

Commerce Committee

Monday, March 29, 2021
4:15 PM – 6:15 PM
Webster Hall (212 Knott)

Meeting Packet

Chris Sprowls
Speaker

Blaise Ingoglia
Chair

The Florida House of Representatives

Commerce Committee

Chris Sprowls
Speaker

Blaise Ingoglia
Chair

Meeting Agenda

Monday, March 29, 2021
4:15 PM – 6:15 PM
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- CS/HB 273 Motor Vehicle Insurance Coverage Exclusions by Insurance & Banking Subcommittee, Plakon
- CS/HB 379 Pub. Rec./Economic Development Agencies by Government Operations Subcommittee, Giallombardo
- CS/HB 619 Pub. Rec./Application for a De Novo Banking Charter by Insurance & Banking Subcommittee, Barnaby
- HB 859 Expiration of Permits and Agreements During Natural Emergencies by Grant
- CS/HB 895 Consumer Finance Loans by Insurance & Banking Subcommittee, Stevenson
- HB 6053 Doorstep Waste Containers by Yarborough

Consideration of the following proposed committee substitute(s):

- PCS for CS/HB 15 -- Sales and Use Tax

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 273 Motor Vehicle Insurance Coverage Exclusions
SPONSOR(S): Insurance & Banking Subcommittee, Plakon
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 420

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 3 N, As CS	Rowley	Luczynski
2) Commerce Committee		Rowley	Hamon

SUMMARY ANALYSIS

Chapter 627, part XI, F.S., Motor Vehicle and Casualty Insurance Contracts, and ch. 324, F.S., the Financial Responsibility Law of 1955, establish motor vehicle insurance coverage requirements. Motor vehicle insurance includes two types of coverage: financial responsibility (i.e., bodily injury, death, and property damage or (BI/PD) and no-fault (i.e., personal injury protection or PIP). A policy providing coverage for BI/PD is required to cover individuals named on the policy and anyone operating a motor vehicle listed on the policy when the operator has the express or implied permission of the insured motor vehicle owner. A policy providing PIP coverage is required to cover the motor vehicle owner, persons operating the insured motor vehicle, relatives residing in the same household as the policyholder, passengers in the motor vehicle, anyone struck and injured by the motor vehicle while not a passenger in a self-propelled vehicle, and anyone specifically named on the policy. For the mandatory motor vehicle insurance coverages of BI/PD and PIP, neither the policyholder nor the insurer can exclude an individual required to be covered by law.

Because there is no authority under the motor vehicle insurance laws for an insurer to exclude a specific individual (i.e., an excluded named driver) from coverage, an insurer may choose not to write a policy in order to avoid covering specific individuals (e.g., a high insurance risk driver). This results in some consumers being denied opportunities to purchase motor vehicle insurance or having to pay more because they live with individuals the policyholder or insurer would like to exclude from the policy. Additionally, policyholders may have their policies cancelled if the license or registration of a co-resident is suspended or revoked.

The bill authorizes the specific exclusion of named drivers from private passenger motor vehicle insurance coverages, except for periods when the excluded named driver is not operating a covered vehicle (e.g., when he or she is a passenger in the vehicle), if the exclusion is discriminatory, or if the exclusion is inconsistent with filed underwriting guidelines. The exclusion of a named driver is contingent upon the written consent of the named insured. The bill requires insurers to list excluded drivers on the policy's declarations page or on a policy endorsement.

The bill does not appear to have a fiscal impact on state or local government. It has positive and negative impacts on the private sector.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Chapter 627, part XI, F.S., Motor Vehicle and Casualty Insurance Contracts, and ch. 324, F.S., the Financial Responsibility Law of 1955, establish motor vehicle insurance coverage requirements. Owners and operators of motor vehicles must maintain the ability to respond in damages at specified minimum amounts for personal injury protection, bodily injury or death, and property damage.

Motor vehicle insurance includes two types of coverage: financial responsibility (i.e., bodily injury, death, and property damage or BI/PD) and no-fault (i.e., personal injury protection or PIP). A policy providing coverage for bodily injury, death, and property damage is required to provide coverage for: [1]

- Individuals named on the policy; and
- Anyone operating a motor vehicle listed on the policy when the operator has the express or implied permission of the insured motor vehicle owner.

A policy providing PIP coverage is required to cover: [2]

- The owner of the motor vehicle;
- Persons operating the insured motor vehicle;
- Relatives residing in the same household[3] as the policyholder;
- Passengers in the motor vehicle;
- Anyone struck by the motor vehicle who suffers bodily injury while not occupying a self-propelled vehicle; and
- Anyone specifically named on the policy.

For the mandatory motor vehicle insurance coverages of BI/PD and PIP, neither the policyholder nor the insurer can exclude an individual required to be covered by law. [4] The law also prohibits an insurer from "knowingly making or permitting unfair discrimination between individuals of the same actuarially supportable class and equal expectation of life."[5] However, an insurer may cancel a motor vehicle insurance policy if the policyholder or any operator who resides in the same household or customarily operates a motor vehicle insured under the policy has her or his driver license revoked or suspended.[6]

Because the law does not expressly permit insurers to exclude or remove specifically named individuals from motor vehicle insurance policies, individuals with resident relatives considered by insurers to be high insurance risks may have existing policies cancelled and/or be denied opportunities to purchase new policies.

