

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

HEALTH POLICY
Senator Harrell, Chair
Senator Berman, Vice Chair

MEETING DATE: Tuesday, January 21, 2020

TIME: 10:00—11:30 a.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Harrell, Chair; Senator Berman, Vice Chair; Senators Baxley, Bean, Book, Cruz, Diaz, Hooper, Mayfield, and Rouson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 494 Simpson (Similar H 411)	H. Lee Moffitt Cancer Center and Research Institute; Increasing, at specified timeframes, the percentage of cigarette tax proceeds paid to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute for certain purposes, etc. HP 01/21/2020 Favorable FT AP	Favorable Yeas 10 Nays 0
2	SB 810 Simmons (Compare H 151, S 694)	Tobacco and Nicotine Products; Citing this act as the "Tobacco 21 Act"; restricting delivery sales of tobacco products to certain entities; revising the conditions under which the Division of Alcoholic Beverages and Tobacco may refuse to issue retail tobacco products dealer permits; revising the age limitation of persons to whom it is unlawful to sell or deliver tobacco products; revising the conditions under which sales of tobacco products from a vending machine are authorized; revising the age limitation that applies to the sale, delivery, bartering, furnishing, or giving of tobacco products, etc. HP 01/21/2020 Fav/CS IT RC	Fav/CS Yeas 10 Nays 0
3	SB 792 Albritton (Similar H 467)	Physical Therapy; Revising the definitions of the terms "physical therapy assessment" and "practice of physical therapy"; revising the powers and duties of the Board of Physical Therapy Practice, etc. HP 01/21/2020 Fav/CS BI RC	Fav/CS Yeas 10 Nays 0

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Health Policy

Tuesday, January 21, 2020, 10:00—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 120 Pizzo (Identical H 331)	Naloxone in Schools; Authorizing a public school to purchase a supply or enter into an arrangement to receive a supply of the opioid antagonist naloxone for a certain purpose; requiring the school district to adopt a protocol for the administration of naloxone; providing that a school district and its employees and agents and the physician who provides the protocol are not liable for any injury arising from the administration of the naloxone pursuant to the protocol, etc. ED 11/12/2019 Favorable HP 01/21/2020 Not Considered RC	Not Considered
5	SB 842 Wright (Identical H 507)	Injured Police Canines; Authorizing life support services to transport injured police canines under certain circumstances; authorizing a paramedic or an emergency medical technician to provide emergency medical care to injured police canines under certain circumstances, etc. HP 01/21/2020 Favorable CJ RC	Favorable Yeas 10 Nays 0
6	SB 52 Bean	Medicaid Services; Deleting the expiration of a requirement for the Agency for Health Care Administration to make payments for Medicaid-covered services for certain persons based on specified retroactive eligibility timeframes, etc. HP 01/21/2020 Favorable AHS AP	Favorable Yeas 6 Nays 4
7	SB 916 Baxley (Similar H 833)	Program of All-Inclusive Care for the Elderly; Authorizing the Agency for Health Care Administration, in consultation with the Department of Elderly Affairs, to approve certain applicants to provide benefits pursuant to the Program of All-Inclusive Care for the Elderly (PACE); specifying requirements and procedures for the submission, publication, review, and initial approval of applications; requiring prospective PACE organizations that are granted initial approval to apply within a certain timeframe for federal approval, etc. HP 01/21/2020 Not Considered AHS AP	Not Considered

COMMITTEE MEETING EXPANDED AGENDA

Health Policy

Tuesday, January 21, 2020, 10:00—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1374 Harrell (Compare H 665)	Regional Perinatal Intensive Care Centers; Authorizing the Department of Health to designate regional perinatal intensive care centers; providing that designation by the department is required for participation in the regional perinatal intensive care centers program; specifying standards that must be included in department rules relating to the designation, development, and operation of a regional perinatal intensive care center; specifying reimbursement parameters for certain services provided in a regional perinatal intensive care center setting, etc. HP 01/21/2020 Not Considered AHS AP	Not Considered

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 494

INTRODUCER: Senators Simpson and Mayfield

SUBJECT: H. Lee Moffitt Cancer Center and Research Institute

DATE: January 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	Favorable
2.			FT	
3.			AP	

I. Summary:

SB 494 increases the percentage of the state's cigarette tax revenue¹ that is directed from month to month to the H. Lee Moffitt Cancer Center and Research Institute. The bill increases the percentage from the current 4.04 percent to 7 percent beginning July 1, 2020, and again to 10 percent beginning July 1, 2023.

The bill takes effect upon becoming a law.

II. Present Situation:

H. Lee Moffitt Cancer Center (Moffitt)

Moffitt was established by the Legislature in 1981, began construction in 1983, and opened to patients on Oct. 27, 1986.² Moffitt began its research on cancer in 1993 and became a National Cancer Institute (NCI) designated cancer center in 1998. In 2001, Moffitt achieved NCI Comprehensive Cancer Center designation indicating that it is one of "the strongest institutions in the nation dedicated to scientific innovation and excellence; to interdisciplinary research, training and education; and to coordinated recognition and pursuit of new research opportunities." Currently, Moffitt is the only NCI-designated Comprehensive Cancer Center based in Florida.³

Moffitt treats cancer patients and performs cancer research. Moffitt is Florida's largest multi-disciplinary medical group practice that is dedicated to cancer care. The Moffitt Medical Group (MMG), based at Moffitt Cancer Center, also provides services at other hospitals and clinics throughout the state of Florida and beyond. The MMG consists of 377 oncology specialists,

¹ The cigarette tax is imposed by s. 210.02, F.S.

² See <https://moffitt.org/about-moffitt/our-story/> (last visited Jan. 16, 2020).

³ See <https://moffitt.org/about-moffitt/nci-designation/> (last visited Jan. 16, 2020).

including 221 board-certified physicians and 156 advanced practice professionals, as well as other staff who specialize in nearly 30 cancer programs and services.⁴ Additionally, Moffitt employs about 800 research faculty scientists, career staff scientists, postdocs, graduate students, and support staff dedicated to cancer research.⁵

Moffitt's Cigarette Tax Revenue

As provided in s. 210.20(2)(b), F.S., the distribution of cigarette tax revenue to the H. Lee Moffitt Cancer Center is 4.04 percent of net cigarette tax collections each fiscal year, or 4.04 percent of net cigarette taxes that were collected in State Fiscal Year 2001-2002, whichever is greater. This provision continues through June 30, 2053, under current law. For the purpose of determining the distribution amounts, net cigarette tax collections are defined as the cigarette tax imposed by s. 210.02, F.S., less the service charges provided for in s. 215.20, F.S., and less 0.9 percent of the amount derived from the cigarette tax imposed by s. 210.02, F.S.

Because cigarette tax collections today are substantially lower than they were in the 2001-2002 fiscal year, the Moffitt distribution amount is estimated to be \$15.6 million each fiscal year, which is equal to the amount Moffitt would have received in the 2001-2002 fiscal year. After all distributions from the cigarette tax are made, the remainder goes to the General Revenue Fund.⁶

III. Effect of Proposed Changes:

SB 494 increases the percentage of cigarette tax revenue,⁷ less the 8 percent service charge imposed by s. 215.20, F.S., and less 0.9 percent that is deposited into the Alcoholic Beverages and Tobacco Trust Fund, which is paid from month to month to the H. Lee Moffitt Cancer Center and Research Institute.

Beginning July 1, 2020, and continuing through June 30, 2023, the percentage is increased from the current percentage of 4.04 percent to 7 percent. Beginning July 1, 2023, the percentage is further increased to 10 percent.

Under the bill, the Revenue Estimating Impact Conference estimated on December 5, 2019, that SB 494 will increase the funds directed to Moffitt from \$15.6 million annually to \$26.9 million (an \$11.4 million increase over current year) from FY 2020-2021 through FY 2022-2023. Starting in FY 2023-2024, the funds directed to Moffitt are estimated to be \$38.4 million annually (a \$22.9 million increase over current year). The amount of funds distributed to the state's General Revenue Fund from the cigarette tax is estimated to decrease by the corresponding amounts.⁸

⁴ See <https://moffitt.org/about-moffitt/medical/> (last visited Jan. 16, 2020).

⁵ See <https://moffitt.org/about-moffitt/research/> (last visited Jan. 16, 2020).

⁶ Revenue Estimating Conference report, Dec. 6, 2019, p. 62, available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/pdf/Impact1206.pdf> (last visited Jan. 16, 2020).

⁷ *Supra* note 1.

⁸ *Supra* note 6, at 64.

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:

For the fiscal impact to Moffitt, please see **Section III** of this analysis.

C. Government Sector Impact:

For the fiscal impact to the General Revenue Fund, please see **Section III** of this analysis.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 210.20 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 Simpson

10-00291-20

2020494__

1 A bill to be entitled
2 An act relating to the H. Lee Moffitt Cancer Center
3 and Research Institute; amending s. 210.20, F.S.;
4 increasing, at specified timeframes, the percentage of
5 cigarette tax proceeds paid to the Board of Directors
6 of the H. Lee Moffitt Cancer Center and Research
7 Institute for certain purposes; providing an effective
8 date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Paragraph (b) of subsection (2) of section
13 210.20, Florida Statutes, is amended to read:

14 210.20 Employees and assistants; distribution of funds.—

15 (2) As collections are received by the division from such
16 cigarette taxes, it shall pay the same into a trust fund in the
17 State Treasury designated "Cigarette Tax Collection Trust Fund"
18 which shall be paid and distributed as follows:

19 (b) Beginning July 1, 2004, and continuing through June 30,
20 2013, the division shall from month to month certify to the
21 Chief Financial Officer the amount derived from the cigarette
22 tax imposed by s. 210.02, less the service charges provided for
23 in s. 215.20 and less 0.9 percent of the amount derived from the
24 cigarette tax imposed by s. 210.02, which shall be deposited
25 into the Alcoholic Beverage and Tobacco Trust Fund, specifying
26 an amount equal to 1.47 percent of the net collections, and that
27 amount shall be paid to the Board of Directors of the H. Lee
28 Moffitt Cancer Center and Research Institute, established under
29 s. 1004.43, by warrant drawn by the Chief Financial Officer.

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Beginning July 1, 2014, and continuing through June 30, 2020
~~2053~~, the division shall from month to month certify to the
Chief Financial Officer the amount derived from the cigarette
tax imposed by s. 210.02, less the service charges provided for
in s. 215.20 and less 0.9 percent of the amount derived from the
cigarette tax imposed by s. 210.02, which shall be deposited
into the Alcoholic Beverage and Tobacco Trust Fund, specifying
an amount equal to 4.04 percent of the net collections, and that
amount shall be paid to the Board of Directors of the H. Lee
Moffitt Cancer Center and Research Institute, established under
s. 1004.43, by warrant drawn by the Chief Financial Officer.
Beginning July 1, 2020, and continuing through June 30, 2023,
the division shall from month to month certify to the Chief
Financial Officer the amount derived from the cigarette tax
imposed by s. 210.02, less the service charges provided for in
s. 215.20 and less 0.9 percent of the amount derived from the
cigarette tax imposed by s. 210.02, which shall be deposited
into the Alcoholic Beverage and Tobacco Trust Fund, specifying
an amount equal to 7 percent of the net collections, and that
amount shall be paid to the Board of Directors of the H. Lee
Moffitt Cancer Center and Research Institute, established under
s. 1004.43, by warrant drawn by the Chief Financial Officer.
Beginning July 1, 2023, and continuing through June 30, 2053,
the division shall from month to month certify to the Chief
Financial Officer the amount derived from the cigarette tax
imposed by s. 210.02, less the service charges provided for in
s. 215.20 and less 0.9 percent of the amount derived from the
cigarette tax imposed by s. 210.02, which shall be deposited
into the Alcoholic Beverage and Tobacco Trust Fund, specifying

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an amount equal to 10 percent of the net collections, and that
amount shall be paid to the Board of Directors of the H. Lee
Moffitt Cancer Center and Research Institute, established under
s. 1004.43, by warrant drawn by the Chief Financial Officer.

These funds are appropriated monthly out of the Cigarette Tax
Collection Trust Fund, to be used for lawful purposes, including
constructing, furnishing, equipping, financing, operating, and
maintaining cancer research and clinical and related facilities;
furnishing, equipping, operating, and maintaining other
properties owned or leased by the H. Lee Moffitt Cancer Center
and Research Institute; and paying costs incurred in connection
with purchasing, financing, operating, and maintaining such
equipment, facilities, and properties. In fiscal years 2004-2005
and thereafter, the appropriation to the H. Lee Moffitt Cancer
Center and Research Institute authorized by this paragraph shall
not be less than the amount that would have been paid to the H.
Lee Moffitt Cancer Center and Research Institute in fiscal year
2001-2002, had this paragraph been in effect.

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



The Florida Senate

Committee Agenda Request

To: Senator Harrell, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: December 12, 2019

I respectfully request that **Senate Bill 494**, relating to Moffitt Cancer Center, be placed on the:

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

A handwritten signature in black ink, appearing to read "Wilton Simpson", is written over a horizontal line.

Senator Wilton Simpson
Florida Senate, District 10

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-21

Meeting Date

494

Bill Number (if applicable)

Topic MOFFITT CANCER CENTER

Amendment Barcode (if applicable)

Name H. LEE MOFFITT

Job Title ATTORNEY

Address 3321 NW PEEWEE RD
Street

Phone 813 760-5712

PALM CITY FL 34990
City State Zip

Email MR5peaker@AOL.COM

Speaking: ☐ For ☐ Against ☒ Information

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

Representing SELF

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 Health Policy

BILL: CS/SB 810

INTRODUCER: Health Policy Committee and Senator Simmons

SUBJECT: Tobacco and Nicotine Products

DATE: January 21, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Williams	Brown	HP	Fav/CS
2.			IT	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 810:

- Increases the minimum age to lawfully purchase and possess tobacco products from 18 years of age to 21 years of age.
- Repeals the exceptions that allow persons in the military and emancipated minors to possess or purchase tobacco products under current law.
- Creates a definition for “vapor-generating electronic device,” using the term and definition from the Florida Constitution’s prohibition against indoor vaping, to provide a consistency of terms and to adapt the term to include the cartridges or containers of nicotine or other substances used with a vaping device. Modifies the definition of “tobacco products” to include vapor-generating electronic devices and products. Provides specific exclusions from the definitions.
- Prohibits smoking and vaping by any person under 21 years of age on or near school property, regardless of hours of day.
- By defining vaping products as tobacco products, subjects retail sellers of vaping products to regulation as retail tobacco product dealers, including the requirement for a permit. (This issue is addressed in a separate linked fee bill.)
- Limits the sale of tobacco products through a vending machine if the location prohibits persons under 21 years of age on the premises.
- Requires age verification before a sale or delivery to a person under 30 years of age. (This complies with recently enacted federal law.)
- Incorporates conforming provisions.

The bill will have an indeterminate fiscal impact related to the regulatory responsibilities of the Department of Business and Professional Regulation. In addition, the bill will have an indeterminate fiscal impact on vape product dealers.

The effective date of the bill is October 1, 2020, contingent upon the passage of the linked fee bill.

II. Present Situation:

Regulation of Tobacco Products

The Division of Alcoholic Beverage and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and enforcement of tobacco products under ch. 569, F.S.

Section 569.002, F.S., provides definitions of terms in the context of the regulation of tobacco products under ch. 569, F.S. Subsection (6) defines the term “tobacco products” to include loose tobacco leaves and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

Subsection (7) specifies that the term “any person under the age of 18” does not include any person under age 18 who:

- Has had his or her disability of nonage removed under ch. 743, F.S.;
- Is in the military reserve or on active duty in the Armed Forces of the United States;
- Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or
- Is acting in his or her scope of lawful employment with an entity licensed under the provisions of ch. 210, F.S., relating to taxation of cigarettes and other tobacco products, or ch. 569, F.S., relating to tobacco products.

Section 569.003, F.S., relates to retail tobacco products dealer permits, the permit application, qualifications, fees, renewals, and duplicates. Subsection (2) stipulates that permits may only be issued to persons who are 18 years of age or older or to corporations the officers of which are 18 years of age or older. The Division is authorized to refuse to issue a permit to any person, firm, association, or corporation the permit of which has been revoked, to any corporation an officer of which has had his or her permit revoked, or to any person who is or has been an officer of a corporation the permit of which has been revoked.

The fee for an annual permit is established in rule by the Division at an amount to cover the regulatory costs of the program, not to exceed \$50. The proceeds of the fee are deposited into the DBPR Alcoholic Beverage and Tobacco Trust Fund.

Mail Order, Internet, Other Remote Sales of Tobacco Products, and Tobacco Products Permits

Section 210.095(5), F.S., provides requirements for the delivery of mail order, Internet, and other remote sales of tobacco products, including age verification requirements, all of which is generally referred to as “delivery sales.” It also defines 10 relevant terms.

Specific notice and shipping requirements are provided for all delivery sales, whether in-state or out-of-state. Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale is required to:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: “Tobacco Products: Florida law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes.”
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
 - Require the signature of an adult who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 27 years of age.
 - Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.
- Provide to the delivery service, if such service is used, evidence of full compliance with requirements for the collection and remittance of all taxes imposed on tobacco products by this state with respect to the delivery sale.¹

If a person accepts a purchase order for a delivery sale and delivers the tobacco products without using a delivery service, the person must comply with all of the requirements that apply to a delivery service.² Before making sales or shipping orders, entities must provide specific notice to the Division as to shipper and receiver, with monthly reporting.³ There are requirements specific to purchase orders.⁴

Section 210.095(8), F.S., provides that the penalty for the following violations of the delivery sale requirements is a misdemeanor of the third degree:⁵

- A delivery sale delivers tobacco products, on behalf of a delivery service, to an individual who is under 18 years of age.
- A violation of any provision in s. 210.095, F.S., by an individual who is under 18 years of age.

Florida law does not provide a criminal penalty classification for a misdemeanor of the third degree. However, the prohibitions and penalties in s. 569.101, F.S., (prohibiting the sale,

¹ Section 210.095(5), F.S.

² *Id.*

³ Section 210.095(6), F.S.

⁴ Section 210.095(7), F.S.

⁵ Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

delivery, bartering, furnishing, or giving, directly or indirectly, to any person who is under 18 years of age, any tobacco product, and s. 569.11, F.S., prohibiting persons under 18 years of age from possessing, directly or indirectly, any tobacco product) apply to s. 210.095, F.S., relating to the delivery of tobacco products to persons under the age of 18.

Section 210.15, F.S., relates to permits for the sale of specific tobacco products. Among the requirements for the issuance of such a permit is the provision found in paragraph (b) of subsection (2) to require that permits may be issued only to persons of good moral character, who are not less than 18 years of age. In addition, permits to corporations may be issued only to corporations whose officers are of good moral character and not less than 18 years of age.

Tobacco Products and Minors

To prevent persons under 18 years of age from purchasing or receiving tobacco products, the sale or delivery of tobacco products is prohibited, except when those products are under the direct control or line of sight of the dealer or the dealer's agent or employee. If a tobacco product is sold from a vending machine, the vending machine must have:

- An operational lock-out device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lock-out device to allow the dispensing of one tobacco product;
- A mechanism on the lock-out device to prevent the machine from functioning if the power source for the lock-out device fails or if the lock-out device is disabled; and
- A mechanism to ensure that only one tobacco product is dispensed at a time.⁶

These requirements for the sale of tobacco products do not apply to an establishment that prohibits persons under 18 years of age on premises and do not apply to the sale or delivery of cigars and pipe tobacco.⁷

Section 569.0075, F.S., prohibits the giving of sample tobacco products to persons under the age of 18.

Section 569.008, F.S., provides a process for a retail tobacco product dealer to mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person under 18 years of age.⁸ The process encourages retail tobacco product dealers to comply with responsible practices. The Division may mitigate penalties if:

- The dealer is qualified as a responsible dealer having established and implemented specified practices designed to ensure that the dealer's employees comply with ch. 569, F.S., such as employee training.
- The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.

⁶ Section 569.007(1), F.S.

⁷ Section 569.007(2) and (3), F.S.

⁸ The Florida Responsible Vendor Act in ss. 561.701 - 561.706, F.S., provides a comparable process for mitigation of penalties against vendors of alcoholic beverages.

- The sale was made through a vending machine equipped with an operational lock-out device.⁹

Section 569.101, F.S., prohibits the sale, delivery, bartering, furnishing or giving of tobacco products to persons under the age of 18. A violation of this prohibition is a second degree misdemeanor.¹⁰ A second or subsequent violation within one year of the first violation is a first degree misdemeanor.¹¹

It is a complete defense to a person charged with a violation of s. 569.101, F.S., if the buyer or recipient falsely evidenced that he or she was 18 years of age or older, a prudent person would believe the buyer or recipient to be 18 years of age or older, and the buyer or recipient presented false identification¹² upon which the person relied in good faith.¹³

Section 569.11, F.S., prohibits persons under the age of 18 years from possessing, directly or indirectly, any tobacco products:

- A first violation of this prohibition is a non-criminal violation with a penalty of 16 hours of community service or a \$25 fine, and attendance at a school-approved anti-tobacco program, if locally available.
- A second or subsequent violation within 12 weeks of the first violation is punishable with a \$25 fine.

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.¹⁴

Eighty percent of all civil penalties received by a county court under s. 569.11, F.S., must be remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court must remain with the clerk of the county court to cover administrative costs.¹⁵

Section 569.12, F.S., provides enforcement authority to full-time, part-time, and auxiliary law enforcement officers for the provisions of ch. 569, F.S. The section also authorizes a county or municipality to designate certain of its employees or agents as tobacco product enforcement officers within specified guidelines. Such enforcement officers are authorized to issue a citation to a person under 18 years of age based on a reasonable cause to believe that a civil infraction

⁹ Section 569.008(3), F.S.

¹⁰ *Supra* note 5.

¹¹ Section 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

¹² Identification includes carefully checking “a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older.” *See* s. 569.101(3)(c), F.S.

¹³ Section 569.101(3), F.S.

¹⁴ Section 569.11(1), F.S.

¹⁵ Section 569.11(6), F.S.

has been committed. Similar authority is provided for correctional probation officers. Details are provided as to the required elements of the citation.

Retail tobacco product dealers (retailers) must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The Division is required to make the signs available to retailers. Retailers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.¹⁶

Section 569.19, F.S., requires the Division to annually provide to the Legislature and the Governor by December 31, a progress report on its enforcement actions specific to: number and results of compliance visits, number of violations for failure of a retailer to hold a valid license, number of violations of selling tobacco products to persons under age 18, and the results of administrative hearings on these issues, and the number of persons under age 18 cited for violations of underage purchases and sanctions imposed as a result of a citation.

Section 386.212, F.S., in the Florida Clean Indoor Air Act, prohibits any person under the age of 18 from smoking tobacco within 1,000 feet of a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight.¹⁷ A violation of this prohibition is punishable by a maximum noncriminal civil penalty not to exceed \$25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco “alternative to suspension” program.¹⁸

Administrative Penalties

A retail tobacco dealer permit-holder can be disciplined under the Division’s penalty guidelines. For a violation of the prohibition in s. 569.06, F.S., against the sale of tobacco products to persons under 18 years of age, the guidelines provide:

- 1st occurrence -- \$500 fine.
- 2nd occurrence -- \$1,000 fine.
- 3rd occurrence -- \$2,000 fine and a 20-day suspension of the dealer permit.
- 4th occurrence -- revocation of the dealer permit.

These penalties are based on a single violation in which the permit-holder committed or knew about the violation; or a pattern of at least three violations on different dates within a 12-week period by employees, independent contractors, agents, or patrons on the licensed premises or in the scope of employment in which the permit-holder did not participate; or violations which were occurring in an open and notorious manner on the licensed premises.¹⁹

Nicotine Dispensing Devices

Section 877.112, F.S., provides requirements for the sale of nicotine dispensing devices and nicotine products to minors, such as electronic cigarettes (e-cigarettes). This statute extends the

¹⁶ Section 569.14, F.S.

¹⁷ Section 386.212(1), F.S.

¹⁸ Section 386.212(3), F.S.

¹⁹ Fla. Admin. Code R. 61A-2.022(1) (2019).

current prohibitions related to tobacco products to the sale, gifting, possession, or use of nicotine dispensing devices and nicotine products to and by persons under 18 years of age.

A “nicotine dispensing device” is:

any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.²⁰

A “nicotine product” is:

any product that contains nicotine, including liquid nicotine intended for human consumption, whether inhaled, chewed, absorbed, dissolved or ingested by any means. The definition does not include a tobacco product under Florida law, a drug or device under federal law, or a product that contains incidental nicotine.²¹

The sale or giving of nicotine products or nicotine dispensing devices to any person under 18 years of age is prohibited and punishable as a second degree misdemeanor.²² It is a complete defense to a violation if an underage person falsely misrepresented his or her age, the underage person had the appearance to a prudent person to 18 years of age or older, and the person carefully checked, and relied on, the driver license or identification card of the recipient.²³

Persons under 18 years of age possessing, purchasing, or misrepresenting their age or military service to obtain nicotine products or nicotine dispensing devices commit a noncriminal violation. The penalty is 16 hours of community service or a \$25 fine for a first violation, and attendance at a school-approved anti-tobacco and nicotine program, if available. A second or subsequent violation within 12 weeks of the first violation requires a \$25 fine. Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.²⁴

If a person under 18 years of age is found by the court to have committed such a noncriminal violation and that person has failed to complete community service, pay the required fine, or attend a school-approved anti-tobacco and nicotine program, if locally available, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for 30 or 45 consecutive days, depending on the infraction.²⁵

²⁰ Section 877.112(1)(a), F.S.

²¹ Section 877.112(1)(b), F.S.

²² *Supra* note 5.

²³ Section 877.112(5), F.S.

²⁴ Sections 877.112(6) and (7), F.S.

²⁵ Section 877.112(8), F.S.

Eighty percent of civil penalties specific to possession of nicotine products or nicotine dispensing devices by minors and misrepresenting age in making such purchases are remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court are retained by the clerk of the county court to cover administrative costs.²⁶

Subsection 877.112(10), F.S., requires a retail dealer of nicotine products and nicotine dispensing devices to post signs that the sale of nicotine products and nicotine dispensing devices to persons under 18 years of age is prohibited.

Nicotine products or nicotine dispensing devices may not be sold or delivered by self-service merchandising, except when such products are under the direct control of, or in the line of sight where effective control may be reasonably maintained by, the retailer or their agent or employee.²⁷

To prevent persons under 18 years of age from purchasing or receiving nicotine products or nicotine dispensing devices, s. 877.112(12), F.S., requires retailers to comply with restrictions identical to the restrictions on the sale of tobacco products in s. 569.007(1), F.S., such as requiring the products to be sold or delivered only when under the direct control or line of sight of the retailer and requiring a lock-out device if the products are sold or delivered from a vending machine.

Regulation of Vaping

During the 2019 session, CS/SB 7012²⁸ was enacted to implement Amendment 9 to the Florida Constitution, which was approved by the voters of Florida on November 6, 2018, to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces, as part of the Florida Clean Indoor Air Act. The use of e-cigarettes is commonly referred to as vaping.

The use of vapor-generating electronic devices is permitted in the enclosed indoor workplace of a “vapor-generating device retailer” or “retail vape shop,” which is defined as “any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic devices and components, parts, and accessories for such products, in which the sale of other products or services is merely incidental.” Vaping is permitted at the same locations authorized to permit tobacco smoking, i.e., private residences whenever not being used for certain commercial purposes, stand-alone bars, designated rooms in hotels and other public lodging establishments, retail tobacco shops, facilities owned or leased by a membership association, smoking cessation program locations, medical or scientific research locations, and customs smoking rooms in airport in-transit lounges.

Local governments may adopt more restrictive local ordinances on the use of vapor-generating electronic devices.

²⁶ Section 877.112(9), F.S.

²⁷ Section 877.112(11), F.S.

²⁸ See ch. 2019-14, L.O.F.

The above provisions were approved by the Governor and took effect July 1, 2019.

Unlike the retail sale of tobacco products, which is subject to regulation under ch. 569, F.S., the sale of vape products is only regulated under the provisions of s. 877.112, F.S. While tobacco products in Florida are subject to specific taxation under ch. 210, F.S., vaping products are only subject to sales taxes.

Rates of Youth Vaping

According to recent data from the federal Centers for Disease Control and Prevention (CDC), more than one in four high school students is an e-cigarette user.²⁹ That represents an increase from approximately one in five last year. At the same time, around 10 percent of middle school students reported using e-cigarettes in the month prior to being surveyed, up from around 5 percent last year. Nearly 70 percent of e-cigarette users reported using a flavored product, and the availability of flavors such as mint and chocolate was a reason that many students cited for trying e-cigarettes. The findings come a year after the U.S. Surgeon General declared the surge in youth vaping an epidemic.³⁰

Health Issues Relating to Vaping

The findings noted above regarding the increases in youth vaping come at the same time that the CDC is conducting an ongoing national investigation of vaping-related lung injuries. The CDC, the federal Food and Drug Administration (FDA), state and local health departments, and public health and clinical stakeholders have spent the past several months investigating and monitoring the nationwide illness outbreak. The condition has been labelled as **E-cigarette, or Vaping, product use-Associated Lung Injury**, or EVALI. The latest count from the CDC finds that 2,409 people have been hospitalized and 52 people have died across 25 states and Washington, D.C., as of December 10, 2019.³¹ Two of the deaths have occurred in Florida, and 103 cases of vaping-related illness hospitalizations have been documented in Florida as of December 3, 2019.³²

National Minimum Age of Sale of Tobacco Products

As part of the federal budget revisions adopted in December 2019, and signed into law on December 20, 2019, the minimum age for the sale of tobacco products is now 21 years of age.³³

²⁹ See “Tobacco Product Use and Associated Factors Among Middle and High School Students — United States, 2019” Centers for Disease Control and Prevention- Morbidity and Mortality Weekly Report (MMWR), (December 6, 2019), available at <https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm> (last visited Jan. 16, 2020).

³⁰ See “Surgeon General Warns Youth Vaping Is Now An ‘Epidemic’” (December 18, 2018), available at <https://www.npr.org/sections/health-shots/2018/12/18/677755266/surgeon-general-warns-youth-vaping-is-now-an-epidemic> (last visited Dec. 12, 2019).

³¹ Mikosz CA, Danielson M, Anderson KN, et al. Characteristics of Patients Experiencing Rehospitalization or Death After Hospital Discharge in a Nationwide Outbreak of E-cigarette, or Vaping, Product Use–Associated Lung Injury — United States, 2019. CDC, *Morbidity & Mortality Weekly Report* 2020;68:1183-1188. (December 20, 2019), available at <http://dx.doi.org/10.15585/mmwr.mm685152e1external icon> (last visited January 8, 2020).

³² See “Florida reports second vaping death” (December 11, 2019), available at <http://www.orlandosentinel.com/news/os-ne-florida-reports-second-vaping-death-20191211-dvz3tehxebvpvkavhe2jdiepe-story.html> (last visited Dec. 12, 2019).

³³ See the “Further Consolidated Appropriations Act, 2020,” Rules Committee print 116-44, Text of the House Amendment to the Senate Amendment to H.R. 1865, December 16, 2019, beginning at page 1492 of 1773, available at

The specific tobacco provisions in the budget document amended section 906(d) of the Federal Food, Drug, and Cosmetic Act to increase the federal minimum age to purchase tobacco products from 18 to 21, and to add a provision that it is unlawful for any retailer to sell a tobacco product to any person younger than age 21. The provisions also require the FDA to update its applicable tobacco regulations within specified timelines.

As part of this rule update process, the FDA is to update the relevant age verification requirements to require age verification for individuals under age 30 (as opposed to the current age verification threshold for individuals under age 27). This topic had been under consideration for some time, and adoption of the changes were the result of the recent increased vaping rates among youth as highlighted above, the recent EVALI cases as highlighted above, and the adoption of age 21 as the minimum age for purchase of tobacco products in multiple states as highlighted in the **Related Issues** portion of this analysis.

Federal Food and Drug Administration Enforcement Priorities for Electronic Nicotine Delivery Systems and Other Deemed Products on the Market without Premarket Authorization (FDA Guidance Document)

On January 2, 2020, the FDA released “Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market without Premarket Authorization” (FDA Guidance Document) as a Guidance for Industry document.³⁴ (For all intents and purposes, the reference to ENDS products is a reference to vaping products.) The Guidance Document’s introduction describes how the FDA intends to prioritize its enforcement resources with regard to the marketing of certain deemed tobacco products that do not have premarket authorization.

The introduction further indicates that, as with FDA’s prior compliance policies on deemed new tobacco products that do not have premarket authorization, this guidance document does not apply to any deemed product that was not on the market on August 8, 2016.³⁵ For ENDS

<https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR1865SA-RCP116-44.PDF> (last visited Jan. 8, 2020).

³⁴ See “Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market without Premarket Authorization: Guidance for Industry, released by the U.S. Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products, (January 2, 2020), *available at* <https://www.fda.gov/media/133880/download> (last visited Jan. 8, 2020). The document as released is a follow-up to a draft document that was released by the FDA in March 2019. Appendix A of the document, consisting of pages 32-52 of the 52 page document, reflects FDA’s response to comments received on the March 2019 draft document.

³⁵ A brief explanation of “deeming” is helpful in this context. The Family Smoking Prevention and Tobacco Control Act (2009) (the ACT) gave the FDA the authority to regulate tobacco products. The Act broadly defined “tobacco products” as any product that is “made or derived from tobacco” that is “intended for human consumption.” However, the Act, when passed, only immediately applied to a few specific products, namely cigarettes, cigarette tobacco, smokeless tobacco, and roll-your-own tobacco. To regulate any other tobacco products, the Act requires the FDA to assert jurisdiction through regulation. In other words, for the FDA to start regulating cigars, e-cigarettes, hookah, and other products currently unregulated by the federal government, the FDA must create a rule through its formal notice-and-comment rulemaking process. A rule, or regulation, that extends the FDA’s jurisdiction to all tobacco products is often referred to as a Deeming Regulation because the language of the Tobacco Control Act states that the FDA can regulate additional tobacco products that it “deems to be subject” to the Act. While this process exists and has been used, its use is infrequent. From *A Deeming Regulation: What is Possible Under the Law*, Tobacco Control Legal Consortium, *available at*

products marketed without the FDA’s authorization, the FDA intends to prioritize enforcement against:

- Any flavored, cartridge-based ENDS product (other than a tobacco- or menthol-flavored ENDS product);
- All other ENDS products for which the manufacturer has failed to take (or is failing to take) adequate measures to prevent minors’ access; and
- Any ENDS product that is targeted to minors or whose marketing is likely to promote use of ENDS by minors.

The Guidance Document provides background details of the FDA’s statutory and regulatory history of tobacco related products, evidence of increasing youth use of vaping products, applicable definitions, enforcement priorities, strategies for avoiding use of “black market” products, and the FDA’s logic regarding enforcement and pre-market review for other deemed new tobacco products.

III. Effect of Proposed Changes:

Smoking and Vaping Prohibited Near School Property; Penalties

Section 2 amends s. 386.212, F.S., relating to smoking and vaping on or near school property and related penalties, to prohibit smoking and vaping by anyone under the age of 21 during any hours of day, on public or private school property or within 1,000 feet of such property. Under current law, that prohibition applies only to persons under 18 years of age between the hours of 6 a.m. and midnight. Current law and the bill provide an exception to this prohibition for any person occupying a moving vehicle or within a private residence.

Definitions of Primary Terms

Section 3 amends s. 569.002, F.S., which provides definitions specific to the regulation of tobacco products, to:

- Redefine the term “tobacco products” in subsection (6) as including:
 - Any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
 - Any vapor-generating electronic device and any substances that may be aerosolized or vaporized by such device, whether or not any of the substance contains nicotine; or
 - Any component, part, or accessory of a product described in (a) or (b), whether or not any of these contain tobacco or nicotine, including but not limited to, filters, rolling papers, blunt or hemp wraps, and pipes.

The term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

- Define the term “vapor-generating electronic device” in subsection (7) as “any product that employs an electronic, chemical, or mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product; any replacement cartridge for such device; and any other container of nicotine in a solution or other substance form intended to be used with or within an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, a vape pen, an electronic hookah, or other similar device or product. The term includes any component, part, or accessory of the device and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine.” The term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.
- Delete the definition of the term “any person under the age of 18.”

Sales Restrictions

Section 1 amends s. 210.15 (1)(b), F.S., relating to permits for the sale of tobacco products, to increase the minimum age for the issuance of such permits from 18 years of age to 21 years of age.

