~payment instruments or in~~ the activity of a payment instrument
seller or money transmitter, for compensation, without first
obtaining a license under this part. For purposes of this
subsection ~~section~~, the term "compensation" includes profit or
loss on the exchange of currency, monetary value, or virtual
currency.

Section 4. Present subsections (2) and (3) of section
560.210, Florida Statutes, are redesignated as subsections (3)
and (4), respectively, and a new subsection (2) is added to that
section, to read:

560.210 Permissible investments.—

(2) Each money transmitter that receives virtual currency,
either directly or through an authorized vendor, for the purpose
of transmitting such virtual currency from one person to another
location or person must at all times hold virtual currency of
the same type and amount owed or obligated to the other location
or person. Virtual currency received and held under this
subsection is not included in the amount of outstanding money
transmissions for purposes of calculating the permissible
investments required by subsection (1).

Section 5. This act shall take effect January 1, 2022.



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: March 3, 2021

I respectfully request that **Senate Bill #1390**, relating to Capital Investment Tax Credit, be placed on the:

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

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

Cc: Todd McKay, Staff Director
Kathryn Vigrass, Committee Administrative Assistant

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21

Meeting Date

1390

Bill Number (if applicable)

Topic Capital Investment Tax Credit

Amendment Barcode (if applicable)

Name Will McKinley

Job Title President

Address 106 E. College Ave., Suite 1100

Phone (850) 681-1980

Street

Tallahassee

FL

32301

Email will@poolemckinley.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Entertainment Software 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.

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21

Meeting Date

1390

Bill Number (if applicable)

Topic Capital Investment Tax Credit

Amendment Barcode (if applicable)

Name Angela Dempsey

Job Title Vice President

Address 106 E. College Ave., Suite 1100

Phone (850) 681-1980

Street

Tallahassee

FL

32301

Email angela@poolemckinley.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Motion Picture Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21

Meeting Date

1390

Bill Number (if applicable)

Topic capital Investment Tax Credit

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Senior Policy Director

Address 136 S Bronough Street

Phone 850-521-1200

Street

Tallahassee

FL

32301

Email cjohnson@flchamber.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/29/21

Meeting Date

SB 1390

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

Job Title

Address

Street

City

State

Phone

Email

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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

S-001 (10/14/14)

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

Commerce 3:30

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21

Meeting Date

SB 1390

Bill Number (if applicable)

Topic Capital Investment Tax Credit

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1390

INTRODUCER: Commerce and Tourism Committee and Senator Gruters

SUBJECT: Capital Investment Tax Credit

DATE: March 30, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1390 amends s. 220.191, F.S., to allow eligible projects that create or develop intellectual property to qualify for the Capital Investment Tax Credit.

Under the bill, a project that creates intellectual property is eligible for a tax credit equal to 20 percent of the project's eligible capital costs if the cumulative intellectual property investment of one or more projects is in aggregate of at least \$50 million per year for 3 years, or an aggregate of \$150 million over a 3-year period. A business with a cumulative intellectual property investment of an aggregate of \$500 million over a 3-year period is eligible for a tax credit equal to 26 percent of the wages or direct production costs generated by the project. These credits may be used by the business or any corporation affiliated with the business. The bill provides conditions for the revocation and repayment of such tax credits.

A qualifying business that establishes a certain intellectual property project is eligible for a tax credit equal to up to 100 percent of its eligible production infrastructure costs if such costs exceed \$100 million during a period of up to 10 years.

A qualifying business that establishes a "strategic priority project," an intellectual property project that demonstrates the potential for measurable value to the state, is eligible for a tax credit equal to 20 percent of its eligible capital costs if the costs are at least \$75 million.

Tax credits may be applied to the qualifying business's corporate income tax liability, sales and use tax liability, or both.

The bill takes effect July 1, 2021.

II. Present Situation:

Capital Investment Tax Credit

The Capital Investment Tax Credit (CITC), established by the Legislature in 1998 to attract and grow capital-intensive industries in the state, provides an annual tax credit against corporate income tax or insurance premium tax liabilities generated by a qualifying project.¹

Eligible Projects

Section 220.191(1)(g), F.S., defines the projects that are eligible for the program. They include:

- A new or expanded facility in a designated high-impact sector² that creates at least 100 new jobs. High-impact sector projects fall into one of three tiers, depending on the project's cumulative capital investment;
- A new or expanded facility in a target industry³ that creates or retains at least 1,000 jobs, provided that at least 100 of those jobs are new, pay an annual average wage of at least 130 percent of the average private sector wage in the area, and result in a cumulative capital investment of at least \$100 million; and
- A new or expanded headquarters facility located in an enterprise zone and brownfield area that creates at least 1,500 jobs which on average pay at least 200 percent of the statewide average annual private sector wage and makes a cumulative capital investment in this state of at least \$250 million.

Tax Credits Allowable

Qualified businesses are generally allowed an annual tax credit equal to 5 percent of a project's eligible capital costs generated by a project for up to 20 years.⁴

The annual tax credit limit for the three tiers of high-impact sector projects may not exceed the following percentages of the annual corporate income or insurance premium tax liability generated by or arising out of a qualifying project:⁵

¹ Chapter 98-61, Law of Fla.

² The sectors currently designated as high impact are clean energy, life sciences, financial services, information technology, silicon technology, transportation equipment manufacturing, and corporate headquarters. See Department of Economic Opportunity, *2020 Annual Incentives Report*, 52, available at https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited Mar. 30, 2021).

³ The current qualified target industries are aviation and aerospace; corporate headquarters; clean technology; defense and homeland security; financial and professional services; global logistics and trade; information technology; life sciences; manufacturing; and research and development. See Department of Economic Opportunity, *2020 Annual Incentives Report*, 12, available at https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited Mar. 30, 2021).

⁴ Section 220.191(2)(a), F.S. Eligible capital costs include all expenses incurred in the acquisition, construction, installation, and equipping of a project from the beginning of construction to the commencement of operations.

⁵ *Id.*

- 100 percent for a qualifying project which results in a cumulative capital investment of at least \$100 million;
- 75 percent for a qualifying project which results in a cumulative capital investment of at least \$50 million but less than \$100 million; or
- 50 percent for a qualifying project which results in a cumulative capital investment of at least \$25 million but less than \$50 million.

Target industry projects are eligible for an annual credit equal to one-half of the increase in the tax liability arising out of the project without regard to the amount of eligible capital costs, but may only receive a tax credit for 5 years.⁶

Headquarters facility projects may take an annual credit equal to the lesser of 5 percent of the project's eligible capital costs or \$15 million. Tax credits for headquarters facility projects may only be applied against corporate income tax liability.⁷

Tax Credit Carryover and Transfer

Only recipients of a tax credit associated with a corporate headquarters facility project or certain high-impact sector projects are permitted to carry forward unused credit. If the full tax credit associated with a corporate headquarters facility is not used in any one year, the taxpayer can carry the unused credit forward to any year within the normal 20-year window.⁸ A high-impact sector business that meets the \$100 million capital investment threshold that was unable to fully use its available credit between years 1 and 20 is permitted to use that credit in years 21 through 30 following the commencement of operations.⁹

Generally, tax credits may not be transferred or sold to other businesses. However, if a qualifying project establishes a new solar panel manufacturing facility that generates at least 400 jobs within 6 months of commencing operations and pays those jobs at least \$50,000, it may transfer its annual tax credit to another business. A business receiving the transferred credits may only use the credits in the year received.¹⁰

Issuance of Tax Credits

The Department of Economic Opportunity (DEO) must certify a business as eligible to receive a tax credit before the commencement of operations of a qualifying project. If a business is certified, the DEO will enter into an agreement with the business that specifies the planned commencement date of operations and the total amount of credit the business can expect if the project proceeds as planned. Agreements are drafted so that a qualified business's annual credit amount begins on the date of commencement of operations, beginning the 20-year credit period. If for some reason operations do not commence on time, the 20-year window is not adjusted.¹¹

⁶ Section 220.191(1)(g)2., F.S.

⁷ Section 220.191(3)(a), F.S.

⁸ Section 220.191(3)(b), F.S.

⁹ Section 220.191(2)(d), F.S.

¹⁰ Section 220.191(2)(c), F.S.

¹¹ Florida Senate Committee on Finance and Tax, *Issue Brief 2012-2014: Review of the Capital Investment Tax Credit* (September 2011), available at <https://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-204ft.pdf> (last visited Mar. 30, 2021).

Before receiving a tax credit each year, a qualifying business must achieve and maintain its minimum employment goals beginning with the commencement of operations of a qualifying project.¹²

Economic Impact

According to the DEO, there were 61 active CITC awardees with 32 reporting performance as of Fiscal Year 2019-2020; the DEO confirmed 2,887 jobs created and over \$308 million in capital investment in said fiscal year.¹³ Over \$67 million in tax credits were approved to be claimed by qualified business in calendar year 2019.¹⁴

III. Effect of Proposed Changes:

The bill amends s. 220.191, F.S., to allow eligible projects that create or develop intellectual property to qualify for the Capital Investment Tax Credit; the bill establishes four different tax credits available to qualifying business that establish an intellectual property project.

Intellectual property includes copyrightable projects for the development of computer software or multimedia application and related expansion content; internal development platforms; cloud-based services; and data visualization and sound synchronization technologies for digital media.

Eligible capital costs for intellectual property projects are all expenses incurred in connection with the project from the start date of the project to the completion date of the project. Such expenses include, but are not limited to, wages, salaries, employer-paid taxes and benefits or other compensation paid to legal residents of Florida, as well as direct production costs paid to any business authorized to do business in Florida.

Direct production costs are direct expenses related to the preproduction, development or filming, and postproduction of intellectual property, not including the distribution and marketing of intellectual property.

Production infrastructure costs are the cost of property, including buildings, facilities, studios, soundstages, and equipment, intended to be used for the development of multiple intellectual property projects.

A project's cumulative intellectual property investment is the total investment made from the start date of the project to the completion date of the project in buildings or equipment; wages, salaries, employer-paid taxes and benefits; and direct production costs paid to any business, regardless of its location.

The annual average wage of an intellectual property project's jobs must be at least 150 percent of the average private sector wage in the area. A project that creates intellectual property may consist of one or more projects with different start and completion dates.

¹² Section 220.191(4), F.S.

¹³ Department of Economic Opportunity, *2020 Annual Incentives Report*, 8, available at https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited Mar. 30, 2021).

¹⁴ *Id* at 49.

A business that establishes an intellectual property project is eligible for a tax credit equal to 20 percent of the project's eligible capital costs if the cumulative intellectual property investment of one or more is at least \$50 million dollars per year for 3 consecutive years, or an aggregate of \$150 million over a 3-year period. A business with a cumulative intellectual property investment of an aggregate of \$500 million over a 3-year period is eligible for a tax credit equal to 26 percent of the wages or direct production costs generated by the project.

Such tax credits may be used in whole or in part by the qualifying business or any corporation associated with the business, or may be transferred to any third party within 1 year. Taxpayers electing to use the tax credit may do so in any one year or years beginning with the commencement of the project and ending the second year after the completion of the project; recipients of a transferred credit must use the credit in the year received.

If a business that receives a 20 percent tax credit fails to meet the required level of cumulative intellectual property investment, any previously issued tax credit will be revoked and rescinded. If a business that receives a 26 percent tax credit fails to meet the investment requirements, any tax credit amount that exceeds 20 percent will be revoked and rescinded. A business that uses or transfers a credit prior to its revocation and rescission must repay the credit with interest, pursuant to s. 213.235, F.S., and a 10 percent penalty.