Effect of the Bill

The bill authorizes insurers and the named insured to exclude specific individuals from a private passenger motor vehicle insurance policy. An excluded individual would not be covered for damages

[1] S. 324.151(1), F.S.
[2] Ss. 627.736(1) and (4)(e) and 627.7407(5)(b), F.S.
[3] "Relative residing in the same household" means a relative of any degree by blood or by marriage who usually makes her or his home in the same family unit, whether or not temporarily living elsewhere. S. 627.732(6), F.S.
[4] The insurer may shift certain liabilities from BI/PD and PIP coverage to uninsured/underinsured vehicle coverage (UM). S. 627.727(3)(c), F.S. UM coverage includes damages caused to a policyholder, a resident relative of the policyholder, or an individual named on the policy who is injured by non-family member who was operating an insured vehicle, if the BI/PD and PIP coverage excludes coverage of these damages.
[5] S. 626.9541(1)(g), F.S.
[6] Ss. 627.7275 and 627.728, F.S.

that occur if he or she operates a motor vehicle that is insured under a policy that excludes the individual by name. The bill prohibits exclusion for periods when the excluded named driver is not operating a motor vehicle covered under the policy (e.g., a passenger in the vehicle), if the exclusion is discriminatory, or if the exclusion is inconsistent with the underwriting guidelines filed by the insurer. The exclusion is contingent upon the written consent of the named insured. The bill requires insurers to list excluded named drivers on the policy's declarations page or on a policy endorsement.

B. SECTION DIRECTORY:

Section 1. Creates s. 627.747, F.S., relating to named driver exclusion.

Section 2. Amends s. 324.151, F.S., relating to motor vehicle liability policies; required provisions.

Section 3. Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.

Section 4. Amends s. 627.7407, F.S., relating to application of the Florida Motor Vehicle No-Fault Law.

Section 5. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may positively affect consumers by increased availability and/or lowered premiums of motor vehicle insurance written with named driver exclusions. However, high-risk consumers may experience increased application denials or higher premiums if they need to secure their own coverage following exclusion from a policy.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2021, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment clarifies that an individual may not be excluded from a motor vehicle policy solely because of his or her race, color, religion, sex, national origin, age, handicap, pregnancy, or marital status.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to motor vehicle insurance coverage exclusions; creating s. 627.747, F.S.; providing that private passenger motor vehicle policies may exclude certain identified individuals from specified coverages under certain circumstances; providing that such policies may not exclude coverage under certain circumstances; amending ss. 324.151, 627.736, and 627.7407, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 627.747, Florida Statutes, is created to read:

627.747 Named driver exclusion.—

(1) A private passenger motor vehicle policy may exclude an identified individual who is not a named insured from the following coverages while the identified individual is operating a motor vehicle, provided the identified individual is named on the declarations page or by endorsement and the named insured consents in writing to such exclusion:

(a) Notwithstanding the Florida Motor Vehicle No-Fault Law, the personal injury protection coverage specifically applicable to the identified individual's injuries, lost wages,

and death benefits.

(b) Property damage liability coverage.

(c) Bodily injury liability coverage, if required by law and purchased by the named insured.

(d) Uninsured motorist coverage for any damages sustained by the identified excluded individual, if the named insured has purchased such coverage.

(e) Any coverage the named insured is not required by law to purchase.

(2) A private passenger motor vehicle policy may not exclude coverage when:

(a) The identified individual is injured while not operating a motor vehicle;

(b) The identified individual is being excluded solely because of his or her race, color, religion, sex, national origin, age, handicap, pregnancy, or marital status; or

(c) The exclusion is inconsistent with the underwriting rules filed by the insurer pursuant to s. 627.0651(13)(a).

Section 2. Paragraph (a) of subsection (1) of section 324.151, Florida Statutes, is amended to read:

324.151 Motor vehicle liability policies; required provisions.—

(1) A motor vehicle liability policy to be proof of financial responsibility under s. 324.031(1)~~,~~ shall be issued to owners or operators under the following provisions:

(a) An owner's liability insurance policy must ~~shall~~ designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby granted, must ~~and shall~~ insure the owner named therein, and, except for a named driver excluded under s. 627.747, must insure any other person as operator using such motor vehicle or motor vehicles with the express or implied permission of such owner against loss from the liability imposed by law for damage arising out of the ownership, maintenance, or use of such motor vehicle or motor vehicles within the United States or the Dominion of Canada, subject to limits, exclusive of interest and costs with respect to each such motor vehicle as is provided for under s. 324.021(7). Insurers may make available, with respect to property damage liability coverage, a deductible amount not to exceed $500. In the event of a property damage loss covered by a policy containing a property damage deductible provision, the insurer shall pay to the third-party claimant the amount of any property damage liability settlement or judgment, subject to policy limits, as if no deductible existed.

Section 3. Subsection (1) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(1) REQUIRED BENEFITS.—An insurance policy complying with the security requirements of s. 627.733 must provide personal

injury protection to the named insured, relatives residing in the same household unless excluded under s. 627.747, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, subject to subsection (2) and paragraph (4)(e), to a limit of $10,000 in medical and disability benefits and $5,000 in death benefits resulting from bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

(a) *Medical benefits.*—Eighty percent of all reasonable expenses for medically necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices and medically necessary ambulance, hospital, and nursing services if the individual receives initial services and care pursuant to subparagraph 1. within 14 days after the motor vehicle accident. The medical benefits provide reimbursement only for:

1. Initial services and care that are lawfully provided, supervised, ordered, or prescribed by a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, a chiropractic physician licensed under chapter 460, or an advanced practice registered nurse registered under s. 464.0123 or that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital. Initial services and care may

also be provided by a person or entity licensed under part III of chapter 401 which provides emergency transportation and treatment.