Section 5 amends s. 569.007(1) and (2), F.S., to modify the general restrictions on the sale or delivery of tobacco products. The bill reflects the increase in the age for the purchase of tobacco products to at least 21 years of age from 18 years of age. Sales of tobacco products from a vending machine are only permissible from a machine that is located in an establishment that prohibits persons under age 21 on the licensed premises at all times.

Section 6 amends s. 569.101, F.S., relating to the probation and penalties for any person who sells, delivers, barter, furnishes, or gives tobacco products to an under-age person, to increase in the age for the purchase of tobacco products to at least 21 years of age from 18 years of age.

Section 7 repeals s. 877.112, F.S., to eliminate the general restrictions on the sale or delivery of tobacco products, nicotine dispensing devices, and nicotine products to persons under the age of 18. Many of these provisions are incorporated into the provisions of ch. 569, F.S., by other portions of the bill, and comparable provisions of ch. 569, F.S., are made applicable to vaping devices and products via revised definitions.

Section 8 amends s. 210.095(5)(a) and (b), F.S., relating to mail order, Internet, and remote sales of tobacco products, and age verification related to such sales. The specifications for the warning label on shipped tobacco products is modified to indicate that Florida law prohibits the shipping to individuals under 21 years of age, rather than 18 years of age. Proof of legal minimum purchase age of the individual accepting delivery is required only if the individual appears to be under 30 years of age, rather than the current 27 years of age. (This latter provision is modified to ensure conformity with recent federal law provisions.³⁶)

³⁶ *Supra* note 33.

Section 11 amends s. 569.11, F.S., relating to prohibitions on the possession of tobacco products by persons under the minimum age of purchase, to reflect the increase in the minimum age for the purchase or sale of tobacco products in these provisions from 18 years of age to 21 years of age. The section is also amended to delete reference to military service in the context of age of purchase, since the bill separately removes an exception to age limits for tobacco purchase or possession by members of the active duty or reserve military.

Conforming Provisions

Sections 4, 9, 10, 12, 13, and 14 amend ss. 569.003(2)(a), 569.0075, 569.008, 569.12(2)(b) and (3), 569.14 and 569.19(3) and (4), F.S., respectively, to incorporate conforming provisions to reflect the increase in the minimum age for the purchase or sale of tobacco and nicotine products from 18 years of age to 21 years of age.

Effective Date

Section 15 provides for an effective date of October 1, 2020, contingent upon the passage of the linked fee bill (yet to be specified) being adopted in the same legislative session or an extension thereof and becoming law.

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:

Retail dealers of vapor-generating electronic devices, such as electronic cigarettes, will be required to obtain a retail tobacco product dealer permit. There is a linked bill that will apply that annual fee of \$50.

C. Government Sector Impact:

The Department of Business and Professional Regulation (DBPR) may incur indeterminate expenses related to personnel costs or modification of operational priorities needed to accommodate the additional licensure of dealers of vapor-generating electronic devices, which may be offset by a regulatory fee, to be applied via a linked bill.

The DBPR indicates that the bill will require modifications to the department's regulatory data system and related devices used by inspection staff. The department indicates that these modifications can be implemented using existing resources.³⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:**Taxation of Tobacco Products**

As previously indicated, Section 3 amends s. 569.002(6), F.S., to modify the definition of "tobacco products." Existing language in s. 210.25(11), F.S., relating to the tax on tobacco products other than cigarettes or cigars, defines the term "tobacco products" to mean:

loose tobacco suitable for smoking; snuff; snuff flour; Cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but "tobacco products" does not include cigarettes, as defined by s. 210.01(1), F.S., or cigars.

By not revising the definition of "tobacco products" in ch. 210, F.S., which governs the excise tax and surcharge imposed and collected on cigarettes and other tobacco products, the bill does not affect:

- The collection of excise taxes and surcharge taxes on tobacco products; and
- The licensure, reporting, and recordkeeping of manufacturers and distributors of the additional nicotine delivery products.

³⁷ Department of Business and Professional Regulation, *Senate Bill 810 Analysis* (December 9, 2019) (on file with the Senate Committee on Health Policy).

Types of Vaping Devices Subject to Federal Enforcement Priorities

It should be noted that the vaping devices that will be subject to enhanced enforcement by the federal FDA under its January 2, 2020, guidance document are those vaping devices that are cartridge-based.³⁸ This means that tank-based vaping devices will not be subject to enhanced federal FDA enforcement. Given this bifurcated approach at the federal level, it is not completely clear if the state's efforts in regulation of *all* vaping devices could face added scrutiny.

Exemptions from the Definition of Underage

Section 4 amends s. 569.002(7), F.S. This subsection presently provides specific exclusions from the meaning of “any person under the age of 18.” The bill does not provide comparable exclusions for persons under 21 years of age, other than those related to employment and compliance check participation. The elimination of these exceptions to the minimum age to purchase tobacco products, coupled with the increase of the minimum age to 21 years of age, may, for instance, require active duty or reserve military personnel to be 21 years of age to purchase or possess tobacco products, including electronic smoking devices.

Age of Tobacco Purchase in Other States

As of September 18, 2019, 18 states have raised the tobacco purchase age to 21 years of age, along with Washington, DC, and over 500 localities.³⁹ Some of the localities are in states that subsequently enacted statewide laws. Collectively, these laws now cover over half of the U.S. population. The strength of state and local laws, such as their enforcement and penalties, varies substantially.

Those states and the effective date of their adoption of the restrictive provisions are as follow:

State and Effective Date	State and Effective Date
Hawaii (effective 1/1/16)	Arkansas (effective 9/1/19)
California (effective 6/9/16)	Texas (effective 9/1/19)
New Jersey (effective 11/1/17)	Vermont (effective 9/1/19)
Oregon (effective 1/1/18)	Connecticut (effective 10/1/19)
Maine (effective 7/1/18)	Maryland (effective 10/1/19)
Massachusetts (effective 12/31/18)	Ohio (effective 10/17/19)
Illinois (effective 7/1/19)	New York (effective 11/13/19)
Virginia (effective 7/1/19)	Washington (effective 1/1/20)
Delaware (effective 7/16/19)	Utah (effective 7/1/21)

The following are among the localities that have raised their age for sale of tobacco products to the minimum to 21 years of age: New York City, Chicago, San Francisco, San Antonio, Boston, Cincinnati, Cleveland, Columbus, and Kansas City (in Kansas and Missouri), plus Washington,

³⁸ *Supra* note 34.

³⁹ See Campaign for Tobacco-Free Kids, States and Localities that have Raised the Minimum Legal Sale Age for Tobacco Products to 21, *available at* https://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf (Last visited Nov. 26, 2019).

D.C. In Florida, Alachua County and the city of Fort Lauderdale have raised their minimum age for purchase of tobacco products to 21 years of age.

Age Restrictions on Youth Access to Electronic Cigarettes in Other States

As of September 15, 2019, all states and the District of Columbia (with the exception of Pennsylvania) have laws that restrict youth access to electronic cigarettes, or e-cigarettes. In this context, *e-cigarette* broadly refers to any product, and its component parts and accessories, that contains nicotine and/or other substances intended for use in the form of an aerosol, often referred to as vapor. In 18 states, the restriction is set at age 21. In four states, the restriction is set at age 19. In 28 states, the restriction is set at age 18. At least one state (Utah) is on a path to increase the age restriction one year at a time to age 21 over a few years. There are certain exceptions and exemptions that are applicable within any given state.⁴⁰

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 210.095, 210.15, 386.212, 569.002, 569.003, 569.007, 569.0075, 569.008, 569.101, 569.11, 569.12, 569.14, and 569.19.

This bill repeals the following section of the Florida Statutes: 877.112.

This bill creates one non-statutory section of the Laws of Florida.

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 Health Policy on January 21, 2020:

The CS revises the bill to:

- Use the term and definition for “vapor-generating electronic device” from the Florida Constitution’s prohibition against indoor vaping to provide a consistency of terms and to adapt the term to include the cartridges or containers of nicotine or other substances used with a vaping device.
- Apply the prohibition against smoking and vaping within 1,000 feet of school property to persons under 21 years of age during all hours of day (instead of to persons under 18 years of age between the hours of 6 a.m. and midnight.)
- Require age verification before a sale or delivery to a person under 30 years of age. This complies with new federal law.

⁴⁰ See “Youth Access to E-Cigarettes, States with Laws Restricting Youth Access to E-Cigarettes, Enacted as of September 15, 2019,” Public Health Law Center at Mitchell Hamline School of Law, *available at* <https://www.publichealthlawcenter.org/sites/default/files/States-with-Laws-Restricting-Youth-Access-to-ECigarettes-September152019.pdf> (last visited Jan. 8, 2019).

The CS removes from the bill provisions that:

- Exempt retailers who only sell vaping devices and products from the fee (\$50) required for a retail tobacco dealer permit.
- Decriminalize, and revise the applicable penalties, for the prohibition against the sale, delivery, barter, or furnishing of tobacco products to a person under the age of 21.
- Repeal the current prohibitions against the possession of tobacco and vaping products by persons under the minimum age of lawful possession.
- Require the DBPR to conduct enhanced compliance checks of retail establishments.
- Prohibit deliveries of tobacco products to consumers.

B. Amendments:

None.

By Senator Simmons

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1 A bill to be entitled
2 An act relating to tobacco and nicotine products;
3 providing a short title; amending s. 210.095, F.S.;
4 deleting and redefining terms; defining the terms
5 "distributor" and "electronic smoking device";
6 restricting delivery sales of tobacco products to
7 certain entities; prohibiting delivery sales directly
8 to unlicensed persons; prohibiting a person from
9 aiding or assisting another person in certain
10 violations; conforming provisions to changes made by
11 the act; amending s. 386.212, F.S.; deleting age and
12 time restrictions relating to the prohibition of
13 smoking and vaping near school property; amending s.
14 569.002, F.S.; defining the term "electronic smoking
15 device"; revising the definition of the term "tobacco
16 products" to include additional products; replacing
17 the term "any person under the age of 18" with "any
18 person under the age of 21"; revising exemptions;
19 amending s. 569.003, F.S.; conforming provisions to
20 changes made by the act; revising the conditions under
21 which the Division of Alcoholic Beverages and Tobacco
22 may refuse to issue retail tobacco products dealer
23 permits; exempting certain entities from fees
24 associated with such permits; amending s. 569.005,
25 F.S.; revising the fines for certain noncriminal
26 violations; amending s. 569.006, F.S.; requiring
27 revenues from certain fines to be used for specified
28 purposes; requiring the division to deposit such
29 revenues in the Alcoholic Beverage and Tobacco Trust

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Fund rather than the General Revenue Fund; amending s. 569.007, F.S.; revising the age limitation of persons to whom it is unlawful to sell or deliver tobacco products; revising the conditions under which sales of tobacco products from a vending machine are authorized; requiring a dealer or a dealer's agent to require proof of age of tobacco product purchasers; amending s. 569.0075, F.S.; revising the age under which the gift of sample tobacco products to a person by certain entities is prohibited; amending s. 569.008, F.S.; revising legislative intent to reflect that the Legislature intends to prevent the sale of tobacco products to persons under a specified age; conforming provisions to changes made by the act; deleting an authorization for the division to mitigate penalties imposed against a dealer for certain violations; revising what constitutes prima facie evidence of a lack of due diligence by a dealer under certain circumstances; amending s. 569.101, F.S.; revising the age limitation that applies to the sale, delivery, bartering, furnishing, or giving of tobacco products; conforming provisions to changes made by the act; revising civil penalties; deleting criminal penalties; revising the elements of a complete defense for violations relating to selling, delivering, bartering, furnishing, or giving tobacco products to persons under a specified age; amending s. 569.11, F.S.; deleting a provision that prohibits persons under a specified age from possessing a tobacco

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product; conforming provisions to changes made by the act; revising the age limitation that applies to unlawful misrepresentation of age for certain purposes; conforming provisions to changes made by the act; deleting provisions relating to requirements for persons cited for committing certain noncriminal violations; amending s. 569.12, F.S.; deleting provisions authorizing tobacco product enforcement officers and correctional probation officers to issue citations under certain circumstances; requiring that dealers be subject to certain compliance checks; amending ss. 569.14 and 569.19, F.S.; conforming provisions to changes made by the act; repealing s. 877.112, F.S., relating to nicotine products and nicotine dispensing devices; providing an effective date.

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

Section 1. This act may be cited as the "Tobacco 21 Act."

Section 2. Section 210.095, Florida Statutes, is amended to read:

210.095 Mail order, Internet, and remote sales of tobacco products; age verification.—

(1) For purposes of this section, the term:

~~(a) "Adult" means an individual who is at least of the legal minimum purchase age for tobacco products.~~

~~(b) "Consumer" means a person in this state who comes into possession of any tobacco product subject to the tax imposed by~~

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~~this chapter and who, at the time of possession, is not a distributor intending to sell or distribute the tobacco product, a retailer, or a wholesaler.~~

(a)~~(e)~~ "Delivery sale" means any sale of tobacco products to a retailer, wholesale dealer, distributing agent, distributor, importer, or exporter ~~consumer~~ in this state for which:

1. The retailer, wholesale dealer, distributing agent, distributor, importer, or exporter ~~consumer~~ submits the order for the sale by telephonic or other voice transmission, mail, delivery service, or the Internet or other online service; or

2. The tobacco products are delivered by use of mail or a delivery service.

(b)~~(d)~~ "Delivery service" means any person engaged in the commercial delivery of letters, packages, or other containers.

(c) "Distributor" has the same meaning as in s. 210.25.

(d) "Electronic smoking device" has the same meaning as in s. 569.002.

~~(e) "Legal minimum purchase age" means the minimum age at which an individual may legally purchase tobacco products in this state.~~

~~(f) "Mail" or "mailing" means the shipment of tobacco products through the United States Postal Service.~~

(e)~~(g)~~ "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers ~~who is not a licensed distributor but who is in possession of tobacco products subject to tax under this chapter for the purposes of selling the tobacco products to consumers.~~

~~(h) "Shipping container" means a container in which tobacco~~

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117 ~~products are shipped in connection with a delivery sale.~~

118 ~~(i) "Shipping document" means a bill of lading, airbill,~~
119 ~~United States Postal Service form, or any other document used to~~
120 ~~verify the undertaking by a delivery service to deliver letters,~~
121 ~~packages, or other containers.~~

122 ~~(f)(j) "Tobacco products" has the same meaning as in s.~~
123 ~~569.002 means all cigarettes, smoking tobacco, snuff, fine-cut~~
124 ~~chewing tobacco, cut and granulated tobacco, cavendish, and plug~~
125 ~~or twist tobacco.~~

126 ~~(2) Licensed retailers, licensed wholesale dealers,~~
127 ~~licensed distributing agents, licensed distributors, licensed~~
128 ~~importers, and licensed exporters may accept delivery sales of~~
129 ~~tobacco products in this state. Delivery sales directly to~~
130 ~~unlicensed persons are prohibited.~~

131 ~~(3) A person may not, with knowledge or reason to know of~~
132 ~~the violation, aid or assist another person in a violation of~~
133 ~~this section.~~

134 ~~(a) A sale of tobacco products constituting a delivery sale~~
135 ~~pursuant to paragraph (1)(c) is a delivery sale regardless of~~
136 ~~whether the person accepting the order for the delivery sale is~~
137 ~~located inside or outside this state.~~

138 ~~(b) A retailer must obtain a license from the division~~
139 ~~pursuant to the requirements of this chapter before accepting an~~
140 ~~order for a delivery sale.~~

141 ~~(c) A person may not make a delivery sale of tobacco~~
142 ~~products to any individual who is not an adult.~~

143 ~~(d) Each person accepting an order for a delivery sale must~~
144 ~~comply with each of the following:~~

145 ~~1. The age verification requirements set forth in~~

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subsection ~~(3)~~.

~~2. The disclosure requirements set forth in subsection (4).~~

~~3. The shipping requirements set forth in subsection (5).~~

~~4. The registration and reporting requirements set forth in subsection (6).~~

~~5. The tax collection requirements set forth in subsection (7).~~

~~6. The licensing and tax stamp requirements set forth in this chapter which apply to sales of tobacco products occurring entirely in this state.~~

~~7. All laws of this state generally applicable to sales of tobacco products occurring entirely in this state which impose excise taxes and assessments.~~

~~(3) A person may not mail, ship, or otherwise deliver tobacco products in connection with an order for a delivery sale unless, before the first delivery to the consumer, the person accepting the order for the delivery sale:~~

~~(a) Obtains from the individual submitting the order a certification that includes:~~

~~1. Reliable confirmation that the individual is an adult; and~~

~~2. A statement signed by the individual in writing and under penalty of perjury which:~~

~~a. Certifies the address and date of birth of the individual; and~~

~~b. Confirms that the individual wants to receive delivery sales from a tobacco company and understands that, under the laws of this state, the following actions are illegal:~~

~~(I) Signing another individual's name to the certification;~~

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175 ~~(II) Selling tobacco products to individuals under the~~
176 ~~legal minimum purchase age; and~~

177 ~~(III) Purchasing tobacco products, if the person making the~~
178 ~~purchase is under the legal minimum purchase age.~~

179 ~~(b) Makes a good faith effort to verify the information~~
180 ~~contained in the certification provided by the individual~~
181 ~~pursuant to paragraph (a) against a commercially available~~
182 ~~database that may be reasonably relied upon for accurate age~~
183 ~~information or obtains a photocopy or other image of a valid~~
184 ~~government-issued identification card stating the date of birth~~
185 ~~or age of the individual.~~

186 ~~(c) Provides to the individual, via electronic mail or~~
187 ~~other means, a notice meeting the requirements of subsection~~
188 ~~(4).~~

189 ~~(d) If an order for tobacco products is made pursuant to an~~
190 ~~advertisement on the Internet, receives payment for the delivery~~
191 ~~sale from the consumer by a credit or debit card issued in the~~
192 ~~name of the consumer, or by personal or company check of the~~
193 ~~consumer.~~

194 ~~(e) Imposes a two-carton minimum on each order of~~
195 ~~cigarettes, and requires payment for the purchase of any tobacco~~
196 ~~product to be made by personal or company check of the purchaser~~
197 ~~or the purchaser's credit card or debit card. Payment by money~~
198 ~~order or cash may not be received or permitted. The person~~
199 ~~accepting the order for delivery sale shall submit, to each~~
200 ~~credit card acquiring company with which the person has credit~~
201 ~~card sales, identification information in an appropriate form~~
202 ~~and format so that the words "tobacco product" may be printed in~~
203 ~~the purchaser's credit card statement when a purchase of a~~

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~~tobacco product is made by credit card payment.~~

~~(f) Makes a telephone call after 5 p.m. to the purchaser confirming the order before shipping the tobacco products. The telephone call may be a person-to-person call or a recorded message. The person accepting the order for delivery sale is not required to speak directly with a person and may leave a message on an answering machine or through voice mail.~~

~~In addition to the requirements of this subsection, a person accepting an order for a delivery sale may request that a consumer provide an electronic mail address.~~

~~(4) The notice described in paragraph (3)(c) must include prominent and clearly legible statements that sales of tobacco products are:~~

~~(a) Illegal if made to individuals who are not adults.~~

~~(b) Restricted to those individuals who provide verifiable proof of age in accordance with subsection (3).~~

~~(c) Taxable under this chapter.~~

~~The notice must include an explanation of how each tax has been, or is to be, paid with respect to the delivery sale.~~

~~(5) Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale must:~~

~~(a) Include as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Tobacco Products: Florida law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes."~~

~~(b) Use a method of mailing, shipping, or delivery which obligates the delivery service to require:~~

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~~1. The individual submitting the order for the delivery sale or another adult who resides at the individual's address to sign his or her name to accept delivery of the shipping container. Proof of the legal minimum purchase age of the individual accepting delivery is required only if the individual appears to be under 27 years of age.~~

~~2. Proof that the individual is either the addressee or the adult designated by the addressee, in the form of a valid, government issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.~~

~~(c) Provide to the delivery service, if such service is used, evidence of full compliance with subsection (7).~~

~~If the person accepting a purchase order for a delivery sale delivers the tobacco products without using a delivery service, the person must comply with all of the requirements of this section which apply to a delivery service. Any failure to comply with a requirement of this section constitutes a violation thereof.~~

~~(6)(a) Before making sales or shipping tobacco products in connection with sales, a person shall file with the division a statement providing the person's name, trade name, and the address of the person's principal place of business, as well as any other place of business.~~

~~(b) No later than the 10th day of each month, each person who has made a sale or mailed, shipped, or otherwise delivered tobacco products in connection with any sale during the previous calendar month shall file with the division a memorandum or a~~

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262 ~~copy of the invoice, providing for each sale:~~

263 ~~1. The name and address of the individual who submitted the~~
264 ~~order for the sale.~~

265 ~~2. The name and address of the individual who accepted~~
266 ~~delivery of the tobacco products.~~

267 ~~3. The name and address of the person who accepted the~~
268 ~~order for the sale of the tobacco products.~~

269 ~~4. The name and address of the delivery service and the~~
270 ~~name of the individual making the delivery.~~

271 ~~5. The brand or brands of the tobacco products sold in the~~
272 ~~sale.~~

273 ~~6. The quantity of each brand of tobacco products sold in~~
274 ~~the sale.~~

275 ~~(c) A person may comply with the requirements of this~~
276 ~~subsection by complying with the requirements of 15 U.S.C. s.~~
277 ~~376.~~

278 ~~(d) This section does not apply to sales of tobacco~~
279 ~~products by a licensed distributor or to sales of tobacco~~
280 ~~products by a retailer purchased from a licensed distributor.~~

281 ~~(7) Each person accepting a purchase order for a delivery~~
282 ~~sale shall collect and remit to the division all taxes imposed~~
283 ~~on tobacco products by this state with respect to the delivery~~
284 ~~sale. With respect to cigarettes, the collection and remission~~
285 ~~are not required if the person has obtained proof in the form of~~
286 ~~the presence of applicable tax stamps or tax-exempt stamps, or~~
287 ~~other proof that the taxes have already been paid to this state.~~

288 ~~(4)(8)(a) Except as otherwise provided in this section, a~~
289 ~~violation of this section by a person other than an individual~~
290 ~~who is not an adult is a misdemeanor of the first degree,~~

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~~punishable as provided in s. 775.082 or s. 775.083, and:~~

1. For a first violation of this section, a ~~the~~ person shall be fined \$1,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

2. For a second or subsequent violation of this section, the person shall be fined \$5,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

~~(b) A person who is an adult and knowingly submits a false certification under subsection (3) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For each offense, the person shall be fined \$10,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.~~

~~(c) A person who fails to pay any tax required in connection with a delivery sale shall pay, in addition to any other penalty, a penalty of five times the retail value of the tobacco products involved.~~

(b) ~~(d)~~ Any tobacco products sold or attempted to be sold in a delivery sale not meeting the requirements of this section shall be forfeited to the state pursuant to s. 210.185.

~~(e) A person who, in connection with a delivery sale, delivers tobacco products on behalf of a delivery service to an individual who is not an adult commits a misdemeanor of the third degree, punishable as provided in s. 775.082 or s. 775.083.~~

(c) ~~(f)~~ Any fixture, equipment, or other material or personal property on the premises of any person who, with the

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intent to defraud this state, mails or ships tobacco products into this state and fails to satisfy any of the requirements of this section is a contraband article within the definition of s. 932.701(2) (a) 3.

~~(g) An individual who is not an adult and who knowingly violates any provision of this section commits a misdemeanor of the third degree, punishable as provided in s. 775.082 or s. 775.083.~~

(5)~~(9)~~ The Attorney General, the Attorney General's designee, a state attorney, or any person who holds a permit under 26 U.S.C. s. 5713 may bring an action in the appropriate court in this state to prevent or restrain violations of this section by any person.

Section 3. Subsection (1) of section 386.212, Florida Statutes, is amended to read:

386.212 Smoking and vaping prohibited near school property; penalty.—

(1) It is unlawful for any person ~~under 18 years of age~~ to smoke tobacco or vape in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school ~~between the hours of 6 a.m. and midnight~~. This section does not apply to any person occupying a moving vehicle or within a private residence.

Section 4. Present subsections (1), (2), and (3) through (6) of section 569.002, Florida Statutes, are redesignated as subsections (2), (3), and (5) through (8), respectively, a new subsection (4) is added to that section, and present subsections (6) and (7) are amended, to read:

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

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349 (4) "Electronic smoking device" means any device that may
350 be used to deliver any aerosolized or vaporized substance to the
351 person inhaling from the device, including, but not limited to,
352 an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. The term
353 includes any component, part, or accessory of the device and
354 also includes any substance intended to be aerosolized or
355 vaporized during the use of the device, whether or not the
356 substance contains nicotine.

357
358 The term does not include drugs, devices, or combination
359 products authorized for sale by the U.S. Food and Drug
360 Administration, as those terms are defined in the Federal Food,
361 Drug, and Cosmetic Act.

362 (8)~~(6)~~ "Tobacco products" includes:

363 (a) Any product containing, made of, or derived from
364 tobacco or nicotine that is intended for human consumption or is
365 likely to be consumed, whether inhaled, absorbed, or ingested by
366 any other means, including, but not limited to, a cigarette, a
367 cigar, pipe tobacco, chewing tobacco, snuff, or snus;

368 (b) Any electronic smoking device and any substances that
369 may be aerosolized or vaporized by such device, whether or not
370 the substance contains nicotine; or

371 (c) Any component, part, or accessory of a product
372 described in paragraph (a) or paragraph (b), whether or not any
373 of these contain tobacco or nicotine, including, but not limited
374 to, filters, rolling papers, blunt or hemp wraps, and pipes.

375
376 The term does not include drugs, devices, or combination
377 products authorized for sale by the U.S. Food and Drug

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Administration, as those terms are defined in the Federal Food,
Drug, and Cosmetic Act ~~loose tobacco leaves, and products made
from tobacco leaves, in whole or in part, and cigarette
wrappers, which can be used for smoking, sniffing, or chewing.~~

~~(1)(7)~~ "Any person under the age of 21 ~~18~~" does not include
any person under the age of 21 ~~18~~ who:

~~(a) Has had his or her disability of nonage removed under
chapter 743;~~

~~(b) Is in the military reserve or on active duty in the
Armed Forces of the United States;~~

~~(c) Is otherwise emancipated by a court of competent
jurisdiction and released from parental care and responsibility;
or~~

~~(a)(d)~~ Is acting in his or her scope of lawful employment
with an entity licensed under the provisions of chapter 210 or
this chapter; or

(b) Is participating in a compliance check as required by
s. 569.12.

Section 5. Subsection (2) of section 569.003, Florida
Statutes, is amended, and subsection (5) is added to that
section, to read:

569.003 Retail tobacco products dealer permits;
application; qualifications; fees; renewal; duplicates.—

(2) (a) Permits may be issued only to persons who are 21 ~~18~~
years of age or older or to corporations the officers of which
are 21 ~~18~~ years of age or older.

(b) The division may refuse to issue a permit to any
person, firm, association, or corporation the permit of which
has been revoked or suspended, to any corporation an officer of

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which has had his or her permit revoked or suspended, or to any person who is or has been an officer of a corporation the permit of which has been revoked or suspended. Any permit issued to a firm, association, or corporation prohibited from obtaining a permit under this section shall be revoked by the division.

(5) An entity that deals only in tobacco products that are electronic smoking devices; components, parts, or accessories of such devices; or substances that may be aerosolized or vaporized by such devices and that holds or is applying for a retail tobacco product dealer permit is exempt from any fees relating to the permit.

Section 6. Subsections (1) and (2) of section 569.005, Florida Statutes, are amended to read:

569.005 Operating without a retail tobacco products dealer permit; penalty.—

(1) It is unlawful for a person, firm, association, or corporation to deal, at retail, in tobacco products, in any manner, or to allow a tobacco products vending machine to be located on its premises, without having a retail tobacco products dealer permit as required by s. 569.003. A person who violates this section is guilty of a noncriminal violation, punishable by a fine of at least ~~not more than~~ \$500.

(2) Any person who violates this section shall be cited for such infraction and shall be cited to appear before the county court. The citation may indicate the time, date, and location of the scheduled hearing and must indicate that the penalty for a noncriminal violation is a fine of at least ~~not more than~~ \$500.

Section 7. Section 569.006, Florida Statutes, is amended to read:

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569.006 Retail tobacco products dealers; administrative penalties.—The division may suspend or revoke the permit of the dealer upon sufficient cause appearing of the violation of any of the provisions of this chapter, by a dealer or by a dealer's agent or employee. The division may also assess and accept administrative fines of up to \$1,000 against a dealer for each violation. The revenues generated from such fines shall be used to offset the costs of licensing administration, education and training, retail inspections, and unannounced compliance checks, and the division shall deposit all fines collected into the Alcoholic Beverage and Tobacco Trust Fund ~~General Revenue Fund~~ as collected. An order imposing an administrative fine becomes effective 15 days after the date of the order. The division may suspend the imposition of a penalty against a dealer, conditioned upon the dealer's compliance with terms the division considers appropriate.

Section 8. Subsections (1), (2), and (4) of section 569.007, Florida Statutes, are amended to read:

569.007 Sale or delivery of tobacco products; restrictions.—

(1) In order to prevent persons under 21 ~~18~~ years of age from purchasing or receiving tobacco products, the sale or delivery of tobacco products is prohibited, except:

(a) When under the direct control or line of sight of the dealer or the dealer's agent or employee; or

(b) Sales from a vending machine are prohibited under ~~the provisions of~~ paragraph (1)(a) and are only permissible from a machine that is located in an establishment that prohibits persons under 21 years of age on the licensed premises at all

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465 ~~times equipped with an operational lockout device which is under~~
466 ~~the control of the dealer or the dealer's agent or employee who~~
467 ~~directly regulates the sale of items through the machine by~~
468 ~~triggering the lockout device to allow the dispensing of one~~
469 ~~tobacco product. The lockout device must include a mechanism to~~
470 ~~prevent the machine from functioning if the power source for the~~
471 ~~lockout device fails or if the lockout device is disabled, and a~~
472 ~~mechanism to ensure that only one tobacco product is dispensed~~
473 ~~at a time.~~

474 ~~(2) The provisions of subsection (1) shall not apply to an~~
475 ~~establishment that prohibits persons under 18 years of age on~~
476 ~~the licensed premises.~~

477 ~~(3)~~ (4) A dealer or a dealer's agent or employee shall ~~may~~
478 require proof of age of a purchaser of a tobacco product before
479 selling the product to that person.

480 Section 9. Section 569.0075, Florida Statutes, is amended
481 to read:

482 569.0075 Gift of sample tobacco products prohibited.—The
483 gift of sample tobacco products to any person under the age of
484 21 ~~18~~ by an entity licensed or permitted under the provisions of
485 chapter 210 or this chapter, or by an employee of such entity,
486 is prohibited and is punishable as provided in s. 569.101.

487 Section 10. Section 569.008, Florida Statutes, is amended
488 to read:

489 569.008 Responsible retail tobacco products dealers;
490 qualifications; ~~mitigation of disciplinary penalties;~~ diligent
491 management and supervision; presumption.—

492 (1) The Legislature intends to prevent the sale of tobacco
493 products to persons under 21 ~~18~~ years of age and to encourage

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retail tobacco products dealers to comply with responsible practices in accordance with this section.

(2) To qualify as a responsible retail tobacco products dealer, the dealer must establish and implement procedures designed to ensure that the dealer's employees comply with the provisions of this chapter. The dealer must provide a training program for the dealer's employees which addresses the use and sale of tobacco products and which includes at least the following topics:

(a) Laws covering the sale of tobacco products.

(b) Methods of recognizing and handling customers under 21 ~~18~~ years of age.

(c) Procedures for proper examination of identification cards in order to verify that customers are not under 21 ~~18~~ years of age.

(d) The use of the age audit identification function on electronic point-of-sale equipment, where available.

~~(3) In determining penalties under s. 569.006, the division may mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person under 18 years of age if the following conditions are met:~~

~~(a) The dealer is qualified as a responsible dealer under this section.~~

~~(b) The dealer provided the training program required under subsection (2) to that employee before the illegal sale occurred.~~

~~(c) The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.~~

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~~(d) If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.~~

(3)~~(4)~~ The division shall develop and make available a model tobacco products training program designed to ensure adherence to this act by dealers and their employees which, if followed, will qualify dealers as responsible dealers.

(4)~~(5)~~ Dealers shall exercise diligence in the management and supervision of their premises and in the supervision and training of their employees, agents, or servants. In proceedings to impose penalties under s. 569.006, proof that employees, agents, or servants of the dealer, while in the scope of their employment, committed at least three violations of s. 569.101 during a 36-month ~~180-day~~ period shall be prima facie evidence of a lack of due diligence by the dealer in the management and supervision of his or her premises and in the supervision and training of employees, agents, officers, or servants.

(5)~~(6)~~ The division may consider qualification as a responsible retail tobacco products dealer under this section as evidence that the dealer properly exercised the diligence required under this section.

Section 11. Section 569.101, Florida Statutes, is amended to read:

569.101 Selling, delivering, bartering, furnishing, or giving tobacco products to persons under 21 ~~18~~ years of age; ~~criminal~~ penalties; defense.—

(1) It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person ~~who is~~ under the age of 21 ~~18 years of age~~, any tobacco product.

(2) Any dealer ~~person~~ who violates subsection (1):

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552 (a) For a first time shall pay a minimum fine of \$500;

553 (b) For a second time within a 36-month period shall pay a
554 minimum fine of \$750 and may not distribute tobacco products for
555 a minimum of 7 days;

556 (c) For a third time within a 36-month period shall pay a
557 minimum fine of \$1,000 and may not distribute tobacco products
558 for a minimum of 30 days; and

559 (d) For a fourth and any subsequent violations within a 36-
560 month period shall pay a minimum fine of \$1,000 and may not
561 distribute tobacco products for a period of 3 years.

562 (3) Any person found to have violated subsection (1) while
563 acting as a nonmanagement agent or employee of a dealer is
564 subject to noncriminal and nonmonetary penalties, including, but
565 not limited to, education classes, diversion programs, and
566 community service.

567 (4) Any person 21 years of age or older who is not a dealer
568 or a dealer's agent or employee and who violates subsection (1)
569 shall pay an administrative fine of \$50 ~~commits a misdemeanor of~~
570 ~~the second degree, punishable as provided in s. 775.082 or s.~~
571 ~~775.083. However, any person who violates subsection (1) for a~~
572 ~~second or subsequent time within 1 year of the first violation,~~
573 ~~commits a misdemeanor of the first degree, punishable as~~
574 ~~provided in s. 775.082 or s. 775.083.~~

575 (5)~~(3)~~ A dealer or nonmanagement agent or employee of a
576 dealer ~~person~~ charged with a violation of subsection (1) has a
577 complete defense if, at the time the tobacco product was sold,
578 delivered, bartered, furnished, or given:

579 (a) The buyer or recipient falsely evidenced that she or he
580 was 21 ~~18~~ years of age or older;

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(b) The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 21 ~~18~~ years of age or older; and

(c) Such person carefully checked a driver license or an identification card issued by this state or another state of the United States or, a passport, ~~or a United States armed services identification card~~ presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 ~~18~~ years of age or older.

Section 12. Section 569.11, Florida Statutes, is amended to read:

569.11 ~~Possession, Misrepresenting age or military service to purchase, and purchase of~~ tobacco products by persons under 21 ~~18~~ years of age prohibited; penalties; jurisdiction; disposition of fines.—

(1) ~~It is unlawful for any person under 18 years of age to knowingly possess any tobacco product. Any person under 18 years of age who violates this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:~~

(a) ~~For a first violation, 16 hours of community service or, instead of community service, a \$25 fine. In addition, the person must attend a school-approved anti-tobacco program, if locally available; or~~

(b) ~~For a second or subsequent violation within 12 weeks after the first violation, a \$25 fine.~~

~~Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first~~

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610 ~~violation.~~

611 ~~(2)~~ It is unlawful for any person under 21 ~~18~~ years of age
612 to misrepresent his or her age ~~or military service~~ for the
613 purpose of inducing a dealer or an agent or employee of the
614 dealer to sell, give, barter, furnish, or deliver any tobacco
615 product, or to purchase, or attempt to purchase, any tobacco
616 product from a person or a vending machine. Any person under 21
617 ~~18~~ years of age who violates this subsection commits a
618 noncriminal violation as provided in s. 775.08(3), punishable
619 by:

620 (a) For a first violation, 16 hours of community service
621 or, instead of community service, a \$25 fine and, in addition,
622 the person must attend a school-approved anti-tobacco program,
623 if available; or

624 (b) For a second or subsequent violation within 12 weeks
625 after the first violation, a \$25 fine.