A qualifying business that establishes an intellectual property project is eligible for a tax credit equal to up to 100 percent of its eligible production infrastructure costs if such costs exceed \$100 million during a period of up to 10 years. Tax credits may not exceed 100 percent of the business's corporate income and sales and use tax liability. A business may not carry its tax credit forward or backward; however, if a business does not have sufficient tax liability to fully use its credit in any given year, the business may use any unused amounts between the 11th and 20th years following the project's commencement of operations.

A qualifying business that establishes a "strategic priority project," an intellectual property project that demonstrates the potential for measurable value to the state, is eligible for a tax credit equal to 20 percent of the eligible capital costs if the capital costs are at least \$75 million. There is no annual average wage requirement for a strategic priority project's jobs.

Upon being granted a tax credit for a strategic priority project, taxpayers must elect to either use or transfer the tax credit. Taxpayers electing to use the tax credit may do so in any one year or years beginning with the commencement of the project and ending the second year after the completion of the project. Taxpayers electing to transfer the credit must do so within 1 year; recipients must use the credit in the year received.

Tax credits issued to businesses that establish an intellectual property project or a strategic priority project may be applied to the qualifying business's corporate income tax liability, sales and use tax liability, or both.

The DEO must first certify a business as eligible to receive a tax credit under the CITC before the commencement of operations *or the completion date* of a qualifying project. Before receiving a tax credit each year, a qualifying business must achieve and maintain its minimum employment

goals beginning with the commencement of operations *or the completion date* of a qualifying project.

The bill updates a cross-reference in s. 288.1089, F.S., referring to the definition of “cumulative investment” in s. 220.191, F.S.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill.

B. Private Sector Impact:

Qualified businesses that establish qualified intellectual property projects will realize savings on corporate income tax and sales and use tax liabilities.

C. Government Sector Impact:

The Department of Revenue estimates that it will require \$77,529 in nonrecurring funds to modify its software and databases in order to implement the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill makes several references to, but does not define, the start date and completion of an intellectual property project. For example, lines 69-71 amend the definition of “eligible capital costs” to include expenses incurred by an intellectual property project during the period from the start date of the project to the completion of the project. It is unclear if this period is intended to begin on the date the project planning begins or the date development work begins. Similarly, the completion of a project could be interpreted as the date the development of a project concludes or when the project is delivered to a client.

Eligible capital costs for intellectual property projects include wages, salaries, or other compensation paid to legal residents of Florida, but the bill does not specify whether the wages and salaries are limited to wages and salaries of the project’s jobs.

Under the bill, a project that creates or develops intellectual property may consist of one or more projects with different start and completion dates. It is unclear if all the jobs created by a business with multiple projects must pay the annual average wage requirement of 150 percent of the average private sector wage in that area. Additionally, it is unclear if a qualifying business with multiple projects would be eligible to claim a tax credit for each qualifying project.

Lines 202-208 define a “strategic priority project” as an intellectual property project that demonstrates the potential for “measurable value” to the state, but it is unclear how and by whom “value to the state” will be measured.

The bill provides for a tax credit for intellectual property projects, production infrastructure projects, and strategic priority projects in ss. 220.191(3)(a), (4), and (5)(a), F.S. Existing language for CITC tax credits offered to other projects requires projects to meet certain job creation goals in order to receive an annual tax credit for a period of 20 years; the bill does not require intellectual property projects to create a certain number of jobs in order to receive a tax credit.

Lines 310-327 and 396-412 authorize businesses with qualified intellectual property projects or strategic priority projects that receive a tax credit to either use or transfer the tax credit. However, the bill does not specify how many transfers may be made each year or how many taxpayers the credits may be transferred to.

Lines 458-463 require a qualifying business to achieve and maintain the minimum employment goals beginning with the commencement of operations *or the completion date* of a qualifying project before receiving a tax credit. Lines 464-475 require the DEO to certify a business as eligible to receive a tax credit under the CITC before the commencement of operations *or the completion date* of a qualifying project. As written, it is unclear whether the option to use the completion date of a project for certification and to meet the minimum employment goals only applies to intellectual property projects. Section 220.191(2)(a), F.S., for example, provides that a tax credit shall be granted to a qualified business for a period of 20 years beginning with the commencement of operations of the project.

The Department of Revenue requests emergency rulemaking authority to implement the bill, and recommends the following language:

“(1) The Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purposes of administering this act.

(2) Notwithstanding any other law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) This section shall take effect upon this act becoming law and expires July 1, 2022.”

VIII. Statutes Affected:

This bill substantially amends sections 220.191 and 288.1089 of the Florida Statutes.

IX. Additional Information:

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

CS by Commerce and Tourism on March 29, 2021:

The committee substitute:

- Defines “cumulative intellectual property investment,” “direct production costs,” “employer-paid taxes and benefits,” and “production infrastructure costs”;
- Expands the investment requirements that a business that establishes an intellectual property project must meet in order to receive a 20 percent tax credit;
- Creates a tax credit equal to 26 percent of a project’s wages and direct production costs for projects that meet certain investment requirements;
- Creates a tax credit equal to up to 100 percent of a project’s production infrastructure costs for projects that meet certain production infrastructure cost requirements;
- Provides that certain tax credits may be used by a business or any corporation affiliated with the business; and
- Provides conditions for the revocation and repayment of certain tax credits.

- B. **Amendments:**

None.



301108

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 220.191, Florida Statutes, is amended to
read:

220.191 Capital investment tax credit.—

(1) DEFINITIONS.—As used in ~~For purposes of~~ this section,
the term:

(a) "Commencement of operations" means the beginning of



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active operations by a qualifying business of the principal function for which a qualifying project was constructed.

(b) "Cumulative capital investment" means the total capital investment in land, buildings, and equipment made in connection with a qualifying project during the period from the beginning of construction of the project to the commencement of operations.

(c) "Cumulative intellectual property investment" means the total investment for the development of intellectual property during the period from the start date of the project to the completion of the project in buildings or equipment; in wages, salaries, or other compensation paid to employees, including amounts paid through an employee leasing company and any employer-paid taxes and benefits; and in the direct production costs paid to any business, regardless of location.

(d) "Direct production costs" means direct expenses related to the preproduction, development or filming, and postproduction of intellectual property. The term does not include the distribution and marketing of intellectual property.

(e)1.(e) "Eligible capital costs" means all expenses incurred by a qualifying business in connection with:

a. The acquisition, construction, installation, and equipping of a qualifying project during the period from the beginning of construction of the project to the commencement of operations; or

b. A qualifying project for the development or creation of intellectual property during the period from the start date of the project to the completion of the project.

2. The term includes, including, but is not limited to:



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~~a.1.~~ The costs of acquiring, constructing, installing, equipping, and financing a qualifying project, including all obligations incurred for labor and obligations to contractors, subcontractors, builders, and materialmen.

~~b.2.~~ The costs of acquiring land or rights to land and any cost incidental thereto, including recording fees.

~~c.3.~~ The costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, environmental mitigation, and supervision of construction, as well as the performance of all duties required by or consequent to the acquisition, construction, installation, and equipping of a qualifying project.

~~d.4.~~ The costs associated with the installation of fixtures and equipment; surveys, including archaeological and environmental surveys; site tests and inspections; subsurface site work and excavation; removal of structures, roadways, and other surface obstructions; filling, grading, paving, and provisions for drainage, storm water retention, and installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and offsite construction of utility extensions to the boundaries of the property.

e. For the development or creation of intellectual property, the wages, salaries, employer-paid taxes and benefits, or other compensation paid to legal residents of this state, including amounts paid through a loan-out company, an employee leasing company, or a payroll service company; and the direct production costs paid to any business authorized to do business



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in this state.

Eligible capital costs ~~do shall~~ not include the cost of any property previously owned or leased by the qualifying business.

(f) "Employer-paid taxes and benefits" includes social security tax; Medicare tax; federal unemployment and state reemployment assistance taxes; workers' compensation premiums and benefits; vacation pay, holiday pay, and sick pay; payroll-handling fees; mileage; car allowances; housing allowances; and per diem.

(g) ~~(d)~~ "Income generated by or arising out of the qualifying project" means the qualifying project's annual taxable income as determined by generally accepted accounting principles and under s. 220.13.

(h) ~~(e)~~ "Intellectual property" means a copyrightable project for which the eligible capital costs are principally paid directly or indirectly for the development or creation of the project. As used in this paragraph, the term "copyrightable project" includes, but is not limited to, a copyrightable software or multimedia application and its expansion content made available to an end user, which includes, but is not limited to, technological activities relating to updating the project; internal development platforms that support the production of multiple applications; cloud-based services that support the functionality of multiple applications; and copyrightable projects that include, but are not limited to, digital visualization and sound synchronization technologies for digital media, or that are necessary for the production of scripted content intended for theatrical, streaming, or



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98 television distribution.

99 (i) "Jobs" means full-time equivalent positions, as that
100 term is consistent with terms used by the Department of Economic
101 Opportunity and the United States Department of Labor for
102 purposes of reemployment assistance tax administration and
103 employment estimation, resulting directly from a project in this
104 state. The term does not include temporary construction jobs
105 involved in the construction of the project facility.

106 (j) "Production infrastructure costs" means the costs of
107 property intended to be used for the development of multiple
108 intellectual property projects. Such investment property
109 includes, but is not limited to, buildings, facilities, studios,
110 soundstages, and any ancillary machinery and equipment used for
111 the development of intellectual property, regardless of whether
112 the property is a fixture or is otherwise affixed to or
113 incorporated into real property. The term does not include the
114 direct production costs related to a specific intellectual
115 property project.

116 (k)~~(f)~~ "Qualifying business" means a business which
117 establishes a qualifying project or strategic priority project
118 in this state and which is certified by the Department of
119 Economic Opportunity to receive tax credits pursuant to this
120 section.

121 (l)~~(g)~~ "Qualifying project" means a facility or project in
122 this state meeting one or more of the following criteria:

123 1. A new or expanding facility in this state which creates
124 at least 100 new jobs in this state and is in one of the high-
125 impact sectors identified by Enterprise Florida, Inc., and
126 certified by the Department of Economic Opportunity pursuant to



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s. 288.108(6), including, but not limited to, aviation, aerospace, automotive, and silicon technology industries. However, between July 1, 2011, and June 30, 2014, the requirement that a facility be in a high-impact sector is waived for any otherwise eligible business from another state which locates all or a portion of its business to a Disproportionally Affected County. For purposes of this section, the term "Disproportionally Affected County" means Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa Rosa County, Walton County, or Wakulla County.

2. A new or expanded facility in this state which is engaged in a target industry designated pursuant to the procedure specified in s. 288.106(2) and which is induced by this credit to create or retain at least 1,000 jobs in this state, provided that at least 100 of those jobs are new, pay an annual average wage of at least 130 percent of the average private sector wage in the area as defined in s. 288.106(2), and make a cumulative capital investment of at least \$100 million. Jobs may be considered retained only if there is significant evidence that the loss of jobs is imminent. Notwithstanding subsection (2), annual credits against the tax imposed by this chapter may not exceed 50 percent of the increased annual corporate income tax liability or the premium tax liability generated by or arising out of a project qualifying under this subparagraph. A facility that qualifies under this subparagraph for an annual credit against the tax imposed by this chapter may take the tax credit for a period not to exceed 5 years.

3. A new or expanded headquarters facility in this state which locates in an enterprise zone and brownfield area and is



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induced by this credit to create at least 1,500 jobs which on average pay at least 200 percent of the statewide average annual private sector wage, as published by the Department of Economic Opportunity, and which new or expanded headquarters facility makes a cumulative capital investment in this state of at least \$250 million.

4. A project involving the development or creation of intellectual property, provided that the project's jobs in this state pay an annual average wage of at least 150 percent of the average private sector wage in the area as defined in s. 288.106. A project that qualifies under this subparagraph may consist of one or more projects with different start and completion dates.