2. Upon referral by a provider described in subparagraph 1., followup services and care consistent with the underlying medical diagnosis rendered pursuant to subparagraph 1. which may be provided, supervised, ordered, or prescribed only by a physician licensed under chapter 458 or chapter 459, a chiropractic physician licensed under chapter 460, a dentist licensed under chapter 466, or an advanced practice registered nurse registered under s. 464.0123, or, to the extent permitted by applicable law and under the supervision of such physician, osteopathic physician, chiropractic physician, or dentist, by a physician assistant licensed under chapter 458 or chapter 459 or an advanced practice registered nurse licensed under chapter 464. Followup services and care may also be provided by the following persons or entities:

a. A hospital or ambulatory surgical center licensed under chapter 395.

b. An entity wholly owned by one or more physicians licensed under chapter 458 or chapter 459, chiropractic physicians licensed under chapter 460, advanced practice registered nurses registered under s. 464.0123, or dentists licensed under chapter 466 or by such practitioners and the spouse, parent, child, or sibling of such practitioners.

c. An entity that owns or is wholly owned, directly or indirectly, by a hospital or hospitals.

d. A physical therapist licensed under chapter 486, based upon a referral by a provider described in this subparagraph.

e. A health care clinic licensed under part X of chapter 400 which is accredited by an accrediting organization whose standards incorporate comparable regulations required by this state, or

(I) Has a medical director licensed under chapter 458, chapter 459, or chapter 460;

(II) Has been continuously licensed for more than 3 years or is a publicly traded corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange; and

(III) Provides at least four of the following medical specialties:

(A) General medicine.

(B) Radiography.

(C) Orthopedic medicine.

(D) Physical medicine.

(E) Physical therapy.

(F) Physical rehabilitation.

(G) Prescribing or dispensing outpatient prescription medication.

(H) Laboratory services.

3. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. up to $10,000 if a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, a physician assistant licensed under chapter 458 or chapter 459, or an advanced practice registered nurse licensed under chapter 464 has determined that the injured person had an emergency medical condition.

4. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. is limited to $2,500 if a provider listed in subparagraph 1. or subparagraph 2. determines that the injured person did not have an emergency medical condition.

5. Medical benefits do not include massage as defined in s. 480.033 or acupuncture as defined in s. 457.102, regardless of the person, entity, or licensee providing massage or acupuncture, and a licensed massage therapist or licensed acupuncturist may not be reimbursed for medical benefits under this section.

6. The Financial Services Commission shall adopt by rule the form that must be used by an insurer and a health care provider specified in sub-subparagraph 2.b., sub-subparagraph 2.c., or sub-subparagraph 2.e. to document that the health care provider meets the criteria of this paragraph. Such rule must include a requirement for a sworn statement or affidavit.

(b) *Disability benefits.*—Sixty percent of any loss of gross income and loss of earning capacity per individual from inability to work proximately caused by the injury sustained by the injured person, plus all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his or her household. All disability benefits payable under this provision must be paid at least every 2 weeks.

(c) *Death benefits.*—Death benefits of $5,000 per individual. Death benefits are in addition to the medical and disability benefits provided under the insurance policy. The insurer may pay death benefits to the executor or administrator of the deceased, to any of the deceased's relatives by blood, legal adoption, or marriage, or to any person appearing to the insurer to be equitably entitled to such benefits.

Only insurers writing motor vehicle liability insurance in this state may provide the required benefits of this section, and such insurer may not require the purchase of any other motor vehicle coverage other than the purchase of property damage liability coverage as required by s. 627.7275 as a condition for providing such benefits. Insurers may not require that property damage liability insurance in an amount greater than $10,000 be purchased in conjunction with personal injury protection. Such

insurers shall make benefits and required property damage liability insurance coverage available through normal marketing channels. An insurer writing motor vehicle liability insurance in this state who fails to comply with such availability requirement as a general business practice violates part IX of chapter 626, and such violation constitutes an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance. An insurer committing such violation is subject to the penalties provided under that part, as well as those provided elsewhere in the insurance code.

Section 4. Paragraph (a) of subsection (5) of section 627.7407, Florida Statutes, is amended to read:

627.7407 Application of the Florida Motor Vehicle No-Fault Law.—

(5) No later than November 15, 2007, each motor vehicle insurer shall provide notice of the provisions of this section to each motor vehicle insured who is subject to subsection (1). The notice is not subject to approval by the Office of Insurance Regulation. The notice must clearly inform the policyholder:

(a) That beginning on January 1, 2008, Florida law requires the policyholder to maintain personal injury protection ("PIP") insurance coverage and that this insurance pays covered medical expenses for injuries sustained in a motor vehicle crash by the policyholder, passengers, and relatives residing in the policyholder's household unless excluded under s. 627.747.

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 379 Pub. Rec./Economic Development Agencies
SPONSOR(S): Government Operations Subcommittee, Giallombardo
TIED BILLS: **IDEN./SIM. BILLS:** SB 968

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	16 Y, 2 N	Willson	Keating
2) Government Operations Subcommittee	15 Y, 1 N, As CS	Villa	Smith
3) Commerce Committee		Willson	Hamon

SUMMARY ANALYSIS

The Department of Economic Opportunity (DEO) and other state economic development agencies administer various loan programs available to eligible small businesses. These loan programs include, among others, the Rural Community Development Revolving Loan Program, the Small Business Emergency Bridge Loan Program, and the Black Business Loan Program.