626
627 Any second or subsequent violation not within the 12-week period
628 after the first violation is punishable as provided for a first
629 violation.

630 ~~(3) Any person under 18 years of age cited for committing a~~
631 ~~noncriminal violation under this section must sign and accept a~~
632 ~~civil citation indicating a promise to appear before the county~~
633 ~~court or comply with the requirement for paying the fine and~~
634 ~~must attend a school-approved anti-tobacco program, if locally~~
635 ~~available. If a fine is assessed for a violation of this~~
636 ~~section, the fine must be paid within 30 days after the date of~~
637 ~~the citation or, if a court appearance is mandatory, within 30~~
638 ~~days after the date of the hearing.~~

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~~(4) A person charged with a noncriminal violation under this section must appear before the county court or comply with the requirement for paying the fine. The court, after a hearing, shall make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified in subsection (1) or subsection (2). A person who participates in community service shall be considered an employee of the state for the purpose of chapter 440, for the duration of such service.~~

~~(5)(a) If a person under 18 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to complete community service, pay the fine as required by paragraph (1)(a) or paragraph (2)(a), or attend a school-approved anti-tobacco program, if locally available, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.~~

~~(b) If a person under 18 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by paragraph (1)(b) or paragraph (2)(b), the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 45 consecutive days.~~

~~(2)(6)~~ (2) Eighty percent of all civil penalties received by a county court pursuant to this section shall be remitted by the clerk of the court to the Department of Revenue for transfer to

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the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products by children. The remaining 20 percent of civil penalties received by a county court pursuant to this section shall remain with the clerk of the county court to cover administrative costs.

Section 13. Section 569.12, Florida Statutes, is amended to read:

569.12 Jurisdiction; tobacco product enforcement officers or agents; enforcement; compliance checks.—

(1) In addition to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation, any law enforcement officer certified under s. 943.10(1), (6), or (8) shall enforce the provisions of this chapter.

(2) ~~(a)~~ A county or municipality may designate certain of its employees or agents as tobacco product enforcement officers. The training and qualifications of the employees or agents for such designation shall be determined by the county or the municipality. Nothing in this section shall be construed to permit the carrying of firearms or other weapons by a tobacco product enforcement agent, nor does designation as a tobacco product enforcement officer provide the employee or agent with the power of arrest or subject the employee or agent to the provisions of ss. 943.085-943.255. Nothing in this section amends, alters, or contravenes the provisions of any state-administered retirement system or any state-supported retirement system established by general law.

~~(b) A tobacco product enforcement officer is authorized to~~

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~~issue a citation to a person under the age of 18 when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 386.212 or s. 569.11.~~

~~(3) A correctional probation officer as defined in s. 943.10(3) is authorized to issue a citation to a person under the age of 18 when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 569.11.~~

~~(4)~~ A citation issued to any person violating the provisions of s. 569.11 shall be in a form prescribed by the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation and shall contain:

(a) The date and time of issuance.

(b) The name and address of the person to whom the citation is issued.

(c) The date and time the civil infraction was committed.

(d) The facts constituting reasonable cause.

(e) The number of the Florida statute violated.

(f) The name and authority of the citing officer.

(g) The procedure for the person to follow in order to contest the citation, perform the required community service, attend the required anti-tobacco program, or to pay the civil penalty.

(4) Each dealer shall be subject to at least two unannounced compliance checks per year. The division or its authorized designee shall conduct compliance checks by engaging persons between the ages of 18 and 20 to enter the tobacco retail establishment to attempt to purchase tobacco products.

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Unannounced follow-up compliance checks of all noncompliant dealers are required within 3 months of any violation of this chapter.

Section 14. Section 569.14, Florida Statutes, is amended to read:

569.14 Posting of a sign stating that the sale of tobacco products to persons under 21 ~~18~~ years of age is unlawful; enforcement; penalty.—

(1) A dealer that sells tobacco products shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following:

THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR SALE PURCHASE.

~~(2) A dealer that sells tobacco products and nicotine products or nicotine dispensing devices, as defined in s. 877.112, may use a sign that substantially states the following:~~

~~THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.~~

~~A dealer that uses a sign as described in this subsection meets the signage requirements of subsection (1) and s. 877.112.~~

~~(3)~~ The division shall make available to dealers of tobacco products signs that meet the requirements of subsection (1) ~~or~~

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755 ~~subsection (2).~~

756 (3)~~(4)~~ Any dealer that sells tobacco products shall provide
757 at the checkout counter in a location clearly visible to the
758 dealer or the dealer's agent or employee instructional material
759 in a calendar format or similar format to assist in determining
760 whether a person is of legal age to purchase tobacco products.
761 This point of sale material must contain substantially the
762 following language:

763
764 IF YOU WERE NOT BORN BEFORE THIS DATE

765 (insert date and applicable year)

766 YOU CANNOT BE SOLD ~~BUY~~ TOBACCO PRODUCTS.
767

768 Upon approval by the division, in lieu of a calendar a dealer
769 may use card readers, scanners, or other electronic or automated
770 systems that can verify whether a person is of legal age to
771 purchase tobacco products. Failure to comply with the provisions
772 contained in this subsection shall result in imposition of
773 administrative penalties as provided in s. 569.006.

774 (4)~~(5)~~ The division, through its agents and inspectors,
775 shall enforce this section.

776 (5)~~(6)~~ Any person who fails to comply with subsection (1)
777 is guilty of a misdemeanor of the second degree, punishable as
778 provided in s. 775.082 or s. 775.083.

779 Section 15. Subsections (3) and (4) of section 569.19,
780 Florida Statutes, are amended to read:

781 569.19 Annual report.—The division shall report annually
782 with written findings to the Legislature and the Governor by
783 December 31, on the progress of implementing the enforcement

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provisions of this chapter. This must include, but is not limited to:

(3) The number of violations for selling tobacco products to persons under age 21 ~~18~~, and the results of administrative hearings on the above and related issues.

(4) The number of persons under age 21 ~~18~~ cited for violations of s. 569.11 and sanctions imposed as a result of citation.

Section 16. Section 877.112, Florida Statutes, is repealed.

Section 17. This act shall take effect October 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Gayle Harrell, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: November 22, 2019

I respectfully request that **Senate Bill 810**, relating to Tobacco and Nicotine Products, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons", with a stylized flourish at the end.

Senator David Simmons
Florida Senate, District 9



ANALYSIS

2020 AGENCY LEGISLATIVE BILL

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION

BILL NUMBER:	<u>SB 810</u>
BILL TITLE:	<u>Tobacco and Nicotine Products</u>
BILL SPONSOR:	<u>Sen. Simmons</u>
EFFECTIVE DATE:	<u>10/01/2020</u>

COMMITTEES OF REFERENCE

1) Health Policy
2) Innovation, Industry, and Technology
3) Rules
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE

N/A

SIMILAR BILLS

BILL NUMBER:	HB 151 (compare) and SB 694 (compare)
SPONSOR:	Reps. Toledo and Duran and Sen. Mayfield

PREVIOUS LEGISLATION

BILL NUMBER:	N/A
SPONSOR:	N/A
YEAR:	N/A
LAST ACTION:	N/A

IDENTICAL BILLS

BILL NUMBER:	N/A
SPONSOR:	N/A

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	December 9, 2019
LEAD AGENCY ANALYST:	Sterling Whisenhunt, Director Alcoholic Beverages and Tobacco
ADDITIONAL ANALYST(S):	Debi Winters, Alcoholic Beverages and Tobacco Tom Coker, Technology Tracy Dixon, Service Operations

	Thomas Izzo, OGC Rules Megan Kachur, OGC AB&T
LEGAL ANALYST:	Ross Marshman, OGC
FISCAL ANALYST:	Raleigh Close, Planning and Budget

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Cited as the "Tobacco 21 Act", the bill raises the minimum age from 18 to 21 to lawfully purchase tobacco products. It revises s. 210.095, F.S., relating to mail order, internet, and remote sales of tobacco products and prohibits delivery sales of these products directly to unlicensed individuals.

The bill includes cigarettes, pipe tobacco, hookahs, waterpipe tobacco, e-liquid, dissolvable tobacco, nicotine gel, smokeless tobacco, roll-your-own tobacco, chewing tobacco, snuff, or snus nicotine, electronic smoking devices, filters, rolling papers, blunt or hemp wraps, and pipes in the definition of tobacco products in ch. 569, F.S. It requires the Division of Alcoholic Beverages and Tobacco (division) to license, audit, and enforce statutory provisions relating to retail dealers who sell nicotine products and nicotine dispensing devices, commonly referred to as vape shops.

In addition, the bill requires the Division of Alcoholic Beverages and Tobacco to perform two compliance checks per year on all tobacco dealers, plus follow-up visits on all checks found to be non-compliant within three months.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Section 210.095, F.S., relating to mail order, internet, and remote sales of tobacco products and age verification provides the following definitions:

- "Adult" means an individual who is at least of the legal minimum purchase age for tobacco products.
- "Consumer" means a person in this state who comes into possession of any tobacco product subject to the tax imposed by this chapter and who, at the time of possession, is not a distributor intending to sell or distribute the tobacco product, a retailer, or a wholesaler.
- "Delivery sale" means any sale of tobacco products to a consumer in this state for which:
 1. The consumer submits the order for the sale by telephonic or other voice transmission, mail, delivery service, or the Internet or other online service; or
 2. The tobacco products are delivered by use of mail or a delivery service.
- "Delivery service" means any person engaged in the commercial delivery of letters, packages, or other containers.
- "Legal minimum purchase age" means the minimum age at which an individual may legally purchase tobacco products in this state.
- "Mail" or "mailing" means the shipment of tobacco products through the United States Postal Service.
- "Retailer" means any person who is not a licensed distributor but who is in possession of tobacco products subject to tax under this chapter for the purposes of selling the tobacco products to consumers.
- "Shipping container" means a container in which tobacco products are shipped in connection with a delivery sale.
- "Shipping document" means a bill of lading, airbill, United States Postal Service form, or any other document used to verify the undertaking by a delivery service to deliver letters, packages, or other containers.
- "Tobacco products" means all cigarettes, smoking tobacco, snuff, fine-cut chewing tobacco, cut and granulated tobacco, cavendish, and plug or twist tobacco.

A sale of tobacco products constituting a delivery sale as defined above is a delivery sale regardless of whether the person accepting the order for the delivery sale is located inside or outside this state. A retailer must obtain a license from the division pursuant to the requirements of this chapter before accepting an order for a delivery sale and is prohibited from making a delivery sale of tobacco products to any individual who is not an adult.

Each person accepting an order for a delivery sale must comply with each of the following:

- **Age Verification** - A person may not mail, ship, or otherwise deliver tobacco products in connection with an order for a delivery sale unless, before the first delivery to the consumer, the person accepting the order for the delivery sale:
 - Obtains from the individual submitting the order a certification that includes:
 - Reliable confirmation that the individual is an adult; and
 - A statement signed by the individual in writing and under penalty of perjury which:
 - Certifies the address and date of birth of the individual; and
 - Confirms that the individual wants to receive delivery sales from a tobacco company and understands that, under the laws of this state, the following actions are illegal:(I) Signing another individual's name to the certification;(II) Selling tobacco products to individuals under the legal minimum purchase age; and(III) Purchasing tobacco products, if the person making the purchase is under the legal minimum purchase age.
 - Makes a good faith effort to verify the information contained in the certification provided by the individual pursuant to paragraph (a) against a commercially available database that may be reasonably relied upon for accurate age information or obtains a photocopy or other image of a valid government-issued identification card stating the date of birth or age of the individual.
 - Provides to the individual, via electronic mail or other means, a notice meeting the disclosure requirements.
 - If an order for tobacco products is made pursuant to an advertisement on the internet, receives payment for the delivery sale from the consumer by a credit or debit card issued in the name of the consumer, or by personal or company check of the consumer.
 - Imposes a two-carton minimum on each order of cigarettes, and requires payment for the purchase of any tobacco product to be made by personal or company check of the purchaser or the purchaser's credit card or debit card. Payment by money order or cash may not be received or permitted. The person accepting the order for delivery sale shall submit, to each credit card acquiring company with which the person has credit card sales, identification information in an appropriate form and format so that the words "tobacco product" may be printed in the purchaser's credit card statement when a purchase of a tobacco product is made by credit card payment.
 - Makes a telephone call after 5 p.m. to the purchaser confirming the order before shipping the tobacco products. The telephone call may be a person-to-person call or a recorded message. The person accepting the order for delivery sale is not required to speak directly with a person and may leave a message on an answering machine or through voice mail. In addition, a person accepting an order for a delivery sale may request that a consumer provide an electronic mail address.
- **Disclosure Requirements** - The notice described in paragraph (3)(c) must include prominent and clearly legible statements that sales of tobacco products are:(a) Illegal if made to individuals who are not adults.(b) Restricted to those individuals who provide verifiable proof of age in accordance with subsection (3).(c) Taxable under this chapter. The notice must include an explanation of how each tax has been, or is to be, paid with respect to the delivery sale.
- **Shipping Requirements** - Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale must:
 - Include as part of the shipping documents the following statement: "Tobacco Products: Florida law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes."
 - Use a method of mailing, shipping, or delivery which obligates the delivery service to require:
 - The individual submitting the order for the delivery sale or another adult who resides at the individual's address to sign his or her name to accept delivery of the shipping container. Proof of the legal minimum purchase age of the individual accepting delivery is required only if the individual appears to be under 27 years of age.
 - Proof that the individual is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.
 - Provide to the delivery service, if such service is used, evidence of full compliance with all laws of this state applicable to sales of tobacco products occurring entirely in this state which impose excise taxes and assessments.
- **Registration and Reporting Requirements** - Before making sales or shipping tobacco products in connection with sales, a person must file with the division a statement providing the person's name, trade name, and the address of the person's principal place of business, as well as any other place of business. No later than the 10th day of each month, each person who has made a sale or mailed, shipped, or otherwise delivered tobacco products in connection with any sale during the previous calendar month shall file with the division a memorandum or a copy of the invoice, providing for each sale:
 - The name and address of the individual who submitted the order for the sale.

- The name and address of the individual who accepted delivery of the tobacco products.
- The name and address of the person who accepted the order for the sale of the tobacco products.
- The name and address of the delivery service and the name of the individual making the delivery
- The brand or brands of the tobacco products sold in the sale.
- The quantity of each brand of tobacco products sold in the sale.

Note: This section does not apply to sales of tobacco products by a licensed distributor or to sales of tobacco products by a retailer purchased from a licensed distributor.

- **Tax Collection Requirements** - Each person accepting a purchase order for a delivery sale must collect and remit to the division all taxes imposed on tobacco products by this state with respect to the delivery sale. With respect to cigarettes, the collection and remission are not required if the person has obtained proof in the form of the presence of applicable tax stamps or tax-exempt stamps, or other proof that the taxes have already been paid to this state.
- **The Licensing and Tax Stamp Requirements** which apply to sales of tobacco products occurring entirely in this state.
- **All Laws of this State Generally** applicable to sales of tobacco products occurring entirely in this state which impose excise taxes and assessments.

Section 210.095, F.S., creates the following penalties for violation of the above provisions:

- A violation of these provisions by a person other than an individual who is not an adult is a misdemeanor of the first degree and:
 - For a first violation, the person must be fined \$1,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.
 - For a second or subsequent violation of this section, the person must be fined \$5,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.
- A person who is an adult and knowingly submits a false certification commits a misdemeanor of the first degree. For each offense, the person must be fined \$10,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.
- A person who fails to pay any tax required in connection with a delivery sale shall pay, in addition to any other penalty, a penalty of five times the retail value of the tobacco products involved.
- Any tobacco products sold or attempted to be sold in a delivery sale not meeting the requirements of this section shall be forfeited to the state.
- A person who, in connection with a delivery sale, delivers tobacco products on behalf of a delivery service to an individual who is not an adult commits a misdemeanor of the third degree.
- Any fixture, equipment, or other material or personal property on the premises of any person who, with the intent to defraud this state, mails or ships tobacco products into this state and fails to satisfy any of the requirements of this section is a contraband article.
- An individual who is not an adult and who knowingly violates any provision of this section commits a misdemeanor of the third degree.

In addition, this section of law authorizes the Attorney General, the Attorney General's designee, a state attorney, or any person who holds a permit under 26 U.S.C. s. 5713 to bring an action in the appropriate court in this state to prevent or restrain violations of this section by any person.

Section 386.212(1), F.S., prohibits any person under 18 years of age from smoking tobacco or vaping in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. This section does not apply to any person occupying a moving vehicle or within a private residence.

Section 569.002, F.S., defines several terms relating to tobacco products, including, but not limited to: dealer; division; permit; retail tobacco products dealer; and retail tobacco products dealer permit. It currently defines tobacco products to include loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing. In addition, this section specifies that the term "Any person under the age of 18" does not include any person under the age of 18 who:

- Has had his or her disability of nonage removed;
- Is in the military reserve or on active duty in the Armed Forces of the United States;
- Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or
- Is acting in his or her scope of lawful employment with an entity licensed under the provisions of ch. 210, F.S. or ch. 569, F.S., relating to tobacco products.

Section 569.003, F.S., restricts the issuance of tobacco permits to persons who are 18 years of age or older or to corporations the officers of which are 18 years of age or older. It authorizes the division to refuse to issue a permit to any person, firm, association, or corporation the permit of which has been revoked, to any corporation an officer of which has had his or her permit revoked, or to any person who is or has been an officer of a corporation the permit of which has been revoked. It requires any permit issued to a firm, association, or corporation prohibited from obtaining a permit under this section shall be revoked by the division.

Section 569.005, F.S., establishes a noncriminal violation, punishable by a fine not to exceed \$500 for operating without a retail tobacco permit.

Section 569.006, F.S., authorizes the division to suspend or revoke the permit of any tobacco dealer who violates the provisions of ch. 569, F.S. In addition the division is authorized to impose an administrative fine of up to \$1,000 per violation. The division is required to deposit all revenues collected via the administrative fines into the General Revenue Fund.

Section 569.007, F.S., in order to prevent persons under 18 years of age from purchasing or receiving tobacco products, prohibits the sale or delivery of tobacco products except:

- When under the direct control or line of sight of the dealer or the dealer's agent or employee; or
- Sales from a vending machine are only permissible from a machine that is equipped with an operational lockout device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one tobacco product. The lockout device must include a mechanism to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled, and a mechanism to ensure that only one tobacco product is dispensed at a time.
- In establishment that prohibits persons under 18 years of age on the licensed premises.

Section 569.008, F.S., relating to responsible retail tobacco products dealers outlines: the qualifications, mitigation of disciplinary penalties by the division, management, training, and supervision requirements; and due diligence requirements for responsible vendors. Currently, in determining penalties the division may mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person under 18 years of age if the following conditions are met:

- The dealer is qualified as a responsible dealer.
- The dealer provided the training program required to that employee before the illegal sale occurred.
- The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.
- If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

Proof that employees, agents, or servants of the dealer, while in the scope of their employment, committed at least three violations of selling, delivering, bartering, furnishing, or giving tobacco products to persons under 18 years of age during a 180-day period is prima facie evidence of a lack of due diligence by the dealer in the management and supervision of his or her premises and in the supervision and training of employees, agents, officers, or servants.

Section 569.101, F.S., prohibits anyone from selling, delivering, bartering, furnishing, or giving tobacco products to persons under 18 years of age and establishes the following criminal penalties for violations of this provision:

- Any person who violates this provision commits a misdemeanor of the second degree;
- Any person who violates this provision for a second or subsequent time within 1 year of the first violation, commits a misdemeanor of the first degree.

Section 569.11, F.S., prohibits the possession, misrepresenting age or military service to purchase, and purchase of tobacco products by persons under 18 years. It establishes the following penalties, jurisdiction, and disposition of fines for violation of this provision:

- Penalties:
 - Any person under 18 years of age who knowingly possesses any tobacco product or misrepresents his or her age or military service for the purpose of inducing a dealer or an agent or employee of the dealer to sell, give, barter, furnish, or deliver any tobacco product, or to purchase, or attempt to purchase, any tobacco product from a person or a vending machine commits a noncriminal violation punishable by:
 - For a first violation, 16 hours of community service or, instead of community service, a \$25 fine. In addition, the person must attend a school-approved anti-tobacco program, if locally available; or

- For a second or subsequent violation within 12 weeks after the first violation, a \$25 fine. Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.
- Jurisdiction – Any person under the age of 18:
 - Cited for committing a noncriminal violation must sign and accept a civil citation indicating a promise to appear before the county court or comply with the requirement for paying the fine and must attend a school-approved anti-tobacco program, if locally available. If a fine is assessed for a violation of this section, the fine must be paid within 30 days after the date of the citation or, if a court appearance is mandatory, within 30 days after the date of the hearing.
 - Charged with a noncriminal violation under this section must appear before the county court or comply with the requirement for paying the fine. The court, after a hearing, must make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it must impose an appropriate penalty. A person who participates in community service is considered an employee of the state for the duration of the service.
 - Found by the court to have committed a noncriminal violation and that person has failed to complete community service, pay the fine, or attend a school-approved anti-tobacco program, if locally available, then the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.
 - Found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine, then the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 45 consecutive days.
- Deposition of Funds - Eighty percent of all civil penalties received by a county court are remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products by children. The remaining 20 percent of civil penalties received by a county court remain with the clerk of the county court to cover administrative costs.

Section 569.12, F.S., authorizes all certified law enforcement officers to enforce Florida's tobacco laws. It requires the division to prescribe the forms used by law enforcement officers for violations by any person under the age of 18 relating to the possession, misrepresentation of age or military service in order to purchase, or purchase of tobacco products.

Section 569.14, F.S., regarding the posting of a sign stating that the sale of tobacco products to persons under 18 years of age is unlawful, and enforcement of such and related penalties, provides the following:

- A dealer that sells tobacco products shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following:
 - THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.
- A dealer that sells tobacco products and nicotine products or nicotine dispensing devices, as defined in s. 877.112, F.S., may use a sign that substantially states the following:
 - THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

A dealer that uses such signs meets the signage requirements of s. 877.112(1), F.S.

Section 877.112, F.S., establishes the definitions, prohibitions for possession or use by minors, criminal penalties for violations of the section's provisions by adults, noncriminal penalties/civil fines for violations by minors, and signage requirements relating to nicotine products and nicotine dispensing devices.

- It defines:
 - "Nicotine dispensing device" to mean any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.
 - "Nicotine product" to mean any product that contains nicotine, including liquid nicotine, that is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means, but does not include a:
 - Tobacco product;

- Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act; or
 - Product that contains incidental nicotine.
- “Self-service merchandising” to mean the open display of nicotine products or nicotine dispensing devices, whether packaged or otherwise, for direct retail customer access and handling before purchase without the intervention or assistance of the retailer or the retailer’s owner, employee, or agent. An open display of such products and devices includes the use of an open display unit.
- It prohibits:
 - Selling, delivering, bartering, furnishing, or giving, directly or indirectly, to any person who is under 18 years of age, any nicotine product or a nicotine dispensing device.
 - The gifting of samples of nicotine products or nicotine dispensing device to any person under the age of 18 by a retailer of nicotine products or nicotine dispensing devices, or by an employee of such retailer.
- It establishes penalties for persons who violate its prohibitions on sales to minors and prohibitions on gifting samples to minors:
 - Any person who commits said violation commits a second degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.
 - Any person who commits said violation for a second or subsequent time within one year of the first violation commits a first degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.
- It establishes affirmative defenses for persons who violate its prohibitions on sales to minors and prohibitions on gifting samples to minors:
 - A person has a complete defense if, at the time the nicotine product or nicotine dispensing device was sold, delivered, bartered, furnished, or given:
 - The buyer or recipient falsely evidenced that she or he was 18 years of age or older;
 - The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 18 years of age or older; and
 - Such person carefully checked a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States Armed Services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older.
- It prohibits any person under 18 years of age to knowingly possess any nicotine product or a nicotine dispensing device. It establishes penalties for said violations:
 - Any person under 18 years of age who violates these provisions commits a noncriminal violation as defined in s. 775.08(3), F.S., punishable by:
 - First violation = 16 hours of community service or, instead of community service, a \$25 fine. In addition, the person must attend a school-approved anti-tobacco and nicotine program, if locally available
 - Second violation within 12 weeks of first violation = \$25 fine
 - Third or subsequent violation within 12 weeks of first violation = the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person’s driver license or driving privilege, as provided in s. 322.056, F.S.
 - Second or subsequent violation not within 12 week time period after first violation = punishable as provided for a first violation
- It prohibits any person under 18 years of age to misrepresent his or her age or military service for the purpose of inducing a retailer of nicotine products or nicotine dispensing devices or an agent or employee of such retailer to sell, give, barter, furnish, or deliver any nicotine product or nicotine dispensing device, or to purchase, or attempt to purchase any such product from a person or a vending machine. It establishes penalties for said violations, which are the same as the penalties for persons under 18 years of age who knowingly possess any nicotine product or a nicotine dispensing device.
- It details the procedures for penalties for minors and the procedures when there is a failure to comply with the penalties by the minor.
- It details the distribution of civil fines paid by persons who violate its prohibitions on possession of nicotine products or nicotine dispensing devices by minors and misrepresenting age:
 - 80% of all civil penalties received by a county court shall be remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children. The remaining 20% of civil penalties received by a county court shall remain with the clerk of the county court to cover administrative costs.

- It details the signage requirements for retailers of nicotine products and nicotine dispensing devices. These requirements are almost identical to the signage requirements in current ss. 569.14(2) and (4), F.S.
- It prohibits self-service merchandising of nicotine products or nicotine dispensing products with one exception:
 - A retailer of nicotine products or nicotine dispensing products may not sell, permit to be sold, offer for sale, or display for sale such products or devices by means of self-service merchandising.
 - A retailer of nicotine products or nicotine dispensing products may not place such products or devices in an open display unit unless the unit is located in an area that is inaccessible to customers.
 - These prohibitions do not apply to an establishment that prohibits persons under 18 years of age on the premises.
- It places restrictions on the sale or delivery of nicotine products or nicotine dispensing devices. These restrictions are almost identical to the language of current s. 569.007, F.S.

2. EFFECT OF THE BILL:

The bill is cited as the "Tobacco 21 Act."

In s. 210.095, F.S., the bill deletes the definitions for "adult", "consumer", "legal minimum purchase age", "mail or mailing", "shipping container", and "shipping document". In addition, it amends the following definitions:

- "Delivery sale" means any sale of tobacco products to a retailer, wholesale dealer, distributing agent, distributor, importer, or exporter, which replaces "consumer", in this state for which:
 - The retailer, wholesale dealer, distributing agent, distributor, importer, or exporter, again replacing the term "consumer", submits the order for the sale by telephonic or other voice transmission, mail, delivery service, or the Internet or other online service; or
 - The tobacco products are delivered by use of mail or a delivery service.
- "Distributor" has the same meaning as in s. 210.25, F.S.
- "Electronic smoking device" has the same meaning as in s. 569.002, F.S.
- "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.
- "Tobacco products" has the same meaning as in s. 569.002, F.S.

The bill authorizes licensed retailers, licensed wholesale dealers, licensed distributing agents, licensed distributors, licensed importers, and licensed exporters to accept delivery sales of tobacco products in this state, while prohibiting delivery sales directly to unlicensed persons. The bill prohibits any person, with knowledge or reason to know of the violation, from aiding or assisting another person in a violation of these provisions.

Although the bill deletes all current language in s. 210.095, F.S., relating to age verification, disclosure requirements, shipping requirements, registration and reporting requirements, tax collection requirements, licensing and tax stamps requirements no impact is anticipated. Since the bill requires all recipients of delivery sales to be licensed retailers, wholesale dealers, distributing agents, distributors, importers, or exporters similar requirements are already in ch. 210, and/or 569, F.S.

The bill deletes the criminal penalties associated with violation of the various provision of s. 210.095, F.S., and simplifies the associated fines, regardless of which portion of s. 210.095, F.S., is violated, to include:

- For a first violation, the person must be fined \$1,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.
- For a second or subsequent violation of this section, the person must be fined \$5,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

In addition, the bill retains the current forfeiture of :

- Any tobacco products sold or attempted to be sold in a delivery sale not meeting the requirements of this section; and
- Any fixture, equipment, or other material or personal property on the premises of any person who, with the intent to defraud this state, mails or ships tobacco products into this state and fails to satisfy any of the requirements of this section is a contraband article.

The bill broadens the prohibition on smoking or vaping within 1,000 feet of a school from applying only to people under the age of 18 between the hours of 6 a.m. and midnight to include all people regardless of age and regardless of time of day or night.

The bill redefines tobacco products in s. 569.002, F.S., to include:

- Any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
- Any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
- Any component, part, or accessory of a product described above, whether or not any of these contain tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, and pipes.

In addition, the bill defines “Electronic smoking device” to mean any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. The term includes any component, part, or accessory of the device and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine.

The bill clarifies that neither term, tobacco products or electronic smoking device, include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

The bill increases the minimum age for possession or use of tobacco products from 18 years of age up to 21 years of age and deletes the following three current exemptions to the age restriction:

- Has had his or her disability of nonage removed;
- Is in the military reserve or on active duty in the Armed Forces of the United States; and
- Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility.

The bill retains the exemption for anyone under the lawful age who is acting in his or her scope of lawful employment with an entity licensed under the provisions of ch. 210 or 569, F.S., relating to tobacco products, and provides a new exemption for anyone who is participating in a compliance check.

The bill amends s. 569.003, F.S., to

- Increase the minimum age needed to get a tobacco permit from age 18 up to age 21; and
- Broadens the division's authority to refuse a tobacco permit to any person, firm, association, or corporation the permit of which has been *suspended* as well as the current standard, revocation, to any corporation an officer of which has had his or her permit revoked *or suspended*, or to any person who is or has been an officer of a corporation the permit of which has been revoked *or suspended*.

The bill exempts any entity that deals only in tobacco products that are electronic smoking devices; components, parts, or accessories of such devices; or substances that may be aerosolized or vaporized by such devices and that holds or is applying for a retail tobacco product dealer permit from the fees relating to the permit.

The bill amends s. 569.005, F.S., which establishes a noncriminal violation for operating without a retail tobacco permit, punishable by a fine of not less than \$500.

The bill amends s. 569.006, F.S., requiring the revenues generated from the administrative fines on retail tobacco products dealers be used to offset the costs of licensing administration, education and training, retail inspections, and unannounced compliance checks. It requires the division to deposit all fines collected into the Alcoholic Beverage and Tobacco Trust Fund.

The bill amends s. 569.007, F.S., to allow the sale of tobacco products from vending machines only in establishments that prohibit persons under 21 years of age on the licensed premises at all times.

The bill deletes the division's authority to mitigate disciplinary penalties in s. 569.008, F.S. In addition, the bill lengthens the time from 180 days up to 36 months in which the commitment of three violations is considered prima facie evidence of a lack of due diligence by the dealer in the management and supervision of his or her premises and in the supervision and training of employees, agents, officers, or servants.

The bill decriminalizes the act of selling, delivering, bartering, furnishing, or giving tobacco products to persons under 21 years of age. In lieu of the criminal penalties, the bill establishes the following fines for violation of this provision:

- For a first time must pay a minimum fine of \$500;
- For a second time within a 36-month period shall pay a minimum fine of \$750 and may not distribute tobacco products for a minimum of 7 days;
- For a third time within a 36-month period shall pay a minimum fine of \$1,000 and may not distribute tobacco products for a minimum of 30 days;

- For a fourth and any subsequent violations within a 36-month period shall pay a minimum fine of \$1,000 and may not distribute tobacco products for a period of 3 years;
- Any person found to have violated this provision while acting as a non-management agent or employee of a dealer is subject to noncriminal and nonmonetary penalties, including, but not limited to, education classes, diversion programs, and community service; and
- Any person 21 years of age or older who is not a dealer or a dealer's agent or employee and who violates this provision must pay an administrative fine of \$50.

The bill amends s. 569.11, F.S., deleting the prohibitions for any person under the age of 18 from possessing or misrepresenting military service in order to purchase tobacco products and the associated penalties. The bill retains the prohibition for any person under the age of 18 who misrepresents age or purchases tobacco products and the following penalties:

- For a first violation, 16 hours of community service or, instead of community service, a \$25 fine. In addition, the person must attend a school-approved anti-tobacco program, if locally available; or
- For a second or subsequent violation within 12 weeks after the first violation, a \$25 fine. Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

In addition, the bill retains the current disposition of funds, 80 percent of all civil penalties received by a county court are remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products by children. The remaining 20 percent of civil penalties received by a county court remain with the clerk of the county court to cover administrative costs.

The bill amends s. 596.12, F.S., requiring that each tobacco dealer be subject to two unannounced compliance checks per year and that all noncompliant checks receive an unannounced follow-up within the 3 months.

The bill conforms s. 569.14, F.S., relating to the signage requirements for tobacco dealers, relating to the age increase from 18 up to 21 years of age and deleting the requirement for a separate, but similar sign for dealers that sell both tobacco products and nicotine products.

The bill repeals s. 877.112, F.S., relating to nicotine products and nicotine dispensing devices.

In addition, the bill conforms multiple references in ch. 569, F.S., from "18 years of age" to "21 years of age."

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☐ N ☒

If yes, explain:	N/A
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	To date, the division has not been contacted by proponents of the legislation with any stated positions.
Opponents and summary of position:	To date, the division has not been contacted by opponents of the legislation with any stated positions.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y ☐ N ☒

If yes, provide a description:	N/A
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Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y ☐ N ☒

Revenues:	None anticipated.
Expenditures:	None anticipated.
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y ☒ N ☐

Revenues:	The bill creates new penalties for selling, delivering, bartering, furnishing, or giving tobacco products to a person under the age of 21. It establishes penalties for 1 st time offenses, and 2 nd , 3 rd , and subsequent offenses within a 36-month period. Impact - The division has had 599 1 st time offenses and no 2 nd , 3 rd , or subsequent offenses over the last 36-months. Estimated potential annual revenue increase is \$99,833 (\$500 * 599 offenses/3yrs). In addition, there are multiple changes in the bill that could potentially increase or decrease state revenues by small indeterminate amounts. See fiscal in the Comments section below for complete listing.
Expenditures:	Inspections: 19 FTE and \$2,336,739. \$1,666,381 recurring. Or

	Surveys: 21 FTE and \$3,511,231. \$3,029,429 recurring.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?Y ☒ N ☐

Revenues:	None anticipated.
Expenditures:	Anyone who sells, delivers, barter, furnishes, or gives tobacco products to a person under the age of 21 would have to pay a \$500 fine for a 1 st offense. The division has had 599 1 st time offenses and no 2 nd , 3 rd , or subsequent offenses over the last 36-months.
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y ☒ N ☐

If yes, explain impact.	<p>New Fees – the bill creates new penalties for selling, delivering, bartering, furnishing, or giving tobacco products to a person under the age of 21. It establishes penalties for 1st time offenses, and 2nd, 3rd, and subsequent offenses within a 36-month period.</p> <p>In addition, there are multiple fee changes, additions, and deletions in the bill with anticipated minimal impact. See fiscal in the Comments section below for complete listing.</p>
Bill Section Number:	Section 11, Lines 551 – 561

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y ☒ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	<p>This bill will require modifications to the allegation/violation tables in Versa: Regulation and the iPad inspection application. Additionally, the bill may require an additional modifier to the retail tobacco dealer license to identify vape stores.</p> <p>Changes to Versa: Regulation – 12 hours Changes to iPad inspection application – 4 hours These modifications can be made with existing resources.</p>
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FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☐

If yes, describe the anticipated impact including any fiscal impact.	Unknown
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ADDITIONAL COMMENTS

Division of Alcoholic Beverages and Tobacco: The new language will increase the workload of the Bureau of Law Enforcement, as it will expand the scope of businesses required to be licensed and also increase the number and types of products regulated by the division. The specific amount of new licenses is unknown at this time, as are the specific number of licensed business that currently engage in the sale of the impacted products, so the division is unable to determine the precise amount of workload increase generated by this proposed bill as a result of this change.