(m) "Strategic priority project" means a qualifying project identified in subparagraph (1)4. which demonstrates the potential for measurable value to this state, including, but not limited to, marketing this state as a visitor destination, making improvements to infrastructure supporting future industry use, or providing measurable technology skills development for residents of this state.

(2)(a) An annual credit against the tax imposed by this chapter shall be granted to any qualifying business in an amount equal to 5 percent of the eligible capital costs generated by a qualifying project, for a period not to exceed 20 years beginning with the commencement of operations of the project. Unless assigned as described in this subsection, the tax credit shall be granted against only the corporate income tax liability or the premium tax liability generated by or arising out of the qualifying project, and the sum of all tax credits provided



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pursuant to this section shall not exceed 100 percent of the eligible capital costs of the project. In no event may any credit granted under this section be carried forward or backward by any qualifying business with respect to a subsequent or prior year. The annual tax credit granted under this section shall not exceed the following percentages of the annual corporate income tax liability or the premium tax liability generated by or arising out of a qualifying project:

1. One hundred percent for a qualifying project which results in a cumulative capital investment of at least \$100 million.

2. Seventy-five percent for a qualifying project which results in a cumulative capital investment of at least \$50 million but less than \$100 million.

3. Fifty percent for a qualifying project which results in a cumulative capital investment of at least \$25 million but less than \$50 million.

(b) A qualifying project which results in a cumulative capital investment of less than \$25 million is not eligible for the capital investment tax credit. An insurance company claiming a credit against premium tax liability under this program shall not be required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming such credit. Because credits under this section are available to an insurance company, s. 624.5091 does not limit such credit in any manner.

(c) A qualifying business that establishes a qualifying project that includes locating a new solar panel manufacturing facility in this state that generates a minimum of 400 jobs within 6 months after commencement of operations with an average



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salary of at least \$50,000 may assign or transfer the annual credit, or any portion thereof, granted under this section to any other business. However, the amount of the tax credit that may be transferred in any year shall be the lesser of the qualifying business's state corporate income tax liability for that year, as limited by the percentages applicable under paragraph (a) and as calculated before ~~prior to~~ taking any credit pursuant to this section, or the credit amount granted for that year. A business receiving the transferred or assigned credits may use the credits only in the year received, and the credits may not be carried forward or backward. To perfect the transfer, the transferor shall provide the department with a written transfer statement notifying the department of the transferor's intent to transfer the tax credits to the transferee; the date the transfer is effective; the transferee's name, address, and federal taxpayer identification number; the tax period; and the amount of tax credits to be transferred. The department shall, upon receipt of a transfer statement conforming to the requirements of this paragraph, provide the transferee with a certificate reflecting the tax credit amounts transferred. A copy of the certificate must be attached to each tax return for which the transferee seeks to apply such tax credits.

(d) If the credit granted under subparagraph (a)1. is not fully used in any one year because of insufficient tax liability on the part of the qualifying business, the unused amounts may be used in any one year or years beginning with the 21st year after the commencement of operations of the project and ending the 30th year after the commencement of operations of the



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project.

(3)(a)1. Notwithstanding subsection (2), a credit against the tax imposed by this chapter, against state taxes collected or accrued under chapter 212, or against a stated combination of the two taxes must be granted to a qualifying business that establishes a qualifying project identified in subparagraph (1)(1)4. for which the cumulative intellectual property investment of one or more projects is, at the election of the qualifying business, at least:

a. Fifty million dollars per year for 3 consecutive years;

b. An aggregate of \$150 million over a 3-year period; or

c. An aggregate of \$500 million over a 3-year period.

2. For sub-subparagraphs 1.a. and b., the tax credit must be granted in an amount equal to 20 percent of the eligible capital costs generated by the qualifying project. The tax credit must be granted against the tax liability of the qualifying business.

3. For projects meeting the threshold of sub-subparagraph 1.c., the tax credit must be granted in an amount equal to 26 percent of the eligible wages, salaries, employer paid taxes and benefits, or other compensation paid to any individual, including amounts paid through an employee leasing company, and the direct production costs paid to any business, regardless of the location, generated by the qualifying project. The tax credit must be granted against the tax liability of the qualifying business.

(b)1. The credit granted under this subsection may be used in whole or in part by the qualifying business or any corporation that is a member of that qualifying business'



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affiliated group of corporations. Any credit may be used by any
of the affiliated corporations to the same extent as it could
have been used by the qualifying business. However, any such use
may not operate to increase the amount of the credit or extend
the period within which the credit must be used.

2. The credit granted under this subsection may be
transferred to any third party. A qualifying business that
elects to transfer the tax credit shall transfer the tax credit
within 1 year after the date the tax credit is granted. A
business receiving the transferred tax credit may use the credit
only in the year received, and the credit may not be carried
forward or backward. To perfect the transfer, the transferor
shall provide the department with a written transfer statement
of the transferor's intent to transfer the tax credits to the
transferee; the date the transfer is effective; the transferee's
name, address, and federal taxpayer identification number; the
tax period to which the transfer applies; and the amount of tax
credits to be transferred. The department shall, upon receipt of
a transfer statement conforming to the requirements of this
subparagraph, provide the transferee with a certificate
reflecting the tax credit amounts transferred. A copy of the
certificate must be attached to each tax return for which the
transferee seeks to apply such tax credits.

(c) A qualifying business that elects to use the tax credit
may use the tax credit in any one year or years beginning with
the commencement of the project and ending the second year after
the completion of the project.

(d) Notwithstanding the cumulative intellectual property
investment thresholds under subparagraph (a)1., tax credits must



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be granted as costs described in that subparagraph are certified by the Department of Economic Opportunity.

(e)1. In any year in which the qualifying business fails to meet the level of cumulative intellectual property investment required by this subsection for that year:

a. For purposes of sub-subparagraph (a)1.a., any previously granted tax credit issued pursuant to this subsection in such year must be revoked and rescinded.

b. For purposes of sub-subparagraph (a)1.b., any previously granted tax credit issued pursuant to this subsection must be revoked and rescinded.

c. For purposes of sub-subparagraph (a)1.c., the portion of any previously granted tax credit that exceeds 20 percent of costs specified in subparagraph (a)3. which was issued pursuant to this subsection must be revoked and rescinded. However, if the total cumulative intellectual property investment is less than \$150 million, sub-subparagraph b. applies.

2. This paragraph may not result in the revocation or rescission of any credits or incentives awarded to a project outside of this subsection.

3. If such revoked and rescinded credit has already been claimed on a return, the business must repay the credit plus the interest applicable under s. 213.235 and a 10 percent penalty.

4. If such revoked and rescinded credit has already been transferred to another business, the transferor must repay the credit plus interest applicable under s. 231.235 and a 10 percent penalty.

(4) Notwithstanding subsection (2), an annual credit against the tax imposed by this chapter, against state taxes



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collected or accrued under chapter 212, or against a stated combination of the two taxes must be granted to a qualifying business that establishes a qualifying project that incurs eligible production infrastructure costs in this state exceeding \$100 million during a period not to exceed 10 years, beginning with the commencement of operations of the project. The sum of all tax credits provided pursuant to this subsection may not exceed 100 percent of the eligible production infrastructure costs of the project. Any credit granted under this subsection may not be carried forward or backward by any qualifying business with respect to a subsequent or prior year. The annual tax credit granted under this section may not exceed 100 percent of the sum of the annual corporate income tax liability and the sales and use tax liability of the qualifying business. If the credit granted under this subsection is not fully used in any given year because of insufficient tax liability on the part of the qualifying business, the unused amounts may be used in any given year or years beginning with the 11th year after the commencement of operations of the project and ending the 20th year after the commencement of operations of the project.

(5)(a) Notwithstanding subsection (2), a credit against the tax imposed by this chapter, against state taxes collected or accrued under chapter 212, or against a stated combination of the two taxes must be granted to a qualifying business that establishes a strategic priority project as defined in paragraph (1)(i), for which the eligible capital costs are at least \$75 million. The tax credit must be granted in an amount equal to 20 percent of the eligible capital costs generated by the qualifying project. The tax credit must be granted against the



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tax liability of the qualifying business.

(b) At the time a tax credit is granted under this subsection, a qualifying business granted the credit shall elect to either use or transfer the tax credit.

1. A qualifying business that elects to transfer the tax credit shall transfer the tax credit within 1 year after the date the tax credit is granted. A business receiving the transferred tax credit may use the credit only in the year received, and the credit may not be carried forward or backward. To perfect the transfer, the transferor shall provide the department with a written transfer statement of the transferor's intent to transfer the tax credits to the transferee; the effective date of the transfer; the transferee's name, address, and federal taxpayer identification number; the tax period to which the transfer applies; and the amount of tax credits to be transferred. Upon receipt of a transfer statement conforming to the requirements of this subparagraph, the department shall provide the transferee with a certificate reflecting the tax credit amounts transferred. A copy of the certificate must be attached to each tax return for the period for which the transferee seeks to apply such tax credits.

2. A qualifying business that elects to use the tax credit may use the tax credit in any one year or years beginning with the commencement of the project and ending the second year after the completion of the project.

(6) (a) Notwithstanding subsection (2), an annual credit against the tax imposed by this chapter ~~must~~ ~~shall~~ be granted to a qualifying business which establishes a qualifying project pursuant to subparagraph (1)(1)3. ~~(1)(g)3.~~, in an amount equal



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to the lesser of \$15 million or 5 percent of the eligible capital costs made in connection with a qualifying project, for a period not to exceed 20 years beginning with the commencement of operations of the project. The tax credit must ~~shall~~ be granted against the corporate income tax liability of the qualifying business and as further provided in paragraph (c). The total tax credit provided pursuant to this subsection must ~~shall~~ be equal to no more than 100 percent of the eligible capital costs of the qualifying project.

(b) If the credit granted under this subsection is not fully used in any one year because of insufficient tax liability on the part of the qualifying business, the unused amount may be carried forward for a period not to exceed 20 years after the commencement of operations of the project. The carryover credit may be used in a subsequent year when the tax imposed by this chapter for that year exceeds the credit for which the qualifying business is eligible in that year under this subsection after applying the other credits and unused carryovers in the order provided by s. 220.02(8).

(c) The credit granted under this subsection may be used in whole or in part by the qualifying business or any corporation that is either a member of that qualifying business's affiliated group of corporations, is a related entity taxable as a cooperative under subchapter T of the Internal Revenue Code, or, if the qualifying business is an entity taxable as a cooperative under subchapter T of the Internal Revenue Code, is related to the qualifying business. Any entity related to the qualifying business may continue to file as a member of a Florida-nexus consolidated group pursuant to a prior election made under s.



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220.131(1), Florida Statutes (1985), even if the parent of the group changes due to a direct or indirect acquisition of the former common parent of the group. Any credit can be used by any of the affiliated companies or related entities referenced in this paragraph to the same extent as it could have been used by the qualifying business. However, any such use shall not operate to increase the amount of the credit or extend the period within which the credit must be used.

~~(7)(4)~~ Before ~~Prior to~~ receiving tax credits pursuant to this section, a qualifying business must achieve and maintain the minimum employment goals beginning with the commencement of operations or the completion date of ~~a~~ a qualifying project and continuing each year thereafter during which tax credits are available pursuant to this section.

~~(8)(5)~~ Applications must ~~shall~~ be reviewed and certified pursuant to s. 288.061. The Department of Economic Opportunity, upon a recommendation by Enterprise Florida, Inc., shall first certify a business as eligible to receive tax credits pursuant to this section before ~~prior to~~ the commencement of operations or the completion date of a qualifying project, and such certification must ~~shall~~ be transmitted to the Department of Revenue. Upon receipt of the certification, the Department of Revenue shall enter into a written agreement with the qualifying business specifying, at a minimum, the method by which income generated by or arising out of the qualifying project will be determined.