The bill creates a public record exemption for certain information held by an economic development agency pursuant to the administration of a state or federally funded small business loan program. Specifically, the bill exempts the following information:

- The home address, telephone number, and e-mail address of a person who submits an application for a loan on behalf of a business.
- Tax returns.
- Bank and financial statements.
- Credit history information, credit reports, and credit scores.

The bill allows the disclosure of the exempt information held by the economic development agency pursuant to its administration of a small business loan program in an aggregated and anonymized format.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date.

The bill may have a minimal fiscal impact on the state and local governments.

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill provides for a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the Florida Constitution.[1] The general law must state with specificity the public necessity justifying the exemption[2] and must be no broader than necessary to accomplish its purpose.[3]

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act[4] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[5]

The Open Government Sunset Review Act requires the automatic repeal of a newly created public record exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[6]

Small Business Loan Programs

The Department of Economic Opportunity (DEO) administers a number of state and federally funded small business loan programs, including:

- Small Business Emergency Bridge Loan Program
- Rebuild Florida Business Loan Fund[7]
- Rural Community Development Revolving Loan Program[8]
- State Small Business Loan Fund[9]
- Black Business Loan Program[10]
- Microfinance Loan Program[11]

Section 288.075, F.S., defines an "Economic development agency" as:

[1] Art. I, s. 24(c), FLA. CONST.
[2] This portion of a public record exemption is commonly referred to as a "public necessity statement."
[3] Art. I. s. 24(c), FLA. CONST.
[4] S. 119.15, F.S.
[5] S. 119.15(6)(b), F.S.
[6] S. 119.15(3), F.S.
[7] DEO, *Rebuild Florida Business Loan Fund*, https://deosera.force.com/RebuildFloridaBusinessLoanFund/s/loan-programs?program=florida-resiliency-loan (last visited Feb. 23, 2021).
[8] S. 288.065, F.S.
[9] DEO, *Small Business Loan Program*, https://floridajobs.org/community-planning-and-development/Small-and-Minority-Business-Development-Resources/Small-and-Minority-Business-Programs/small-business-loan-program (last visited Feb. 23, 2021).
[10] Ss. 288.7102–.714, F.S.
[11] *See* Microfinance Programs, ch. 288, part XIV.

- The Department of Economic Opportunity;
- Any industrial development authority created in accordance with part III of chapter 159 or by special law;
- Space Florida created in part II of chapter 331;
- The public economic development agency of a county or municipality or, if the county or municipality does not have a public economic development agency, the county or municipal officers or employees assigned the duty to promote the general business interests or industrial interests of that county or municipality or the responsibilities related thereto;
- Any research and development authority created in accordance with part V of chapter 159; or
- Any private agency, person, partnership, corporation, or business entity when authorized by the state, a municipality, or a county to promote the general business interests or industrial interests of the state or that municipality or county.

Effect of the Bill

This bill creates a public record exemption for certain information held by economic development agencies as part of its administration of a state or federally funded small business loan program. Specifically, the bill provides the following information is exempt[12] from public record requirements:

- The home address, telephone number, and e-mail address of a person who submits an application for a loan on behalf of a business.
- Tax returns.
- Bank and financial statements.
- Credit history information, credit reports, and credit scores.

The bill does not prohibit the disclosure of information held by the economic development agency pursuant to its administration of a small business loan program in an aggregated and anonymized format.

This bill provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that in order to assess the viability of loans, an economic development agency may obtain sensitive information, including contact and financial information, of an applicant or borrower and, if released, the sensitive information could be used by fraudulent contractors, predatory lenders, thieves, or individuals seeking to impose on the applicant or borrower.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date.

B. SECTION DIRECTORY:

Section 1 Amends s. 288.075, F.S.; providing an exemption from public records requirements for certain information held by an economic development agency; providing that such information may be released in an aggregated and anonymized format; providing for future legislative review and repeal of the exemption.

Section 2 Provides a public necessity statement as required by the Florida Constitution.

Section 3 Provides an effective date of July 1, 2021.

[12] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. (1985).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on economic development agencies responsible for complying with public records requests and redacting exempt information prior to releasing a record. Such costs, however, would be absorbed as part of the day-to-day responsibilities of these agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   Vote Requirement

   Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

   Public Necessity Statement

   Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption and includes the required public necessity statement.

Breadth of Exemption

Article 1, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2021, the Government Operations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The first amendment corrected a reference in the bill from section to subsection. The second amendment revised the public necessity statement to align with the information exempted in the bill.

This analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.

A bill to be entitled

An act relating to public records; amending s. 288.075, F.S.; providing an exemption from public records requirements for certain information held by an economic development agency; providing that such information may be released in an aggregated and anonymized format; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (7) of section 288.075, Florida Statutes, is renumbered as subsection (8), and a new subsection (7) is added to that section, to read:

288.075 Confidentiality of records.—

(7) LOAN PROGRAMS.—

(a) The following information held by an economic development agency pursuant to its administration of a state or federally funded small business loan program is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. The home address, telephone number, and e-mail address of a person who submits an application for a loan on behalf of a business.