Additionally, the language appears to raise the legal age of use, which may increase the amount of non-compliant activity, which would also increase workload. Similar changes are made to the requirements for licensure and the use of vending machines, which will result in verifying current license holders meet the requirements of the bill, should it become law, and require the bureau to verify that vending machine usage in locations is also compliant with the proposed changes.

Importantly, the bill's language mandates semi-annual compliance checks, which will impact the bureau's workload by mandating the timeframe and minimum number of tobacco surveys each year. In FY18-19, the division administered 27,589 RTPD permits. Should each of those locations be required to be surveyed twice, the division would be obligated to perform over 55,000 tobacco compliance surveys per year, creating a situation where the mandated number of tobacco surveys exceeds the division's total number of alcohol and tobacco surveys in FY18-19.

The bill also removes the criminal penalties of certain violations, which will impact how the bureau handles with those types of violations.

The Bureau of Law Enforcement would be required to train its enforcement team on the changes and impacts of the bill, should it become law.

The bill amends s. 596.12, F.S., requiring that each tobacco dealer be subject to two unannounced compliance checks per year and that all noncompliant checks receive an unannounced follow-up within the 3 months. It is unclear if the bill's intent is to have two inspections per year or two undercover/underage tobacco purchases attempted each year. Either way, this provision will create a substantial workload and expenditure increase for the Bureau of Enforcement. Clarification is requested.

Lines 394-395: The division uses *inspectors* to conduct compliance checks. If the bill intended to provide an exemption for the *underage operatives* who attempt to purchase tobacco products from licensed establishments in order to ensure compliance with age restrictions then the correct term would be "*tobacco surveys*", not "*compliance checks*."

ABT – Revenues:

- State Government Revenues/Fee deletions, indeterminate potential decrease in revenues - Section 2, lines 300-309, deletes the following two penalties relating to mail order, remote, and internet tobacco sales: a person who is an adult and knowingly submits a false certification commits a misdemeanor of the first degree. For each offense, the person must be fined \$10,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater; and a person who fails to pay any tax required in connection with a delivery sale shall pay, in addition to any other penalty, a penalty of five times the retail value of the tobacco products involved. Impact – The division does not currently track tobacco penalties specific to s. 210.095, F.S., relating to mail order, remote, and internet tobacco sales.
- State Government Revenues/Fee changes, indeterminate potential increase in revenues – Section 6, lines 422 – 433, changes the penalty for operating without a retail tobacco permit from "not more than \$500" to "at least \$500". Impact is anticipated to be minimal. This violation has not been charged over the last 12 months.
- State Government Revenues, indeterminate decrease for General Revenue and offsetting increase for the Alcoholic Beverage and Tobacco Trust Fund – Section 7, lines 442 – 446, changes the deposition of administrative fines charges against retail tobacco dealers from deposit into the General Revenue Fund to deposit into the Alcoholic Beverage and Tobacco Trust Fund. There have been no administrative fines against retail tobacco dealers in the last 12 months, very minimal impact.
- State Government Revenue Increases/New Fees – Section 11, Lines 551 – 561, creates new penalties for selling, delivering, bartering, furnishing, or giving tobacco products to a person under the age of 21. It establishes penalties for 1st time offenses, and 2nd, 3rd, and subsequent offenses within a 36-month period. The division has had 599 1st time offenses 12 months and no 2nd, 3rd, or subsequent offenses over the last 36-months. Estimated potential annual revenue increase is \$99,833 (\$500 * 599 offenses/3yrs).
- State Government Revenue Increases/New Fee – Section 11, Lines 567 – 569, creates a new administrative fine, \$50, for any person over 21 who is not a dealer and sells, delivers, barter, furnishes, or gives tobacco products to a person under the age of 21. – Impact, indeterminate minimal increase, the division does not currently track non-licensed offenders, but the fee would only be \$50 per offense.
- State Government Revenues/Fee deletions, indeterminate revenue decrease – Section 12, lines 597 – 606, deletes the \$25 fee charged by the courts for underage possession of tobacco products.. Although the historical amount of the fees is unknown, 80% of this civil penalty goes to the Department of Revenue and 20% goes to the courts.

ABT – Workload:

If the bill's intent is to have two inspections per year, the workload impact is anticipated to require 19 FTEs. The anticipated expenditures for Inspections and 19 FTE: \$2,336,739 of which \$1,666,381 is recurring.

Inspections Workload

Current Tobacco Permits:	27,589
Two inspections per permitholder per year:	2
Total Compliance Inspections (27,589 X 2 = 55,178):	55,178
Hours per inspection:	1
Total inspection hours:	55,178
Less current inspection level:	19,266
Total additional inspection hours (Projected total inspection hours minus current inspection level):	35,912
Work hours per FTE:	1,854
Additional FTEs Required (35,912 divided by 1,854 = 19.37):	19.37
Additional Staff Required (Rounded):	19.00

If the bill's intent is to have two undercover/underage tobacco purchases attempted each year (surveys), the workload impact is anticipated require 21 FTEs. The anticipated expenditures for Surveys and 21 FTE: \$3,511,231 of which \$3,029,429 is recurring.

Surveys Workload	
Current Tobacco Permits:	27,589
Two surveys per permitholder per year:	2
Total Surveys per year (27,589 X 2 = 55,178):	55,178
Hours per survey (4 surveys per 3 hours):	0.75
Total survey hours:	41,384
Less current survey level:	2,394
Total additional inspection hours (Projected total surveys per year minus current survey level divided by 4 surveys every 3 hours):	39,588
Work hours per FTE:	1,854
Additional Staff Required (39,588 divided by 1,854 = 21.35):	21.35
Additional Staff Required (Rounded):	21.00

Division of Service Operations: The impact to the division is indeterminate at this time.

OGC Rules: Rulemaking may be required to reflect and implement the changes to law relating to penalties and penalty guidelines.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	While this bill defines the terms like "electronic smoking device" and amends the definition of the term "tobacco products" under ch. 569, F.S., this bill does not define or amend terms used in ch. 210, F.S.
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THE FLORIDA SENATE

APPEARANCE RECORD

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



Meeting Date

1/24/20

810

Bill Number (if applicable)

STRIKE-ALL

Amendment Barcode (if applicable)

155714

Topic TOBACCO & NICOTINE PRODUCTS

Name PAUL HULL

Job Title VICE PRESIDENT

Address 555 11TH ST. NW, STE. 300
Street

Phone 904-907-3470

WASHINGTON, DC 20004
City State Zip

Email PAUL.HULL@CANCER.ORG

Speaking: ☐ For ☐ Against ☒ Information

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

Representing AMERICAN CANCER SOCIETY CANCER ACTION NETWORK

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)

1/21/20
Meeting Date

810
Bill Number (if applicable)
155716 b
Amendment Barcode (if applicable)

Topic Tobacco Products Regulation

Name Mark Landreth

Job Title Civil Relations Director

Address 2851 Remington Green Cir #A
Street

Tallahassee FL 32308
City State Zip

Phone 850.544.3376

Email Mark.Landreth@heart.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing American Heart Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-21-20

Meeting Date

SB 810

Bill Number (if applicable)

155714

Amendment Barcode (if applicable)

Topic

Name Michael Boling

Job Title

Address 8114 Villa Grande Court

Street

Sarasota

City

FL

State

34243

Zip

Phone 941-539-2878

Email Michael.boling@gmail.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)

1/21/2020

Meeting Date

SB 810

Bill Number (if applicable)

155716

Amendment Barcode (if applicable)

Topic

Name DAN MADLIN

Job Title

Address 326 Ferris St. Gre

Street

Green Cove Springs, FL 32043

City

State

Zip

Phone 904-572-9001

Email betaboy@gmail.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)

Meeting Date

810
Bill Number (if applicable)

155716
Amendment Barcode (if applicable)

Topic Vaping Tobacco

Name Bredlee Sino

Job Title Store Manager ATZ Vaping

Address 301 monument Ave

Phone 615-714-0729

Street

Port St Joe

City

FL

State

32456

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Smoke Free myself

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)

1/21/2020
Meeting Date

810
Bill Number (if applicable)

Topic Tobacco

✓ - 155716
Amendment Barcode (if applicable)

Name Doug Bell

Job Title _____

Address 119 S. Monroe
Street
TLH
City State Zip

Phone 805 205 9000

Email doug.bell@uhd.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chapter of the American Academy of Pediatrics

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

1-21-20

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

SB 810

Meeting Date

Bill Number (if applicable)

155716

Amendment Barcode (if applicable)

Topic

Name Gregory Conley

Job Title President - American Vaping Assoc.

Address 231 Church Rd

Phone 609-947-8059

Street

Medford

NJ

08055

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Vaping Assoc.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

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)

1/21/2020

Meeting Date

SB 810

Bill Number (if applicable)

155716

Amendment Barcode (if applicable)

Topic _____

Name ROBERT LOVETT

Job Title PRESIDENT - FSFA

Address 407 PARK BLVD.

Street

OLDSMAR FL 34677

City

State

Zip

Phone 352-281-4913

Email robort@flsmokefree.org

Speaking: ☐ For ☒ Against ☒ Information

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

Representing Florida Smoke Free 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.

_____ 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)

1/21/2020

Meeting Date

SB 810

Bill Number (if applicable)

155716

Amendment Barcode (if applicable)

Topic _____

Name Horacio Moreno

Job Title _____

Address 7610 Stirling Rd Apt F204

Street

Hollywood, FL 33024

City

State

Zip

Phone 954-479-9447

Email horacio.f.moreno@gmail.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.

Signature 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)

1/21/20
Meeting Date

SB810
Bill Number (if applicable)

155716
Amendment Barcode (if applicable)

Topic _____

Name Jonathan Ristren

Job Title Business Owner

Address 2980 S. Ridgewood Ave
Street

Phone 321 972 2207

Edgewater FL 32141
City State Zip

Email info@gentlemansdraw.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Gentleman's Draw, LLC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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This is a 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)

1/21/2020

Meeting Date

SB 810

Bill Number (if applicable)

155716

Amendment Barcode (if applicable)

Topic _____

Name Amanda Risteen

Job Title Business Owner

Address 141 Flamingo Rd.

Street

Edgewater, FL 32141

City

State

Zip

Phone 386-290-4227

Email amanda.risteen@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Gentlemen's Draw

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.

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)

Meeting Date _____

SB 810

Bill Number (if applicable)

155 716

Amendment Barcode (if applicable)

Topic _____

Name NICK ORLANDO

Job Title _____

Address 101 CLEARWATER LARGO RD.

Street

Phone 813-784-3578

LARGO

City

FLORIDA

State

33770

Zip

Email NICK@FLSMOKEFLA.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing THE FLORIDA SMOKE FLA 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.

Use record for this meeting

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

JAN 21ST 2020

Meeting Date

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

SB 810

Bill Number (if applicable)

155716

Amendment Barcode (if applicable)

Topic _____

Name JOSHUA UNGER

Job Title _____

Address 101 GULF STREAM

Street

SANASOTA

City

FL

State

34736

Zip

Phone 941 306 9380

Email Junger1225@aol.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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-21-20

Meeting Date

SB 810

Bill Number (if applicable)

155716

Amendment Barcode (if applicable)

Topic _____

Name J.D. McCormick

Job Title _____

Address 6265 Old Water Oak Rd #102-B

Street

Tallahassee

City

FL

State

32312

Zip

Phone 907-508-0340

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.

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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)

1/21/2020

Meeting Date

SB 810

Bill Number (if applicable)

155716

Amendment Barcode (if applicable)

Topic _____

Name delorse Orlando

Job Title _____

Address 2812 Edenwood St.
Street

Phone 727-692-6452

Clearwater, FL 33759
City State Zip

Email delorse_1@msn.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

1-21-2020

Meeting Date

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

SB 810

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID MARTIN

Job Title _____

Address 326 Ferris St.

Street

Green Cove Spring, FL 32043

City

State

Zip

Phone

904-572-9001

Email

betabay@gmail.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)

1/21/2020
Meeting Date

SB810
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Amanda Risteen

Job Title Business Owner

Address 141 Flamingo Rd
Street
Edgewater FL 32141
City State Zip

Phone 386-290-4227

Email amanda.risteen@gmail.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)

Jan 21, 2020
Meeting Date

810
Bill Number (if applicable)

Topic Tobacco & Nicotine Products

Amendment Barcode (if applicable)

Name BETH LABASKY

Job Title Consultant

Address 1400 Village Sq. Blvd. Ste 3116 Phone 850 322 7335
Street
Tallahassee Fla 32312 Email bethlabasky@aol.com
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Informed Families of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/21/20
Meeting Date

810
Bill Number (if applicable)

Topic Tobacco and Nicotine Products

Amendment Barcode (if applicable)

Name Alexandra Abboud

Job Title Governmental Affairs Liaison

Address 118 E Jefferson Street

Phone 850-224-1089

Tallahassee FL 32301
City State Zip

Email abboud@floridadental.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Dental Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/21/20

Meeting Date

810

Bill Number (if applicable)

Topic Tobacco Regulation

Amendment Barcode (if applicable)

Name Mark Landreth

Job Title Gov Relations Dir

Address 2851 Penny Ln Green Circle #1A

Phone 850.544.3376

Street

Tallahassee

FL

32308

City

State

Zip

Email Mark.Landreth@heart.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Heart Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/21/20

Meeting Date

SB 810

Bill Number (if applicable)

Topic Tobacco and Nicotine Products

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title

Address 119 South Monroe Street #200

Street

Phone 850-205-9000

Tallahassee FL 32301

City

State

Zip

Email aimee.diazlyon@mhdfirm.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing American Lung 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

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

1 21 20

Meeting Date

810

Bill Number (if applicable)

Topic Vaping Tobacco

Amendment Barcode (if applicable)

Name Bradlee Siron

Job Title Manager ATL Vaping

Address 301 Monument Ave

Phone 615-714-0729

Street

Port St Joe FL 32456

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

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)

1-21-20

Meeting Date

SB 810

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Michael Boley

Job Title _____

Address 8114 Villa Grande Court

Phone 941-535-7870

Street

Jacksonville

FL

34243

City

State

Zip

Email Michael.Boley@gmail.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)

APPEARANCE RECORD

1-21-20

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

SB 810

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Gregory Conley

Job Title President - American Vaping Assoc.

Address 231 Church Rd

Phone 609-947-8059

Street

Mtford NJ 08055

Email gconley@vaping.org

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing American Vaping Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

1/21/20
Meeting Date

SB 810
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jonathan Risteen

Job Title Business Owner

Address 2980 S. Ridgewood Ave
Street

Phone 321-972-2207

Edgewater FL 32141
City State Zip

Email info@Gentlemen'sDraw.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Gentleman's Draw LLC

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)

1/22/20
Meeting Date

810
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Delorse Orlando

Job Title _____

Address 2812 Edenwood St.
Street
Clwtr, Fl 33759
City State Zip

Phone 727-692-6452

Email delorse_1@msn.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)

1/21/2020

Meeting Date

SB 810

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Robert Lovett

Job Title President - FSFA

Address 407 Park Blvd

Phone 352-281-4913

Street

Oldsmar

FL

34677

City

State

Zip

Email robert@flsmokefree.org

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida Smoke Free Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/21/2020
Meeting Date

SB 810
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Horacio Moreno

Job Title _____

Address 7410 Stirling Rd Apt F204
Street
Hollywood FL 33024
City State Zip

Phone 954-479-9447

Email horacio.f.moreno@gmail.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)

Jan 21 2010

Meeting Date

SB 810

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name JOSHUA UNGBER

Job Title _____

Address 101 S GULF Stream

Phone 941 306 9380

Street

SANASOTA

City

FL

State

Zip

Email Junger1225@aol.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.

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)

1-21-20

Meeting Date

SB 810

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name J. D. McCormick

Job Title _____

Address 6265 Old Water Oak Rd #102-B

Street

Phone _____

Tallahassee

City

FL

State

32312

Zip

Email jdmlpu1@gmail.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)

1/21/2020

Meeting Date

SB 810

Bill Number (if applicable)

~~455716~~ 455716

Amendment Barcode (if applicable)

Topic _____

Name NICK ORLANDO

Job Title _____

Address 101 CLEARWATER LARGO RD.

Street

Phone 813-784-3578

LARGO
City

FLORIDA
State

33770
Zip

Email NICK@FLSMOKEFREE.ORG

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida Smoke Free 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
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 Health Policy

BILL: CS/SB 792

INTRODUCER: Health Policy Committee and Senators Albritton and Harrell

SUBJECT: Physical Therapy

DATE: January 22, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/CS
2.	_____	_____	BI	_____
3.	_____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 792 amends several provisions within the Physical Therapy Practice Act. The bill amends the definition of “physical therapy assessment” to alter the purpose of such assessments and the definition of “practice of physical therapy” to add modalities of treatment while removing provisions relating to a physical therapist’s performance of acupuncture, along with related restrictions and the Board of Medicine’s oversight of the criteria for such acupuncture. The bill adds definitions of “dry needling” and “myofascial trigger point.”

The bill excludes acupuncture from the practice of physical therapy. The bill requires the Board of Physical Therapy Practice (Board) to establish minimum standards of practice for physical therapy relating to dry needling with specific requirements to be included.

The bill has an effective date of July 1, 2020.

II. Present Situation:

The Practice of Physical Therapy in Florida

The Physical Therapy Practice Act is codified in ch. 486, F.S. Licensed physical therapists (PT) are regulated by the Board within the Department of Health (DOH).¹ A PT must practice physical therapy in accordance with the provisions of the practice act and Board rules.²

The practice of physical therapy includes:

- The performance of physical therapy assessments;
- The treatment of any disability, injury, disease, or other health condition of human beings, or the prevention of such disability, injury, disease, or other condition of health, and rehabilitation as related thereto, by the use of:
 - The physical, chemical, and other properties of air;
 - Electricity;
 - Exercise;
 - Massage;
 - The performance of acupuncture only upon compliance with criteria set forth by the Board of Medicine³ when no penetration of the skin occurs;
 - Radiant energy, including ultraviolet, visible, and infrared rays;
 - Ultrasound;
 - Water; and
 - Apparatus and equipment as they relate to the application of the above;
- The performance of tests of neuromuscular functions to aid in the diagnosis or treatment of any human condition; or
- The performance of electromyography to aid in the diagnosis of any human condition only upon compliance with criteria set forth by the Board of Medicine.⁴

To be eligible for licensure as a PT, an applicant must:

- Be 18 years of age;
- Be of good moral character; and
- Satisfy the following educational requirements:
 - Have graduated from a school of physical therapy which has been approved for the educational preparation of physical therapists by the appropriate accrediting agency recognized by the Commission on Recognition of Postsecondary Accreditation or the U.S. Department of Education at the time of her or his graduation and have passed, to the satisfaction of the Board, the American Registry Examination prior to 1971 or a national examination approved by the Board to determine her or his fitness for practice as a physical therapist;
 - Have received a diploma from a program in physical therapy in a foreign country and have educational credentials deemed equivalent to those required for the educational preparation of physical therapists in this country, as recognized by the appropriate agency

¹ Section 486.023, F.S.

² Sections 486.031 and 486.102, F.S.

³ See s. 458.307, F.S., and <https://flboardofmedicine.gov/> (last visited Jan. 16, 2020)

⁴ Section 486.021(11), F.S.

- as identified by the Board, and have passed to the satisfaction of the Board an examination to determine her or his fitness for practice as a physical therapist; or
- Be entitled to licensure without examination.⁵

Currently, there are 17,403 PTs who hold active Florida licenses.⁶

The Board of Physical Therapy Practice

The Board is composed of seven members appointed by the Governor and subject to confirmation by the Senate. Five Board members must be licensed PTs in good standing who are residents of this state and who have been engaged in the practice of physical therapy for at least four years immediately prior to their appointment. One licensed PT Board member may be a full-time faculty member teaching in a physical therapy curriculum in an educational institution in this state. The two remaining members must be residents of this state who have never been licensed health care practitioners.⁷

The Board may administer oaths, summon witnesses, and take testimony in all matters relating to its duties, establish or modify minimum standards of practice, and adopt rules implement the provisions of ch. 486, F.S. The Board may also review the standing and reputability of any school or college that offers courses in physical therapy and whether the courses of such school or college meet the standards established by the appropriate accrediting agency. In determining the standing and reputability of any such school and whether the school and courses meet the standards, the Board may investigate and make a personal inspection.⁸

Physical Therapy Scope of Practice

A PT's professional responsibilities include, but are not limited to:

- Interpretation of a practitioner's referral;⁹
- Provision of a patient's initial physical therapy assessment;
- Initial identification and documentation of precautions, special problems, contraindications;
- Development of a treatment plan for a patient including the long- and short-term goals;
- Implementation of or directing implementation of the treatment plan;
- Delegation of appropriate tasks; and
- Reassessment of the patient in reference to goals and, when necessary, modification of the treatment plan.¹⁰

⁵ Section 486.081, F.S.

⁶ Number of active Florida licenses was calculated by adding "In State Active" practitioners and "Out of State Active" practitioners, and "Active Military" practitioners. See Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2018-2019: Table 1 Summary of Licensed Practitioners*, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/index.html> (last visited Jan. 16, 2020).

⁷ Section 486.023, F.S.

⁸ Section 486.025, F.S.

⁹ Under s. 486.021(11)(a), F.S., a health care practitioner licensed under chapter 458 (medical practice), chapter 459 (osteopathic medicine), chapter 460 (chiropractic medicine), chapter 461 (podiatric medicine), or chapter 466 (dentistry) and engaged in active practice is eligible to serve as a physical therapy patient's practitioner of record. A practitioner of record or an advanced practice registered nurse may develop a patient's plan of physical therapy treatment and may refer a patient to a PT for such treatment.

¹⁰ Fla. Admin. Code R. 64B17-6.001(3),(2019).

A PT performs a physical therapy assessment for the purpose of making recommendations for treatment. The physical therapy assessment includes observational, verbal, and manual determinations of the function of the musculoskeletal or neuromuscular system relative to physical therapy. The assessment can include, but is not limited to, the following testing:

- Range of motion of a joint;
- Motor power;
- Postural attitudes;
- Biomechanical function;
- Locomotion; and
- Functional abilities.¹¹

Physical Therapy Treatment Plan and Referral for Treatment

A PT may implement a plan of treatment that he or she develops for a patient and may also implement a treatment plan provided for a patient by a practitioner of record or by an advance practice registered nurse.¹² However, a PT must refer a patient to, or consult with, the patient's practitioner of record if a patient's condition is found to be outside the scope of physical therapy.¹³

A PT may implement a treatment plan for a patient without a written order from a practitioner of record. However, if physical therapy treatment is required beyond 30 days for a condition not previously assessed by a patient's practitioner of record, the PT must obtain a review of the treatment plan by a practitioner of record, along with his or her signature on the plan. This requirement for review and signature does not apply if a patient has been physically examined by a physician licensed in another state, the patient has been diagnosed by the physician as having a condition for which physical therapy is required, and the PT is treating that condition.¹⁴

Dry Needling

What is dry needling?

Dry needling, sometimes referred to as trigger point dry needling, is a skilled intervention that uses a thin filiform needle to penetrate the skin and stimulate underlying myofascial trigger points, muscular, and connective tissues for the management of neuromusculoskeletal pain and movement impairments. According to the American Physical Therapy Association, dry needling may be used to treat dysfunctions in skeletal muscle, fascia, and connective tissue, and to diminish persistent peripheral nociceptive input and reduce or restore impairments of body structure and function leading to improved activity and participation.¹⁵

¹¹ Section 486.021(10), F.S.

¹² Section 486.021(11)(a), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ American Physical Therapy Association, *Description of Dry Needling in Clinical Practice: An Educational Resource Paper*, (February 2013) available at <http://www.apta.org/StateIssues/DryNeedling/ClinicalPracticeResourcePaper/> (last visited Jan. 16, 2020).

Recent research has shown that the most common adverse event of dry needling is minor bleeding.¹⁶

Is Dry Needling Within the Scope of Practice of Physical Therapy?

The issue of whether the performance of dry needling should fall within the professional and legal scope of physical therapist practice continues to be a question posed to state regulatory boards, legislatures, and governmental agencies.¹⁷ The laws of 34 states and the District of Columbia permit PTs to perform dry needling.¹⁸ Seven states – California, Florida, Hawaii, New Jersey, New York, Oregon and Washington – prohibit PTs from performing dry needling.¹⁹

III. Effect of Proposed Changes:

Section 1 amends the definition of “physical therapy assessment” in s. 486.021(10), F.S., to provide that an assessment is for the purpose of “physical therapy treatment” instead of for the purpose of “making recommendations for treatment.” The definition is further amended to provide that an assessment relates to the function of the “movement system” instead of the “musculoskeletal or neuromuscular system” and includes motor control and posture as components of the former.

The bill also amends the definition of the “practice of physical therapy” in s. 486.021(11), F.S., to expand the scope of practice by providing that the practice of physical therapy may include alleviating impairments, functional limitations, and disabilities by designing, implementing, and modifying treatment interventions through:

- Therapeutic exercise;
- Functional training in self-care and in-home, community, or work integration or reintegration;
- Manual therapy;
- Therapeutic massage;
- Airway clearance techniques;
- Maintaining and restoring integumentary integrity and wound care;
- Physical agents or modalities;
- Mechanical and electrotherapeutic modalities; and
- Patient-related instruction.

The bill does not define any of the terms and concepts listed above.

¹⁶ Brady, S., McEvoy, J., Dommerholt, J., Doody, C.: *Adverse events following trigger point dry needling: a prospective survey of chartered physiotherapists* (August 22, 2014), available at <https://www.ncbi.nlm.nih.gov/pubmed/25125935>.

¹⁷ American Physical Therapy Association, *Dry Needling in Physical Therapy*, (last updated November 7, 2019), available at <http://www.apta.org/StateIssues/DryNeedling/> (last visited Jan. 16, 2020).

¹⁸ American Physical Therapy Association, *State Laws and Regulations Governing Dry Needling Performed by Physical Therapists in the US*, available at http://www.apta.org/uploadedFiles/APTAorg/Advocacy/State/Issues/Dry_Needling/APTADryNeedlingLawsByState.pdf (last visited Jan. 16, 2020). The States that permit dry needling include: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wyoming.

¹⁹ *Id.*

The bill also amends the definition of the “practice of physical therapy” to remove provisions that currently allow for physical therapy treatment by the use of:

- The physical, chemical, and other properties of air;
- Electricity;
- Exercise;
- Massage;
- The performance of acupuncture only upon compliance with criteria set forth by the Board of Medicine when no penetration of the skin occurs;
- Radiant energy, including ultraviolet, visible, and infrared rays;
- Ultrasound; and
- Water.

In several instances, the two lists above (one adding elements and the other removing elements) merely substitute a modality with a similar modality, e.g. when the use of “electricity” is replaced by “electrotherapeutic modalities.” Other elements being added are new to the definition altogether, such as airway clearance techniques and maintaining and restoring integumentary integrity and wound care.

One element in the list of modalities being removed under the bill is accompanied by substantive limitations on how that element may be employed and under what criteria. The bill removes acupuncture as a treatment that PTs may perform, and, in so doing, it also removes the restriction that such acupuncture may be performed only upon compliance with criteria set forth by the Board of Medicine and may not involve penetration of the skin. The bill goes on to specify that the practice of physical therapy does not authorize a PT to practice acupuncture.

The bill defines “dry needling” as a skilled technique based on western medical concepts using apparatus or equipment of filiform needles to stimulate a myofascial trigger point for the evaluation and management of neuromusculoskeletal conditions, pain, movement impairments, and disabilities.

The bill further defines “myofascial trigger point” as an irritable section of tissue often associated with palpable taut bands of muscle fibers.

Section 2 amends s. 486.025, F.S., to authorize the Board to establish minimum standards for physical therapy, including, without limitation, standards of practice for the performance of dry needling by PTs, to include, at a minimum:

- Completion of two years of practice as a PT;
- Completion of 50 hours of face-to-face continuing education from an accredited entity on the topic of dry needling, which must include a determination by the PT instructor that the PT demonstrates the requisite psychomotor skills to safely perform dry needling;
- Continuing education requirements in all of the following areas:
 - Dry needling theory;
 - Selection and safe handling of needles, other apparatus, and equipment used in dry needling, including the proper handling of biohazardous waste;
 - Indications and contraindications for dry needling;

- Psychomotor skills needed to perform dry needling;
- Post intervention care, including:
 - Adverse responses;
 - Adverse event recordkeeping; and
 - Reporting obligations.
- Completion of 25 patient sessions of dry needling performed:
 - Under the indirect supervision of a PT actively license to practice physical therapy in any state or the District of Columbia and who has actively practiced dry needling for at least one year; or
 - As a PT licensed in another state or in the United States Armed Forces;
- A requirement that dry needling may not be performed without patient consent, and patient consent must be part of the patient's documented care plan; and
- A requirement that dry needling may not be delegated to any person other than a PT who is authorized to engage in dry needling under Florida law.

The bill expands the scope of practice for physical therapy, since dry needling is not currently a treatment that PTs may perform. The bill gives no oversight to the Board of Medicine for physical therapists who perform dry needling the way current law provides for a PT's performance of acupuncture, which may be performed by a PT under current law only when no penetration of the skin occurs.

The bill further provides that the performance of dry needling in the practice of physical therapy under ch. 486, F.S., may not be construed to limit the scope of practice of any other licensed health care practitioners.

Section 3 provides an effective date of July 1, 2020.

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:

The expansion of the scope of practice for physical therapists could provide new avenues through which their services might be more in demand.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not address the following:

- What constitutes the “psychomotor skills” that a PT must demonstrate to a PT instructor to safely perform dry needling;
- The definition of “indirect supervision” as used in the mandatory, minimum requirement that a PT complete 25 patient sessions of dry needling under the indirect supervision of a PT licensed in any state who has actively practiced dry needling for at least one year;
- The method or procedure the DOH is to follow to designate, certify or license, and track, a PT who has, or has not, met the minimum standards set by the Board to perform dry needling, to protect the public from PT’s who may be performing dry needling without meeting the minimum standards;
- Whether or not any of the 50 required face-to-face continuing education hours, from a college or university accredited by an accrediting agency approved by the United States Department of Education, may be counted toward the 24 hours of continuing education required for biennial license renewal under current law; and
- Whether or not, once a PT has initially demonstrated that he or she has satisfied the minimum required standards set by the Board to perform dry needling, any re-evaluation or further continuing education credits are require to maintain his or her status as a PT competent to perform dry needling.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 486.021 and 486.025.

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 Health Policy on January 21, 2020:

The CS:

- Defines “dry needling” and “myofascial trigger point”;
- Requires the Board to make rules to establish minimal standards of practice for providing dry needling and specifies certain items that those standards must include at a minimum; and
- Specifically excludes acupuncture from the practice of physical therapy.

- 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 Senators Albritton and Harrell

25-00774A-20

2020792__

A bill to be entitled
An act relating to physical therapy; amending s.
486.021, F.S.; revising the definitions of the terms
"physical therapy assessment" and "practice of
physical therapy"; amending s. 486.025, F.S.; revising
the powers and duties of the Board of Physical Therapy
Practice; providing an effective date.

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

Section 1. Subsections (10) and (11) of section 486.021,
Florida Statutes, are amended to read:

486.021 Definitions.—In this chapter, unless the context
otherwise requires, the term:

(10) "Physical therapy assessment" means observational,
verbal, or manual determinations of the function of the human
movement systems ~~musculoskeletal or neuromuscular system~~
relative to physical therapy, including, but not limited to,
range of motion of a joint, motor power, motor control, posture
~~postural attitudes~~, biomechanical function, locomotion, or
functional abilities, for the purpose of physical therapy ~~making~~
~~recommendations for treatment.~~

(11) "Practice of physical therapy" means the performance
of physical therapy assessments and the treatment of any
disability, injury, disease, or other health condition of human
beings, or the prevention of such disability, injury, disease,
or other health condition ~~of health~~, and the rehabilitation of
such disability, injury, disease, or other health condition ~~as~~
~~related thereto~~ by alleviating impairments, functional

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30 limitations, and disabilities by designing, implementing, and
31 modifying treatment interventions through therapeutic exercise;
32 functional training in self-care and in-home, community, or work
33 integration or reintegration; manual therapy; therapeutic
34 massage; airway clearance techniques; maintaining and restoring
35 integumentary integrity and wound care; physical agents or
36 modalities; mechanical and electrotherapeutic modalities;
37 patient-related instruction ~~the use of the physical, chemical,~~
38 ~~and other properties of air; electricity; exercise; massage; the~~
39 ~~performance of acupuncture only upon compliance with the~~
40 ~~criteria set forth by the Board of Medicine, when no penetration~~
41 ~~of the skin occurs; the use of radiant energy, including~~
42 ~~ultraviolet, visible, and infrared rays; ultrasound; water; the~~
43 ~~use of apparatus and equipment in the application of such~~
44 treatment, prevention, or rehabilitation ~~the foregoing or~~
45 ~~related thereto;~~ the performance of tests of neuromuscular
46 functions as an aid to the diagnosis or treatment of any human
47 condition; or the performance of electromyography as an aid to
48 the diagnosis of any human condition only upon compliance with
49 the criteria set forth by the Board of Medicine.

50 (a) A physical therapist may implement a plan of treatment
51 developed by the physical therapist for a patient or provided
52 for a patient by a practitioner of record or by an advanced
53 practice registered nurse licensed under s. 464.012. The
54 physical therapist shall refer the patient to or consult with a
55 practitioner of record if the patient's condition is found to be
56 outside the scope of physical therapy. If physical therapy
57 treatment for a patient is required beyond 30 days for a
58 condition not previously assessed by a practitioner of record,

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2020792__

the physical therapist shall have a practitioner of record review and sign the plan. The requirement that a physical therapist have a practitioner of record review and sign a plan of treatment does not apply when a patient has been physically examined by a physician licensed in another state, the patient has been diagnosed by the physician as having a condition for which physical therapy is required, and the physical therapist is treating the condition. For purposes of this paragraph, a health care practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 and engaged in active practice is eligible to serve as a practitioner of record.

(b) The use of roentgen rays and radium for diagnostic and therapeutic purposes and the use of electricity for surgical purposes, including cauterization, are not "physical therapy" for purposes of this chapter.

(c) The practice of physical therapy does not authorize a physical therapy practitioner to practice chiropractic medicine as defined in chapter 460, including specific spinal manipulation. For the performance of specific chiropractic spinal manipulation, a physical therapist shall refer the patient to a health care practitioner licensed under chapter 460.

(d) This subsection does not authorize a physical therapist to implement a plan of treatment for a patient currently being treated in a facility licensed pursuant to chapter 395.

Section 2. Section 486.025, Florida Statutes, is amended to read:

486.025 Powers and duties of the Board of Physical Therapy

25-00774A-20

2020792__

Practice.—The board may administer oaths, summon witnesses, take testimony in all matters relating to its duties under this chapter, establish or modify minimum standards of the practice of physical therapy as defined in s. 486.021, including, but not limited to, standards for the performance of dry needling by physical therapists, and adopt rules pursuant to ss. 120.536(1) and 120.54 to implement ~~the provisions of~~ this chapter. The board may also review the standing and reputability of any school or college offering courses in physical therapy and whether the courses of such school or college in physical therapy meet the standards established by the appropriate accrediting agency referred to in s. 486.031(3)(a). In determining the standing and reputability of any such school and whether the school and courses meet such standards, the board may investigate and personally inspect the school and courses ~~make personal inspection of the same.~~

Section 3. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Gayle Harrell, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: January 2, 2020

I respectfully request that **Senate Bill #792**, relating to Physical Therapy, be placed on the:

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

A handwritten signature in cursive script, appearing to read "Ben Albritton".