~~(9)(6)~~ The Department of Economic Opportunity, in consultation with Enterprise Florida, Inc., is authorized to develop the necessary guidelines and application materials for



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the certification process described in subsection (8)~~(5)~~.

(10)~~(7)~~ It shall be the responsibility of the qualifying business to affirmatively demonstrate to the satisfaction of the Department of Revenue that such business meets the job creation and capital investment requirements of this section.

(11)~~(8)~~ The Department of Revenue may specify by rule the methods by which a project's pro forma annual taxable income is determined.

Section 2. Paragraph (d) of subsection (2) of section 288.1089, Florida Statutes, is amended to read:

288.1089 Innovation Incentive Program.—

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

(d) "Cumulative investment" means cumulative capital investment and all eligible capital costs, as defined in s. 220.191, Florida Statutes (2020).

Section 3. This act shall take effect July 1, 2021.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the capital investment tax credit; amending s. 220.191, F.S.; defining and redefining terms; providing a credit against the corporate income tax, the sales and use tax, or a stated combination of the two taxes to a qualifying business that establishes a qualifying project for the creation of intellectual property which meets certain capital



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investment criteria; specifying the calculation of the credit; authorizing use of the credit or portions of the credit by the business members of its affiliated group of corporations; authorizing the transfer of credits, subject to certain conditions; requiring credits to be granted as costs are certified by the Department of Economic Opportunity; providing for revocation and rescission of credits under certain circumstances; providing a credit against the corporate income tax, the sales and use tax, or a stated combination of the two taxes to a qualifying business that incurs eligible production infrastructure costs that exceed a certain threshold; specifying the calculation of the credit; prohibiting the carryover of credits; authorizing use of unused credits after a certain time period; providing a credit against the corporate income tax, the sales and use tax, or a stated combination of the two taxes to a qualifying business that establishes a strategic priority project that meets certain capital investment criteria; specifying the calculation of the credit; authorizing the carryover or transfer of credits, subject to certain conditions; conforming provisions to changes made by the act; amending s. 288.1089, F.S.; revising the definition of the term "cumulative investment"; providing an effective date.

By Senator Gruters

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A bill to be entitled

An act relating to the capital investment tax credit; amending s. 220.191, F.S.; redefining terms; defining the terms "intellectual property" and "strategic priority project"; providing a credit against the corporate income tax, the sales and use tax, or a stated combination of the two taxes to a qualifying business that establishes a qualifying project for the creation of intellectual property which meets certain capital investment criteria; specifying the calculation of the credit; authorizing the carryover or transfer of credits, subject to certain conditions; providing a credit against the corporate income tax, the sales and use tax, or a stated combination of the two taxes to a qualifying business that establishes a strategic priority project that meets certain capital investment criteria; specifying the calculation of the credit; authorizing the carryover or transfer of credits, subject to certain conditions; conforming provisions to changes made by the act; amending s. 288.1089, F.S.; revising the definition of the term "cumulative investment" to conform to changes made by the act; providing an effective date.

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

Section 1. Section 220.191, Florida Statutes, is amended to read:

220.191 Capital investment tax credit.—

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

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(1) DEFINITIONS.—As used in ~~For purposes of~~ this section, the term:

(a) "Commencement of operations" means the beginning of active operations by a qualifying business of the principal function for which a qualifying project was constructed.

(b) "Cumulative capital investment" means the total capital investment in land, buildings, and equipment made in connection with a qualifying project during the period from the beginning of construction of the project to the commencement of operations.

(c) 1. "Eligible capital costs" means all expenses incurred by a qualifying business in connection with:

a. The acquisition, construction, installation, and equipping of a qualifying project during the period from the beginning of construction of the project to the commencement of operations; or

b. A qualifying project for the development or creation of intellectual property during the period from the start date of the project to the completion of the project.

2. The term includes, ~~including~~, but is not limited to:

a.1- The costs of acquiring, constructing, installing, equipping, and financing a qualifying project, including all obligations incurred for labor and obligations to contractors, subcontractors, builders, and materialmen.

b.2- The costs of acquiring land or rights to land and any cost incidental thereto, including recording fees.

c.3- The costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, environmental

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mitigation, and supervision of construction, as well as the performance of all duties required by or consequent to the acquisition, construction, installation, and equipping of a qualifying project.

~~d.4.~~ The costs associated with the installation of fixtures and equipment; surveys, including archaeological and environmental surveys; site tests and inspections; subsurface site work and excavation; removal of structures, roadways, and other surface obstructions; filling, grading, paving, and provisions for drainage, storm water retention, and installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and offsite construction of utility extensions to the boundaries of the property.

e. For the development or creation of intellectual property, the wages, salaries, or other compensation paid to legal residents of this state, including amounts paid through a loan-out company, an employee leasing company, or a payroll service company. The term also includes expenditures for the rental of tangible personal property or the provision of services directly related to the development or creation of intellectual property.

Eligible capital costs ~~do shall~~ not include the cost of any property previously owned or leased by the qualifying business.

(d) "Income generated by or arising out of the qualifying project" means the qualifying project's annual taxable income as determined by generally accepted accounting principles and under s. 220.13.

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(e) "Intellectual property" means a copyrightable project for which the eligible capital costs are principally paid directly or indirectly for the development or creation of the project. As used in this paragraph, the term "copyrightable project" includes, but is not limited to, a copyrightable software or multimedia application and its expansion content made available to an end user, which includes, but is not limited to, technological activities relating to updating the project; internal development platforms that support the production of multiple applications; cloud-based services that support the functionality of multiple applications; and copyrightable projects that include, but are not limited to, digital visualization and sound synchronization technologies for digital media, or that are necessary for the production of scripted content intended for theatrical, streaming, or television distribution.

(f) "Jobs" means full-time equivalent positions, as that term is consistent with terms used by the Department of Economic Opportunity and the United States Department of Labor for purposes of reemployment assistance tax administration and employment estimation, resulting directly from a project in this state. The term does not include temporary construction jobs involved in the construction of the project facility.

~~(g)-(f)~~ "Qualifying business" means a business which establishes a qualifying project or strategic priority project in this state and which is certified by the Department of Economic Opportunity to receive tax credits pursuant to this section.

~~(h)-(g)~~ "Qualifying project" means a facility or project in

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this state meeting one or more of the following criteria:

1. A new or expanding facility in this state which creates at least 100 new jobs in this state and is in one of the high-impact sectors identified by Enterprise Florida, Inc., and certified by the Department of Economic Opportunity pursuant to s. 288.108(6), including, but not limited to, aviation, aerospace, automotive, and silicon technology industries. However, between July 1, 2011, and June 30, 2014, the requirement that a facility be in a high-impact sector is waived for any otherwise eligible business from another state which locates all or a portion of its business to a Disproportionally Affected County. For purposes of this section, the term "Disproportionally Affected County" means Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa Rosa County, Walton County, or Wakulla County.

2. A new or expanded facility in this state which is engaged in a target industry designated pursuant to the procedure specified in s. 288.106(2) and which is induced by this credit to create or retain at least 1,000 jobs in this state, provided that at least 100 of those jobs are new, pay an annual average wage of at least 130 percent of the average private sector wage in the area as defined in s. 288.106(2), and make a cumulative capital investment of at least \$100 million. Jobs may be considered retained only if there is significant evidence that the loss of jobs is imminent. Notwithstanding subsection (2), annual credits against the tax imposed by this chapter may not exceed 50 percent of the increased annual corporate income tax liability or the premium tax liability generated by or arising out of a project qualifying under this

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subparagraph. A facility that qualifies under this subparagraph for an annual credit against the tax imposed by this chapter may take the tax credit for a period not to exceed 5 years.

3. A new or expanded headquarters facility in this state which locates in an enterprise zone and brownfield area and is induced by this credit to create at least 1,500 jobs which on average pay at least 200 percent of the statewide average annual private sector wage, as published by the Department of Economic Opportunity, and which new or expanded headquarters facility makes a cumulative capital investment in this state of at least \$250 million.

4. A project involving the creation of intellectual property, provided that the project's jobs in this state pay an annual average wage of at least 150 percent of the average private sector wage in the area as defined in s. 288.106. A project that qualifies under this subparagraph may consist of one or more projects with different start and completion dates.

(i) "Strategic priority project" means a qualifying project identified in subparagraph (h)4. which demonstrates the potential for measurable value to this state, including, but not limited to, marketing Florida as a visitor destination, improvements to infrastructure supporting future industry use, or measurable technology skills development for residents of this state.

(2) (a) An annual credit against the tax imposed by this chapter shall be granted to any qualifying business in an amount equal to 5 percent of the eligible capital costs generated by a qualifying project, for a period not to exceed 20 years beginning with the commencement of operations of the project.

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Unless assigned as described in this subsection, the tax credit shall be granted against only the corporate income tax liability or the premium tax liability generated by or arising out of the qualifying project, and the sum of all tax credits provided pursuant to this section shall not exceed 100 percent of the eligible capital costs of the project. In no event may any credit granted under this section be carried forward or backward by any qualifying business with respect to a subsequent or prior year. The annual tax credit granted under this section shall not exceed the following percentages of the annual corporate income tax liability or the premium tax liability generated by or arising out of a qualifying project:

1. One hundred percent for a qualifying project which results in a cumulative capital investment of at least \$100 million.

2. Seventy-five percent for a qualifying project which results in a cumulative capital investment of at least \$50 million but less than \$100 million.

3. Fifty percent for a qualifying project which results in a cumulative capital investment of at least \$25 million but less than \$50 million.

(b) A qualifying project which results in a cumulative capital investment of less than \$25 million is not eligible for the capital investment tax credit. An insurance company claiming a credit against premium tax liability under this program shall not be required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming such credit. Because credits under this section are available to an insurance company, s. 624.5091 does not limit such credit in any manner.

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(c) A qualifying business that establishes a qualifying project that includes locating a new solar panel manufacturing facility in this state that generates a minimum of 400 jobs within 6 months after commencement of operations with an average salary of at least \$50,000 may assign or transfer the annual credit, or any portion thereof, granted under this section to any other business. However, the amount of the tax credit that may be transferred in any year shall be the lesser of the qualifying business's state corporate income tax liability for that year, as limited by the percentages applicable under paragraph (a) and as calculated before ~~prior to~~ taking any credit pursuant to this section, or the credit amount granted for that year. A business receiving the transferred or assigned credits may use the credits only in the year received, and the credits may not be carried forward or backward. To perfect the transfer, the transferor shall provide the department with a written transfer statement notifying the department of the transferor's intent to transfer the tax credits to the transferee; the date the transfer is effective; the transferee's name, address, and federal taxpayer identification number; the tax period; and the amount of tax credits to be transferred. The department shall, upon receipt of a transfer statement conforming to the requirements of this paragraph, provide the transferee with a certificate reflecting the tax credit amounts transferred. A copy of the certificate must be attached to each tax return for which the transferee seeks to apply such tax credits.

(d) If the credit granted under subparagraph (a)1. is not fully used in any one year because of insufficient tax liability

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on the part of the qualifying business, the unused amounts may be used in any one year or years beginning with the 21st year after the commencement of operations of the project and ending the 30th year after the commencement of operations of the project.

(3) (a) Notwithstanding subsection (2), a credit against the tax imposed by this chapter, against state taxes collected or accrued under chapter 212, or against a stated combination of the two taxes must be granted to a qualifying business that establishes a qualifying project identified in subparagraph (1) (h) 4. for which the eligible capital costs of one or more projects are an aggregate of at least \$50 million per year for 3 years. The tax credit must be granted in an amount equal to 20 percent of the eligible capital costs generated by the qualifying project. The tax credit shall be granted against the tax liability of the qualifying business.