2. Tax returns.

3. Bank and financial statements.

4. Credit history information, credit reports, and credit scores.

(b) This subsection does not prohibit the disclosure of information held by an economic development agency pursuant to its administration of a small business loan program in an aggregated and anonymized format.

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

Section 2. The Legislature finds that it is a public necessity that the home address, telephone number, and e-mail address of a person who submits an application for a loan on behalf of a business; tax returns; bank and financial statements; and credit history information, credit reports, and credit scores held by an economic development agency pursuant to its administration of any state or federally funded small business loan program be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. In order to assess the viability of loans, an economic development agency may obtain sensitive information of an applicant or borrower, including certain contact and financial information. If released, the sensitive information could be used by

fraudulent contractors, predatory lenders, thieves, or individuals seeking to impose on the applicant or borrower. Therefore, it is necessary that sensitive information held by an economic development agency pursuant to its administration of any state or federally funded small business loan program be protected to ensure that applicants and borrowers are not harassed, intimidated, or potentially defrauded. The Legislature finds the harm that may result from the release of such sensitive information outweighs the public benefit that may be derived from the disclosure of the information.

Section 3. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 619 Pub. Rec./Application for a De Novo Banking Charter
SPONSOR(S): Insurance & Banking Subcommittee, Barnaby
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 512

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 5 N, As CS	Hinshelwood	Luczynski
2) Government Operations Subcommittee	12 Y, 1 N	Roth	Smith
3) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry. In order to apply for authority to organize a new state-chartered bank, the proposed directors must file a written application with the OFR. The application includes such information as the name, residence, and occupation of each proposed director; the proposed corporate name; the community, including the street and number, if available, where the principal office of the proposed bank is to be located; the total initial capital; the proposed business plan; and pro forma financial statements. Additionally, each proposed executive officer, director, and major shareholder must complete and submit detailed biographical and financial information, including but not limited to names, home addresses, current and past employment, and statements of assets, liabilities, and total net worth. The OFR utilizes this information to ascertain whether the proposed directors and executives have the kind of experience, ability, standing, and reputation that indicates a reasonable promise of successful bank operation.

While some existing public record exemptions may apply to certain records received by the OFR pursuant to an application to organize a new bank, current statutes do not provide a public record exemption specifically directed at such applications. Presently, with the exception of some material for which the applicant may claim trade secret status, the majority of information on an application is subject to public inspection and copying.

The bill creates a public record exemption for information received by the OFR pursuant to an application for authority to organize a new state bank and makes the following information confidential and exempt: personal financial information, specified identification numbers, books and records of a current or proposed financial institution, personal identifying information of specified individuals, and the proposed bank's business plan and supporting documentation. Existing statutory provisions would permit the release of the information for certain purposes and to certain persons, such as furnishing information to other agencies responsible for the regulation of financial institutions and reporting suspected criminal activity to law enforcement. The exemption created in the bill only provides protection for records and information that are not otherwise public record. Upon approval of an application, the OFR issues a bank charter that is a public record and contains the names of the bank's officers and board of directors.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date. It also provides a public necessity statement as required by the Florida Constitution.

The bill may have a minimal negative fiscal impact on state government. The bill has an indeterminate but likely positive impact on the private sector.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24(a).[1] The general law must state with specificity the public necessity justifying the exemption and must be no more broad than necessary to accomplish its purpose.[2]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[3] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[4]

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[5]

Office of Financial Regulation (OFR)

The OFR regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[6] The OFR's Division of Financial Institutions charters, licenses, and regulates various entities that engage in financial institution business in Florida, in accordance with the financial institutions codes (Codes) and the rules promulgated thereunder.[7] The specific chapters under the Codes are:

- Chapter 655, F.S. – Financial Institutions Generally
- Chapter 657, F.S. – Credit Unions
- Chapter 658, F.S. – Banks and Trust Companies
- Chapter 660, F.S. – Trust Business
- Chapter 662, F.S. – Family Trust Companies
- Chapter 663, F.S. – International Banking
- Chapter 665, F.S. – Capital Stock Associations
- Chapter 667, F.S. – Savings Banks

[1] Art. I, s. 24(c), Fla. Const.
[2] Art. I, s. 24(c), Fla. Const.
[3] S. 119.15, F.S.
[4] S. 119.15(6)(b), F.S.
[5] S. 119.15(3), F.S.
[6] S. 20.121(3)(a)2., F.S.
[7] Chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.

As of June 30, 2020, the Division of Financial Institutions regulates 197 financial institutions:[8]

- 69 banks
- 66 credit unions
- 21 international bank offices
- 15 trust companies
- 16 family trust companies
- 10 qualified limited service affiliates

Regulation of Banks

Under the dual banking system in the United States, banks may be chartered under either state or federal law:

- *State-chartered banks* are chartered under the laws of the state in which the bank is headquartered. State-chartered banks have both a state regulator, which for banks chartered by the state of Florida is the OFR, and a federal regulator. The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System (FRB), and the primary federal regulator for non-member state banks is the Federal Deposit Insurance Corporation (FDIC).[9]
- *National banks* are chartered by the Office of the Comptroller of the Currency (OCC) under the National Bank Act.[10] As such, the OCC is the primary federal regulator for national banks.[11]