Senator Ben Albritton
Florida Senate, District 26

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/21/20
Meeting Date

792
Bill Number (if applicable)

Topic Physical Therapy

Amendment Barcode (if applicable)

Name _____

Job Title _____

Address 1720 SE 16th Street Suite #302

Phone 352-512-0825

Street

Ocala

City

FL

State

34471

Zip

Email Bart.reed@mountainriverpt.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Physical Therapy 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

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

1/21/20

Meeting Date

792

Bill Number (if applicable)

Topic Physical therapy

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title _____

Address 119 South Monroe Street #200
Street
Tallahassee FL 32301
City State Zip

Phone 850-205-9000

Email aimee.diazlyon@mhdfirm.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing the Florida Physical therapy 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

1/21/20

Meeting Date

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

SB 792

Bill Number (if applicable)

Topic SENATE BILL 792

Amendment Barcode (if applicable)

Name DAVID BIBBEY

Job Title _____

Address 441 SE Kings Bay Drive

Phone 3

Street

Crystal River, FL 34429

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☒ Information

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

Representing FLORIDA STATE ORIENTAL ASSOC.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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)

1/21/2020

Meeting Date

SB 792

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Hongjian He

Job Title _____

Address 901 N. Hercules Ave Suite F

Street

Phone ~~727 465 1076~~

Clearwater

City

FL

State

33765

Zip

Email drhe@live.com

Speaking: ☐ For ☒ Against ☒ Information

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

Representing Florida Acupuncture 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

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

1/21/20

Meeting Date

792

Bill Number (if applicable)

Topic Physical Therapy

Amendment Barcode (if applicable)

Name Doug Cone

Job Title

Address 500 N.W. 27th Ave

Street

Phone (352) 732-4111

Ocala

FL

34475

City

State

Zip

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 Health Policy

BILL: SB 120

INTRODUCER: Senators Pizzo and Book

SUBJECT: Naloxone in Schools

DATE: January 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Sikes	ED	Favorable
2.	Looke	Brown	HP	Favorable
3.			RC	

I. Summary:

SB 120 authorizes a K-12 public school to purchase the opioid antagonist naloxone and allows trained personnel to administer the drug to a student who overdoses on an opioid. The bill requires a participating school district to adopt a protocol developed by a licensed physician and provides liability protections for the physician and school district personnel relating to injuries arising from naloxone use administered by trained school personnel who comply with the protocol.

The bill takes effect July 1, 2020.

II. Present Situation:

Opioid Epidemic

An opioid overdose may cause a person to lose consciousness, stop breathing, and die.¹ In 2017, the number of overdose deaths involving opioids was six times higher nationwide than it was in 1999² and, in 2018, opioids killed 3,727 people in Florida.³ As a result of the opioid epidemic, Governor Rick Scott declared Florida to be in a state of emergency.⁴ Subsequent Executive

¹ U.S. Food & Drug Administration, *Statement From FDA Commissioner Scott Gottlieb, M.D., on Unprecedented New Efforts to Support Development of Over-The-Counter Naloxone to Help Reduce Opioid Overdose Deaths* (Jan. 17, 2019), available at <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-unprecedented-new-efforts-support-development-over> (last visited Jan. 14, 2020).

² Centers for Disease Control and Prevention, *Opioid Overdose* (2018), available at <https://www.cdc.gov/drugoverdose/epidemic/index.html> (last visited Jan. 14, 2020).

³ Florida Department of Law Enforcement, Medical Examiners Commission, *Drugs Identified in Deceased Persons by Florida Medical Examiners, 2018 Annual Report*, available at <https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2018-Annual-Drug-Report.aspx> (last visited Jan. 14, 2020).

⁴ Office of the Governor, *Executive Order Number 17-146*, May 3, 2017 (Opioid Epidemic).

Orders extended the state of emergency through April 2, 2019.⁵ On April 1, 2019, Governor Ron DeSantis created a Statewide Task Force on Opioid Abuse to research and assess the nature of opioid drug abuse in Florida and develop a statewide strategy to identify best practices to combat the opioid epidemic through education, treatment, prevention, recovery, and law enforcement.⁶

Naloxone

Background

Naloxone is a well-established essential medicine for the treatment of life-threatening opioid overdose in emergency medicine.⁷ Naloxone is a safe antidote to a suspected overdose and can save a life when given in time.⁸ Research shows that when naloxone and overdose education are available to community members, overdose deaths decrease in those communities.⁹ Laypersons administering naloxone have a 75 to 100 percent success rate in reversing the effects of an opioid overdose.¹⁰

Regulation

Naloxone is a derivative of thebaine,¹¹ a Schedule II controlled substance in Florida.¹² Schedule II substances may only be dispensed with a prescription from a licensed practitioner,¹³ but emergency responders are authorized by law to possess, store, and administer emergency opioid antagonists as necessary.¹⁴ The U.S. Surgeon General developed standards to encourage the distribution of over-the-counter naloxone.¹⁵

Subject to statutory exceptions, it is illegal for a drug manufacturer or wholesale distributor in Florida to distribute a prescription drug to a person without a prescription.¹⁶ One such statutory exception authorizes a public school to purchase a supply of epinephrine auto-injectors from a

⁵ Office of the Governor, *Executive Order Number 19-36*, February 1, 2019 (Opioid Epidemic Extension).

⁶ Office of the Governor, *Executive Order Number 19-97*, April 1, 2019 (Establishing the Office of Drug Control and the Statewide Task Force on Opioid Abuse to Combat Florida's Substance Abuse Crisis).

⁷ John Strang, et al., *Take-Home Naloxone for the Emergency Interim Management of Opioid Overdose: The Public Health Application of an Emergency Medicine*, 79(13) *Drugs* 1395-1418 (July 27, 2019), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6728289/> (last visited Jan. 14, 2020).

⁸ U.S. Department of Health and Human Services, Office of the Surgeon General, *U.S. Surgeon General's Advisory on Naloxone and Opioid Overdose* (Apr. 5, 2018), available at <https://www.hhs.gov/surgeongeneral/priorities/opioids-and-addiction/naloxone-advisory/index.html> (last visited Jan. 14, 2020).

⁹ *Id.*

¹⁰ Rachael Rzasa Lynn, J. L. Galinkin, *Naloxone dosage for opioid reversal: current evidence and clinical implications*, 9(1) *Therapeutic Advances in Drug Safety*, 63-88 (2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5753997/> (last visited Jan. 14, 2020).

¹¹ National Institute of Health, U.S. National Library of Medicine, *Naloxone*, <https://pubchem.ncbi.nlm.nih.gov/compound/Naloxone> (last visited Jan. 14, 2020).

¹² Section 893.03(2)(a)1.s., F.S.

¹³ Section 893.04(1)(f), F.S. "Practitioner" means a physician licensed under ch. 458, a dentist licensed under ch. 466, a veterinarian licensed under ch. 474, an osteopathic physician licensed under ch. 459, an advanced practice registered nurse licensed under ch. 464, a naturopath licensed under ch. 462, a certified optometrist licensed under ch. 463, a psychiatric nurse as defined in s. 394.455, F.S., a podiatric physician licensed under ch. 461, or a physician assistant licensed under ch. 458 or ch. 459, provided such practitioner holds a valid federal controlled substance registry number. Section 893.02(23), F.S.

¹⁴ Section 381.887, F.S.

¹⁵ U.S. Food & Drug Administration, *supra* note 1.

¹⁶ Section 499.005(14), F.S.

wholesale distributor or manufacturer.¹⁷ In addition, a manufacturer or wholesale distributor of naloxone may sell a prescription drug to:¹⁸

- A licensed pharmacist or any person under the licensed pharmacist's supervision while acting within the scope of the licensed pharmacist's practice;
- A licensed practitioner authorized by law to prescribe prescription drugs or any person under the licensed practitioner's supervision while acting within the scope of the licensed practitioner's practice;
- A qualified person who uses prescription drugs for lawful research, teaching, or testing, and not for resale;
- A licensed hospital or other institution that procures such drugs for lawful administration or dispensing by practitioners;
- An officer or employee of a federal, state, or local government; or
- A person that holds a valid permit issued by the Department of Business and Professional Regulation, which authorizes that person to possess prescription drugs.

Administration

Naloxone may be administered to a person through a vein, through a muscle, or through the nasal passage.¹⁹ Naloxone may cost less than a dollar per unit for a simple vial, to several thousand dollars for certain intramuscular auto-injectors.²⁰

ADAPT Pharma, Inc., has produced an FDA-approved naloxone nasal spray called Narcan.²¹ The Florida Department of Children and Families, as part of its overdose prevention program, purchases Narcan at \$75 per carton. Each carton contains two doses of Narcan.²² The Narcan Nasal Spray School Program, offered through ADAPT Pharma, offers up to two cartons of Narcan to every high school at no cost.²³ New approved naloxone nasal sprays cost between \$30 and several hundred dollars per carton.²⁴

School Health

District school board personnel may assist students in the administration of certain medication and medical services.²⁵ County health departments, district school boards, and local school health advisory committees jointly develop school health services plans, which must include provisions for meeting emergency needs at each school.²⁶ Each school must ensure that at least

¹⁷ Section 1002.20(3)(i), F.S.

¹⁸ Section 499.03(1), F.S.

¹⁹ Strang, *supra* note 7.

²⁰ *Id.*

²¹ *Id.*

²² Fla. Dep't of Children and Families, *Patterns and Trends of the Opioid Epidemic in Florida*, 20 (2018), available at <http://www.floridahealth.gov/statistics-and-data/e-forcse/fl-seow-annual-report-2018.pdf> (last visited Jan. 14, 2020).

²³ Narcan Nasal Spray, *Community Programs*, available at <https://www.narcan.com/community/education-awareness-and-training-resources/> (last visited Jan. 14, 2020).

²⁴ Strang, *supra* note 7.

²⁵ Section 1006.062, F.S.

²⁶ Sections 381.0056(4)(a)12. and 1006.062(6), F.S.

two school staff members are currently certified by nationally recognized certifying agencies to provide first aid and cardiopulmonary resuscitation.²⁷

At least four states enacted bills to expand naloxone access in schools in 2019.²⁸

III. Effect of Proposed Changes:

SB 120 authorizes a school to purchase a supply of the opioid antagonist naloxone from a wholesale distributor, or enter into an arrangement with a wholesale distributor or manufacturer for naloxone at fair-market, free, or reduced prices. A participating school district must adopt a protocol developed by a licensed physician for the administration of the drug by school personnel who are trained to recognize an opioid overdose and to administer naloxone. The school must maintain the naloxone in a secure location on the premises of a participating school.

The bill exempts a school district, its employees and agents, and the physician who provides the standing protocol, from liability for any injury arising from the use of naloxone so long as the naloxone is administered by trained school personnel who follow the standing protocol and whose professional opinion is that the student is having an opioid overdose. The liability protections apply unless the trained school personnel's action is willful and wanton and apply regardless of whether:

- The parents or guardians of the student to whom the naloxone is administered have been provided notice or have signed a statement acknowledging that the school district is not liable; or
- Authorization has been given by the student's parents or guardians or by the student's physician, physician's assistant, or advanced practice registered nurse.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁷ Fla. Admin. Code R. 64F-6.004.

²⁸ Minnesota, Oregon, South Dakota, and Washington. Alyssa Rafa, Education Commission of the States, *Education Policy Responses to the Opioid Crisis* (2019), available at <https://www.ecs.org/education-policy-responses-to-the-opioid-crisis/>, at 3, (last visited Jan. 14, 2020).

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:

SB 120 may have an indeterminate, negative fiscal impact on school districts. The costs to school districts depend on whether or not the district decides to purchase the medication and whether the medication is purchased at fair-market or reduced prices. ADAPT Pharma will provide two cartons of Narcan nasal spray (four doses) free of charge to high schools through the Narcan Nasal Spray School Program.²⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1002.20 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.

²⁹ *Supra* note 23.

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

By Senator Pizzo

38-00009-20

2020120__

A bill to be entitled
An act relating to naloxone in schools; amending s.
1002.20, F.S.; authorizing a public school to purchase
a supply or enter into an arrangement to receive a
supply of the opioid antagonist naloxone for a certain
purpose; specifying requirements for the maintenance
of the naloxone; requiring the school district to
adopt a protocol for the administration of naloxone;
providing that a school district and its employees and
agents and the physician who provides the protocol are
not liable for any injury arising from the
administration of the naloxone pursuant to the
protocol; providing exceptions; providing an effective
date.

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

Section 1. Paragraph (n) is added to subsection (3) of
section 1002.20, Florida Statutes, to read:

1002.20 K-12 student and parent rights.—Parents of public
school students must receive accurate and timely information
regarding their child's academic progress and must be informed
of ways they can help their child to succeed in school. K-12
students and their parents are afforded numerous statutory
rights including, but not limited to, the following:

(3) HEALTH ISSUES.—

(n) Naloxone use and supply.—

1. A public school may purchase a supply of the opioid
antagonist naloxone from a wholesale distributor as defined in

38-00009-20

2020120__

s. 499.003 or may enter into an arrangement with a wholesale distributor or manufacturer as defined in s. 499.003 for naloxone at fair-market, free, or reduced prices for use in the event a student has an opioid overdose. The naloxone must be maintained in a secure location on the public school's premises. The participating school district shall adopt a protocol developed by a licensed physician for the administration of the drug by school personnel who are trained to recognize an opioid overdose and to administer naloxone.

2. The school district and its employees and agents and the physician who provides the standing protocol for school naloxone are not liable for any injury arising from the use of the drug if it is administered by trained school personnel who follow the standing protocol and whose professional opinion is that the student is having an opioid overdose:

a. Unless the trained school personnel's action is willful and wanton;

b. Notwithstanding that the parents or guardians of the student to whom the naloxone is administered have not been provided notice or have not signed a statement acknowledging that the school district is not liable; and

c. Regardless of whether authorization has been given by the student's parents or guardians or by the student's physician, physician's assistant, or advanced practice registered nurse.

Section 2. This act shall take effect July 1, 2020.

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 Health Policy

BILL: SB 842

INTRODUCER: Senator Wright

SUBJECT: Injured Police Canines

DATE: January 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Favorable
2.	_____	_____	CJ	_____
3.	_____	_____	RC	_____

I. Summary:

SB 842 authorizes an emergency service transport vehicle permit holder to transport a police canine injured in the line of duty to a veterinary clinic, hospital emergency department, or similar facility if no person requires medical attention or transport when the canine needs it. The bill authorizes emergency medical technicians (EMTs) and paramedics to provide emergency medical care to an injured police canine at the scene of an emergency or while the canine is being transported.

The bill provides civil and criminal immunity for EMTs and paramedics providing emergency care to an injured police canine and exempts them from the application of the veterinary practice act for providing medical care to a police canine injured in the line of duty.

The bill has an effective date of July 1, 2020.

II. Present Situation:

Police Canines

Section 843.19, F.S., defines the term “police canine” for law enforcement purposes as any canine that is owned, or the service of which is employed, by a law enforcement agency or a correctional agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

Special K-9 Units

Specially-trained dogs are used by various agencies and departments throughout the state in their K-9 units. These departments employ dogs to assist with tracking and apprehending offenders,

narcotics and bomb detection,¹ and building and article searches.² Additionally, some fire departments use dogs as part of arson detection programs.³ Various non-profit organizations also use dogs for the purpose of search and rescue, such as the Community Emergency Response Team, which provides support to the federal Emergency Management Agency.⁴

Veterinary Medical Care and Treatment for Canines

The practice of veterinary medicine is licensed and regulated by the Department of Business and Professional Regulation (DBPR), Board of Veterinary Medicine.⁵ A veterinarian is a licensed health care practitioner who engages in the practice of veterinary medicine which the Legislature has determined can be potentially dangerous to the public health and safety if conducted by incompetent and unlicensed practitioners.⁶ The practice of veterinary medicine includes:

- The diagnosis of medical conditions of animals;
- Prescribing, dispensing, or administering drugs, medicine, appliances, and applications for animals;
- The treatment of animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease;
- Performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals;
- The determination of the health, fitness, or soundness of an animal; and
- The practice of the following on animals:
 - Surgery;
 - Acupuncture;
 - Obstetrics;
 - Dentistry;
 - Physical therapy;
 - Radiology;
 - Theriogenology; and
 - Any other veterinary medicine specialty.

Section 474.202, F.S., defines an animal as a wild or domestic, dead or alive, bird, amphibian, fish, reptile, or mammal, other than a human being. A dog, or canine, is a mammal.⁷ It is the responsibility of every veterinarian licensed and practicing in Florida to provide, either personally or through another licensed veterinarian, 24-hour emergency services for all animals under his or her continuing care.⁸

¹ City of Orlando, *K-9 Unit*, available at <http://www.cityoforlando.net/police/k-9-unit/> (last visited Jan. 15, 2020).

² St. Petersburg Police Department, *K-9 Unit*, available at <http://police.stpete.org/usb/k-9.html> (last visited Jan. 15, 2020).

³ City of Orlando, *Accelerant Detection Canines*, available at <http://www.cityoforlando.net/fire/accelerant-detection-canines/> (last visited Jan. 15, 2020).

⁴ Boondocks K9 SAR-CERT Unit, *Community Emergency Response Team (CERT)*, available at <https://www.boondocksk9.org/> (last visited Jan. 15, 2020).

⁵ Chapter 474, F.S.; and see s. 20.165, F.S.

⁶ Sections 474.201 and 202(11), F.S.

⁷ Merriam-Webster On-line Dictionary, Dog or Canine is a highly variable domestic mammal (*Canis familiaris*) closely related to the gray wolf, available at <https://www.merriam-webster.com/dictionary/dog> (last visited Jan. 15, 2020).

⁸ Fla. Admin. Code R. 61G19-19.001 (2019).

When the DBPR has probable cause to believe that a person is practicing, or attempting to practice, veterinary medicine without a license, or aiding and abetting a person to practice veterinary medicine without a license, the DBPR may issue to the offender a notice to cease and desist. If the person fails to comply with the notice, the DBPR may file a proceeding seeking an injunction or a writ of mandamus. Additionally, the DBPR may impose an administrative penalty not to exceed \$5,000 per incident or may issue a citation.⁹

Emergency Medical Services, Paramedics, and Emergency Medical Technicians (EMTs)

Emergency Medical Transport Services

Prehospital life support transport services fall into two general categories – basic life support services (BLS) and advanced life support services (ALS).

BLS services includes the assessment or treatment by a person qualified under part III of ch. 401, F.S., through the use of techniques described in the Emergency Medical Technician (EMT)-Basic National Standard Curriculum or the National EMS Education Standards of the U.S. Department of Transportation.¹⁰ The term includes the administration of oxygen and other techniques that have been approved and are performed under specific conditions.¹¹ BLS services are usually performed by EMTs.¹²

ALS services include patient assessment or treatment including the implementation of advanced medical skills such as endotracheal intubation, the administration of drugs or intravenous fluids, telemetry, cardiac monitoring, cardiac defibrillation, and other techniques described in the EMT-Paramedic National Standard Curriculum or the National EMS Education Standards.¹³ ALS services can be performed on site and are usually provided by physicians or paramedics¹⁴

To obtain a transport vehicle permit to provide BLS or ALS services, an applicant must provide to the Department of Health (DOH) the following:

- An application and required fees;
- Documentation that the vehicle qualifies as follows:
 - Is furnished with essential medical supplies and equipment which is in good working order;
 - Meets appropriate standards for design and construction;
 - Is equipped with an appropriate communication system;
 - Meets appropriate safety standards;

⁹ Section 455.228, F.S.

¹⁰ United States Department of Transportation, National Highway Traffic Safety Administration, *National Emergency Medical Services Education Standards*, available at <https://www.ems.gov/pdf/National-EMS-Education-Standards-FINAL-Jan-2009.pdf> (last visited Jan. 15, 2020).

¹¹ Sections 401.23(7) and (8), F.S.

¹² Ryyanen, et. al, *Is advanced life support better than basic life support in prehospital care? A systematic review*, Scand J Trauma Resusc. Emerg. Med. 2010; 18: 62, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3001418/> (last visited Jan. 15, 2020).

¹³ Sections 401.23(1) and (2), F.S.

¹⁴ Ryyanen, et. al, *Is advanced life support better than basic life support in prehospital care? A systematic review*, Scand J Trauma Resusc. Emerg. Med. 2010; 18: 62, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3001418/> (last visited Jan. 15, 2020).

- Meets sanitation and maintenance standards;
- Is insured for a minimum of \$100,000/\$300,000 against injuries to or the death of any person arising out of an accident; and
- Has been awarded a Certificate of Public Convenience and Necessity (COPCN).¹⁵

The following adult and pediatric medical equipment and supplies are required for BLS service vehicles:

- Bandaging, dressing, and taping supplies;
- Bandage shears;
- Patient restraints;
- Blood pressure cuffs;
- Stethoscopes;
- Blankets;
- Sheets;
- Pillows;
- Patient rain cover;
- Long and short spine boards;
- Cervical, spine and extremity immobilization devices and traction splints;
- Portable oxygen tanks, masks, and nasal cannula;
- Hand-operated bag-valve mask resuscitators;
- Portable suction;
- Sterile obstetrical kit;
- Burn sheets;
- Flashlight;
- Occlusive dressings;
- Gloves, face masks;
- Nasopharyngeal airways;
- Biohazardous waste bags; and
- Bulb syringe.¹⁶

The following additional adult and pediatric medical equipment and medications are required for ALS service vehicles:

- Medications:
 - Atropine;
 - Dextrose;
 - Epinephrine;
 - Ventricular dysrhythmic;
 - Benzodiazepine sedative/anticonvulsant;
 - Naloxone (Narcan);
 - Nitroglycerin; and
 - Beta adrenergic inhalant with nebulizer apparatus.
- I.V. SOLUTIONS including Lactated Ringers or Normal Saline with stopcocks, pressure infuser, drip sets, tubing and cannula.

¹⁵ Section 401.26(2), F.S. and Fla. Admin. Code R. 64J-1.002 and 63J-1.003 (2019).

¹⁶ Fla. Admin Code R. 64J-1.002(4) (2019).

- **EQUIPMENT**
 - Laryngoscope handle, blades and batteries;
 - I.V. arm boards or splints;
 - Disposable endotracheal tubes and stylets;
 - Magill forceps;
 - Device for intra-tracheal meconium suctioning;
 - Tourniquets;
 - Needles and syringes;
 - Portable monitor with defibrillator, pacing capabilities, ECG printout, and electrodes; and
 - Glucometer.¹⁷

Emergency Medical Technicians

The primary focus of an EMT is to provide basic emergency medical care and transportation for critical and emergent patients who access the emergency medical system. This individual possesses the basic knowledge and skills necessary to provide patient care and transportation. An EMT functions as part of a comprehensive EMS response, under medical oversight. An EMT performs interventions with the basic equipment typically found on an ambulance. An EMT is a link from the scene to the emergency health care system.¹⁸

Paramedics

A paramedic is an allied health professional whose primary focus is to provide advanced emergency medical care for critical and emergent patients who access the emergency medical system. This individual possesses the complex knowledge and skills necessary to provide patient care and transportation. Paramedics function as part of a comprehensive EMS response, under medical oversight. Paramedics perform interventions with the basic and advanced equipment typically found on an ALS service vehicle. A paramedic is a link from the scene into the health care system.¹⁹

III. Effect of Proposed Changes:

SB 842 creates s. 401.254, F.S., to authorize an emergency service transport vehicle permit holder to transport a police canine injured in the line of duty to a veterinary clinic, hospital emergency department, or similar facility if no person requires medical attention or transport when the canine needs it.

The bill defines the term “police canine” as any canine that is owned, or the service of which is employed, by a state or local law enforcement agency, a correctional agency, a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of criminal activity, flammable materials, or missing persons; enforcement of laws; investigation of fires; or apprehension of offenders.

The bill authorize EMTs and paramedics to provide emergency medical care to the injured police canine at the scene of the emergency or while being transported. The bill provides civil and

¹⁷ Id.

¹⁸ See note 18.

¹⁹ Id.

criminal immunity for EMTs and paramedics providing emergency care to the injured police canine and exempts them from the application of the veterinary practice act for providing medical care to a police canine injured in the line of duty.

The bill has an effective date of July 1, 2020.

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:

The bill does not provide any emergency treatment protocols for EMTs and paramedics to follow for the emergency care and treatment of police canines injured in the line of duty, nor does the

bill require the collaborative development of treatment protocols for injured police canines between the boards of medicine and osteopathic medicine and the board of veterinary medicine. The emergency medical care and treatment of human beings and canines is very different, as is the training of veterinarians when compare to that of EMTs and paramedics.

VIII. Statutes Affected:

This bill substantially amends section 474.203 of the Florida Statutes.

This bill creates section 401.254 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 Wright

14-00561-20

2020842__

A bill to be entitled
An act relating to injured police canines; creating s.
401.254, F.S.; defining the term "police canine";
authorizing life support services to transport injured
police canines under certain circumstances;
authorizing a paramedic or an emergency medical
technician to provide emergency medical care to
injured police canines under certain circumstances;
providing immunities; amending s. 474.203, F.S.;
providing applicability; providing an effective date.

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

Section 1. Section 401.254, Florida Statutes, is created to
read:

401.254 Treatment of injured police canines.—

(1) As used in this section, the term "police canine" means
any canine that is owned, or the service of which is employed,
by a state or local law enforcement agency, a correctional
agency, a fire department, a special fire district, or the State
Fire Marshal for the principal purpose of aiding in the
detection of criminal activity, flammable materials, or missing
persons; enforcement of laws; investigation of fires; or
apprehension of offenders.

(2) A licensee with a valid permit for its transport
vehicle may transport a police canine injured in the line of
duty to a veterinary clinic, hospital emergency department, or
similar facility if there is no individual requiring medical
attention or transport at that time.

14-00561-20

2020842__

30 (3) Notwithstanding s. 474.213, a paramedic or an emergency
31 medical technician may provide emergency medical care to a
32 police canine injured in the line of duty while at the scene of
33 the emergency or while the police canine is being transported to
34 a veterinary clinic, hospital emergency department, or similar
35 facility. A paramedic or an emergency medical technician who
36 acts in good faith to provide emergency medical care to an
37 injured police canine is immune from criminal or civil
38 liability.

39 Section 2. Subsection (9) is added to section 474.203,
40 Florida Statutes, to read:

41 474.203 Exemptions.—This chapter does not apply to:

42 (9) A paramedic or an emergency medical technician
43 providing emergency medical care to a police canine injured in
44 the line of duty as authorized under s. 401.254.

45
46 For the purposes of chapters 465 and 893, persons exempt
47 pursuant to subsection (1), subsection (2), or subsection (4)
48 are deemed to be duly licensed practitioners authorized by the
49 laws of this state to prescribe drugs or medicinal supplies.

50 Section 3. This act shall take effect July 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs and Space, *Chair*
Children, Families, and Elder Affairs
Commerce and Tourism
Environment and Natural Resources

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT
14th District

November 22, 2019

The Honorable Gayle Harrell
310, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 842 – Injured Police Canines

Dear Chair Harrell:

Senate Bill 842, relating to Injured Police Canines has been referred to the Committee on Health Policy. I am requesting your consideration on placing SB 842 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tom A. Wright".

Tom A. Wright, District 14

cc: Allen Brown, Staff Director of the Committee on Health Policy
Celia Georgiades, Administrative Assistant of the Committee on Health Policy

REPLY TO:

- ☐ 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
- ☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

9/21/20

Meeting Date

842

Bill Number (if applicable)

Topic Injured Police Canines

Amendment Barcode (if applicable)

Name Kate MacFall

Job Title State director

Address 1624 Metropolitan Circle
Tallahassee FL 32308
 City State Zip

Phone 870 508-1001

Email Kmacfallchsus.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Humane Society of the United States

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)

Jan 21, 2020

Meeting Date

842

Bill Number (if applicable)

Topic Injured Canines

Amendment Barcode (if applicable)

Name Ken "cop-CHEN-ski" Kopczynski

Job Title Lobbyist

Address 300 East Brevard St

Phone 850-222-3329

Street

Talla

FL

32301

Email ken@flpba.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida PBA Inc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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)

1-24-20

Meeting Date

SB 0842

Bill Number (if applicable)

Topic INSURED POLICE CANINES

Amendment Barcode (if applicable)

Name ERIC CHUDZIK

Job Title DISTRICT VICE PRESIDENT

Address 343 W. MADISON STREET

Phone (239) 560 0930

Street

TALLAHASSEE

FL

32304

City

State

Zip

Email 11TH DVA@FFP.ORG

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA PROFESSIONAL FIREFIGHTERS

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 Health Policy

BILL: SB 52

INTRODUCER: Senator Bean

SUBJECT: Medicaid Services

DATE: January 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Williams	Brown	HP	Favorable
2.			AHS	
3.			AP	

I. Summary:

SB 52 amends s. 409.904, F.S., to delete a current-law provision that will cause subsection (12) of that statute to expire on July 1, 2020. By deleting the expiration date, the bill maintains Florida's current policy to limit a non-pregnant adult's retroactive eligibility for the Medicaid program to the first day of the month in which such an adult's application to be enrolled in the program is filed.

A fiscal impact estimate for this bill has not been provided by the Agency for Health Care Administration (AHCA). See Section V for historical cost estimates.

The effective date of the bill is July 1, 2020.

II. Present Situation:

Florida Medicaid Program

The Florida Medicaid program is a partnership between the federal and state governments. Each state operates its own Medicaid program under a state plan approved by the federal Centers for Medicare & Medicaid Services (CMS). The state plan outlines Medicaid eligibility standards, service coverage policies, and reimbursement methodologies.

Florida's Medicaid program is administered by the AHCA and financed with federal and state funds. According to the most recently published estimates, just under 3.9 million Floridians are currently enrolled in Medicaid, and the program's projected expenditures for the 2020-2021 state fiscal year are \$29.0 billion.¹

¹ See Social Services Estimating Conference, Medicaid Caseloads and Expenditures, July 25, 2019, and August 6, 2019, respectively, Executive Summary, available at <http://edr.state.fl.us/Content/conferences/medicaid/execsummary.pdf> (last visited Jan. 16, 2020). Estimates made in December 2019 and January 2020 are not yet published, as of this writing.

Eligibility for Florida Medicaid is based on several factors, including age, household or individual income, and assets. State Medicaid payment guidelines are provided in s. 409.903, F.S., (Mandatory Payments for Eligible Persons) and s. 409.904, F.S., (Optional Payments for Eligible Persons). Minimum coverage thresholds are established in federal law for certain population groups, such as children or pregnant women.

Medicaid Retroactive Eligibility

Federal Requirements

The Social Security Act provides requirements under which state Medicaid programs must operate. For most eligibility groups, federal law² directs state Medicaid programs to make payment for Medicaid-covered services furnished in or after the third month before the month in which a Medicaid-eligible individual makes application to enroll in the program, if such individual would have been determined Medicaid-eligible at the time such services were furnished.³ However, the requirement for retroactive eligibility may be waived pursuant to federal waiver laws and regulations.

Florida's State Plan for Medicaid

In compliance with the federal requirement for retroactive eligibility, the Florida Medicaid State Plan previously provided that “[c]overage is available beginning the first day of the third month before the date of application if individuals who are aged, blind or disabled, or who are AFDC-related,⁴ would have been eligible at any time during that month, had they applied.” These provisions had been applicable to the Florida Medicaid State Plan as state policy since at least October 1, 1991, until the 2018-2019 state fiscal year.⁵

Florida's 2018 Policy Change

In 2018, the Legislature, via the General Appropriations Act (GAA)⁶ and the Implementing Bill accompanying the GAA,⁷ directed the AHCA to seek a waiver from federal CMS to limit the retroactive eligibility period for non-pregnant adults aged 21 and older. For these adults, eligibility would become retroactively effective on the first day of the month in which their Medicaid application was filed, instead of the first day of the third month prior to the date of application, if federal waiver authority to that effect were granted.

² 42 U.S.C. s. 1396a(a)(34).

³ Under this latter aspect of retroactive eligibility, a newly-eligible Medicaid recipient must be deemed to have been eligible during the retroactive period in order for Medicaid to make payment for covered services provided during that period. A lack of eligibility during the retroactive period would result in no payments being made by Medicaid for such expenses, regardless of prospective eligibility.

⁴ Aid to Families with Dependent Children (AFDC) was a federal assistance program in effect from 1935 to 1996 created by the Social Security Act and administered by the United States Department of Health and Human Services that provided financial assistance to children whose families had low or no income.

⁵ See Florida Medicaid State Plan, page 373 of 431, *available at* https://ahca.myflorida.com/medicaid/stateplanpdf/Florida_Medicaid_State_Plan_Part_I.pdf (last visited Dec. 11, 2019).

⁶ See Specific Appropriation 199 of the General Appropriations Act for State Fiscal Year 2018-2019, Chapter 2018-9, Laws of Fla., *available at* <http://www.flsenate.gov/Session/Bill/2018/5001/Amendment/616813/pdf> (last visited Dec. 10, 2019).

⁷ See section 20 of the Implementing Bill for State Fiscal Year 2018-2019, Chapter 2018-10, Laws of Fla., *available at* <https://www.flsenate.gov/Session/Bill/2018/5003/BillText/er/PDF> (last visited Dec. 10, 2019).

As directed by the 2018 Legislature, the AHCA requested an amendment to the federal waiver for Florida's section 1115 demonstration project, titled Managed Medical Assistance (MMA) Program (Project No. 11-W-00206/4). As a waiver amendment, there were comment periods at the state level prior to submission of the waiver request and at the federal level after submission of the waiver request. The waiver request that included the retroactive eligibility item was submitted to federal CMS by the AHCA on April 27, 2018, and was approved on November 30, 2018. The approval letter from federal CMS contained the following waiver authority:

[Effective February 1, 2019], to enable Florida to not provide medical assistance for any month prior to the month in which a beneficiary's Medicaid application is filed, for adult beneficiaries who are not pregnant or within the 60-day period after the last day of the pregnancy, and are aged 21 and older. The waiver of retroactive eligibility does not apply to pregnant women (or during the 60-day period beginning on the last day of the pregnancy), infants under one year of age, or individuals under age 21. The state currently has state legislative authority for this waiver through June 30, 2019. The state must submit a letter to CMS by May 17, 2019, if it receives state legislative authority to continue the waiver past June 30, 2019. In the event the state does not receive legislative authority to continue this waiver through June 30, 2019 and timely submit a letter to CMS to this effect, this waiver authority ends June 30, 2019.⁸

This change in the state's retroactive eligibility policy was implemented in February 2019 but was limited in duration under both federal authority and state law. In terms of state law, since the change was enacted via the 2018 budget Implementing Bill, it was applicable only in the fiscal year for which it was enacted (State Fiscal Year 2018-2019) and did not have ongoing applicability beyond June 30, 2019.

Continuation of Florida's Policy in 2019

The 2019 Legislature renewed the 2018 Medicaid retroactive eligibility policy by enacting statutory language in the 2019-2020 budget Implementing Bill, or SB 2502,⁹ which created s. 409.904(12), F.S., and required the AHCA, effective July 1, 2019, to make payments to Medicaid providers for Medicaid-covered services as follows:

- On behalf of eligible children and pregnant women, retroactive for a period of no more than 90 days before the month in which an application for Medicaid is submitted; or
- On behalf of eligible non-pregnant adults, retroactive to the first day of the month in which an application for Medicaid is submitted.

SB 2502 was passed by both chambers of the Florida Legislature on May 4, 2019. The AHCA notified federal CMS of the bill's passage prior to the May 17, 2019, deadline imposed under the

⁸ See the November 30, 2018, CMS letter and waiver approval document, including waiver Special Terms and Conditions, available at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/fl/fl-mma-ca.pdf> (last visited Dec. 10, 2019).

⁹ See s. 24 of ch. 2019-116, Laws of Fla., or the enacted version of SB 2502, available at <http://www.flsenate.gov/Session/Bill/2019/2502/BillText/er/PDF> (last visited Jan. 15, 2020).

waiver authority granted in November 2018, thereby enabling the waiver authority to continue for the current state fiscal year.

However, s. 409.904(12), F.S., will expire under current law on July 1, 2020, consistent with the expiration of other statutory provisions in the Implementing Bill. The AHCA needs both federal waiver authority, which is currently granted, and a continuation of authority under state law to continue the state's current retroactive eligibility policy beyond June 30, 2020.

Reports and Evaluations

In addition to enacting the statutory language in s. 409.904(12), F.S., the 2019 Implementing Bill also directed the AHCA to compile and submit specified information relating to retroactive eligibility in a report to the Governor and the Legislature by January 10, 2020.^{10, 11} In the report, the AHCA indicated the following:

- Federal CMS is working with states to standardize evaluation methodologies for waivers of retroactive eligibility so that it can better assess the impacts of changes to Medicaid retroactive eligibility policy. To this end, CMS provided detailed evaluation design guidance to be used as a basis for discussions with the evaluators.¹²
- The AHCA used this guidance in its proposed evaluation design, which was submitted to CMS on July 24, 2019. The proposed evaluation design was included as an Appendix to the report submitted by the AHCA on January 10, 2020. The proposed evaluation design includes six specific research questions, three of which are key review questions, and three of which may be included contingent on results for one of the key questions. For each research question, the research design addresses outcome measures, sample populations, data sources, and analytic methods.
- The AHCA is awaiting CMS feedback on the draft evaluation design and must submit a revised draft within 60 days after receipt of any additional edits from CMS. Upon CMS approval of the draft Evaluation Design, the document will be included as an attachment to the Florida MMA 1115 waiver Special Terms and Conditions. The AHCA will publish the approved Evaluation Design within 30 days of CMS approval.
- The AHCA has contracted with the University of Florida to evaluate the Florida Medicaid 1115 waiver, including a segment on the change to retroactive eligibility policy. The evaluation of retroactive eligibility policy is anticipated to be completed in the Fall of 2020.