(b) At the time a tax credit is granted under this subsection, a qualifying business granted the credit shall elect to either use or transfer the tax credit.

1. A qualifying business that elects to transfer the tax credit shall transfer the tax credit within 1 year after the date the tax credit is granted. A business receiving the transferred tax credit may use the credit only in the year received, and the credit may not be carried forward or backward. To perfect the transfer, the transferor shall provide the department with a written transfer statement of the transferor's intent to transfer the tax credits to the transferee; the date the transfer is effective; the transferee's name, address, and federal taxpayer identification number; the tax period to which

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the transfer applies; and the amount of tax credits to be transferred. The department shall, upon receipt of a transfer statement conforming to the requirements of this subparagraph, provide the transferee with a certificate reflecting the tax credit amounts transferred. A copy of the certificate must be attached to each tax return for which the transferee seeks to apply such tax credits.

2. A qualifying business that elects to use the tax credit may use the tax credit in any one year or years beginning with the commencement of the project and ending the second year after the completion of the project.

(4) (a) Notwithstanding subsection (2), a credit against the tax imposed by this chapter, against state taxes collected or accrued under chapter 212, or against a stated combination of the two taxes must be granted to a qualifying business that establishes a strategic priority project as defined in paragraph (1) (i), for which the eligible capital costs are at least \$75 million. The tax credit must be granted in an amount equal to 20 percent of the eligible capital costs generated by the qualifying project. The tax credit shall be granted against the tax liability of the qualifying business.

(b) At the time a tax credit is granted under this subsection, a qualifying business granted the credit shall elect to either use or transfer the tax credit.

1. A qualifying business that elects to transfer the tax credit shall transfer the tax credit within 1 year after the date the tax credit is granted. A business receiving the transferred tax credit may use the credit only in the year received, and the credit may not be carried forward or backward.

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291 To perfect the transfer, the transferor shall provide the
 292 department with a written transfer statement of the transferor's
 293 intent to transfer the tax credits to the transferee; the
 294 effective date of the transfer; the transferee's name, address,
 295 and federal taxpayer identification number; the tax period to
 296 which the transfer applies; and the amount of tax credits to be
 297 transferred. Upon receipt of a transfer statement conforming to
 298 the requirements of this subparagraph, the department shall
 299 provide the transferee with a certificate reflecting the tax
 300 credit amounts transferred. A copy of the certificate must be
 301 attached to each tax return for the period for which the
 302 transferee seeks to apply such tax credits.

303 2. A qualifying business that elects to use the tax credit
 304 may use the tax credit in any one year or years beginning with
 305 the commencement of the project and ending the second year after
 306 the completion of the project.

307 (5) (a) Notwithstanding subsection (2), an annual credit
 308 against the tax imposed by this chapter must ~~shall~~ be granted to
 309 a qualifying business which establishes a qualifying project
 310 pursuant to subparagraph (1) (h) 3. ~~(1) (g) 3.~~, in an amount equal
 311 to the lesser of \$15 million or 5 percent of the eligible
 312 capital costs made in connection with a qualifying project, for
 313 a period not to exceed 20 years beginning with the commencement
 314 of operations of the project. The tax credit must ~~shall~~ be
 315 granted against the corporate income tax liability of the
 316 qualifying business and as further provided in paragraph (c).
 317 The total tax credit provided pursuant to this subsection must
 318 ~~shall~~ be equal to no more than 100 percent of the eligible
 319 capital costs of the qualifying project.

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320 (b) If the credit granted under this subsection is not
 321 fully used in any one year because of insufficient tax liability
 322 on the part of the qualifying business, the unused amount may be
 323 carried forward for a period not to exceed 20 years after the
 324 commencement of operations of the project. The carryover credit
 325 may be used in a subsequent year when the tax imposed by this
 326 chapter for that year exceeds the credit for which the
 327 qualifying business is eligible in that year under this
 328 subsection after applying the other credits and unused
 329 carryovers in the order provided by s. 220.02(8).

330 (c) The credit granted under this subsection may be used in
 331 whole or in part by the qualifying business or any corporation
 332 that is either a member of that qualifying business's affiliated
 333 group of corporations, is a related entity taxable as a
 334 cooperative under subchapter T of the Internal Revenue Code, or,
 335 if the qualifying business is an entity taxable as a cooperative
 336 under subchapter T of the Internal Revenue Code, is related to
 337 the qualifying business. Any entity related to the qualifying
 338 business may continue to file as a member of a Florida-nexus
 339 consolidated group pursuant to a prior election made under s.
 340 220.131(1), Florida Statutes (1985), even if the parent of the
 341 group changes due to a direct or indirect acquisition of the
 342 former common parent of the group. Any credit can be used by any
 343 of the affiliated companies or related entities referenced in
 344 this paragraph to the same extent as it could have been used by
 345 the qualifying business. However, any such use shall not operate
 346 to increase the amount of the credit or extend the period within
 347 which the credit must be used.

348 (6) ~~(4)~~ Before ~~Prior to~~ receiving tax credits pursuant to

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349 this section, a qualifying business must achieve and maintain
 350 the minimum employment goals beginning with the commencement of
 351 operations or the completion date of ~~at~~ a qualifying project and
 352 continuing each year thereafter during which tax credits are
 353 available pursuant to this section.

354 (7)(5) ~~Applications must shall~~ be reviewed and certified
 355 pursuant to s. 288.061. The Department of Economic Opportunity,
 356 upon a recommendation by Enterprise Florida, Inc., shall first
 357 certify a business as eligible to receive tax credits pursuant
 358 to this section before ~~prior to~~ the commencement of operations
 359 or the completion date of a qualifying project, and such
 360 certification must shall be transmitted to the Department of
 361 Revenue. Upon receipt of the certification, the Department of
 362 Revenue shall enter into a written agreement with the qualifying
 363 business specifying, at a minimum, the method by which income
 364 generated by or arising out of the qualifying project will be
 365 determined.

366 (8)(6) ~~The Department of Economic Opportunity, in~~
 367 consultation with Enterprise Florida, Inc., is authorized to
 368 develop the necessary guidelines and application materials for
 369 the certification process described in subsection (7)(5).

370 (9)(7) ~~It shall be the responsibility of the qualifying~~
 371 business to affirmatively demonstrate to the satisfaction of the
 372 Department of Revenue that such business meets the job creation
 373 and capital investment requirements of this section.

374 (10)(8) ~~The Department of Revenue may specify by rule the~~
 375 methods by which a project's pro forma annual taxable income is
 376 determined.

377 Section 2. Paragraph (d) of subsection (2) of section

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

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378 288.1089, Florida Statutes, is amended to read:

379 288.1089 Innovation Incentive Program.—

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

381 (d) "Cumulative investment" means cumulative capital
 382 investment and all eligible capital costs, as defined in s.
 383 220.191, Florida Statutes (2020).

384 Section 3. This act shall take effect July 1, 2021.

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



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: March 18, 2021

I respectfully request that **Senate Bill #1682**, relating to Telephone Solicitation, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

Cc: Todd McKay, Staff Director
Kathryn Vigrass, Committee Administrative Assistant

THE FLORIDA SENATE
APPEARANCE RECORD

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

SB/682

Bill Number (if applicable)

Meeting Date _____

Topic Telephone Solicitation

Amendment Barcode (if applicable) _____

Name Ed Normand

Job Title Attorney

Address 3165 McCrary place

Phone 407 625 9043

Street

Orlando

FL

32803

City

State

Zip

Email Ed@EdNormand.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Justice 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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

SB 1682

3/29/21

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

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

Job Title

Address

Street

City

State

Zip

Phone

Email

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1682

INTRODUCER: Senator Gruters

SUBJECT: Telephone Solicitation

DATE: March 26, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Harmsen	McKay	CM	Favorable
2. _____	_____	RI	_____
3. _____	_____	RC	_____

I. Summary:

The bill requires all sales telephone calls, text messages, and direct-to-voicemail transmissions to have the receiving consumer's prior express written consent if the call will (1) be made using an automated machine to dial the recipient's phone number, or (2) play a recorded message upon connection with the recipient.

The bill creates a rebuttable presumption that a telephonic sales call that is made to a Florida area code is made either to a Florida resident or to a person in this state at the time of the call.

The bill creates a private right of action to enforce violations of s. 501.059, F.S.

II. Present Situation:

Unsolicited Phone Calls

Consumers are often inundated with unwanted calls. In fiscal year 2020, the Federal Trade Commission (FTC) received 293,071 complaints from Florida consumers about unwanted telephone calls.¹ The Federal Communications Commission (FCC) reports that unwanted calls constitute their top consumer complaint.² Unwanted calls can come in many forms, including

¹ Federal Trade Commission, *Do Not Call Data Book 2020*, (Oct. 2020), available at https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2020/dnc_data_book_2020.pdf (last visited Mar. 26, 2020).

² Federal Communications Commission, *Stop Unwanted Calls and Texts*, (Mar. 2, 2021) <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Mar. 26, 2021).

robocalls,³ which use an autodialer⁴ and play a recorded message upon connection with the consumer; spoofed calls, which transmit falsified information to a consumer's caller ID to disguise the solicitor's identity; and unwanted telemarketing calls.

State and federal action is limited to combat these issues because there are legitimate and legal uses of this technology. For example, a doctor's office may legally use a robocall to remind one of an upcoming appointment.⁵ Additionally, some solicitors act outside the scope of federal or state enforcement authority.

Federal Law

*Telephone Consumer Protection Act*⁶

The Telephone Consumer Protection Act of 1991 (TCPA) protects U.S. consumers from unwanted communications by restricting the use of automatic telephone dialing system (autodialers), prerecorded sales messages, and unsolicited sales calls, text messages, or faxes.

The TCPA prohibits telephone solicitations that:

- Are made to residences before 8 am, and after 9 pm;
- Fail to provide the consumer with the solicitor's identity, including his or her true phone number via caller identification service,⁷ and an opportunity to opt out of the current call, and all future calls made by that solicitor;
- Send pre-recorded messages to a residential line without the consumer's prior express consent;⁸ and
- Use an autodialer or pre-recorded messages to a cellular, emergency, or hospital room line without prior express consent. Any telemarketing calls made to a cellular telephone number require *written* prior express consent; all others require either oral or written consent.⁹ This specific provision does not apply to residential phone lines.¹⁰

³ "At the FCC, we use the term 'robocalls' to refer not to just prerecorded calls but also autodialed calls, regardless of whether the call is live or prerecorded." *Stopping Fraudulent Robocall Scams: Can More be Done?*, Hearing Before the S. Subcomm. On Cons. Protection, Product Safety, and Ins. Of the Comm. On Commerce, Science, and Transp., 130th Cong. (July 10, 2013)(Statement of Eric J. Bash, Assoc. Chief, Enforcement Bureau, FCC).

<https://www.govinfo.gov/content/pkg/CHRG-113shrg85765/pdf/CHRG-113shrg85765.pdf> (last visited Mar. 26, 2021).

⁴ An autodialer 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).

⁵ FCC, Consumer and Governmental Affairs Bureau, *Report on Robocalls 2-4* (Feb. 2019), CG Docket No. 17-59, available at <https://www.fcc.gov/document/fcc-issues-report-illegal-robocalls> (last visited Mar. 26, 2021). See also, FCC, *Stop Unwanted Calls and Texts--Spoofing*, (Mar. 2, 2021) <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Mar. 26, 2021).

⁶ 47 U.S.C. § 227. See also, 47 CFR § 64.1200 (2012).

⁷ 47 CFR § 64.1601(e). See also, FCC, *Public Notice: FCC's Caller ID Rules for Telemarketers Become Effective* (Jan. 29, 2004) https://apps.fcc.gov/edocs_public/attachmatch/DA-04-206A1.pdf (last visited Mar. 26, 2021).