Confidential Treatment of Applications to Charter a National Bank

The federal Freedom of Information Act (FOIA)[12] sets forth the process for obtaining federal agency records, unless the records or any portion thereof are protected from disclosure by one of the FOIA's nine exemptions or by one of its three special law enforcement record exclusions. The OCC has set forth its policies regarding the availability of information under FOIA, as well as procedures for requesting information, within 12 CFR Part 4, Subpart B. Under the OCC's FOIA regulations, the following records, or portions thereof, are exempt from disclosure:[13]

1) A record that is specifically authorized, under criteria established by an executive order, to be kept secret in the interest of national defense or foreign policy, and that is properly classified pursuant to that executive order;
2) A record relating solely to the internal personnel rules and practices of an agency;
3) A record specifically exempted from disclosure by statute (other than 5 U.S.C. § 552b), provided that the statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; establishes particular criteria for withholding, or refers to particular types of matters to be withheld; and, if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to 5 U.S.C. § 552(b)(3);
4) A record that is privileged or contains trade secrets, or commercial or financial information, furnished in confidence, that relates to the business, personal, or financial affairs of any person;[14]
5) An intra-agency or interagency memorandum or letter not routinely available by law to a private party in litigation, including memoranda, reports, and other documents prepared by OCC employees, and records of deliberations and discussions at meetings of OCC employees, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;
6) A personnel, medical, or similar record, including a financial record, or any portion thereof, where disclosure would constitute a clearly unwarranted invasion of personal privacy;

[8] Office of Financial Regulation, *Fast Facts* (2021 ed.), https://www.flofr.com/sitePages/documents/FastFacts.pdf.
[9] 12 U.S.C. § 1813(q).
[10] 12 U.S.C. § 38.
[11] 12 U.S.C. § 1813(q).
[12] 5 U.S.C. § 552 *et. seq*.
[13] 12 C.F.R. § 4.12(b).
[14] Notice requirements regarding disclosure of confidential commercial information are contained in 12 C.F.R. § 4.16.

7) A record or information compiled for law enforcement purposes, but only to the extent that the OCC reasonably believes that producing the record or information may:
    i. Interfere with enforcement proceedings;
    ii. Deprive a person of the right to a fair trial or an impartial adjudication;
    iii. Constitute an unwarranted invasion of personal privacy;
    iv. Disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution that furnished information on a confidential basis;
    v. Disclose information furnished by a confidential source, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation;
    vi. Disclose techniques and procedures for law enforcement investigations or prosecutions, or disclose guidelines for law enforcement investigations or prosecutions if such disclosure reasonably could be expected to risk circumvention of the law; or
    vii. Endanger the life or physical safety of any individual;
8) A record contained in or related to an examination, operating, or condition report prepared by, on behalf of, or for the use of the OCC or any other agency responsible for regulating or supervising financial institutions; and
9) A record containing or relating to geological and geophysical information and data, including maps, concerning wells.

An applicant submitting information to the OCC may request that specific information be treated as confidential when the materials are submitted.[15] If the OCC does not consider the information to be confidential, the OCC may include that information in the public file after providing notice to the submitter.[16] In addition, the OCC may, at its own initiative, determine that certain information should be treated as confidential and withhold that information from the public file.[17] While a filing is pending with the OCC, the OCC licensing office may provide the *public* portion of a filing to any person who requests it.[18] The public file consists of those portions of the filing, supporting data, and supplementary information that was submitted by the applicant and by interested persons and not afforded confidential treatment.[19]

An applicant is encouraged to request confidential treatment for portions of a filing containing personally identifiable information (PII).[20] The term "PII" refers to information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual.[21] Examples of PII include an individual's first name or first initial and last name, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics (for example, fingerprints), date or place of birth, mother's maiden name, or medical data.[22]

Each organizing group must disclose its proposed CEO to the OCC at the time the group files the charter application.[23] If the proposed CEO wants to have his or her name withheld from the public until the OCC grants preliminary conditional approval, the organizers should:[24]

---

[15] Office of the Comptroller of the Currency, *Comptroller's Licensing Manual: General Policies and Procedures (Oct. 2019)* at 4, https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/licensing-booklet-general-policies-and-procedures.html (last visited Mar. 19, 2021).
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id*. at 6.
[20] *Id.* at 4.
[21] *Id.*
[22] *Id.*
[23] Office of the Comptroller of the Currency, *Comptroller's Licensing Manual: Charters (Oct. 2019)* at 14-15, https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/licensing-booklet-charters.html (last visited Mar. 19, 2021).
[24] *Id.*

- Include a request for confidential treatment with the materials submitted in the charter application;
- Provide support for their request that disclosure would constitute an unwarranted invasion of personal privacy under exemption six of FOIA[25] or result in substantial competitive harm to the organizers or the proposed CEO under exemption four of FOIA;[26]
- List in the application the criteria that were used in the selection process;
- Provide a detailed description of the person's background, experience, and qualifications in the public portion of the application that is sufficiently specific to permit matching the application information with the person once his or her identity is disclosed; and
- Discuss the proposed terms of employment for the CEO, including compensation and benefits.

Formation of a De Novo (New) State-Chartered Bank

In order to apply for authority to organize a new state-chartered bank, the proposed directors must file a written application with the OFR on form OFR-U-1.[27] The application includes such information as the name, residence, and occupation of each proposed director; the proposed corporate name; the community, including the street and number, if available, where the principal office of the proposed bank is to be located; the total initial capital; the proposed business plan; and pro forma financial statements.[28] Additionally, each proposed executive officer, director, and major shareholder must complete and submit an Interagency Biographical and Financial Report, Form OFR-U-10.[29] This form requires extensive personal identification information and personal financial information, including but not limited to names, home addresses, current and past employment, and statements of assets, liabilities, and total net worth.