Policy Objectives

An objective of Florida's current retroactive eligibility policy is to encourage Medicaid recipients to obtain and maintain health coverage even when they are healthy, as opposed to applying for Medicaid only after they need and have obtained health care services. Obtaining and maintaining coverage in advance of illness should increase continuity of care and reduce gaps in coverage when recipients "churn" on and off of Medicaid enrollment by enrolling only when

¹⁰ See s. 25 of ch. 2019-116, Laws of Fla., or the enacted version of SB 2502, available at <http://www.flsenate.gov/Session/Bill/2019/2502/BillText/er/PDF> (last visited Jan. 15, 2020).

¹¹ The January 10, 2020, report, "Florida Medicaid Retroactive Eligibility Legislative Report," was submitted by the AHCA on January 10, 2020 (on file with the Senate Committee on Health Policy).

¹² See *Appendix to Evaluation Design Guidance for Section 1115 Eligibility and Coverage Demonstrations: Retroactive Eligibility Waivers*, an undated 2019 release available at <https://www.medicaid.gov/medicaid/section-1115-demo/downloads/evaluation-reports/ce-evaluation-design-guidance-retro-eligibility-appendix.pdf> (last visited Dec. 11, 2019).

sick. Recipients should remain healthier on an ongoing basis and expenditures for treating acute illnesses should be mitigated if recipients obtain and maintain coverage in a more continuous fashion.¹³

Medicaid Retroactive Eligibility in Other States

When the Legislature considered changing Medicaid retroactive eligibility in 2018, several states had already reduced retroactive eligibility periods so that retroactive eligibility begins on the first day of the month in which application is made. Iowa, New Hampshire, Arkansas, and Indiana made such changes in conjunction with Medicaid program expansion under the federal Patient Protection and Affordable Care Act (PPACA). Several other states had already modified retroactive eligibility prior to the enactment of the PPACA, including Delaware, Massachusetts, Maryland, Tennessee, and Utah.¹⁴

During the Florida Legislature's 2019 Regular Session, Florida was one of a total of eight states that had eliminated or was proposing to eliminate or place limits on retroactive eligibility for one or more eligibility groups in 2018 or 2019. The states in addition to Florida were Arkansas, New Hampshire, Iowa, Kentucky, Maine, New Mexico, and Utah.¹⁵

More recently, a few states other than Florida have obtained waivers to eliminate or reduce retroactive coverage. Effective July 1, 2019, Arizona eliminated retroactive coverage for most newly-eligible Medicaid recipients, excluding pregnant women and children. Although Maine received waiver approval (in December 2018) to eliminate retroactive eligibility, in January 2019, the incoming governor informed federal CMS that the state would not accept the terms of the approved waiver. Similarly, in New Mexico, a Section 1115 waiver amendment was approved in December 2018 that allowed the state to limit retroactive coverage to one month for most Medicaid managed care members; however, under the new governor, the state submitted an amendment in June 2019 to reinstate the full 90-day retroactive coverage period. Finally, as a result of litigation challenging Section 1115 waivers, retroactive coverage restrictions have been set aside in Arkansas, Kentucky, and New Hampshire.¹⁶

III. Effect of Proposed Changes:

Section 1 deletes the statutory expiration date of July 1, 2020, from s. 409.904(12), F.S., which was enacted in 2019 to limit retroactive Medicaid eligibility for non-pregnant adults to the first day of the month in which they apply for Medicaid.

¹³ *Supra*, note 8.

¹⁴ Musumeci, MaryBeth, and Rudowitz, Robin, *Medicaid Retroactive Coverage Waivers; Implications for Beneficiaries, providers, and States*, November 2017, Kaiser Family Foundation, available at <https://www.kff.org/medicaid/issue-brief/medicaid-retroactive-coverage-waivers-implications-for-beneficiaries-providers-and-states/> (last visited Jan. 16, 2020).

¹⁵ Gifford, Kathleen, et al., *States Focus on Quality and Outcomes Amid Waiver Changes, Results from a 50-State Medicaid Budget Survey for State Fiscal Years 2018 and 2019* (October 2018), available at <https://www.kff.org/medicaid/report/states-focus-on-quality-and-outcomes-amid-waiver-changes-results-from-a-50-state-medicaid-budget-survey-for-state-fiscal-years-2018-and-2019/> (last visited Jan. 16, 2020).

¹⁶ Gifford, Kathleen, et al., *A View from the States: Key Medicaid Policy Changes Results from a 50-State Medicaid Budget Survey for State Fiscal Years 2019 and 2020* (October 2018), available at <https://www.kff.org/medicaid/report/a-view-from-the-states-key-medicaid-policy-changes-results-from-a-50-state-medicaid-budget-survey-for-state-fiscal-years-2019-and-2020/> (last visited Jan. 16, 2020).

Section 2 provides for an effective date of July 1, 2020.

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:

Under SB 52, the retroactive eligibility policy that has been in effect since February 1, 2019, will remain in effect beyond the current state fiscal year, meaning that Medicaid providers who provide covered services to newly-eligible, non-pregnant Medicaid recipients aged 21 or older, earlier than the first day of the month in which the recipient applies for Medicaid, will continue to receive no Medicaid reimbursement for those services.

C. Government Sector Impact:

If the waiver authority for retroactive eligibility granted by federal CMS on November 30, 2018, and implemented on February 1, 2019, had not been continued for the current state fiscal year, the AHCA estimated in 2019 that the Legislature would have needed to appropriate an additional \$103.6 million in order to restore the reduction made

during the 2018 Regular Session. Of this total, \$40.1 million would have been general revenue and \$63.5 million would have been federal funding.¹⁷

As part of its analysis of this bill, the AHCA provided the following fiscal impact statement:

SB 52 allows the State to continue the savings gained when the [current retroactive eligibility] policy was initially enacted. If the current retroactive policy expires July 1, 2020, Medicaid will revert to the prior policy of allowing all applicants with unreimbursed medical expenses to have up to 90 days of retroactive eligibility. This would have a fiscal impact to Medicaid.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 409.904 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.

¹⁷ Agency for Health Care Administration, *Senate Bill 192 Analysis* (February 27, 2019) (on file with the Senate Committee on Health Policy).

¹⁸ Agency for Health Care Administration, *Senate Bill 52 Analysis* (January 7, 2020) (on file with the Senate Committee on Health Policy).

By Senator Bean

4-01795A-20

202052__

A bill to be entitled
An act relating to Medicaid services; amending s.
409.904, F.S.; deleting the expiration of a
requirement for the Agency for Health Care
Administration to make payments for Medicaid-covered
services for certain persons based on specified
retroactive eligibility timeframes; providing an
effective date.

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

Section 1. Subsection (12) of section 409.904, Florida
Statutes, is amended to read:

409.904 Optional payments for eligible persons.—The agency
may make payments for medical assistance and related services on
behalf of the following persons who are determined to be
eligible subject to the income, assets, and categorical
eligibility tests set forth in federal and state law. Payment on
behalf of these Medicaid eligible persons is subject to the
availability of moneys and any limitations established by the
General Appropriations Act or chapter 216.

(12) Effective July 1, 2019, the agency shall make payments
for ~~to~~ Medicaid-covered services:

(a) For eligible children and pregnant women, retroactive
for a period of no more than 90 days before the month in which
an application for Medicaid is submitted.

(b) For eligible nonpregnant adults, retroactive to the
first day of the month in which an application for Medicaid is
submitted.

4-01795A-20

202052__

30

31 ~~This subsection expires July 1, 2020.~~

32 Section 2. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Gayle Harrell, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: December 19, 2019

I respectfully request that **Senate Bill # 52**, relating to Medicaid Services, be placed on the:

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

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

Senator Aaron Bean
Florida Senate, District 4

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/21/2020
Meeting Date

SB 52
Bill Number (if applicable)

650576
Amendment Barcode (if applicable)

Topic Retroactive Medicaid Eligibility

Name Olivia Babits

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City State Zip

Email oliviab@disabilityrights
florida.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Disability Rights 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
APPEARANCE RECORD

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

1/27/2020
Meeting Date

SB 52
Bill Number (if applicable)

Topic Retrospective Medicaid Eligibility

Amendment Barcode (if applicable)

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City State Zip

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Speaking: ☐ For ☒ Against ☐ Information

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

Representing Disability Rights Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

APPEARANCE RECORD

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

Jan 21, 2020
Meeting DateSB 52
Bill Number (if applicable)Topic Medicaid Services

Amendment Barcode (if applicable)

Name Dorene BarkerJob Title Associate State DirectorAddress 215 S Monroe St., Suite 603Phone (850) 228-6387

Street

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City

State

Zip

Email do.barker@aarps.orgSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)Representing AARP FLAppearing at request of Chair: ☐ Yes ☒ NoLobbyist 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)

APPEARANCE RECORD

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

1/21/2020

Meeting Date

52

Bill Number (if applicable)

Topic ELIMINATION OF RME

Amendment Barcode (if applicable)

Name TRISH NEELY

Job Title CONSULTANT

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State

Zip

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1/21/2020
Meeting Date

SB 52
Bill Number (if applicable)

Topic Medicaid Services

Amendment Barcode (if applicable)

Name Scott McCoy

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City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action Fund

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)

1/21/2020
Meeting Date

52
Bill Number (if applicable)

Topic Medicaid Services

Amendment Barcode (if applicable)

Name Karen Woodell

Job Title Exec. Director

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Phone 850-321-9386

Tallahassee FL 32301
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 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.

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

S-001 (10/14/14)



Florida Medicaid Retroactive Eligibility Legislative Report

**Report to the Florida Legislature
January 10, 2020**



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Summary

The Agency for Health Care Administration (Agency) serves as the single state agency responsible for the Florida Medicaid program. The Department of Children and Families (Department) or the Social Security Administration (for SSI recipients) determines Florida Medicaid eligibility.

In accordance with Section 1902(a)(34) of the Social Security Act, medical assistance is available for eligible recipients' care and services furnished in or after the third month before the month in which the Medicaid application is made.

The Florida 2019-2020 General Appropriations Act Implementing Bill (SB 2502) added subsection (12) to section 409.904, Florida Statutes, applying changes to Medicaid retroactive eligibility for non-pregnant adults. This law was effective on July 1, 2019 and expires on July 1, 2020. This law did not change the eligibility period for children (up to age 21) and pregnant women, who may continue to request retroactive Medicaid eligibility for up to 90 days before the month in which an application for Medicaid was submitted. However, this new law required coverage of eligible non-pregnant adults beginning the first day of the month in which an application was submitted.

Through the General Appropriations Act Implementing Bill, the Florida Legislature directed the Agency to provide a report in collaboration with certain state and private stakeholders. This report includes an overview of the Florida Medicaid program, the retroactive eligibility waiver filed as a result of the 2019-2020 Florida law, Agency attempts to collect the data requested, and the federal evaluation of the retroactive eligibility change on individuals, hospitals and nursing homes. The report also includes information on improving outreach and Medicaid coverage among eligible non-pregnant adults.

Section I. Background

Purpose of Report

The 2019 Florida Legislature passed the General Appropriations Act Implementing Bill, Senate Bill 2502, which included Section 25:

In order to implement Specific Appropriations 203, 207, 208, 210, 212, and 221 of the 2019-2020 General Appropriations Act:

- (1) By January 10, 2020, the Agency for Health Care Administration, in consultation with the Department of Children and Families, the Florida Hospital Association, the Safety Net Hospital Alliance of Florida, the Florida Health Care Association, and LeadingAge Florida, shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the impact of the waiver of Medicaid retroactive eligibility on beneficiaries and providers. The report must include but is not limited to:*
 - (a) The total unduplicated number of nonpregnant adults who applied for Medicaid at a hospital site from February 1, 2019, through December 6, 2019; and, of those applicants, the number whose Medicaid applications were approved, the number whose Medicaid applications were denied, and the reasons for denial ranked by frequency.*
 - (b) The total unduplicated number of nonpregnant adults who applied for Medicaid at a nursing home site from February 1, 2019, through December 6, 2019; and, of those applicants, the number whose Medicaid applications were approved, the number whose Medicaid applications were denied, and the reasons for denial ranked by frequency.*
 - (c) The estimated impact of medical debt on people for whom a Medicaid application was not submitted in the same month when the individual became an inpatient of a hospital or resident of a nursing home.*
 - (d) Recommendations to improve outreach and Medicaid coverage for nonpregnant adults who would be eligible for Medicaid if they applied before an event that requires hospital or nursing home care.*
- (2) The Agency for Health Care Administration shall also include, as part of the report required by this section, a copy of the evaluation design and performance metrics submitted to the federal Centers for Medicare and Medicaid Services relating to the waiver of Medicaid retroactive eligibility, in conformity with the Special Terms and Conditions of the state's Section 1115 demonstration project, titled Managed Medical Assistance (MMA) Program (Project No. 11-W-00206/4).*

During the 2020 Legislative Session, Senate Bill 52 has been filed, which would remove the July 1, 2020, expiration date following Subsection 12 (b) of Section 409.904, Florida Statutes. The bill would allow the Agency and Department of Children and Families (Department) to continue the current retroactive eligibility policy.

Section II. Florida's Medicaid Program

Medicaid and the Children's Health Insurance Program provide health coverage to 71 million individuals nationwide, including eligible low-income adults, children, pregnant women, elderly adults, and people with disabilities. Medicaid is administered by states, in accordance with federal requirements in the Social Security Act. Each state operating a Medicaid program has a state plan, which serves as an agreement between the state and the federal government describing how that state administers its Medicaid program.

States and the federal government together fund Medicaid. As of October 2019, over 3.8 million Floridians were enrolled in the Medicaid program. Florida Medicaid had \$25.9 billion in expenses for state fiscal year 2018-2019.

The Agency for Health Care Administration (Agency) is the single state Medicaid agency responsible for administering the Florida Medicaid program. Florida provides Medicaid services through competitively selected managed care organizations within the Statewide Medicaid Managed Care (SMMC) program or through the fee-for-service delivery system. Florida's fee-for-service delivery system is a direct billing program where providers receive reimbursement from Florida Medicaid directly through the Agency's claims adjudication system. Approximately 96% of Florida Medicaid recipients who are eligible for full benefits receive their Medicaid services through the SMMC program.

The SMMC program was fully implemented in 2014 and has three components: the Managed Medical Assistance program, the Long-Term Care program, and the Dental program. The Managed Medical Assistance program covers medical care services for health plan enrollees, including substance use disorders and mental health treatment services. The Long-Term Care program provides long-term care services and supports to eligible individuals with disabilities age 18-64 years old and elderly individuals age 65 years or older, including individuals over the age of 18 years with a diagnosis of cystic fibrosis, acquired immune deficiency syndrome, or a traumatic brain or spinal cord injury. The Dental program provides dental services to children and adult Medicaid recipients who are eligible to receive dental benefits. (Examples of recipients not eligible to receive dental benefits through the dental program include individuals for whom the state only pays Medicare cost sharing and individuals residing in institutions where Medicaid pays an all-inclusive rate.)

The Agency partners with other state agencies and entities for various administrative functions, including:

- The Department of Children and Families— determines Medicaid eligibility in Florida.
- The Agency for Persons with Disabilities – operates the Developmental Disabilities Individual Budgeting Waiver.
- The Department of Health – operates the Family Planning Waiver.
- The Department of Elder Affairs – determines clinical eligibility for the Statewide Medicaid Managed Care Long-Term Care program.
- The Aging and Disability Resource Centers –not-for-profit agencies that maintain the waitlist for the Statewide Medicaid Managed Care Long-Term Care program through contracts with the Department of Elder Affairs.

Medicaid Eligibility Determinations

In Florida, the Department of Children and Families (Department) determines Medicaid eligibility for:

- Parents and caretaker relatives of children
- Children (0-20 years of age)
- Pregnant women

- Individuals formerly in foster care (up to 26 years of age)
- Non-citizens with medical emergencies
- Aged or disabled individuals not currently receiving Supplemental Security Income (SSI)

The Social Security Administration (SSA) determines eligibility for SSI recipients. The SSA automatically notifies the Department upon determining that an applicant is eligible for SSI. The SSI program assists disabled adults and children with limited income and resources. Florida residents eligible for SSI are automatically eligible for Medicaid coverage.

Medicaid Application Process

Florida residents can apply for Florida Medicaid eligibility online, by mail, by phone, and in person.

The Department's Automated Community Connection to Economic Self Sufficiency Florida Program (ACCESS) is the electronic application process used for Florida Medicaid and other forms of government assistance. The Department's website contains quick and easy links to determine eligibility, apply for benefits and check existing accounts. Information is available 24 hours a day, 7 days a week. Most applicants choose to apply online. Paper applications are also available on the Department's ACCESS Florida website if an applicant prefers to mail their application.

For applicants who prefer to apply in person, the Department has 53 storefront facilities where an individual can receive a paper application, apply in person, or acquire assistance. The Department also has 2,140 Community Partner Assisted Service sites and 446 Community Partner Self-Service sites to assist in the application process. These Partners are trained by the Department and serve as a point of contact for Medicaid applicants.

If an applicant would like to speak with an agent over the phone, the call center's number is located on the ACCESS website, and the website includes call center wait times. Agents are available Monday through Friday from 8:00 AM to 5:00 PM.

Another entry point for potentially eligible Floridians is through the Federally Facilitated Marketplace (FFM) via Healthcare.gov. The FFM sends information to the Department for applicants who appear to be Medicaid eligible. The Department processes the application based on the information provided. If additional information is required, the Department will contact the applicant and further assist in the application process.

According to 42 CFR § 435.907 and 65A-1.205(1) of the Florida Administrative Code, an application must include the individual's name, address, and signature to start the application process and establish the effective date for Medicaid. Florida may only require an applicant to provide the information necessary to make an eligibility determination or for a purpose directly connected to the administration of the Florida Medicaid State Plan. States are federally required to process applications within 45 days.

Presumptive Eligibility Process

Presumptive eligibility is an option that authorizes certain qualified Medicaid providers to make immediate Medicaid eligibility determinations and provide Medicaid services to individuals who are determined eligible based upon preliminary information. Presumptive eligibility is not available for seniors nor individuals with disabilities who may have long-term care needs (unless they also qualify as a child, parent/caretaker or a pregnant woman). The ability to receive a presumptive eligibility

determination immediately upon seeking treatment ensures that these recipients experience no delay in accessing subsidized medical services through the Medicaid program.

There are two groups of providers who can be qualified to make presumptive eligibility determinations. Qualified Designated Providers (such as County Health Departments, Regional Perinatal Intensive Care Centers, or other agencies approved by DCF) may make presumptive eligibility determinations only for pregnant women. Hospitals that elect to make presumptive eligibility determinations are called Qualified Hospital Providers. They may make presumptive eligibility determinations for infants and children under the age of 19 years old, children formerly in foster care, parents and other caretakers or relatives, and pregnant women. Qualified Hospital Providers must enter into an agreement with the Agency in order to make presumptive eligibility determinations. Currently, Florida has 52 Qualified Hospital Providers.

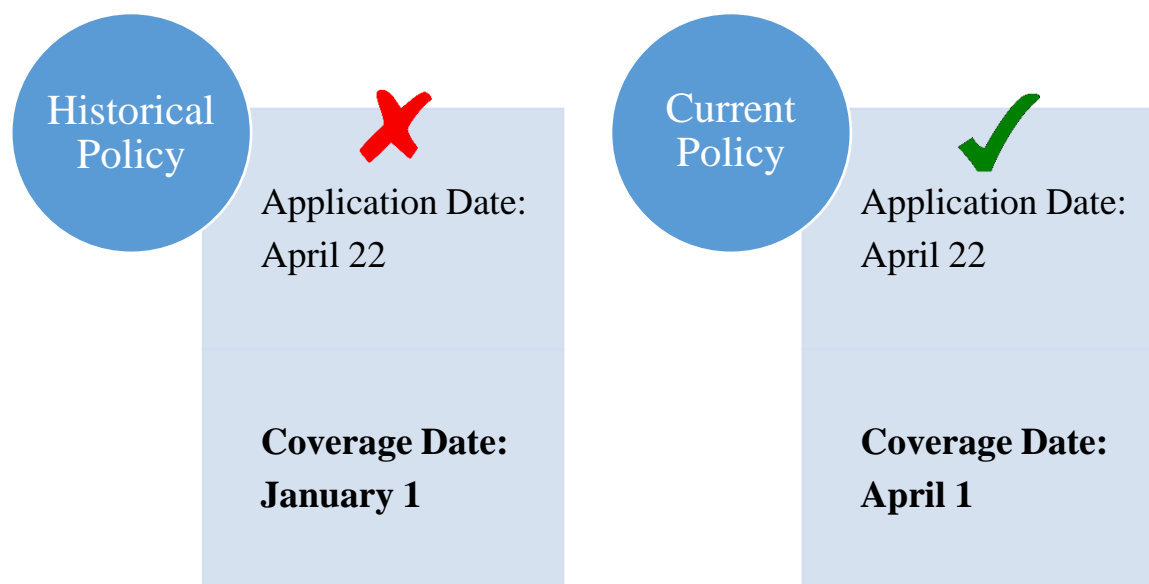
Retroactive Eligibility

The U.S. Code Title 42, Section 1396(a) directs state Medicaid programs to cover a Medicaid recipient's medical bills up to three months (90 days) prior to their application date. To qualify for retroactive coverage, a Medicaid recipient must request retroactive coverage and must have been eligible for coverage three months before the application date. Retroactive coverage is provided for services covered under Medicaid that were provided during that period.¹

In 2018, the Florida Legislature directed the Agency to request federal approval to eliminate retroactive Medicaid coverage for non-pregnant adults. The Centers for Medicare and Medicaid Services approved the Agency's request to amend its 1115 waiver. The changes to retroactive eligibility took effect on February 1, 2019. The waiver eliminates retroactive Medicaid coverage for non-pregnant adults only, meaning payments for Medicaid-covered services begin the first day of the month in which an application was submitted rather than up to 90 days prior to the month in which an application was submitted. Eligible pregnant women, infants under the age of 1, and individuals under the age of 21 are not affected by this waiver and are still eligible for retroactive Medicaid coverage for up to 90 days prior to the month in which their application was submitted. Additionally, the application date for approved Supplemental Security Income (SSI) benefits is used to automatically establish Florida Medicaid, no matter how recent or old the date.

The illustration below displays the difference between the historical and current retroactive eligibility policy for non-pregnant adults.

¹ According to U.S. Code Title 42, Section 1396(a)(A)34, a state plan for medical assistance must: provide that in the case of any individual who has been determined eligible for medical assistance under the plan, such assistance will be made available to him for care and services included under the plan and furnished in or after the third month before the month in which he made application (or application was made on his behalf in the case of a deceased individual) for such assistance if such individual was (or upon application would have been) eligible for such assistance at the time such care and services were furnished.



The change to retroactive eligibility policy enhances fiscal predictability, promotes continuity of care, and encourages individuals to apply for Florida Medicaid as soon as possible so they can be placed in a health plan to receive care coordination immediately upon approval of the Medicaid application. By promoting personal responsibility, residents are encouraged to secure and keep health coverage. Individuals should apply for Medicaid without hesitation to encourage continuity of eligibility and enrollment.

Table 1 represents the original and current estimates relating to expenditures incurred during the retroactive period. More than 70% of the services were provided through institutions such as hospitals, nursing homes and hospices.

Table 1: Expenditures for the Retroactive Period: Example Years SFY 2015-2016 and SFY 2017-2018			
Data Period	Total Unduplicated Recipients (month 1-3)	Total Expenditures (months 1-3)	Total General Revenue Expenditures (months 1-3)
July 1, 2015 – June 30, 2016	19,625	\$98,425,855	\$38,082,585
July 1, 2017- June 30, 2018	11,466	\$103,599,413	\$39,761,455

Section III. Retroactive Eligibility: Hospital and Nursing Home Impacts

The Legislature directed that the Agency consult with the Department of Children and Families (Department), the Florida Hospital Association, the Safety Net Hospital Alliance of Florida, the Florida Health Care Association, and LeadingAge Florida on the impact of the changes in retroactive eligibility on hospitals and nursing facilities² and directed the Agency to report on the total unduplicated number of non-pregnant adults who applied for Medicaid at a hospital or nursing facility and, of those applicants, the number whose Medicaid applications were approved, the applications that were denied, and the reasons for the denial.

The Agency requested data from the Department regarding the number of applications that originated from a hospital or nursing facility, but the Department does not collect information on the submitting entity at the time of application.

In the absence of this information, the Agency explored general data elements, such as matching the Department's Medicaid application dates with the Agency's claims data for nursing facility or hospital services received prior to the application date. However, this analysis did not yield the desired information on the impact of retroactive eligibility.

Taking a different approach, the Agency asked providers that assisted patients in the completion of applications for information on the number they submitted. Florida Hospital Association, the Florida Health Care Association, the Safety Net Hospital Alliance of Florida, and LeadingAge informed the Agency that they do not track this type of data. Manual reviews of all patient records would be required to ascertain which patients had Medicaid applications submitted by nursing facilities and hospitals. The providers expressed concern regarding the burden of completing the manual reviews.

The Agency and the Department worked collaboratively to identify additional ways to collect and analyze data to address the impact of retroactive eligibility on hospitals and nursing facilities. The Department currently collects the Internet Protocol (IP) address for each Florida Medicaid application received through the ACCESS system. Each IP address is a string of numbers separated by periods that uniquely identifies each computer using the internet protocol to communicate over a shared network. These IP addresses collected through the ACCESS system can be compared to those from hospitals and nursing facilities, to tie a location to an application.

The Department and the Agency developed survey questions for stakeholder groups, requesting specific IP addresses to match with applications received. These questions were shared with each stakeholder group before asking for submission to the Agency. The Florida Hospital Association expressed security concerns with using hospital IP addresses for data analysis as IP addresses could be used to track and identify personal information and compromise the anonymity and security of the hospitals' information. Because of these concerns, IP addresses were not used to identify the source of applications.

² General Appropriations Act, Section (1)(a)(b)

Section IV. Estimated Impact of Medical Debt

The Legislature also directed that the Agency report the estimated impact of medical debt for individuals who submitted a Medicaid application in a different month from when they became an inpatient of a hospital or resident of a nursing home.

Neither the Agency nor the Department collects or maintains data relating to medical debt. The Department, however, allow applicants to indicate on their application whether they have outstanding medical bills at the time of their application. Data is available regarding the total number of applications in which applicants made this indication before and after the retroactive eligibility policy change took effect February 1, 2019. Table 2 shows that the quarterly percentage of applications that indicated outstanding medical bills decreased after the policy change took effect.

**Table 2:
Medicaid Applications, Including Applications With Indication of Outstanding Medical Bills
July 2018 – June 2019**

Applications	2018 Quarter 3 July - Sept 2018	2018 Quarter 4 Oct - Dec 2018	2019 Quarter 1 Jan – Mar 2019	2019 Quarter 2 Apr – Jun 2019
Approved Applications with Reported Medical Debt	42,955	38,379	33,820	24,588
Denied Applications with Reported Medical Debt	22,732	21,157	17,419	12,209
Duplicate, Withdrawn, or Other Applications with Reported Medical Debt	2,969	2,832	2,862	1,933
Total Applications with Reported Medical Debt	68,656	62,368	54,101	38,730
Total Applications	465,210	527,276	563,200	518,774
Percent of Applications with Reported Medical Debt	14.8%	11.8%	9.6%	7.5%

The Agency also contracted with the University of Florida (UF) to create a survey to collect key items of information in order to analyze the enrollment process changes and survey the impact of medical debt on Medicaid applicants and enrollees. The results of this survey will be part of the evaluation of retroactive eligibility, which is anticipated to be completed in Fall 2020.

The Agency researched other states' retroactive eligibility policies to compare Florida's system with states that have also implemented this change. Arizona provided a clear outline of the policy change with their waiver request to eliminate the retroactive eligibility period. As of April 1, 2019, Arizona Medicaid limits retroactive coverage to the first day of the month of application. Arizona listed three objectives for the amended retroactive eligibility policy, which align with Florida Medicaid goals:

1. Encourage members to obtain and continuously maintain health coverage, even when healthy;
2. Encourage members to apply for Medicaid without delays to promote continuity of eligibility and enrollment for improved health status; and
3. Contain Medicaid costs.

Iowa's retroactive policy was effective October 26, 2017. The amendment includes a waiver of the three-month retroactive eligibility period, which applies to all Iowa Medicaid beneficiaries, except for pregnant women (and during the 60-day period beginning on the last day of the pregnancy) and infants under one year of age. Beneficiaries continue to receive Medicaid coverage effective the first day of the month in which their Medicaid application was filed, or as otherwise allowed by the state plan.

Section V. Evaluation Design and Performance Metrics

As part of the report, the Legislature requested that the Agency include a copy of the evaluation design and performance metrics submitted to the federal Centers for Medicare and Medicaid Services (CMS) relating to the 1115 waiver of Medicaid retroactive eligibility. The evaluation design was submitted to CMS on July 24, 2019, and the Agency is awaiting formal approval. CMS is working with states to standardize evaluation methodologies for waivers of retroactive eligibility so that it can better assess the impacts of this policy. To this end, CMS provided detailed evaluation design guidance to be used as a basis for discussions with the evaluators. Florida has used this guidance in its proposed evaluation design.

The Agency must submit a revised draft Evaluation Design within 60 days after receipt of any additional edits from CMS. Upon CMS approval of the draft Evaluation Design, the document will be included as an attachment to the Florida MMA 1115 waiver Special Terms and Conditions. The Agency will publish the approved Evaluation Design within 30 days of CMS approval.

A full evaluation of the MMA program is due to CMS no later than January 1, 2022. The Agency's contracted evaluation vendor is completing portions of the evaluation over the next year. The portion that assesses the impact of the waiver of retroactive eligibility on Medicaid recipients and providers is anticipated to be completed in Fall 2020.

**See Appendix for the submitted Evaluation Design and Performance Metrics for Section (2) of the report.*

Section VI. Stakeholder Feedback: Improving Outreach and Medicaid Coverage

The Legislature further directed the Agency to collaborate with the Department and certain organizations to provide recommendations for improved outreach and Medicaid coverage for non-pregnant, eligible adults if they applied before an event that requires hospital or nursing home care.

Members of the Florida Hospital Association, Safety Net Hospital Alliance of Florida, LeadingAge Florida, and Florida Health Care Association were tasked with completing an online survey exploring how the policy change has affected hospitals and nursing facilities assisting patients enrolled in Medicaid. Additionally, the survey sought recommendations for improving outreach.

The survey was sent to hospitals and nursing facilities. The survey relied on self-reported data from key informants. As such, responses were subjective and reflect the opinions of the respondents and not necessarily the organizations that employ them. Due to time constraints for survey response and completion, the Agency was unable to incorporate a summary of the results into this report. The results are currently being aggregated and reviewed for utility.

Outreach Opportunities and Best Practices

Following approval of the waiver, the Agency performed outreach activities to the general public and Medicaid providers to raise awareness of the change to the retroactive eligibility policy. The activities included the following:

- Electronic provider alerts
- Developing and posting a page on the Agency's website dedicated to retroactive eligibility³
- Communication by email blasts to providers
- Phone conversations and in-person discussions with associations representing hospitals and nursing facilities
- Provided relevant information to Agency call centers in order to assist in alerting the public about the changes to retroactive eligibility.

The Department developed an internal spotlight communication available to both internal Department staff and interested external parties. The Department also engaged community partners with information sharing on the changes to retroactive eligibility.

In addition to this specific outreach on the change to retroactive eligibility policy, the Department and the Agency provide an array of outreach to raise awareness of all of the assistance programs offered and how to apply. Through the different educational programs and community networks, the Department provides awareness to a diverse population.

The Department has several Supplemental Nutrition Assistance Programs (SNAP) that include educational and outreach components to increase customers' ability to access SNAP program information. If a person applies for SNAP, they can also use the same application process to apply for Medicaid.

The Department uses its network of Community Partner Liaisons (CPL) to engage in different pathways for outreach and increased awareness of resources customers can access, including but not limited to the

³ Retroactive Eligibility Agency web page:

https://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/program_policy/eligibility/retro_elig.shtml

Medicaid program. Community Partner Liaisons distribute Economic Self-Sufficiency (ESS) materials, conduct ESS presentations, and work directly with community members while networking with appropriate community organizations. The CPL's also assist in community outreach and health fair activities. The CPL's attend up to 80 community fair events a year, per region.

The Department has made extensive use of social media tools, press releases and website alerts as pathways to increase outreach and engagement to customers accessing benefits.

The Agency has had success with the different forms of outreach through its contract with the Florida Healthy Kids Corporation. The Florida Healthy Kids Corporation is tasked in statute with promoting Kidcare, the State of Florida's high-quality, low-cost health insurance for children, from birth through age 18. This includes three types of health insurance coverage for children: Medicaid for children, the subsidized Children's Health Insurance Program, and state-sponsored child coverage whose cost is fully paid by the child's family. Although Florida Kidcare is primarily concerned with a different population than the focus of this report, the program has demonstrated multiple successful marketing strategies for targeted outreach to a traditionally difficult-to-contact population. When an individual applies for Kidcare for a child, they can also apply for coverage for adult Medicaid. Research has shown that outreach and marketing for CHIP also increases enrollment in Medicaid, and vice versa, since the application process can be initiated through either program.

Florida Healthy Kids utilizes a broad network of community partners providing 'boots on the ground' and a trusted, one-on-one avenue for application. Healthy Kids has routinely employed newsletters, community events, text alerts, online alerts, and infographics, for the purpose of communicating targeted Medicaid information to a variety of audiences, including partnering with area non-profits and hospitals.

Additionally, digital and social media advertising expands awareness, generates applications and supports enrollment growth. Benefit-specific messaging differentiates Florida Kidcare plans from private market offerings, while encouraging utilization and retention. Between October 2018 and June 2019, paid search advertising generated 15,575 completed applications. During October of 2018, a mental health awareness social media advertising campaign was launched on Facebook and Instagram to highlight the mental and behavioral health benefits available through Florida KidCare. This one-month campaign reached 670,799 Florida parents, and total of 141 new accounts were created.

Social media advertising has provided consistent outreach and can be a useful tool to use for outreach efforts in additional programs. A pilot paid advertising campaign leveraging a new online eligibility calculator ran in June of 2019 on Facebook, Instagram, and Programmatic Display. The campaign generated 2,519,787 total impressions and 559 new accounts.

Conclusion

The Agency and the Department made multiple attempts to obtain the data requested in Section (1) (a) and (1) (b) of Section 25 of the 2019-2020 General Appropriations Act Implementing Bill. The Department's ACCESS system does not collect information on the source of Medicaid applications. The Agency asked hospitals and nursing facilities to provide information on applications they submitted on behalf of patients, but they reported that they would have to manually review patient files to compile this information. The agencies explored the possibility of collecting IP addresses through the ACCESS system to comply with the data request, however, Florida Hospital Association identified data security concerns with this approach. The Agency was able to determine that, for applications that indicated the individual had outstanding medical bills, the average percentage of denied applications declined after the retroactive eligibility change.

CMS is working with states to standardize evaluation methodologies for waivers of retroactive eligibility so that it can better assess the impacts of this policy. To this end, CMS provided detailed evaluation design guidance to be used as a basis for discussions with the evaluators. Florida has used this guidance in its proposed evaluation design. The Agency has contracted with the University of Florida to evaluate the Florida Medicaid 1115 waiver, including a segment on the change to retroactive eligibility policy. The evaluation of retroactive eligibility policy, including its impact on medical debt, is anticipated to be completed in Fall 2020.

Appendix

Evaluation Design

The following evaluation design was submitted to Centers for Medicare and Medicaid Services (CMS) on July 24, 2019. The Agency is awaiting formal approval from CMS.

The below research questions are for component nine of the waiver evaluation design. This component will be addressed beginning in January 2020, when the first year of data reflective of the waiver of retroactive eligibility become available. Research questions, outcome measures, sample populations, data sources, and analytic methods are detailed below.