⁸ See also, 47 CFR § 64.1200(a)(7)(i)(B), (b)(3). Certain calls made to a residential line, such as those by a tax-exempt nonprofit organization or calls that are subject to HIPPA may be made without prior express consent.

⁹ FCC, *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 7999, para. 4 (Jun. 18, 2015).

¹⁰ In 2015, language was added to the TCPA to allow robocalls and autodialed calls to cell phones for the purpose of collecting a debt owed to the U.S. government. See 47 U.S.C. § 227(b)(1)(A)(iii). This provision was severed from the by the U.S. Supreme Court in 2020 based on their finding that it was a content-specific speech regulation in violation of the first amendment. The Court left the TCPA's prohibition of robocalls and autodialed calls to cell phones intact. *Barr v. American Assc. Of Political Consultants, Inc.*, 140 S. Ct. 2335 (2020). See also, 47 CFR § 64.1200(f)(8).

The TCPA defines autodialers as “equipment which has the capacity—(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.”¹¹

The TCPA grants a private right of action to pursue actual monetary damages or up to \$500 per violation.¹² State attorneys general and the FCC also have jurisdiction to investigate and file civil claims based on violations of the TCPA.¹³

The TCPA’s protections extend to text messaging in the same manner that they apply to telephone calls.¹⁴

Federal Do Not Call Program¹⁵

The FTC, in concert with the FCC, administers the National Do Not Call Program.¹⁶ Telephone solicitors may not contact a consumer who participates in the National Do Not Call Program, unless the calls are:¹⁷

- 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.

Truth in Caller ID Act¹⁸

The Truth in Caller ID Act of 2009 protects consumers by making it unlawful for any person to transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value. The FCC investigates and prosecutes violations of the act under its rules.¹⁹ The FCC has taken enforcement actions totaling \$450 million in recent years against telemarketers for call spoofing violations—of note, the FCC imposed its largest fine ever against a Florida-based timeshare marketing operation.²⁰

To protect individual privacy concerns, an individual caller may still request to hide his or her phone number when making a call.²¹

¹¹ 47 U.S.C. § 227(b)(1)(A).

¹² 47 U.S.C. § 227 (c)(5).

¹³ 47 U.S.C. § 227 (f).

¹⁴ FCC, *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 7999, para. 2 (Jun. 18, 2015); FCC, *FCC Strengthens Consumer Protections Against Unwanted Calls and Texts* (Jun. 18, 2015)

https://apps.fcc.gov/edocs_public/attachmatch/DOC-333993A1.pdf (last visited Mar. 26, 2021).

¹⁵ See, 15 U.S.C. § 6101.

¹⁶ FCC, *Stop Unwanted Calls and Texts—The National Do Not Call List*, (Mar. 2, 2021)

<https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Mar. 26, 2021).

¹⁷ 47 U.S.C. § 227(a)(4); See also, 47 C.F.R. § 64.1200 (2012).

¹⁸ 47 U.S.C. § 227 (e).

¹⁹ See, 47 CFR § 64.

²⁰ FCC, *The FCC’s Push to Combat Robocalls & Spoofing: Major Fines Against Spoofers* <https://www.fcc.gov/spoofed-robocalls> (last visited Mar. 26, 2021). See also, FCC, *FCC Fines Massive Neighbor Spoofing Robocall Operation \$120 Million* (May 10, 2018) <https://www.fcc.gov/document/fcc-fines-massive-neighbor-spoofing-robocall-operation-120-million> (last visited Mar. 26, 2021).

²¹ 47 CFR § 64.1601

Florida Law

Florida Telemarketing Act

The Florida Telemarketing Act (Telemarketing Act), part IV of ch. 501, F.S., requires commercial telephone sellers (usually a business entity) and their individual salespersons to obtain a license from the Department of Agriculture and Consumer Services (Department). An applicant for licensure as a commercial telephone seller must submit, among other information:²²

- Its criminal, civil, and administrative disciplinary background;
- All phone numbers from which the applicant will solicit business and the physical address at which the phones will be located;
- The script it will use during a solicitation, or any informational literature it will provide to a consumer; and
- A bond, letter of credit, or certificate of deposit to serve as security in any future case of fraud, breach of contract, financial failure, or violation by the licensee.

As part of their licensure, individual salespersons (who are hired by commercial telephone sellers to act as their salespersons) undergo a similar review of their criminal, civil, administrative or regulatory disciplinary history, but they are not required to post a bond, letter of credit, or certificate of deposit.²³

Many solicitors are exempt from licensure under the Telemarketing Act, including religious, charitable, political, or educational organizations that have a s. 501(c)(3) or (6) exemption from the Internal Revenue Code; licensed securities, commodities, or investment brokers and dealers; and newspaper or cable television sellers, among others.²⁴

Licensed telephone sellers and solicitors must identify themselves to the consumer within 30 seconds of the beginning of the phone call.²⁵ To ensure that the Department can conduct thorough investigations, when needed, a licensed telephone seller must also maintain copies of their business records for at least 2 years—including all of the names and telephone numbers that they contacted.²⁶

All telephone sellers and solicitors, whether exempt or not, are prohibited from calling consumers outside of the hours of 8:00 a.m. and 9:00 p.m. of the called person's local time.²⁷ Additionally, all solicitors must allow their name or telephone number to be transmitted to the consumer if the equipment they use is capable. This prevents solicitors from 'spoofing' a different number or otherwise blocking their caller identification to induce a consumer to answer the phone.²⁸

²² Section 501.605, F.S.

²³ Section 501.607, F.S.

²⁴ See, s. 501.604, F.S.

²⁵ Section 501.613, F.S.

²⁶ Section 501.6175, F.S.

²⁷ Section 501.616(6); see also, s. 501.604, F.S., which provides a general exemption from the Telemarketing Act, "except ss. 501.608 and 501.616(6) and (7)."

²⁸ Section 501.616(7), F.S.

Florida Do Not Call Act

Do Not Call List

The Department also administers the Florida Do Not Call Act (also called the “Do Not Call List”), which prohibits unsolicited phone calls and text messages.²⁹ Residents who do not wish to receive sales calls may request to have their residential, mobile, or paging device telephone number included on the Department’s list.³⁰

A communication is unsolicited, and therefore prohibited under the Do Not Call List, unless the contact is made:

- At the consumer’s request;
- By a charitable or political organization that is seeking donations;
- As part of a survey, or for the purpose of research seeking an opinion;
- In connection with an existing debt or contract for which payment is due; or
- By a newspaper publisher, or his or her agent or employee, in connection with the publisher’s business.

Continued Solicitations

Section 501.059(5), F.S., prohibits a telephone solicitor³¹ from calling, text messaging, sending a direct voicemail transmission to contact any consumer who has previously communicated to the solicitor that he or she does not wish to receive a telephone call, whether or not he or she is part of the Do Not Call List. However, this prohibition applies only to calls made by or on behalf of a seller who offers goods or services or a charity that solicits a charitable contribution.

Automated Dialers and Recorded Messages

Section 501.059(8), F.S., prohibits solicitations via telephone calls, text messages, and direct-to-voicemail transmissions if the communication is initiated with an automated system that selects or dials the telephone numbers (autodialer), or if the communication plays a recorded message upon connection with the consumer. Autodialed calls and recorded messages are permitted if (1) they are in response to a call that the consumer initiated, (2) the person initiating the call screens out unlisted telephone numbers and those that are on the “Do Not Call” list, or (3) made regarding goods or services that the consumer previously purchased.

This section also prevents call spoofing (in cases of solicitation calls), wherein a telephone call, text message, or direct-to-voicemail transmission does not transmit the correct originating telephone number; and fraudulent attempts to disguise the caller’s identity in order to defraud, confuse, or otherwise injure the call’s recipient.

Penalties

A telephone solicitor who violates the above provisions is subject to a civil penalty with a maximum fine of \$10,000 per violation, or an administrative fine with a maximum of \$1,000 per

²⁹ See, s. 501.059, F.S. Florida Department of Agriculture and Consumer Services, *Florida Do Not Call*, <https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call> (last visited Mar. 26, 2021).

³⁰ Section 501.059(3)-(4), F.S.

³¹ Section 501.059(1)(f), defines a ‘telephone solicitor’ as a natural person or business that does business in this state by making or causing to be made a telephone sales call.

violation, in addition to attorney's fees and costs.³² This section does not provide for a private cause of action—the Department of Agriculture and Consumer Services and the Office of the Attorney General have exclusive enforcement authority.

III. Effect of Proposed Changes:

A telephonic sales call is a telephone call, text message, or voicemail transmission that will solicit a good or service to a consumer.

The bill requires any person who makes a telephonic sales call with an automated system for the selection or dialing of telephone numbers (autodialer), or who makes a telephonic sales call that will play a recorded message upon connection with the consumer, to obtain signed prior express written consent from the consumer he or she calls.

The bill defines prior express written consent as an agreement that clearly authorizes the person who makes or allows the call, text message, or voicemail transmission, to do so by an autodialer or for the purpose of playing a recorded message or prerecorded voicemail. The agreement must:

- Be signed by the party who is the regular user of the telephone number that will receive the call, text message, or voicemail, and his or her signature may be in any form that federal or state contract law recognizes as valid, which may include an electronic or digital signature;
- Include the telephone number to which the consumer will allow the telephonic phone call to be made; and
- Inform the consumer in a clear and conspicuous manner that he or she is not required to agree to receive calls, text messages, or direct-to-voicemail recordings as a condition of purchasing any property, goods, or services.

This will generally conform Florida's telephone solicitor language to the federal TCPA provisions regarding autodialed calls and calls that will play a prerecorded message. However, this bill applies the requirement for a consumer's prior express consent to all calls equally, and does not follow the TCPA's distinction between residential and cellular telephone calls.

The bill also deletes language that allows telephonic sales calls that are made with an autodialer or that will play a recorded message upon connection with the consumer in the following specific cases: those made in response to a call initiated by the consumer; those made only to persons whose phone numbers are not unlisted or are not on the "Do Not Call" list, and those made regarding goods or services that the consumer previously purchased. Therefore, those telephonic sales calls, text messages, and direct-to voicemail messages are now also prohibited without prior written express consent.

The bill creates a rebuttable presumption under s. 501.059(8), F.S., that a telephonic sales call (which includes telephone calls, text messages, and direct-to-voicemail transmissions) made to a Florida area code is made to a Florida resident or to a person who is in Florida at the time of the call. It is unclear whether this presumption will apply to all telephonic sales call regulations within s. 501.059, F.S., or just those listed under s. 501.059(8), F.S.

³² Section 501.059(9), F.S.

The bill creates a private cause of action to enforce violations of the provision. An aggrieved party may petition a court to enjoin the violating party and may receive an award of either actual damages or \$500, whichever is greater, in addition to attorney fees and costs. A court may increase damages by up to three times if it finds that the defendant willfully or knowingly violated s. 501.059, F.S.

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Federal Preemption

The TCPA expressly permits state regulations that impose more restrictive *intrastate* requirements or regulations on, or which prohibit:

- The use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;
- The use of automatic telephone dialing systems;
- The use of artificial or prerecorded voice messages; or
- The making of telephone solicitations.³³

In fact, it expressly disclaims a complete preemption of state laws that govern the regulation of unsolicited sales calls and the improper use of prerecorded messages claims.³⁴ A Florida district court of appeal determined that Florida's regulation of recorded messages and autodialers, although more stringent than the TCPA, was not preempted by the federal law because Congress had indicated that the TCPA was the “minimum necessary to protect the public against the harm caused by’ automated dialing

³³ 47 U.S.C. § 227(e).