Within 21 days after receipt of an application, the OFR must file notice of the application in the Florida Administrative Register, and any person may request a hearing within 21 days after publication of the notice.[30] If a hearing is requested, the applicant must publish at its own expense a notice of the hearing in a newspaper of general circulation in the area affected by the application.[31]

The OFR utilizes the information contained in the application in order to make an investigation of:[32]

1) The character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors.
2) The need for bank facilities or additional bank facilities, as the case may be, in the primary service area where the proposed bank is to be located.
3) The ability of the primary service area to support the proposed bank and all other existing bank facilities in the primary service area.

After making such investigation, the OFR must approve an application if it finds the following:[33]

1) Local conditions indicate reasonable promise of successful operation for the proposed state bank.
2) The proposed capitalization is adequate, but at least $8 million.
3) The proposed capital structure is in such form as the OFR may require, subject to certain minimum requirements.
4) Regarding officers and directors:
    a. The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation.

---

[25] 12 C.F.R. § 4.12(b)(6).
[26] 12 C.F.R. § 4.12(b)(4).
[27] S. 658.19(1), F.S.; rule 69U-105.202(1), F.A.C. The form is available at https://www.flofr.com/sitePages/CommercialBanks.htm.
[28] *Id.*
[29] *Id*.
[30] S. 120.80(3)(a)1., F.S.
[31] *Id.*
[32] S. 658.20(1), F.S.
[33] s. 658.21, F.S.

b. None of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, F.S., relating to the control of money laundering and terrorist financing; ch. 896, F.S., relating to offenses related to financial institutions; or similar state or federal law.
c. At least two of the proposed directors who are not also proposed officers have had at least one year of direct experience as an executive officer, regulator, or director of a financial institution within the five years before the date of the application. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than five years before the date of the application, the OFR may allow the applicant to have only one director who has direct financial institution experience within the last five years.
d. The proposed president or chief executive officer must have had at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last five years.

5) The corporate name of the proposed state bank is approved by the OFR.
6) Provision has been made for suitable quarters at the location in the application.

Upon approval of an application, the OFR issues a bank charter that is a public record and contains the names of the bank's officers and board of directors. The names of bank shareholders would continue to receive confidential and exempt treatment pursuant to s. 655.057(2) and (8), F.S.[34]

In 2018, the OFR received its first two banking applications since 2009. Three applications were received annually in 2019 and 2020.[35] Based on data provided by the OFR, the chart below depicts the new bank application activity since 2001 for Florida.

Year	Number of New Banking Applications	Number of New Banks Opened
2001	8	11
2002	11	8
2003	13	10
2004	19	16
2005	25	18
2006	21	18
2007	12	18
2008	6	7
2009	2	2
2010	0	0
2011	0	0
2012	0	0
2013	0	0
2014	0	0
2015	0	0
2016	0	0
2017	0	0
2018	2	1
2019	3	0
2020	3	1

Current Public Record Exemptions Related to Financial Institutions

[34] However, the name of a foreign national who proposes to own or control 10 percent or more of any class of a bank's voting securities, would become public pursuant to s. 120.80(3)(a)4., F.S.
[35] *Id.*

Presently, s. 655.057, F.S., contains a number of public record exemptions for certain records relating to OFR's regulation of financial institutions:

- Subsection 655.057(1), F.S., makes confidential and exempt records and information relating to active investigations. The records remain confidential and exempt after the investigation is completed or ceases to be active to the extent disclosure would jeopardize the integrity of another active investigation, impair the safety and soundness of the financial institution, reveal personal financial information, reveal the identity of a confidential source, defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures.
- Subsection 655.057(2), F.S., makes confidential and exempt reports of examinations, operations, or condition, including working papers, or portions thereof, prepared by, or for the use of, the OFR or any other state agency or federal agency responsible for the regulation or supervision of financial institutions. However, this exemption provides for the following release of such reports:
    - The reports may be released to specified persons such as the financial institution under examination (or its holding company) and certain proposed acquirers of a financial institution.
    - The reports must be released within one year after the appointment of a liquidator, receiver, or conservator to the financial institution, except that portions of the reports which identify specified individuals such as depositors and stockholders remain confidential and exempt.
- Subsection 655.057(3), F.S., makes confidential and exempt the OFR's informal enforcement actions to the extent that disclosure would jeopardize the integrity of another active investigation, impair the safety and soundness of the financial institution, reveal personal financial information, reveal the identity of a confidential source, defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures.
- Subsection 655.057(4), F.S., makes confidential and exempt trade secrets, as defined in s. 688.002, F.S., which comply with s. 655.0591, F.S., and are held by the OFR in accordance with its statutory duties.
- Subsections 655.057(7) and (8), F.S., make confidential and exempt a list of stockholders or members of a financial institution.