Research Question	Outcome Measures	Sample or Population Subgroups Compared	Data Sources	Analytic Methods
9A. How will eliminating or reducing retroactive eligibility change enrollment continuity?	<ul style="list-style-type: none"> -Enrollment duration in months for Medicaid cohorts both before and after the policy change -Qualitative information on how hospitals and nursing facilities have changed their enrollment procedures following or in anticipation of the policy change 	-Enrollment duration for (1) Medicaid enrollee cohort as of January 2019 (last month prior to policy change) and (2) Medicaid enrollee cohort as of last month available after the policy change	<ul style="list-style-type: none"> -Medicaid eligibility and enrollment data -Qualitative results of surveys/interviews of hospital and nursing facility administrators 	<ul style="list-style-type: none"> -Pre-post duration models of enrollment length (e.g., Cox proportional hazards model or accelerated failure time model) -Qualitative methods (open-ended surveys and/or key informant interviews)
9B. How will eliminating or reducing retroactive eligibility change the enrollment of eligible people when they are healthy relative to those eligible people who have the option of retroactive eligibility?	-Clinical Risk Groups (CRGs) (Averill et al., 1999; Hughes et al., 2004), a widely-used measure of health status calculated from claims and encounter data	-New Medicaid enrollees	-Medicaid encounter data for new enrollees completing their first year of enrollment both before and after the policy change	<ul style="list-style-type: none"> -Difference-in-differences testing (if possible) or pre-post statistical models of the distribution of new Medicaid enrollees across the five major CRG categories both before and after the policy change -The evaluation team will also explore administering the SF-12 tool using a telephone survey of new enrollees following the policy change to measure health status. Comparing health status as measured by the CRGs to health status as measured by the SF-12 will help validate the broader

Agency for Health Care Administration

				application of the CRGs in RQ 9B
9C. How will eliminating or reducing retroactive eligibility affect new enrollee financial burden?	-Hospital utilization and charges with self-pay payor status from the three-months prior to Medicaid application date both before and after the policy change	-New Medicaid enrollees	-Linked (1) statewide Florida Health Information and Transparency (FHIT) Center hospital inpatient, outpatient, ambulatory, and ED utilization data, (2) Medicaid new enrollee encounter data both before and after the policy change for the three months prior to Medicaid application date	-Pre-post testing of self-pay utilization and charges in the three-months prior to Medicaid application using linked encounter data both before and after the policy change. In particular, self-pay charges will measure the amount of health care charges previously covered by Medicaid under retroactive eligibility that will now fall to the self-pay patient and/or provider uncompensated care. The evaluation team will also examine Medicaid FFS and Medicaid MMA payor classes
Note: Results from 9C will determine whether 9D through 9F are applicable.				
9D. How will eliminating or reducing retroactive eligibility affect provider uncompensated care amounts?	-Hospital and SNF Uncompensated Care Expenditures	-Florida hospital and SNFs serving Medicaid enrollees	-Florida Hospital Uniform Reporting System (FHURS)	-Difference-in-Differences models (if possible) or pre-post statistical models examining uncompensated care amounts, net income/rates of return, and uncompensated care net of LIP payments
9E. How will eliminating or reducing retroactive eligibility affect provider financial performance (income after expenses)?	-Hospital and SNF net income and rates of return	-Florida hospital and SNFs serving Medicaid enrollees	-CMS Medicare Hospital and SNF Cost Reports	
9F. How will eliminating or reducing retroactive eligibility affect the net financial impact of uncompensated care (UCC – LIP payments)?	-Hospital net change impact of UCC: UCC – LIP payments Hospital and SNF Uncompensated Care Expenditures		-Florida Low Income Pool expenditure reports	
	-Hospital and SNF net income and rates of return			
	-Hospital net change impact of UCC: UCC – LIP payments			



2019 AGENCY SUMMARY BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

AGENCY: Agency for Health Care Administration

BILL#:	Senate Bill 192
RELATING TO:	Medicaid Eligibility/ Retroactive
SPONSOR(S):	Senator Bean
COMPANION BILLS:	None

ANALYST/REVIEWER NAME:	Shevaun Harris
DIVISION/UNIT:	Medicaid
CONTACT NUMBER:	412-4000

COORDINATED WITH:	
DIVISION/UNIT:	
CONTACT NUMBER:	

I. SUMMARY:

Retroactive eligibility allows a person applying for Medicaid eligibility to have their eligibility start prior to the month in which they applied. Prior to February 2019, Florida allowed retroactive eligibility for a period of up to 90 days prior to the month in which the Medicaid application is made. The Department of Children and Families (DCF), the Florida agency responsible for determining Medicaid eligibility, applied two periods of eligibility retroactively:

- (1) Grants eligibility automatically for all applicants' **retroactive back to the first day of the month in which a person applied**. For example, one person applies on April 5th, another on April 27th; both of them would be granted eligibility beginning April 1.
- (2) If those individuals had medical expenses in the 90 days prior to the month in which they applied, they can request and be granted **retroactive eligibility to pay for those expenses that occurred during the 90 days prior to the month in which they applied**. In the examples above, if either person had medical expenses, their eligibility could be granted back to January 1.

In Florida, a vast majority of individuals who received retroactive eligibility under #2 above gained it because they were hospitalized or in a nursing facility. They likely would have been eligible for Medicaid already, but did not apply. This means they did not have the advantage of accessing the full array of Medicaid benefits such as preventive care, care management for chronic conditions like diabetes and asthma, and expanded benefits offered by Medicaid health plans.

During the 2018 Legislative Session, the Agency was directed to seek federal approval to change the retroactive eligibility policy to only allow retroactive eligibility to go back to the first day of the month in which a person applied. This change does not apply to children or pregnant women. With the passage of this direction, a budget reduction was taken reflecting the savings estimated to occur with the implementation of this policy.

The Agency's waiver request has been approved, and, effective February 1, 2019, pregnant women and children will continue to have access to retroactive eligibility for a period of up to 90 days prior to the month in which they submitted their application to DCF. Adults who are not pregnant will have access to retroactive eligibility for only the period between their application date and the first day of this month in which they submitted their application to DCF.

Since the authorizing language was in the 2018 Appropriations Implementing bill, the language was only valid for the 2018-19 fiscal year, and the federally approved waiver requires the state Medicaid program to seek further legislative authority in order to continue the policy.

Section 20. In order to implement Specific Appropriations 598 199, 203, 204, 206, 208, and 217 of the 2018-2019 General 599 Appropriations Act, the Agency for Health Care Administration 600 shall seek authorization from the federal Centers for Medicare 601 and Medicaid Services to eliminate the Medicaid retroactive 602 eligibility period for nonpregnant adults in a manner that 603 ensures that the elimination becomes effective on July 1, 2018. 604 Eligibility will continue to begin the first day of the month in 605 which a nonpregnant adult applies for Medicaid. This section 606 expires July 1, 2019.

The Agency has state legislative authority for this portion of the waiver through June 30, 2019. The Agency must submit a letter to CMS by May 17, 2019, if it receives state legislative authority to continue the retroactive eligibility portion of the waiver past June 30, 2019. In the event the state Legislature does not authorize the continuation of the waiver of retroactive eligibility, the authority for the waiver of retroactive eligibility will end July 1, 2019 and the former policy of allowing all Medicaid recipients to request up to 90 days of retroactive eligibility would be restored.

If this bill, or a similar directive, is not enacted, the Legislature will need to appropriate an additional \$103.6 million to the Agency for Health Care Administration to restore the reduction taken during the 2018 Legislative session in order to cover the program costs incurred by reinstating the prior coverage policy. \$40.1 million of this total is General Revenue.

II. Does this bill impact the Agency? If yes, please provide a brief explanation of the impact:

Senate Bill (SB) 192, related to Medicaid eligibility, requires the Agency for Health Care Administration (Agency) to seek authorization from the Centers for Medicare and Medicaid Services (CMS) to eliminate the 90-day Medicaid retroactive eligibility period for non-pregnant adults, effective July 1, 2019. The bill requires that the eligibility period for this population begin on the first day of the month in which the individual applies for Medicaid coverage. The provisions in this bill do not apply to pregnant women and children seeking Medicaid coverage; their eligibility period will continue to begin 90 days prior to the date in which they submitted their Medicaid application.

In practice, Senate Bill 192 directs the Agency to seek federal authority to continue the policy adopted by the 2018 Florida Legislature. If SB 192 or similar legislation is not adopted by the Legislature, the retroactive eligibility period will revert to including the 90 days prior to the month when a person submits their Medicaid eligibility application.

In Florida, the vast majority of individuals who receive retroactive eligibility gain it because they were hospitalized or in a nursing facility. They likely would have been eligible for Medicaid already, but did not apply. This means they did not have the advantage of accessing the full array of Medicaid benefits such as preventive care, care management for chronic conditions like diabetes and asthma, and expanded benefits offered by Medicaid health plans.

If this change is not authorized by statute to continue, the previous retroactive eligibility period will be reinstated and the Agency will be responsible for paying for those expenses that occurred during the 90 day period prior to the month in which a person applied. An additional \$103.6 million will need to be

appropriated to the Agency for Health Care Administration to cover the additional program costs incurred by reinstating the prior coverage policy.

In addition, a return to the prior policy will have an adverse impact on persons eligible for Medicaid in Florida. No one has lost eligibility due to this change, in fact, the current policy has the effect of incentivizing Floridians to seek health care through the Medicaid program before they are in an emergency health care situation. This change has inspired changes in process on behalf of nursing facility and hospitals to ensure that applications for Medicaid are submitted timely by their residents/patients. Florida Medicaid recipients who have a nursing facility level of care should be enrolled in the Statewide Medicaid Managed Care Long-Term Care program so that they can access the enhanced care management and assistance with transition to the community that those plans provide. The policy adopted by the 2018 Florida Legislature has incentivized nursing facilities to assist their residents in submitting these applications without delay and therefore facilitated increased access to the services provided under the Long-Term Care program.

The provisions in this bill do not pose an operational impact to the Medicaid program as the Agency has already implemented the proposed changes, so no further action is needed. Further, the notification letter that would be provided to CMS, as required by the bill, will take minimal effort to accomplish.

III. FISCAL COMMENTS:

Fiscal Impact:

If the policy adopted during the 2018 Legislative Session is not continued, the Legislature will need to appropriate an additional \$103.6 million to the Agency for Health Care Administration to restore the reduction taken during the 2018 Legislative session in order to cover the program costs incurred by reinstating the prior coverage policy. \$40.1 million of this total is General Revenue.

Florida Medicaid Retroactive Eligibility¹ Fiscal Impact Report (Non-Pregnant Adults Only)

State Fiscal Year 2017 - 2018 (SFY1718)		
RETRO MONTHS	TOTAL	
	Distinct Recipient Count ³	Amount
1	9,568	\$ 57,852,911
2	5,488	\$ 27,912,164
3	3,595	\$ 17,834,338
Retro 1-3 Total	11,466	\$ 103,599,413

Note¹: Retroactive eligibility is defined as eligibility prior to a recipient's application date with the Department of Children and Families (DCF). DCF will grant retroactive eligibility up to three months prior to a recipient's application month. Additionally, DCF will grant retroactive eligibility to cover the full month of application.

Note²: The month of application. Amounts reflected in this row are expenditures during the application month that take place prior to the application date.

Note³: Distinct count of recipients eligible during a retroactive eligibility period and utilizing services.

Source: Bureau of Medicaid Data Analytics, SQL Server Claims, Eligibility & DCF Application List



2020 AGENCY SUMMARY BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

AGENCY: Agency for Health Care Administration

BILL#:	Senate Bill 52
RELATING TO:	Medicaid Services
SPONSOR(S):	Senator Bean
COMPANION BILLS:	None

ANALYST/REVIEWER NAME:	Mallory Frye
DIVISION/UNIT:	Medicaid
CONTACT NUMBER:	412-4045

COORDINATED WITH:	
DIVISION/UNIT:	
CONTACT NUMBER:	

I. SUMMARY:

During the 2018 Legislative Session, the Agency for Health Care Administration (Agency) was directed to seek federal approval to change the retroactive eligibility policy to only permit Florida eligibility back to the first day of the month in which a person applied. The 90 days Medicaid retroactive period for adults aged 21 years and older ended. This change did not apply to children or pregnant women. With the passage of the 2018 bill, a budget reduction was taken reflecting the savings estimated to occur with the implementation of this policy. Following federal approval, the new policy was implemented on February 1, 2019. During the 2019 Legislative Session, the Agency was authorized through the 2019 Appropriations Implementing bill to continue this policy for an additional fiscal year, until July 1, 2020.

Retroactive eligibility allows a person applying for Medicaid eligibility to have their eligibility start prior to the month in which they applied. Before February 2019, Florida allowed retroactive eligibility for a period of up to 90 days prior to the month in which the Medicaid application is made for all recipients. The Department of Children and Families (DCF), the Florida agency responsible for determining Medicaid eligibility, now applies two periods of eligibility retroactively:

- (1) For eligible non-pregnant adults, eligibility is granted retroactive to the first day of the month in which an application for Medicaid is submitted.
- (2) For eligible children and pregnant women, eligibility is granted retroactively for a period of up to 90 days before the month in which an application for Medicaid is submitted, if the person has unreimbursed medical expenses during that period.

Senate Bill 52 removes the expiration date of July 1, 2020. In practice, Senate Bill 52 directs the Agency to continue the policy adopted by the 2018 Florida Legislature.

II. Does this bill impact the Agency? If yes, please provide a brief explanation of the impact:

The provisions in this bill do not pose an operational nor fiscal impact to the Medicaid program as the Agency implemented the policy February 2019 and has the federal approval to continue this policy as long as state law permits it.

III. FISCAL COMMENTS:

Fiscal Impact:

SB 52 allows the State to continue the savings gained when the policy was initially enacted. If the current retroactive policy expires July 1, 2020, Medicaid will revert to the prior policy of allowing all applicants with unreimbursed medical expenses to have up to 90 days of retroactive eligibility. This would have a fiscal impact to Medicaid.

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 Health Policy

BILL: SB 916

INTRODUCER: Senator Baxley

SUBJECT: Program of All-Inclusive Care for the Elderly

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kibbey	Brown	HP	Favorable
2.			AHS	
3.			AP	

I. Summary:

SB 916 codifies the Program of All-Inclusive Care for the Elderly (PACE) in s. 430.84, F.S. First authorized in 1998, the PACE became operational in Miami-Dade County in 2003 but has not been codified in state law. More than 2,000 Medicaid managed care eligible recipients are currently enrolled in PACE organizations in seven counties.

The bill establishes a statutory process for the review, approval, and oversight of future and current PACE organizations. The bill statutorily exempts all PACE organizations from the requirements of ch. 641, F.S., which regulates health maintenance organizations, prepaid health clinics, and other health care service programs.

The bill enables a prospective PACE organization to apply to the Agency for Health Care Administration (AHCA) without first receiving legislative approval specific to that PACE organization. This may increase the number of PACE applications, resulting in an indeterminate operational and fiscal impact to the AHCA and the Department of Elder Affairs (DOEA). The bill also has an indeterminate fiscal impact to the Florida Medicaid Program.

The bill has an effective date of July 1, 2020.

II. Present Situation:

Program of All-Inclusive Care for the Elderly

The Program of All-Inclusive Care for the Elderly (PACE) is a capitated benefit model authorized by the federal Balanced Budget Act of 1997 (BBA)¹ that features a comprehensive service delivery system and integrated federal Medicare and state Medicaid financing

¹ Specifically, services under the PACE program are authorized under Section 1905(a)(26) of the Social Security Act.

mechanism. The model, which was tested through the federal Centers for Medicare & Medicaid Services (CMS) demonstration projects beginning in the mid-1980s,² was developed to address the needs of long-term care clients, providers, and payers.

The PACE operates as a three-way agreement between the federal government, the state administering agency, and a PACE organization. In Florida, the PACE is a Florida Medicaid long-term care managed care plan option providing comprehensive long-term and acute care services which support Medicaid and Medicare enrollees who would otherwise qualify for Medicaid nursing facility services.³

The PACE is a unique federal/state partnership. The BBA established the PACE model of care as a permanent entity within the Medicare program and enabled states to provide PACE services to Medicaid beneficiaries as an optional state plan service without a Medicaid waiver.

The federal government established the PACE organization requirements and application process; however, the state is responsible for oversight of the application process, which includes reviewing the initial application and providing an on-site readiness review before a PACE organization can be authorized to serve participants. An approved PACE organization must sign a contract with the CMS and the state Medicaid agency.

The PACE is administered by the Department of Elder Affairs (DOEA) in consultation with the Agency for Health Care Administration (AHCA). The DOEA oversees the contracted PACE organizations but is not a party to the contract between the CMS, the AHCA, and the PACE organizations.⁴ The DOEA, the AHCA, and the CMS must approve any applications for new PACE organizations if expansion is authorized by the Legislature through the necessary appropriation of the state matching funds.

A PACE organization must be part of either a city, county, state, or tribal government; a private not-for-profit 501(c)(3) organization; or for-profit entity that is primarily engaged in providing PACE services and must also:

- Have a governing board that includes participant representation;
- Be able to provide the complete service package, regardless of frequency or duration of services;
- Have a physical site to provide primary care, social services, restorative therapies, personal care and supportive services, nutritional counseling, recreational therapy, and meals;
- Have a defined service area;
- Have safeguards against conflicts of interest;
- Have a demonstrated fiscal soundness;
- Have a formal participant bill of rights; and

² United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, *CMS Manual System: Pub. 100-11 Programs of All-Inclusive Care for the Elderly (PACE) Manual* (issued June 9, 2011), available at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/pacel11c01.pdf> (last visited Jan. 14, 2020).

³ Department of Elder Affairs and Agency for Health Care Administration, *Program of All-Inclusive Care for the Elderly and Statewide Medicaid Managed Care Long-term Care Program Comparison Report* (January 14, 2014), available at https://ahca.myflorida.com/Medicaid/recent_presentations/PACE_Evaluation_2014.pdf (last visited Jan. 14, 2020).

⁴ *Id.*

- Have a process to address grievances and appeals.⁵

Eligibility and Benefits

The PACE participants must be at least 55 years of age, live in the PACE center service area, meet eligibility requirements for nursing home care, pursuant to a Comprehensive Assessment and Review for Long-Term Care Services (CARES) pre-admission screening, and be able to live in a community setting without jeopardizing their health or safety. The PACE becomes the sole source of services for these Medicare and Medicaid eligible enrollees. Additionally, by electing to enroll in the PACE, the participant agrees to forgo other options for medical services and receive all of their services through the PACE organization.⁶

Under the PACE, an interdisciplinary team consisting of professional and paraprofessional staff assesses participants' needs, develops care plans, and delivers all services, including acute care and nursing facility services when necessary, which are integrated to provide a seamless delivery model. In most cases, a PACE organization provides social and medical services in a health center with supplemental services through in-home and referral services as necessary. The PACE service package must include all Medicare and Medicaid covered services and other services determined necessary by the multidisciplinary team for the care of the PACE participant.⁷

Before being approved to operate and deliver services, PACE organizations are required to provide evidence of the necessary financial capital to deliver the benefits and services, which include a combined adult day care center and primary care clinic, transportation, and full range of clinical and support staff with the interdisciplinary team of professionals.⁸

By federal law, the first three contract years for a PACE organization are considered a trial period, and the PACE organization is subject to annual reviews to ensure compliance.⁹ The site visit reviews include:

- A comprehensive assessment of an organization's fiscal soundness;
- A comprehensive assessment of the organization's capacity to provide all PACE services to all enrolled participants;
- A detailed analysis of the PACE organization's substantial compliance with all the federal statutory requirements and accompanying federal regulations; and
- Compliance with any other elements the Secretary of the U.S. Department of Health and Human Services (Secretary) or the state's administering agency considers necessary and appropriate.¹⁰

Review of the PACE organization may continue after the trial period by the Secretary or the administering state agency as appropriate, depending upon the PACE organization's performance and compliance with requirements and regulations.

⁵ *Supra* note 2.

⁶ *Id.*

⁷ *Id.*

⁸ *Supra* note 3, at 4.

⁹ *See* 42 U.S.C. s. 1395eee(e)(4)(A)(2020).

¹⁰ *Id.*

No deductibles, copayments, coinsurance, or other cost-sharing can be charged by a PACE organization. No other limits relating to amount, duration, or scope of services that might otherwise apply in Medicaid are permitted.¹¹ The PACE enrollee must accept the PACE center physician as his or her new Medicare primary care physician, if enrolled in Medicare.¹²

Quality of Care Requirements

Each PACE organization is required to develop, implement, maintain, and evaluate an effective data-driven Quality Assurance and Performance Improvement (QAPI) program. The program must incorporate all aspects of the PACE organization's operations, which allows for the identification of areas that need performance improvement. The organization's written QAPI plan must be reviewed by the PACE organization's governing body at least annually. At a minimum, the plan should address the following areas:

- Utilization of services in the PACE organization, especially in key services;
- Participant and caregiver satisfaction with services;
- Data collected during patient assessments to determine if individual and organizational-level outcomes were achieved within a specified time period;
- Effectiveness and safety of direct and contracted services delivered to participants; and
- Outcomes in the organization's non-clinical areas.¹³

Florida PACE

The Florida PACE project was initially authorized in ch. 98-327, Laws of Florida, under the administration of the DOEA operating in consultation with the AHCA.¹⁴ Florida's first PACE organization, located in Miami-Dade County, began serving enrollees in February 2003 with a total of 150 slots. Since then, the Legislature has approved additional slots either as part of the General Appropriations Act (GAA) or general law.

In 2011, the Legislature moved administrative responsibility for the PACE program from the DOEA to the AHCA as part of the expansion of Medicaid managed care into the Statewide Medicaid Managed Care (SMMC) program.¹⁵ Participation by the PACE in the SMMC program is not subject to the procurement requirements or regional plan number limits normally applicable to SMMC plans. Instead, PACE plans may continue to provide services to individuals at such levels and enrollment caps as authorized by the GAA.¹⁶

Currently, four PACE organizations operate in Florida and provide services to participants within specific zip codes in Broward, Miami-Dade, Charlotte, Collier, Lee, Palm Beach, and Pinellas counties. There are 2,245 individuals enrolled in the four Florida PACE organizations.

¹¹ *Supra* note 2.

¹² Department of Elder Affairs and Agency for Health Care Administration, *Program of All-Inclusive Care for the Elderly and Statewide Medicaid Managed Care Long-term Care Program Comparison Report* (January 14, 2014), available at https://ahca.myflorida.com/Medicaid/recent_presentations/PACE_Evaluation_2014.pdf (last visited Jan. 14, 2020).

¹³ *Id.*

¹⁴ Chapter 2011-135, s. 24, L.O.F., repeals s. 430.707, F.S., effective October 1, 2013, as part of the expansion of Medicaid managed care.

¹⁵ Chapter 2011-135, s. 24, L.O.F., repeals s. 430.707, F.S., effective October 1, 2013.

¹⁶ Section 409.981(4), F.S.

The current PACE approval process requires any entity interested in becoming a PACE organization to submit a comprehensive PACE application to the AHCA, which sets forth details about the adult day care center, staffing, provider network, financial solvency and pro forma financial projections, and policies and procedures, among other elements. The application is similar in detail to the provider applications submitted by managed care plans seeking to provide medical care to Medicaid recipients. PACE providers operating in the same geographic region must establish that there is adequate demand for services so that each provider will be viable. The application requires that documentation be submitted demonstrating that PACE providers in the same geographic region are not competing for the same potential enrollees.

The AHCA and the DOEA review the application and, when the entity has satisfied all requirements, conduct an on-site survey of the entity's readiness to serve PACE enrollees. Once all requirements are met, including full licensure of the PACE center, staffing for key positions, and signed provider network contracts, the AHCA certifies to the CMS that the PACE site is ready. At that time, the CMS reviews the application and readiness certification and, if all requirements are satisfied, executes a three-way agreement with the PACE provider and the AHCA. The PACE provider may then begin enrolling members, subject to an appropriation to fund the slots.

Enrollment and Organizational Slots

Slots are authorized by the Legislature for a specific PACE area; however, slots may not always be fully funded in the same year the program is authorized. Some PACE providers need additional time to complete the application process, obtain necessary licensures, or to finalize operations.

Funding and Rates

Each year since the PACE's inception, the Legislature has appropriated funds for PACE organizations through proviso language in the GAA or through one of the GAA's accompanying implementing or conforming bills.¹⁷ These directives provide specific slot increases or decreases by county or authorization for implementation of a new program. In 2013, Governor Rick Scott vetoed all county allocations with the exception of Palm Beach County, noting that the state's focus should be on the implementation of the SMMC and that effectiveness and the need for additional PACE slots should be re-evaluated after that transition was completed.¹⁸

PACE organizations receive a capitated Medicaid payment for each enrolled Medicaid long-term care recipient and an enhanced Medicare payment for Medicare enrollees for acute care services from the federal government. The payment amount is established in the GAA and is based on estimates that have been forecast by the Social Services Estimating Conference for the PACE.

Medicaid

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership between the federal and state governments where the federal government establishes the

¹⁷ Chapter 2013-40, L.O.F.

¹⁸ Governor Rick Scott, *Veto Message - SB 1500* (May 20, 2013), p. 28, available at <http://www.flgov.com/wp-content/uploads/2013/05/Message1.pdf> (last visited Jan. 14, 2020).

structure for the program and pays a share of the cost. Each state operates its own Medicaid program under a state plan that must be approved by the CMS. The plan outlines current Medicaid eligibility standards, policies, and reimbursement methodologies.

To qualify for nursing home care under Medicaid, both an individual's income and assets are reviewed. Additionally, a personal needs allowance is applied as part of the eligibility determination process.¹⁹ The current standard income limit in Florida for institutional care or services under the home and community based services waiver is \$2,313 for an individual and \$4,626 for a couple. There is also an asset limit for either category of \$2,000 for an individual or \$3,000 for a couple.²⁰

In Florida, the Medicaid program is administered by the AHCA. The AHCA, however, delegates certain functions to other state agencies, including the Department of Children and Families (DCF), the Agency for Persons with Disabilities (APD), and the DOEA. The AHCA has overall responsibility for the program and qualifies providers, sets payment levels, and pays for services.

The DCF is responsible for determining financial eligibility for Medicaid recipients. The APD operates one of the larger waiver programs under Medicaid, the Home and Community Based (HCBS) Waiver program, serving individuals with developmental disabilities.

The DOEA assesses Medicaid recipients to determine if they require nursing home care. Specifically, the DOEA determines whether an individual:

- Requires nursing home placement as evidenced by the need for medical observation throughout a 24-hour period and requires medically complex care to be performed on a daily basis under the direct supervision of a health professional because of mental or physical incapacitation;
- Requires or is at imminent risk of nursing home placement as evidenced by the need for observation throughout a 24-hour period and requires care to be performed on a daily basis under the supervision of a health professional because of mental or physical incapacitation; or
- Requires or is at imminent risk of nursing home placement as evidenced by the need for observation throughout a 24-hour period and requires limited care to be performed on a daily basis under the supervision of a health professional because of mild mental or physical incapacitation.

Floridians who need nursing home care, but do not qualify for Medicaid, must pay from their own funds or through insurance.

¹⁹ The personal needs allowance (PNA) of an individual is defined as that portion of an individual's income that is protected to meet the individual's personal needs while in an institution. *See* Department of Children and Families, *Glossary (Chapter 4600) "Personal Needs Allowance,"* p. 19, <http://www.dcf.state.fl.us/programs/access/docs/esspolicymanual/4600.pdf> (last visited Jan. 15, 2020).

²⁰ Department of Children and Families, *SSI-Related Program-Financial Eligibility Standards: January 2019*, http://www.dcf.state.fl.us/programs/access/docs/esspolicymanual/a_09.pdf (last visited Jan. 15, 2020).

Long-Term Care Managed Care

In 2011, HB 7107²¹ was signed into law, increasing the use of managed care plans in Medicaid. The law required both Medicaid LTC services and Managed Medical Assistance (MMA) services to be provided through managed care plans.

LTC Managed Care plans participating in SMMC are required to provide minimum benefits that include nursing home care as well as home and community based services. The minimum benefits include:

- Nursing home care;
- Services provided in assisted living facilities;
- Hospice;
- Adult day care;
- Medical equipment and supplies, including incontinence supplies;
- Personal care;
- Home accessibility adaptation;
- Behavior management;
- Home delivered meals;
- Case management;
- Therapies, including physical, respiratory, speech, and occupational;
- Intermittent and skilled nursing;
- Medication administration;
- Medication management;
- Nutritional assessment and risk reduction;
- Caregiver training;
- Respite care;
- Transportation; and
- Personal emergency response system.

III. Effect of Proposed Changes:

Section 1 creates s. 430.84, F.S., and codifies the PACE within the Florida Statutes. Currently, the program does not have an implementing statute and has been operationalized through annual appropriations, proviso, or bills designed to implement the state budget or conform statute to provisions of the state budget.

Program Creation

The bill authorizes the AHCA, in consultation with the DOEA, to approve entities that have submitted the required application and data to the CMS as PACE organizations pursuant to 42 U.S.C. s. 1395eee (2019). Applications, as required by the CMS, will be reviewed by the AHCA on an ongoing basis, in consultation with the DOEA for initial approval as PACE organizations. Notice of applications must be published in the Florida Administrative Register.

²¹ Chapter 2011-134, L.O.F.

A prospective PACE organization must submit an application to the AHCA before submitting a request for program funding. An applicant for a PACE program must meet the following requirements:

- Provide evidence that the applicant can meet all of the federal regulations and requirements established by the CMS by the proposed implementation date;
- Provide market studies which include an estimate of the potential number of participants and which show the geographic area the applicant proposes to serve;
- Develop a business plan of operation, including pro forma financial statement and projections based on the planned implementation date;
- Show evidence of regulatory compliance and meet market studies requirements, if the applicant is an existing PACE organization which seeks to expand to an additional service area; and
- Submit its complete federal PACE application to the AHCA and the CMS within 12 months after date of initial state approval. If the organization fails to timely meet this requirement, the state approval of the application is void.

Quality and Reporting

All PACE organizations are required to meet specific quality and performance standards established by the CMS. The AHCA has the responsibility to oversee and monitor Florida's PACE and the contracted organizations through the data and reports submitted periodically to the AHCA and the CMS.

The bill exempts all PACE organizations from the requirements of chapter 641, the chapter of Florida law that regulates health maintenance organizations, prepaid health clinics, and other health care service programs.

Section 2 provides an effective date of July 1, 2020.

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:

Additional private sector providers that meet the criteria to be a PACE organization and achieve eligibility confirmation status could be approved as PACE sites. Expansion of PACE sites would also mean additional individuals in the community would have access to these services.

C. Government Sector Impact:

SB 916 has an indeterminate fiscal impact to the Florida Medicaid Program.

D. Technical Deficiencies:

None.

VI. Related Issues:

In subsection (4) of section 430.84, the bill directs the AHCA to oversee and monitor the PACE program by using data and reports that the PACE organizations submit periodically to the AHCA and CMS. This subsection requires PACE organizations to meet standards established by the CMS. The AHCA is in the process of developing additional state standards for PACE organizations that will allow comparisons and evaluation between the PACE and the Statewide Medicaid Managed Care Long-Term Care (LTC) program. Because bill limits the AHCA's oversight to only CMS standards, the AHCA has indicated that it may not be able to compare PACE and the LTC managed care program and ensure comparable quality and patient outcomes.²²

VII. Statutes Affected:

This bill creates section 430.84 of the Florida Statutes.

VIII. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

²² Agency for Health Care Administration, *Senate Bill 916 Analysis* (Nov. 4, 2019) (on file with the Senate Committee on Health Policy).

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

12-00748A-20

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A bill to be entitled
An act relating to the Program of All-Inclusive Care
for the Elderly; creating s. 430.84, F.S.; defining
terms; authorizing the Agency for Health Care
Administration, in consultation with the Department of
Elderly Affairs, to approve certain applicants to
provide benefits pursuant to the Program of All-
Inclusive Care for the Elderly (PACE); specifying
requirements and procedures for the submission,
publication, review, and initial approval of
applications; requiring prospective PACE organizations
that are granted initial approval to apply within a
certain timeframe for federal approval; providing
accountability requirements; exempting PACE
organizations from certain requirements; providing an
effective date.

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

Section 1. Section 430.84, Florida Statutes, is created to
read:

430.84 Program of All-Inclusive Care for the Elderly.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Agency" means the Agency for Health Care
Administration.

(b) "Applicant" means an entity that has filed an
application with the agency for consideration as a Program of
All-Inclusive Care for the Elderly (PACE) organization.

(c) "CMS" means the Centers for Medicare and Medicaid

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Services within the United States Department of Health and Human Services.

(d) "Department" means the Department of Elderly Affairs.

(e) "PACE organization" means an entity under contract with the agency to deliver PACE services.

(f) "Participant" means an individual receiving services from a PACE organization and who has been determined by the department to need the level of care required under the state Medicaid plan for coverage of nursing facility services.

(2) PROGRAM CREATION.—The agency, in consultation with the department, may approve entities that have submitted applications required by the CMS to the agency for review and consideration which contain the data and information required in subsection (3) to provide benefits pursuant to the PACE program as established in 42 U.S.C. s. 1395eee and in accordance with the requirements set forth in this section.

(3) PACE ORGANIZATION SELECTION.—The agency, in consultation with the department, shall on a continuous basis review and consider applications required by the CMS for PACE which have been submitted to the agency by entities seeking initial state approval to become PACE organizations. Notice of such applications must be published in the Florida Administrative Register.

(a) A prospective PACE organization shall submit application documents to the agency before requesting program funding. Application documents submitted to and reviewed by the agency, in consultation with the department, must include all of the following:

1. Evidence that the applicant is able to meet all of the

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applicable federal regulations and requirements established by the CMS for participation as a PACE organization by the proposed implementation date.

2. Market studies, including an estimate of the number of potential participants and the geographic service area in which the applicant proposes to serve.

3. A business plan of operation, including pro forma financial statements and projections, based on the proposed implementation date.

(b) Each applicant must propose to serve a unique and defined geographic service area without duplication of services or target populations. No more than one PACE organization may be authorized to provide services within any unique and defined geographic service area.

(c) An existing PACE organization seeking authority to serve an additional geographic service area not previously authorized by the agency or the Legislature must meet the requirements set forth in paragraphs (a) and (b).

(d) Any prospective PACE organization that is granted initial state approval by the agency, in consultation with the department, shall submit its complete federal PACE application, in accordance with the application process and guidelines established by the CMS, to the agency and the CMS within 12 months after the date of initial state approval, or such approval is void.

(4) ACCOUNTABILITY.—All PACE organizations must meet specific quality and performance standards established by the CMS for the PACE program. The agency shall oversee and monitor the PACE program and organizations based upon data and reports

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88 periodically submitted by PACE organizations to the agency and
89 the CMS. A PACE organization is exempt from the requirements of
90 chapter 641.

91 Section 2. This act shall take effect July 1, 2020.



2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Agency for Health Care Administration

BILL INFORMATION

BILL NUMBER:	SB 916
BILL TITLE:	Program of All-Inclusive Care for the Elderly
BILL SPONSOR:	Senator Dennis Baxley
EFFECTIVE DATE:	July 1, 2020

COMMITTEES OF REFERENCE

1) Health Policy
2) Appropriations Subcommittee on Health and Human Services
3) Appropriations
4)
5)

CURRENT COMMITTEE

Not Applicable

SIMILAR BILLS

BILL NUMBER:	Not Applicable
SPONSOR:	Not Applicable

PREVIOUS LEGISLATION

BILL NUMBER:	SB 778
SPONSOR:	Senator Baxley
YEAR:	2019
LAST ACTION:	Died in Appropriations 5/3/2019

IDENTICAL BILLS

BILL NUMBER:	HB 833
SPONSOR:	Representative Bob Rommel

Is this bill part of an agency package?

Y ___ N X___

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	November 14, 2019
LEAD AGENCY ANALYST:	Karen Williams
ADDITIONAL ANALYST(S):	
LEGAL ANALYST:	
FISCAL ANALYST:	Paula McKnight Robinson

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Senate Bill (SB) 916 creates section 430.84, F.S., which establishes the requirements for an organization seeking approval to operate as a Program of All-Inclusive Care for the Elderly (PACE) in Florida. The bill also establishes requirements related to organization selection and accountability. The language requires prospective PACE organizations to apply to the Agency for Health Care Administration (Agency) for state approval prior to receiving program funding and provides a list of materials applicants must submit as part of the application process. The bill establishes a limit of 1 PACE organization within any defined service area and requires an application submission to CMS within 12 months after the date of initial state approval. SB 916 also requires all PACE organizations to meet the specific PACE quality and performance standards established by the Centers for Medicare and Medicaid Services (CMS). If the bill limits the Agency's oversight to only CMS standards, then the Agency may not be able to compare PACE and the Long-term Care (LTC) managed care program and ensure comparable quality and patient outcomes.