³⁴ 47 U.S.C. § 227(g)(6). *See also, TSA Stores, Inc. v. Dep’t. of Ag. And Consumer Servs.*, 957 So.2d 25, 28 (Fla. 5th DCA 2007).

machines.”³⁵ The Court further reasoned that “[e]ven though it [Congress] recognized that states might not have jurisdiction over interstate communications, Congress thus provided language that specifically allows states to impose more restrictive measures in this area.”³⁶

Additionally, the TCPA clearly contemplates that state attorneys general or other designated state official has authority to bring civil actions on behalf of the state’s residents to enjoin calls that violate the TCPA and to recover damages.³⁷

Commercial Speech Regulations

In *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, the Supreme Court held that commercial speech should receive First Amendment protections.³⁸ The Court based its opinion on the public’s right to receive a free flow of commercial information.³⁹ Although commercial speech does receive protection, it is below the protection provided to completely protected speech, and states retain the ability to regulate commercial speech that is inherently misleading or that has proven to be misleading in practice.⁴⁰

In *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, the Supreme Court established a four-part test for analyzing the limitations of advertising regulations.⁴¹ Under the *Central Hudson* test, a state must show that any commercial speech regulation is aimed at regulating lawful and “non-misleading” commercial speech in service of a substantial state interest, in a manner that directly advances that interest, and that is no more extensive than necessary to serve that interest.⁴² Although commercial speech regulations must meet the *Central Hudson* test, in *Bates v. State Bar of Arizona*, the Supreme Court held that reasonable time, place, and manner restrictions on advertising are authorized if the content or subject matter is not regulated.⁴³

Content-Based Speech Regulations

A government may impose reasonable time, place, and manner restrictions on speech. However, Content-based laws are subject to strict scrutiny.⁴⁴ A law is a content-based regulation of speech if it, on its face, draws distinctions based on the message a speaker conveys or singles out specific subject matter for differential treatment.⁴⁵

³⁵ *TSA Stores, Inc. v. Dep’t. of Ag. And Consumer Servs.*, 957 So.2d 25, 30 (Fla. 5th DCA 2007), quoting S. Rep. No. 102-178 at 5 (1991).

³⁶ *Id.* at 31, citing *FreeEats.Com, Inc. v. Indiana*, 2006 WL 3025810 (S.D.Ind. Oct. 24, 2006).

³⁷ 47 U.S.C. § 227 (g).

³⁸ See *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 96 S. Ct. 1817 (1976).

³⁹ *Id.*

⁴⁰ See *In re R.M.J.*, 102 S. Ct. 929 (1982).

⁴¹ See *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, 100 S. Ct. 2343 (1980).

⁴² *Id.*

⁴³ See *Bates v. State Bar of Arizona*, 97 S. Ct. 2691 (1977).

⁴⁴ *Id.*

⁴⁵ *Reed v. Town of Gilbert*, 576 U.S. 155, 163-169, 135 S. Ct. 2218 (2015).

A 2015 amendment to the TCPA allowed robocalls and prerecorded messages to be made to cellphone users to collect government debt. The U.S. Supreme Court determined this to be an invalid, content-based regulation of speech. The Court invalidated the 2015 amendment that allowed the government debt collection calls, and left the overall ban on robocalls and prerecorded messages intact.⁴⁶

Commerce Clause

A state law that has the practical effect of regulating commerce that occurs entirely outside of the State's borders is invalid under the Commerce Clause of the U.S. Constitution, regardless of its intent to reach outside of the state's borders.⁴⁷ Conversely, the dormant commerce clause prohibits states from enacting laws that unduly burden interstate commerce.⁴⁸

A Florida law that prohibited persons from causing false information to be displayed on the call recipient's caller ID system was found to regulate commerce wholly outside of Florida by making it impossible for parties to use or offer caller ID spoofing services anywhere.⁴⁹ The Court reasoned that the law affected interstate commerce because the increased use of mobile phones and call forwarding make it impossible to be certain where the parties one calls are located.

For example, a business located in New York might place a call, using caller ID spoofing services, to a telephone number with an Ohio area code. Because of call forwarding and the mobility of cellular telephones, the recipient of that call might be present in Florida, and the New York business would be criminally liable for violating [the law] when they called the Ohio telephone number. ... The logical consequence of this impossibility is that Plaintiffs are unable to offer caller ID spoofing services anywhere in the country without risking criminal liability under Florida's statute.⁵⁰

It is unclear whether the bill's presumption regarding Florida area codes will have an effect on interstate commerce to an extent that has the practical effect of regulating commerce outside of Florida's borders.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁴⁶ *Barr v. American Association of Political Consultants, Inc.*, 140 S. Ct. 2335, 2345-2346 (2020).

⁴⁷ *Healy v. Beer Institute, Inc.*, 491 U.S. 324, 332 (1989). *See also*, U.S. CONST. art. 1 § 8, cl. 3.

⁴⁸ *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 90 S.Ct. 844 (1970).

⁴⁹ *Taltech Systems, Inc. v. McCollum*, 2009 WL 10626585 (S.D. Fla. July 16, 2009).

⁵⁰ *Id.*

B. Private Sector Impact:

Businesses that make telephonic sales calls, text messages, or direct-to-voicemail transmissions either with an autodialer or for the purpose of playing a recorded message to a Florida consumer or to a phone with a Florida-based area code may have to adjust their businesses to accommodate this restriction.

C. Government Sector Impact:

This will likely lead to an increase in the investigations and enforcement actions undertaken by the Department of Agriculture and Consumer Services relating to violations of the provisions of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 501.059 of the Florida Statutes:

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Gruters

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1 A bill to be entitled
 2 An act relating to telephone solicitation; amending s.
 3 501.059, F.S.; defining terms; prohibiting certain
 4 telephonic sales calls without the prior express
 5 written consent of the called party; removing
 6 provisions authorizing the use of certain automated
 7 telephone dialing systems; providing a rebuttable
 8 presumption for certain calls made to an area code in
 9 this state; providing a cause of action for aggrieved
 10 called parties; authorizing a court to increase an
 11 award for willful and knowing violations; revising
 12 awards of attorney fees and costs for violations to
 13 authorize only a prevailing defendant to receive such
 14 an award; providing an effective date.
 15
 16 Be It Enacted by the Legislature of the State of Florida:
 17
 18 Section 1. Present paragraphs (a) through (e) and (f)
 19 through (i) of subsection (1) of section 501.059, Florida
 20 Statutes, are redesignated as paragraphs (b) through (f) and (i)
 21 through (l), respectively, new paragraphs (a), (g), and (h) are
 22 added to that subsection, and subsections (8), (10), (11), and
 23 (12) are amended, to read:
 24 501.059 Telephone solicitation.—
 25 (1) As used in this section, the term:
 26 (a) "Called party" means a person who is the regular user
 27 of the telephone number who receives a telephonic sales call.
 28 (g) "Prior express written consent" means a written
 29 agreement that:

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30 1. Bears the signature of the called party;
 31 2. Clearly authorizes the person making or allowing the
 32 placement of a telephonic sales call by telephone call, text
 33 message, or voicemail transmission to deliver or cause to be
 34 delivered to the called party a telephonic sales call using an
 35 automated system for the selection or dialing of telephone
 36 numbers, the playing of a recorded message when a connection is
 37 completed to a number called, or the transmission of a
 38 prerecorded voicemail;
 39 3. Includes the telephone number to which the signatory
 40 authorizes a telephonic sales call to be delivered; and
 41 4. Includes a clear and conspicuous disclosure informing
 42 the called party that:
 43 a. By executing the agreement, the called party authorizes
 44 the person making or allowing the placement of a telephonic
 45 sales call to deliver or cause to be delivered a telephonic
 46 sales call to the called party using an automated system for the
 47 selection or dialing of telephone numbers or the playing of a
 48 recorded message when a connection is completed to a number
 49 called; and
 50 b. He or she is not required to directly or indirectly sign
 51 the written agreement or to agree to enter into such an
 52 agreement as a condition of purchasing any property, goods, or
 53 services.
 54 (h) "Signature" includes an electronic or digital
 55 signature, to the extent that such form of signature is
 56 recognized as a valid signature under applicable federal law or
 57 state contract law.
 58 (8) (a) ~~A~~ ~~No~~ person ~~may not~~ ~~shall~~ make or knowingly allow a

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59 telephonic sales call to be made if such call involves an
 60 automated system for the selection or dialing of telephone
 61 numbers or the playing of a recorded message when a connection
 62 is completed to a number called without the prior express
 63 written consent of the called party.

64 (b) ~~Nothing herein prohibits the use of an automated~~
 65 ~~telephone dialing system with live messages if the calls are~~
 66 ~~made or messages given solely in response to calls initiated by~~
 67 ~~the persons to whom the automatic calls or live messages are~~
 68 ~~directed or if the telephone numbers selected for automatic~~
 69 ~~dialing have been screened to exclude any telephone subscriber~~
 70 ~~who is included on the department's then current "no sales~~
 71 ~~solicitation calls" listing or any unlisted telephone number, or~~
 72 ~~if the calls made concern goods or services that have been~~
 73 ~~previously ordered or purchased.~~

74 (e) It shall be unlawful for any person who makes a
 75 telephonic sales call or causes a telephonic sales call to be
 76 made to fail to transmit or cause not to be transmitted the
 77 originating telephone number and, when made available by the
 78 telephone solicitor's carrier, the name of the telephone
 79 solicitor to any caller identification service in use by a
 80 recipient of a telephonic sales call. However, it is shall not
 81 ~~be~~ a violation to substitute, for the name and telephone number
 82 used in or billed for making the call, the name of the seller on
 83 behalf of which a telephonic sales call is placed and the
 84 seller's customer service telephone number, which is answered
 85 during regular business hours. If a telephone number is made
 86 available through a caller identification service as a result of
 87 a telephonic sales call, the solicitor must ensure that

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88 telephone number is capable of receiving telephone calls and
 89 must connect the original call recipient, upon calling such
 90 number, to the telephone solicitor or to the seller on behalf of
 91 which a telephonic sales call was placed. For purposes of this
 92 section, the term "caller identification service" means a
 93 service that allows a telephone subscriber to have the telephone
 94 number and, where available, the name of the calling party
 95 transmitted contemporaneously with the telephone call and
 96 displayed on a device in or connected to the subscriber's
 97 telephone.

98 (c) ~~(d)~~ It shall be unlawful for any person who makes a
 99 telephonic sales call or causes a telephonic sales call to be
 100 made to intentionally alter the voice of the caller in an
 101 attempt to disguise or conceal the identity of the caller in
 102 order to defraud, confuse, or financially or otherwise injure
 103 the recipient of a telephonic sales call or in order to obtain
 104 personal information from the recipient of a telephonic sales
 105 call which may be used in a fraudulent or unlawful manner.

106 (d) There is a rebuttable presumption that a telephonic
 107 sales call made to an area code in this state is made to a
 108 Florida resident or to a person in this state at the time of the
 109 call.

110 (10) (a) A called party who is aggrieved by a violation of
 111 this section may bring an action to:

112 1. Enjoin such violation.

113 2. Recover actual damages or \$500, whichever is greater.

114 (b) If the court finds that the defendant willfully or
 115 knowingly violated this section or rules adopted pursuant to
 116 this section, the court may, in its discretion, increase the

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amount of the award to an amount equal to not more than three times the amount available under paragraph (a).

(11)(a) If a plaintiff prevails in any civil litigation resulting from a transaction involving a violation of this section, ~~the prevailing party~~, after judgment in the trial court and exhaustion of all appeals, if any, the plaintiff shall receive his or her reasonable attorney ~~attorney's~~ fees and costs from the defendant ~~nonprevailing party~~.

(b) The attorney for the prevailing plaintiff ~~party~~ shall submit a sworn affidavit of his or her time spent on the case and his or her costs incurred for all the motions, hearings, and appeals to the trial judge who presided over the civil case.