In large part, the changes codify in Florida Statutes the current federal PACE regulations and state operational practices. One difference is that prospective PACE organizations can apply to the Agency without first receiving legislative approval. This may increase the number of PACE applications.

The changes in this bill will have an indeterminate operational and fiscal impact to the Agency as additional staff resources may be needed to complete the PACE application review process if additional PACE organizations apply. There is an indeterminate fiscal impact to the Florida Medicaid program as Agency staff are required to travel to conduct mandatory on-site visits prior to final approval of a PACE application. The travel cost can be absorbed within existing resources.

SB 916 has an effective date of July 1, 2020.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Program of All-Inclusive Care for the Elderly (PACE) is a Medicare and Medicaid program that helps people meet their health and long-term care needs in the community instead of going to a nursing home or other care facility. PACE programs primarily organize their services in a PACE Center, which in Florida is licensed as an adult day care center. Participants come to the center, often several times a week, for primary care, nursing, recreation, therapy, supervision, and socialization.

In order to enroll in PACE, federal law requires individuals meet the following criteria:

- Individuals age 55 years or older
- Individuals determined by the state to need the level of care required under the State Medicaid plan for coverage of nursing facility services
- Individuals who reside in the service area of the PACE organization
- Individuals who are able to live in a community setting without jeopardizing their health or safety

Individuals who choose to enroll in PACE have both their medical and long-term care needs managed through a single organization. Here are some of the services PACE covers:

- Adult day care (including doctor, recreational therapy, and nursing services)
- Dentistry
- Emergency services
- Home care
- Hospital care
- Laboratory/x-ray services
- Meals (home-delivered meals and meals provided at the Adult Day Care Center)
- Medical specialty services
- Nursing home care
- Nutritional counseling

- Occupational therapy
- Physical therapy
- Prescription drugs
- Primary care

The Agency for Health Care Administration (Agency) is the single state agency responsible for the administration of the Florida Medicaid and PACE programs; both programs are authorized under Title XIX of the Social Security Act. This authority includes establishing and maintaining a Medicaid State Plan, approved by the federal Centers for Medicare and Medicaid Services (CMS). A Medicaid State Plan is an agreement between a state and the federal government describing how that state administers its Medicaid programs. Within the Medicaid State Plan, states establish and maintain a PACE Program Agreement that is approved by CMS. The PACE Program Agreement is an agreement between a state administering agency, the PACE organization, and the federal government describing how that state administers the PACE program. It establishes the group of individuals covered by each PACE organization and the geographic service area and details covered services, payment methodologies, and other administrative and organizational requirements. The Agency must also maintain compliance with federal regulations necessary to operate the PACE program as funded through the General Appropriations Act and directed by the Florida Legislature.

In addition to services covered under Medicaid, PACE includes all Medicare-covered services for individuals eligible for Medicare (known as dual eligible). For dual eligibles, PACE organizations receive both Medicare and Medicaid capitated payments and are responsible for providing the full continuum of medical and long-term care services. Individuals receive all their services from providers in the PACE network.

Currently, four PACE organizations operate in Florida and provide services to participants within specific ZIP codes in Broward, Miami-Dade, Charlotte, Collier, Lee, Palm Beach, and Pinellas counties. There are 2,245 individuals enrolled in the four Florida PACE organizations. To determine whether prospective enrollees require nursing home level of care, the Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) unit performs level of care assessments.

Current Application/Enrollment Process for PACE Organizations

In order to operate as a PACE organization in any state, the PACE organization must meet the requirements as outlined in Code of Federal Regulations (CFR), 42 CFR 460. Federal regulations require a PACE organization to receive approval from CMS to operate.

In order to operate the PACE program in Florida, each service area must have funds appropriated through the General Appropriations Act (GAA) as passed by the Legislature and approved by the Governor each fiscal year. The GAA also includes an allocation of "slots," which is the maximum number of individuals that may be served in each service area. There is currently no formal process for estimating or designating new slots specific to each PACE organization or service location. The lack of methodology needed to accurately determine the appropriate number of slots can complicate the approach of prospective and existing PACE organizations when applying, expanding, and managing current operations, and has sometimes led to underspending in past fiscal years. Underspending can also occur if the timing of the appropriations do not align with federal approval to operate as a PACE organization.

The following outlines the current process by which PACE program applicants, recognized by the Legislature, can enroll as a PACE provider in Florida:

- The PACE program applicant must notify the Agency, in writing, regarding its intent to apply and must provide a copy of the application to the Agency prior to submitting the application to the Centers for Medicare and Medicaid Services (CMS).
- Applicants must send the Agency all supplemental documentation required in 42 CFR 460 for the application review process. The Agency reviews and verifies that the applicant meets all the requirements. The Agency then forwards the application to CMS with a certification that the State has reviewed and certifies the application is complete and in compliance.

- CMS has an annual application submission window. To meet the CMS application submission deadline, applicants must send the notification, application, and all supplemental documentation to the Agency for review prior to the CMS deadline.
- Per 42 CFR 460.18, CMS evaluates an application for approval as a PACE organization on the basis of the following information: (a) Information contained in the application; (b) Information obtained through onsite visits conducted by CMS or the state administering agency; (c) Information obtained by the state administering agency.
- CMS will either approve or deny the application. CMS may also request additional information in order to make a determination.
- In addition to federal approval, all PACE organizations must enroll as a Medicaid provider and receive an Adult Day Care License through the Agency.

Administration of PACE

To administer PACE, the Agency has an Interagency Agreement with the Department of Elder Affairs (DOEA). The Agency and DOEA coordinate the reviews for initial and service area expansion applications and any proposed amendments to the PACE Program Agreement (see Title 42 Code of Federal Regulations Section 460). The Agency and DOEA also collaborate in the oversight, monitoring, and data collection activities of PACE organizations. DOEA compiles funding and population projections on a monthly basis to ensure the program has reasonable growth capacity. The Agency, in collaboration with CMS, conducts biennial audits of each PACE organization. The PACE organization also submits quarterly reports to CMS on the organizations' quality and performance.

2. EFFECT OF THE BILL:

Senate Bill 916 creates section 430.84, F.S., which codifies the requirements for an organization seeking approval to operate a PACE program in Florida. The bill also establishes requirements related to organization selection and accountability. The language requires prospective PACE organizations to apply to the Agency for state approval prior to receiving program funding. In addition, the bill provides a list of materials applicants must submit as part of the application process.

SB 916 also requires all PACE organizations to meet the specific quality and performance standards established by CMS for PACE. This section establishes requirements related to the PACE program that currently do not exist in state law, but are defined at the federal level through the Federal Code of Regulations (CFR), 42 CFR 460 or are codified in the PACE Program Agreement. The Agency and DOEA already comply with the requirements referenced in the creation of this section. The ability for prospective PACE organizations to submit applications prior to requesting program funding may increase the number of applicants, and additional Agency staff may be needed to complete the PACE application review process if more PACE organizations apply.

SB 916 states that the PACE organization must meet quality and performance standards established by CMS and that the Agency will oversee and monitor the PACE program using data and reports that the PACE organizations submit periodically to the Agency and CMS. The Agency is in the process of developing additional state standards for PACE organizations that will allow comparisons and evaluation between the PACE and the Statewide Medicaid Managed Care (SMMC) Long-Term Care (LTC) program. If the bill limits the Agency's oversight to only CMS standards, then the Agency may not be able to compare PACE and the LTC managed care program and ensure comparable quality and patient outcomes.

SB 916 clarifies that PACE organizations are exempt from Chapter 641, F.S., which is the primary regulatory statutes for health maintenance organizations, prepaid health clinics, and health care services. This change has no impact on the Agency's operational procedures as multiple citations in current law, such as Chapter 2017-129 Laws of Florida, exempt PACE organizations from Chapter 641, F.S..

SB 916 poses an indeterminate operational and fiscal impact to the Agency. An increase in application submissions would require more staff review time and on-site reviews in accordance with 42 CFR 460. This would result in additional travel expenses for the Agency.

This act will take effect on July 1, 2020.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ___ N X

If yes, explain:	
Is the change consistent with the agency's core mission?	Y <u>X</u> N ___
Rule(s) impacted (provide references to F.A.C., etc.):	Not Applicable

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	
Opponents and summary of position:	

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y ___ N X

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

6. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC.? REQUIRED BY THIS BILL? Y ___ N X

Board:	Not Applicable
Board Purpose:	Not Applicable
Who Appointments:	Not Applicable
Appointee Term:	Not Applicable
Changes:	Not Applicable
Bill Section Number(s):	Not Applicable

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y ___ N X

Revenues:	Not Applicable
Expenditures:	Not Applicable
Does the legislation increase local taxes or fees? If yes, explain.	No

If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	Not Applicable
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2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y X N

Revenues:	Not Applicable
Expenditures:	The changes in this bill will have an operational impact to the Agency that can be completed using current Agency resources, and will have an indeterminate fiscal impact to the Florida Medicaid Program. There is an indeterminate number of new recipients that will be eligible for retroactive payments for additional PACE case months. The time between the determination of medical eligibility and financial eligibility may vary causing the number of monthly capitation payments to be indeterminate.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	Not Applicable

3. DOES THE BILL HAVE A THE FISCAL IMPACT TO THE PRIVATE SECTOR? Y N X

Revenues:	
Expenditures:	
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y N X

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y N X

If yes, describe the anticipated impact to the agency including any fiscal impact.	
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FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y N

If yes, describe the anticipated impact including any fiscal impact.	
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ADDITIONAL COMMENTS

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LEGAL – GENERAL COUNSEL’S OFFICE REVIEW

Issues/concerns/comments:	None.
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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 1374

INTRODUCER: Senator Harrell

SUBJECT: Regional Perinatal Intensive Care Centers

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	Favorable
2.			AHS	
3.			AP	

I. Summary:

SB 1374 amends several sections of law governing the designation of, and requirements for, regional perinatal intensive care centers (RPICC). The bill expands the maximum number of RPICCs that the Department of Health (DOH) may designate from 11 to 22. The bill also adds additional criteria that the DOH must use when adopting rules for the designation, development, and operation of a RPICC and when selecting and designating new RPICCs.

The bill takes effect July 1, 2020.

II. Present Situation:

Regional Perinatal Intensive Care Centers

History of RPICCs

RPICCs are hospitals that are designated by the DOH to work to improve the outcome of pregnancy and the quality of life from birth. RPICCs provide obstetrical services to women who have a high-risk pregnancy and care for newborns with special health needs, such as critical illness or low birth weight.

The goals of a RPICC include reducing the risk of serious illness for pregnant women and newborns and providing the best medical care to women with high-risk pregnancies and newborns who are sick or born prematurely. Currently, RPICC services are provided at 11 hospitals around the state located in Pensacola, Jacksonville, Gainesville, Orlando, Tampa, St. Petersburg, West Palm, Hollywood, Ft. Lauderdale, Miami, and Ft. Myers, and two obstetrical satellite clinics.¹

¹ See <http://www.floridahealth.gov/programs-and-services/childrens-health/cms-specialty-programs/regional-perinatal-intensive-care-centers-program/index.html> (last visited Jan. 16, 2020).

RPICCs were established by the Legislature in 1976 with the intent to prevent neonatal diseases and disabilities that have debilitating, costly, and often fatal consequences.² At that time, the Legislature authorized 10 such centers in a geographic area which experiences at least 10,000 live births per year. In 1994, the Legislature added one additional RPICC, bringing the total to 11, and the number of RPICCs has not been increased since.³

Current RPICC Requirements

Currently, ss. 383.15-383.19, F.S., establish the requirements for RPICCs. Section 383.17, F.S., allows the DOH to contract with health care providers to establish RPICCs. Section 383.18, F.S., requires that such contracts provide that patients will receive services from the RPICC and that parents or guardians of patients who participate in the program and who comply with Medicaid eligibility requirements, as determined by the DOH, are not additionally charged for treatment and care that has been provided by the RPICC. When determining which hospitals to contract with, the DOH must give priority to establishing RPICCs in hospitals that demonstrate an interest in perinatal intensive care by meeting program standards and may not contract with a private, for-profit hospital that does not accept county, state, or federal funds or indigent patients.⁴

Section 383.19, F.S., requires the DOH to adopt rules to specify standards for RPICCs, including:

- The need to provide services through a RPICC and the requirements of the population to be served.
- Equipment.
- Facilities.
- Staffing and qualifications of personnel.
- Transportation services.
- Data collection.
- Definitions of terms.⁵

Failure to comply with these standards is grounds for the DOH to terminate a RPICC's contract.

RPICC Medicaid Reimbursement

Fee-for-service reimbursement for RPICC services provided to Medicaid recipients is paid according to Medicaid fee schedules (neonatal and obstetrical).

Statute requires that Medicaid reimbursement for in-center obstetrical physician services be based upon the obstetrical care group payment system. Medicaid reimbursement for in-center neonatal physician services is based upon the neonatal care group payment system. These prospective payment systems, developed by the DOH, must place patients into homogeneous groups based on clinical factors, severity of illness, and intensity of care. Payment for outpatient

² Chapter 76-54, L.O.F.

³ Chapter 94-140

⁴ Section 383.19(4) and (5), F.S.

⁵ See Rules 64C-6.001-6.003, F.A.C.

obstetrical services and other related services, such as consultations, are determined based on the usual Medicaid method of payment for outpatient medical services.⁶

- The payment systems used to fulfill the statute were created and administered by the University of Florida.
- The University of Florida (UF) held a long-running contract with the Agency for Health Care Administration (AHCA) to operate a payment system for physician specialists who provide obstetrical services to women with high-risk pregnancy or who provide care for newborns with special health needs, such as critical illness or low birth weight. UF also hosted a data system to maintain demographic and medical information of Medicaid recipients receiving services in RPICCs.
- The contract with UF ended June 30, 2019, and the AHCA is working with UF to establish a new contract to fulfill the statutory mandate.⁷

In State Fiscal Year 2018-2019, RPICCs were added as an eligible hospital group in the Low Income Pool (LIP). The AHCA created a RPICC-only tier in the LIP model, which allowed a number of hospitals to increase the percentage of their charity care that may be reimbursed under the LIP. This creates an incentive for more hospitals to obtain the RPICC designation.

The base fees for physician services provided in RPICCs are higher than the fees on the non-RPICC physician fee schedule for the same procedure codes. For example, the RPICC base rates for C-sections and vaginal deliveries are 56 percent higher than the physician fee schedule for those procedures.⁸

Comparison				
Procd	Description	Practitioner	RPICC	Percent Difference
59515	C-Section	\$ 1,144	\$1,785	56.03%
59614	Vaginal Delivery	\$ 1,444	\$1,785	56.03%

III. Effect of Proposed Changes:

SB 1374 amends various statutes related to RPICCs as follows:

Section 1 of the bill amends s. 383.16, F.S., to add definitions for “agency,” meaning the AHCA, and “district,” meaning AHCA planning districts as established in s. 408.032, F.S.

Section 4 of the bill amends s. 383.19, F.S., to include levels of care, educational outreach, participation in quality collaborations within and outside a RPICC’s district, and support of rural hospitals to the list of standards for which the DOH must adopt rules. The bill also adds additional criteria that the DOH must use to select and designate RPICCs, including:

- Demonstrating a commitment to improving access to health services, including timely use of personal health services to achieve the best health outcomes;

⁶ See s. 383.19(2), F.S.

⁷ Agency for Health Care Administration, Medicaid Comments on Draft RPICC Bill (on file with the Senate Committee on Health Policy).

⁸ Id.

- Maintaining a facility birth volume of at least 3,000 live births per year; and
- Actively participating in one or more perinatal quality collaborations as defined by the DOH in rule.

The bill increases the maximum number of RPICCs allowed to be designated from 11 to 22. The DOH is required to designate at least one RPICC in each of the AHCA planning districts⁹ and one additional RPICC in any district in which 20,000 or more resident live births occur per year.¹⁰

The bill also specifies that Medicaid reimbursements for services provided to members of a managed care plan must be paid in accordance with the provider payment provisions of part IV of ch. 409, F.S. (Medicaid Managed Care) and that fee-for-service reimbursements must be based upon obstetrical or neonatal group payment systems developed by the DOH, as applicable.

The bill also requires the DOH, in consultation with the AHCA, to develop and implement a statewide process to engage perinatal stakeholders for the purpose of determining appropriate and efficacious levels of maternal care provided by RPICCs. The process must be completed no later than July 1, 2023, and must seek to standardize RPICCs internal assessments of levels of maternal care guided by methodologies and tools developed by the federal Centers for Disease Control and Prevention.

Sections 2, 3, 5, and 6 of the bill amend ss. 383.17, 383.18, 409.908, and 409.967, F.S., to make clarifying, conforming, and technical changes.

The bill takes effect July 1, 2020.

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.

⁹ AHCA planning districts are established in s. 408.032, F.S.

¹⁰ Based on 2018 birth rates, available from the DOH (<http://www.flhealthcharts.com/charts/default.aspx>), AHCA districts 4, 6, 7, 9, 10, and 11 have a sufficient volume of births to require the DOH to designate a second RPICC in those districts.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1374 may have an indeterminate positive fiscal impact on facilities and providers that are newly designated to provide RPICC services.

C. Government Sector Impact:

The bill may have an indeterminate negative fiscal impact on the state since the bill increases the number of RPICCs that may be designated and which may receive enhanced reimbursement rates from the Medicaid program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 383.16, 383.17, 383.18, 383.19, 409.908, and 409.975.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Harrell

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20201374__

1 A bill to be entitled
2 An act relating to regional perinatal intensive care
3 centers; amending s. 383.16, F.S.; defining and
4 revising terms; amending s. 383.17, F.S.; authorizing
5 the Department of Health to designate regional
6 perinatal intensive care centers; amending s. 383.18,
7 F.S.; providing that designation by the department is
8 required for participation in the regional perinatal
9 intensive care centers program; amending s. 383.19,
10 F.S.; specifying standards that must be included in
11 department rules relating to the designation,
12 development, and operation of a regional perinatal
13 intensive care center; authorizing the department to
14 designate two regional perinatal intensive care
15 centers in a district under certain circumstances;
16 specifying reimbursement parameters for certain
17 services provided in a regional perinatal intensive
18 care center setting; providing parameters for removal
19 of a regional perinatal intensive care center's
20 designation; specifying criteria centers must meet for
21 the department's selection and designation as regional
22 perinatal intensive care centers; requiring the
23 department, in consultation with the agency, to
24 develop and implement a process by a specified date to
25 determine levels of maternal care provided by regional
26 perinatal intensive care centers; revising the
27 contents of certain annual reports that regional
28 perinatal intensive care centers are required to
29 submit to the department; requiring the department to

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conduct an onsite review of each center at least once every 3 years; amending s. 409.908, F.S.; conforming provisions to changes made by the act; amending s. 409.975, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Present subsections (1), (2), and (3) of section 383.16, Florida Statutes, are redesignated as subsections (2), (4), and (5), respectively, new subsections (1) and (3) are added to that section, and present subsection (2) of that section is amended, to read:

383.16 Definitions; ss. 383.15-383.19.—As used in ss. 383.15-383.19, the term:

(1) "Agency" means the Agency for Health Care Administration.

(3) "District" has the same meaning as in s. 408.032.

(4)~~(2)~~ "Regional perinatal intensive care center" or "center" means a unit designated by the department, located within a hospital, and specifically designed to provide a full range of perinatal health services to its patients.

Section 2. Section 383.17, Florida Statutes, is amended to read:

383.17 Regional perinatal intensive care centers program; authority.—The department may designate and contract with health care providers in establishing and maintaining centers in accordance with ss. 383.15-383.19. The cost of administering the regional perinatal intensive care centers program shall be paid

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by the department from funds appropriated for this purpose.

Section 3. Section 383.18, Florida Statutes, is amended to read:

383.18 Designations; contracts; conditions.—Participation in the regional perinatal intensive care centers program under ss. 383.15–383.19 is contingent upon the department designating and entering into a contract with a provider. The contract must ~~shall~~ provide that patients will receive services from the center and that parents or guardians of patients who participate in the program and who are in compliance with Medicaid eligibility requirements as determined by the department are not additionally charged for treatment and care that ~~which~~ has been contracted for by the department. Financial eligibility for the program is based on the Medicaid income guidelines for pregnant women and for children younger than ~~under~~ 1 year of age. Funding must ~~shall~~ be provided in accordance with ss. 383.19 and 409.908.

Section 4. Section 383.19, Florida Statutes, is amended to read:

383.19 Standards; funding; ineligibility.—

(1) The department shall adopt rules that specify standards for designation, development, and operation of a center which must include, but need not be ~~are not~~ limited to:

(a) The need to provide services through a regional perinatal intensive care center and the requirements of the population to be served.

(b) Equipment.

(c) Facilities.

(d) Staffing and qualifications of personnel.

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(e) Transportation services.

(f) Data collection.

(g) Levels of care.

(h) Educational outreach.

(i) Access to consultative specialist services.

(j) Participation in quality collaborations, both within and outside of the center's district.

(k) Support of rural hospitals, as defined in s. 395.602.

(1) ~~(g)~~ Definitions of terms.

(2) The department shall designate at least one center to serve a geographic area representing each district ~~region~~ of the state, and one additional center may be designated in any district in which at least 20,000 resident ~~10,000~~ live births occur per year, as reported by the department's Bureau of Vital Statistics, but in no case may there be more than 22 ~~11~~ regional perinatal intensive care centers established unless specifically authorized in the General Appropriations Act or in this subsection.

(3) Medicaid reimbursement must ~~shall~~ be made for services provided to patients who are Medicaid recipients. Medicaid reimbursement for in-center and outpatient obstetrical and neonatal physician services must be paid as follows:

(a) Reimbursement for such services provided at centers to members of a managed care plan as defined in s. 409.962 must be paid in accordance with the provider payment provisions of part IV of chapter 409; or

(b) Reimbursement for such services provided at centers on a fee-for-service basis must ~~shall~~ be based upon the obstetrical care group payment system or. ~~Medicaid reimbursement for in-~~

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~~center neonatal physician services shall be based upon the~~
neonatal care group payment system, as applicable. These
prospective payment systems, developed by the department, must
place patients into homogeneous groups based on clinical
factors, severity of illness, and intensity of care. ~~Outpatient~~
~~obstetrical services and other~~ Related services provided on a
fee-for-service basis, such as consultations, must ~~shall~~ be
reimbursed based on the usual Medicaid method of fee-for-service
payment for such ~~outpatient~~ medical services.

(4)-(3) Failure to comply with any standard ~~the standards~~
established under this section, department rules, or the terms
of the contract between the department and a center constitutes
grounds for terminating the contract and removal of the center's
designation.

(5)-(4) The department shall select and designate centers
that do all of the following: give priority to establishing
~~centers in hospitals that~~

(a) Demonstrate an interest in perinatal intensive care by
meeting program standards established in this section and by the
department.

(b) Demonstrate a commitment to improving access to health
services, including the timely use of personal health services
to achieve the best health outcomes.

(c) Maintain a facility birth volume of at least 3,000 live
births per year.

(d) Actively participate in one or more perinatal quality
collaborations as defined by department rule.

(6) No later than July 1, 2023, the department, in
consultation with the agency, shall develop and implement a

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146 statewide process to engage perinatal stakeholders for the
147 purpose of determining appropriate and efficacious levels of
148 maternal care provided by centers. The statewide process must
149 seek to standardize the centers' internal assessments of levels
150 of maternal care guided by methodologies and tools developed by
151 the federal Centers for Disease Control and Prevention.

152 ~~(7)(5)~~ A private, for-profit hospital that does not accept
153 county, state, or federal funds or indigent patients is not
154 eligible to participate under ss. 383.15-383.19.

155 ~~(8)(6)~~ Each hospital that is designated by and contracts
156 with the department to provide services under the terms of ss.
157 383.15-383.19 shall prepare and submit to the department an
158 annual report that includes, but is not limited to, the number
159 of clients served, quality improvement measures and projects
160 that the center has engaged in, and the costs of services in the
161 center. The department shall annually conduct a programmatic and
162 financial evaluation of each center and shall conduct an onsite
163 review of each center at least once every 3 years.

164 Section 5. Paragraph (c) of subsection (12) of section
165 409.908, Florida Statutes, is amended to read:

166 409.908 Reimbursement of Medicaid providers.—Subject to
167 specific appropriations, the agency shall reimburse Medicaid
168 providers, in accordance with state and federal law, according
169 to methodologies set forth in the rules of the agency and in
170 policy manuals and handbooks incorporated by reference therein.
171 These methodologies may include fee schedules, reimbursement
172 methods based on cost reporting, negotiated fees, competitive
173 bidding pursuant to s. 287.057, and other mechanisms the agency
174 considers efficient and effective for purchasing services or

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goods on behalf of recipients. If a provider is reimbursed based on cost reporting and submits a cost report late and that cost report would have been used to set a lower reimbursement rate for a rate semester, then the provider's rate for that semester shall be retroactively calculated using the new cost report, and full payment at the recalculated rate shall be effected retroactively. Medicare-granted extensions for filing cost reports, if applicable, shall also apply to Medicaid cost reports. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Further, nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act, provided the adjustment is consistent with legislative intent.

(12)

(c) Notwithstanding paragraph (b), reimbursement fees to physicians for providing total obstetrical services to Medicaid recipients, which include prenatal, delivery, and postpartum care, shall be at least \$1,500 per delivery for a pregnant woman with low medical risk and at least \$2,000 per delivery for a pregnant woman with high medical risk. However, reimbursement to physicians working in regional perinatal intensive care centers designated pursuant to chapter 383, for services to certain pregnant Medicaid recipients with a high medical risk, must ~~may~~

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204 be made according to s. 383.19(3) ~~obstetrical care and neonatal~~
205 ~~care groupings and rates established by the agency.~~ Nurse
206 midwives licensed under part I of chapter 464 or midwives
207 licensed under chapter 467 shall be reimbursed at no less than
208 80 percent of the low medical risk fee. The agency shall by rule
209 determine, for the purpose of this paragraph, what constitutes a
210 high or low medical risk pregnant woman and shall not pay more
211 based solely on the fact that a caesarean section was performed,
212 rather than a vaginal delivery. The agency shall by rule
213 determine a prorated payment for obstetrical services in cases
214 where only part of the total prenatal, delivery, or postpartum
215 care was performed. The Department of Health shall adopt rules
216 for appropriate insurance coverage for midwives licensed under
217 chapter 467. Prior to the issuance and renewal of an active
218 license, or reactivation of an inactive license for midwives
219 licensed under chapter 467, such licensees shall submit proof of
220 coverage with each application.

221 Section 6. Paragraph (b) of subsection (1) of section
222 409.975, Florida Statutes, is amended to read:

223 409.975 Managed care plan accountability.—In addition to
224 the requirements of s. 409.967, plans and providers
225 participating in the managed medical assistance program shall
226 comply with the requirements of this section.

227 (1) PROVIDER NETWORKS.—Managed care plans must develop and
228 maintain provider networks that meet the medical needs of their
229 enrollees in accordance with standards established pursuant to
230 s. 409.967(2)(c). Except as provided in this section, managed
231 care plans may limit the providers in their networks based on
232 credentials, quality indicators, and price.

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(b) Certain providers are statewide resources and essential providers for all managed care plans in all regions. All managed care plans must include these essential providers in their networks. Statewide essential providers include:

1. Faculty plans of Florida medical schools.
2. Regional perinatal intensive care centers as defined in s. 383.16(4) ~~s. 383.16(2)~~.

3. Hospitals licensed as specialty children's hospitals as defined in s. 395.002(27).

4. Accredited and integrated systems serving medically complex children which comprise separately licensed, but commonly owned, health care providers delivering at least the following services: medical group home, in-home and outpatient nursing care and therapies, pharmacy services, durable medical equipment, and Prescribed Pediatric Extended Care.

Managed care plans that have not contracted with all statewide essential providers in all regions as of the first date of recipient enrollment must continue to negotiate in good faith. Payments to physicians on the faculty of nonparticipating Florida medical schools shall be made at the applicable Medicaid rate. Payments for services rendered by regional perinatal intensive care centers shall be made at the applicable Medicaid rate as of the first day of the contract between the agency and the plan. Except for payments for emergency services, payments to nonparticipating specialty children's hospitals shall equal the highest rate established by contract between that provider and any other Medicaid managed care plan.

Section 7. This act shall take effect July 1, 2020.

CourtSmart Tag Report

Room: KN 412

Caption: Senate Health Policy Committee

Case:

Judge:

Type:

Started: 1/21/2020 10:02:08 AM

Ends: 1/21/2020 11:30:21 AM

Length: 01:28:14

10:02:07 AM Meeting called to order
10:02:32 AM Roll Call - Quorum is present
10:02:56 AM Senator Bean for an introduction
10:03:35 AM Chair
10:03:37 AM Tab 1 - SB 494 by Senator Simpson - H. Lee Moffitt Cancer Center Research Institute
10:04:57 AM Questions?
10:05:10 AM Senator Rouson
10:05:41 AM Senator Simpson
10:05:52 AM Appearance Cards?
10:05:58 AM H. Lee Moffitt waives in support
10:06:11 AM Debate?
10:06:19 AM Senator Berman
10:06:50 AM Senator Harrell
10:07:11 AM Senator Simpson waives close
10:07:17 AM Roll Call on SB 494 - Favorable
10:08:04 AM Tab 5 - SB 842 by Senator Wright - Injured Police Canines
10:09:13 AM Questions?
10:10:12 AM Senator Rouson
10:10:18 AM Senator Wright
10:10:49 AM Appearance Cards?
10:10:59 AM Eric Chudzik, District VP, Fl. Professional Firefighters, waives in support
10:11:03 AM Ken Kopczynski, Lobbyist, Fl. PBA, waives in support
10:11:10 AM Kate MacFall, State Director, Humane Society of the United States, waives in support
10:11:24 AM Debate? None
10:11:29 AM
10:11:31 AM Senator Wright to close
10:11:36 AM Roll Call on SB 842 - Favorable
10:12:05 AM Tab 6 - SB 52 by Senator Bean - Medicaid Services
10:14:48 AM Questions?
10:15:44 AM Senator Hooper
10:16:20 AM Senator Bean
10:17:38 AM Amendment 650576 by Senator Berman
10:18:56 AM Questions on Amendment
10:19:02 AM Olivia Babis, Disability Rights of Florida, waives in support
10:19:15 AM Debate on Amendment?
10:19:26 AM Senator Bean
10:20:12 AM Senator Berman to close on amendment
10:20:51 AM Roll Call on amendment 650576 - Oppose
10:21:22 AM Questions on Bill?
10:21:27 AM Appearance Cards?
10:21:44 AM Olivia Babis, Disability Rights of Florida, speaking
10:26:19 AM Dorene Barker, Associate State Director, AARP Fl., waives in opposition
10:27:21 AM Trish Neely, Consultant, League of Women's Voters, speaking against
10:28:56 AM Scott McCoy, Policy Director, SPLC Action Fund, waives in opposition
10:29:35 AM Karen Woodell, Exec. Director, Fl. Center for Fiscal & Economic Policy, speaking in opposition
10:30:37 AM Debate?
10:30:41 AM Senator Rouson
10:31:21 AM Senator Berman
10:32:38 AM Senator Baxley
10:35:13 AM Senator Bean to close
10:37:12 AM Roll Call SB 52 - Favorable
10:37:32 AM Gavel handed to Vice Chair Berman

10:37:46 AM Tab 2 - SB 810 - by Senator Simmons - Tobacco and Nicotine Products
 10:38:15 AM Strike-all amendment 155716 by Senator Simmons
 10:40:46 AM Questions?
 10:41:51 AM Appearance Cards?
 10:41:58 AM Paul Hull, VP, American Cancer Society Cancer Action Network, speaking for information
 10:43:12 AM Mark Landreth, American Heart Association, waives in support
 10:43:24 AM Dan Madin, waives in opposition
 10:43:31 AM Michael Bowling, waives in opposition
 10:43:41 AM Doug Bell, waives in support
 10:43:47 AM Bradlee Sinor, store manager ATL Vaping, Pt. St. Joe - waive in opposition
 10:43:56 AM Gregory Conley, American Vaping Association, speaking against
 10:47:34 AM Beth Kidder, Dep. Sec. for Medicaid, AHCA, waives in opposition
 10:47:54 AM JD McCormick, Tallahassee, waives in opposition
 10:47:55 AM Delorse Orlando, Clearwater, speaking for information
 10:47:57 AM Joshua Unger, speaking against
 10:48:05 AM Nick Orlando, Fla. Smoke Free Association, speaking for information
 10:48:10 AM Amanda Risteen, Edgewater, FL, waives in opposition
 10:48:17 AM Jonathan Risteen, Gentlemen's Draw LLC, speaking for information
 10:48:24 AM Horacio Moreno, Hollywood, waives in opposition
 10:48:39 AM Robert Lovett, President FSFA, speaking against amendment
 10:49:41 AM Debate?
 10:49:46 AM Senator Simmons to close
 10:52:23 AM Strike-all amendment adopted
 10:53:23 AM Back on Bill as amended
 10:53:28 AM Appearance Cards?
 10:53:33 AM Dan Marlin, waives in opposition
 10:53:38 AM Amanda Risteen, Owner, Gentlemen's Draw, waives in opposition
 10:53:42 AM Beth Labasky, Informed Families of Florida, waives in support
 10:53:55 AM Alex waives in support
 10:54:03 AM Mark Landreth, American Heart, waives in support
 10:54:15 AM Aimee Diaz Lyon, American Lung Association, waives in support
 10:54:21 AM Bradley Sirior, waives in opposition
 10:54:33 AM Gregory Conley, Pres. American Vaping Association, speaking against
 10:54:45 AM Michael Boling - speaking against bill
 10:55:32 AM Jonathan Ristine, Gentleman's Draw LLC - speaking for information
 10:59:22 AM Delores Orlando, speaking for information
 11:02:20 AM Robert Lovett, Fl. Smoke Free Association, speaking for information
 11:03:20 AM Horacio Moreno, Hollywood, FL, speaking for information
 11:03:25 AM Joshua Unger, Sarasota, FL, speaking against
 11:03:28 AM JD McCormick, Tallahassee, speaking against
 11:08:43 AM Nick Orlando, Florida Smoke Free Association, speaking for information
 11:10:25 AM Debate on bill as amended?
 11:11:24 AM Senator Book
 11:12:22 AM Senator Bean
 11:13:55 AM Senator Mayfield
 11:16:13 AM Senator Baxley
 11:17:07 AM Chair
 11:17:42 AM Senator Simmons to close
 11:20:48 AM Roll Call SB 810 - Favorable
 11:21:54 AM Gavel back to Chair Harrell
 11:22:11 AM Tab 3 - SB 792 by Senator Albritton - Physical Therapy
 11:22:51 AM Strike-all amendment 312936 by Senator Albritton
 11:24:07 AM Questions? None
 11:24:51 AM Appearance Cards? None
 11:24:57 AM Amendment to Amendment 660322 by Senator Albritton
 11:25:28 AM Objection to late filed amendment to amendment? introduced
 11:25:44 AM Questions? None
 11:25:51 AM Debate? None
 11:25:57 AM Objection to Amend to Amend - accepted
 11:26:12 AM Back on Strike-all as amended
 11:26:18 AM Questions? None
 11:26:18 AM Debate? None

11:26:18 AM Appearance Cards?
11:26:33 AM Aimee Diaz Lyon, Fl. Physical Therapy Association, waives in support
11:26:42 AM
11:26:48 AM Doug Cone, Ocala, FL, waives in support
11:27:18 AM Hongjian He, Fl. Acupuncture Association, speaking against
11:28:20 AM David Bibbey, Fl. State Oriental Association, waives in opposition
11:28:29 AM Debate?
11:28:29 AM Senator Hooper
11:29:02 AM Strike- all is adopted
11:29:17 AM Debate? None
11:29:22 AM Senator Albritton to close
11:29:27 AM Roll Call SB 792 - Favorable
11:29:56 AM Are there any members that would like votes to be recorded?
11:30:05 AM Senator Baxley moves to adjourn. Without objection we are adjourned.