(c) The trial judge shall award the prevailing plaintiff ~~party~~ the sum of reasonable costs incurred in the action plus a reasonable legal fee for the hours actually spent on the case as sworn to in an affidavit.

(d) Any award of attorney ~~attorney's~~ fees or costs shall become a part of the judgment and subject to execution as the law allows.

(e) In any civil litigation initiated by the department or the Department of Legal Affairs, the court may award to the prevailing party reasonable attorney ~~attorney's~~ fees and costs if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party or if the court finds bad faith on the part of the losing party.

(12)~~(11)~~ Telecommunications companies shall inform their customers of the provisions of this section. The notification may be made by:

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(a) Annual inserts in the billing statements mailed to customers; and

(b) Conspicuous publication of the notice in the consumer information pages of the local telephone directories.

(13)~~(12)~~ The department may adopt rules to implement this section.

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

CourtSmart Tag Report

Room: SB 110

Case No.:

Type:

Caption: Commerce and Tourism Committee

Judge:

Started: 3/29/2021 3:30:44 PM

Ends: 3/29/2021 5:57:34 PM

Length: 02:26:51

3:30:43 PM Roll call, Quorum is present
3:31:31 PM SB 1882 is Temporarily Postponed
3:31:46 PM SB 1906 is introduced by Senator Brodeur
3:43:45 PM Senator Pizzo has a question for Brodeur
3:44:54 PM Senator Brodeur answers
3:46:01 PM Senator Pizzo has a follow up question
3:47:35 PM Senator Brodeur answers
3:48:36 PM Senator Pizzo has a follow up question
3:49:39 PM Senator Brodeur answers
3:50:46 PM Senator Taddeo has a question
3:51:49 PM Senator Brodeur answers
3:52:36 PM Senator Taddeo has a follow up question
3:53:28 PM Amendment 565626 by Senator Torres is introduced
3:54:48 PM Karen Woodall, FL Center for Fiscal & Ec. Policy waives in support
3:55:05 PM Appearance by Dr. Rich Templin, AFL-CIO, speaks in support
3:57:13 PM Senator Powell debates in favor of amendment
3:57:55 PM Senator Brodeur speaks against amendment
3:58:58 PM Senator Torres closes on amendment 565626
3:59:42 PM Amendment is not adopted
4:00:43 PM Amendment 810712 is introduced by Senator Brodeur
4:01:50 PM Senator Pizzo has question on amendment
4:02:22 PM Appearance by Karen Woodall, FL Center for Fiscal & Ec. Policy waives in support of amendment
4:03:01 PM Appearance by Dr. Rich Templin, AFL-CIO speaks in support
4:03:46 PM Senator Taddeo is in debate
4:04:31 PM Senator Powell is in debate
4:05:13 PM Amendment 810712 is adopted
4:05:36 PM Amendment 608332 is introduced by Senator Powell
4:06:09 PM Appearance by Karen Woodall, FL Center for Fiscal & Ec. Policy waives in support
4:06:47 PM Appearance by Dr. Rich Templin, AFL-CIO speaks in support
4:07:48 PM Senator Brodeur debates on the amendment
4:08:37 PM Senator Powell closes on his amendment
4:09:30 PM Amendment fails
4:10:33 PM Amendment 238872 by Senator Powell is introduced
4:11:30 PM Appearance by Karen Woodall, FL Center for Fiscal & Ec. Policy speaks in support
4:12:55 PM Debate by Senator Taddeo
4:14:06 PM Debate by Senator Brodeur
4:16:01 PM Senator Powell closes on his amendment
4:16:38 PM Amendment fails
4:18:09 PM Amendment 321614 withdrawn
4:18:18 PM Amendment 774460 by Senator Powell
4:19:10 PM Senator Pizzo question to sponsor
4:19:26 PM Karen Woodall, FL Center for Fiscal & Ec. Policy speaking for the amendment
4:22:11 PM Speaker, Dr. Rich Templin, AFL-CIO for the amendment
4:23:02 PM Debate on Powell amendment
4:23:09 PM Sen. Brodeur comment on amendment
4:24:10 PM Senator Powell close on amendment
4:24:56 PM Amendment fails
4:25:02 PM Back on bill as amended
4:25:10 PM Sen. Pizzo question/comment
4:25:49 PM Response by bill sponsor
4:26:01 PM Sen. Pizzo follow up
4:26:32 PM Response of sponsor

4:26:41 PM Sen. Pizzo follow up
 4:26:57 PM Response of sponsor
 4:27:03 PM Back and forth of Sen. Pizzo and bill sponsor
 4:28:47 PM Chair Hooper question to Sen. Pizzo
 4:29:00 PM Sen. Pizzo further explain
 4:29:40 PM Sen. Brodeur responds
 4:30:35 PM Dr. Rich Templin, AFL-CIO speaking for the bill
 4:33:15 PM Speaker, Karen Woodall, Center for Fiscal & Ec. Policy speaking for the bill
 4:35:16 PM In debate:
 4:35:20 PM Sen. Pizzo
 4:38:10 PM Sen. Torres in debate.
 4:39:13 PM Sen. Powell
 4:41:35 PM Sen. Taddeo comments
 4:43:50 PM Sen. Diaz
 4:44:32 PM Sen. Brodeur closes on SB 1906
 4:46:07 PM Roll call on SB 1906
 4:46:21 PM SB 1906 passes as CS favorably
 4:46:47 PM CS/SB 954 by Sen. Bean
 4:48:36 PM Questions
 4:48:39 PM Sen. Torres to sponsor
 4:49:15 PM Sponsor response
 4:50:11 PM Sen. Torres follow up
 4:50:25 PM Sponsor response
 4:50:53 PM Speaker, Martha Edenfield, The Real Property, Probate and Trust Law Sect of the FL Bar speaking
 against bill
 4:51:40 PM Sen. Pizzo to Ms. Edenfield
 4:52:56 PM Ms. Edenfield response
 4:54:18 PM Debate:
 4:54:20 PM Sen. Pizzo
 4:55:01 PM Sen. Torres in debate
 4:55:23 PM Sen. Bean close on CS/SB 954
 4:56:14 PM Roll call on CS/SB 954
 4:56:25 PM CS/SB 954 passes favorably
 4:56:56 PM Tab 8, SB 1390 by Sen. Gruters
 4:57:14 PM Amendment 301108 by Sen. Gruters
 4:58:56 PM Questions on amendment:
 4:59:03 PM Sen. Powell question
 4:59:20 PM Sen. Gruters responds
 4:59:46 PM Sen. Powell follow up
 5:00:03 PM Sen. Gruters responds
 5:00:56 PM Sen. Gruters closes on amendment
 5:01:04 PM Amendment 301108 is adopted
 5:01:23 PM
 5:01:25 PM Brewster Bevis, Associated Industries waive in support
 5:01:33 PM Carolyn Johnson, FL Chamber of Commerce waive in support
 5:01:44 PM Angela Dempsey, Motion Picture Association waive in support
 5:01:45 PM Will McKinley, Entertainment Software Association waive in support
 5:02:00 PM Sen. Gruters closes on bill as amended
 5:02:22 PM Roll call on SB 1390
 5:02:35 PM SB 1390 passes as CS favorably
 5:02:48 PM Tab 9, SB 1682 by Sen. Gruters
 5:03:55 PM Speaker, Ed Normand, FL Justice Association speaking for the bill
 5:05:11 PM David Serdar, speaking for the bill
 5:05:46 PM Debate on bill:
 5:05:51 PM Sen. Pizzo
 5:06:17 PM Sen. Gruters close on SB 1682
 5:06:31 PM Roll call on SB 1682
 5:06:41 PM SB 1682 passes favorably
 5:06:59 PM Tab 3, SB 1176 by Sen. Stewart
 5:07:52 PM Sen. Pizzo, question to sponsor
 5:08:03 PM Response of sponsor
 5:08:28 PM Sen. Powell, question

5:09:05 PM Response of sponsor
5:09:17 PM Diego Echeverri, Americans for Prosperity, waive in support
5:09:29 PM Cesar Grajales, The Libre Initiative waive in support
5:09:33 PM Christian Camara, Institute for Justice, speaking in support
5:10:36 PM Debate: None
5:10:45 PM Sen. Stewart waives close
5:10:55 PM Roll call
5:10:59 PM SB 1176 passes favorably
5:11:27 PM In informal recess while wait on bill sponsors
5:11:44 PM Recording Paused
5:13:36 PM Recording Resumed
5:13:42 PM Chair Hooper calls Sen. Brandes, Tab 7, SB 1758
5:14:55 PM Speaker, Jeffrey Sharkey, FL BlockChain Alliance waive in support
5:15:07 PM Russ Weigel, Office of financial regulation, waive in support
5:15:20 PM Sen. Brandes waives close
5:15:29 PM Roll call
5:15:31 PM SB 1758 passes favorably
5:15:49 PM Tab 4, SB 1246 by Sen. Rodrigues
5:18:30 PM Sen. Torres question to sponsor
5:18:43 PM Response of sponsor
5:19:19 PM Speaker, Jim East, The Hertz Corp. waive in support
5:20:02 PM Sen. Rodrigues waive close
5:20:11 PM Roll call
5:20:14 PM SB 1246 passes favorably
5:20:28 PM Chair Hooper comments to committee/staff
5:22:14 PM Sen. Taddeo comments and motion to be shown voting Yea on SB 758
5:22:46 PM Sen. Wright comments and motions to Vote Yea on Tab 6
5:23:08 PM Motion by Sen. Burgess to Vote Yea on Tab 7, SB 1758
5:23:24 PM Tab 2, SB SB 1072 by Sen. Baxley
5:25:51 PM Sen. Taddeo questions to bill sponsor
5:26:23 PM Sen. Baxley response
5:28:10 PM Sen. Taddeo further question
5:28:54 PM Further response of sponsor
5:29:53 PM Sen. Powell, question
5:30:45 PM Response of sponsor
5:30:46 PM Follow up question
5:32:28 PM Sen. Baxley further responds
5:33:50 PM Sen. Powell in questions
5:34:20 PM Sen. Baxley responds
5:34:42 PM Sen. Pizzo question to sponsor
5:36:20 PM Sen. Baxley responds
5:38:16 PM Sen. Pizzo follow up
5:40:42 PM Sen. Hutson question
5:41:13 PM Sen. Baxley response
5:42:08 PM Sen. Hutson follow up
5:42:26 PM Sen. Baxley responds
5:42:55 PM Paul Keller, The Home Depot speaking for the bill
5:46:20 PM Speaker, Grace Lovett, Florida Retail Federation, speaking for the bill
5:47:43 PM Speaker, Sally West, Walgreens for the bill
5:48:04 PM Sen. Hutson motion to stop testimony at 5:53PM
5:50:20 PM Sen. Pizzo question to Ms. West
5:50:53 PM Response of speaker
5:51:03 PM Further comment, Sen. Pizzo
5:51:15 PM Greg Black, International Council of Shopping Centers waive in support
5:51:22 PM Servando Esparza, Tech Net waive against
5:51:33 PM Alli Liby-Schoonover, Ebay waive against bill
5:51:49 PM David Serdar, speaking for the bill
5:52:11 PM Debate:
5:52:15 PM Sen. Pizzo
5:52:50 PM Sen. Torres
5:53:08 PM Sen. Taddeo
5:54:01 PM Sen. Powell

5:54:21 PM	Sen. Hutson comments
5:54:52 PM	Sen. Baxley close on bill
5:55:11 PM	Roll call
5:55:19 PM	SB 1072 passes favorably
5:56:00 PM	Sen. Powell comments to staff
5:56:42 PM	Sen. Torres comments
5:57:08 PM	Sen. Torres moves adjournment
5:57:16 PM	Committee adjourned