Subsections 655.057(5) and (6), F.S., permit the following release of records or information which otherwise fall under exemptions provided in the statute:

- Publishing specified reports that are required to be submitted to the OFR or that are required by applicable federal statutes or regulations to be published.
- Furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions.
- Disclosing or publishing summaries of the condition of financial institutions and general economic and similar statistics and data, provided that the identity of a particular financial institution is not disclosed.
- Reporting any suspected criminal activity, with supporting documents and information, to appropriate law enforcement and prosecutorial agencies.
- Furnishing information upon request to the Chief Financial Officer or the Division of Treasury of the Department of Financial Services regarding the financial condition of any financial institution that is, or has applied to be, designated as a qualified public depository pursuant to ch. 280, F.S.
- Furnishing information to Federal Home Loan Banks regarding its member institutions pursuant to an information sharing agreement between the Federal Home Loan Banks and the OFR.
- Providing records or information pursuant to an order of a court or an administrative law judge or pursuant to a legislative subpoena, according to specified procedures and restrictions.

While some of the above public record exemptions, or other public record exemptions provided in ch. 119, F.S., may apply to certain records received by the OFR pursuant to an application to organize a new bank, current statutes do not provide a public record exemption specifically directed at such applications. Presently, with the exception of some material for which the applicant may claim trade

secret status pursuant to s. 655.0591, F.S., all of the information received by the OFR on form OFR-U-1 is subject to public inspection and copying. Additionally, significant portions of the information received by the OFR on form OFR-U-10 is subject to public inspection and copying, with only certain information, such as social security numbers, passport numbers, home county identification numbers, immigration file numbers, and certain financial disclosures being exempted from public records requirements.

Effect of the Bill

The bill creates a public record exemption within s. 655.057, F.S., for certain information received by the OFR pursuant to an application for authority to organize a new state bank. Specifically, the bill provides that, *except for those portions that are otherwise public record*, the following information received by the OFR pursuant to an application for authority to organize a new state bank under ch. 658, F.S., is confidential and exempt[36] from public record requirements:

- Personal financial information.
- A driver license number, a passport number, a military identification number, or any other similar number issued on a government document used to verify identity.
- Books and records of a current or proposed financial institution.
- The personal identifying information of a shareholder, subscriber, proposed officer, or proposed director of the proposed state bank when such information has been marked by the applicant as confidential when submitted to the OFR. The term "personal identifying information" means names, home addresses, e-mail addresses, telephone numbers, names of relatives, work experience, professional licensing and educational backgrounds, and photographs.
- The proposed state bank's business plan and any attached supporting documentation when such information has been marked by the applicant as confidential when submitted to the OFR.

Section 655.057(12)(c), F.S., currently defines “personal financial information” to mean:

- Information relating to the existence, nature, source, or amount of a person’s personal income, expenses, or debt.
- Information relating to a person’s financial transactions of any kind.
- Information relating to the existence, identification, nature, or value of a person’s assets, liabilities, or net worth.

Although the information covered by this new public record exemption is confidential and exempt, existing provisions of s. 655.057, F.S., permit the following release of records or information which otherwise fall under exemptions provided in the statute:

- Publishing specified reports that are required to be submitted to the OFR or that are required by applicable federal statutes or regulations to be published.
- Furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions.
- Disclosing or publishing summaries of the condition of financial institutions and general economic and similar statistics and data, provided that the identity of a particular financial institution is not disclosed.
- Reporting any suspected criminal activity, with supporting documents and information, to appropriate law enforcement and prosecutorial agencies.
- Furnishing information upon request to the Chief Financial Officer or the Division of Treasury of the Department of Financial Services regarding the financial condition of any financial institution that is, or has applied to be, designated as a qualified public depository pursuant to ch. 280, F.S.

[36] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Op. Att’y Gen. Fla. 85-62 (1985).

- Furnishing information to Federal Home Loan Banks regarding its member institutions pursuant to an information sharing agreement between the Federal Home Loan Banks and the OFR.
- Providing records or information pursuant to an order of a court or an administrative law judge or pursuant to a legislative subpoena, according to specified procedures and restrictions.

As previously stated, the exemption created in the bill only provides protection for records and information that are not otherwise public record. Upon approval of an application, the OFR issues a bank charter that is a public record and contains the names of the banks officers and members of the board of directors. The names of bank shareholders would continue to receive confidential and exempt treatment pursuant to s. 655.057(2) and (8), F.S.[37]

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date. It also provides a statement of public necessity as required by the Florida Constitution.

B. SECTION DIRECTORY:

Section 1. Amends s. 655.057, F.S., relating to records; limited restrictions upon public access.

Section 2. Provides a statement of public necessity.

Section 3. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The proposed public record exemption may encourage and attract the formation of new banks as Florida-chartered institutions, in which case the bill would have a positive impact on investment, employment, economic growth, and consumer access to financial services. However, the impact to the private sector is indeterminate.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public record exemption. Agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed by existing resources, as they are part of the day-to-day responsibilities of agencies.

[37] *See supra* note 34.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement
Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption
Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public record exemption for certain information received by the OFR pursuant to an application for authority to organize a new state bank. The purpose of the exemption is to protect sensitive personal, financial, and business information that the OFR receives in conjunction with its duties related to the review of applications for the organization or establishment of new state banks. As such, the bill appears to be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2021, the Insurance & Banking Subcommittee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute makes the following changes to the bill:

- Aligns the House bill with the Senate bill.
- More clearly identifies the categories of records and information covered by the exemption, which makes the exemption more feasible for the record custodian.
- More completely covers the sensitive personal, financial, and business information contained in an application to establish a new state-chartered bank.
- Conforms the statement of public necessity to the changes made to the exemption.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to public records; amending s. 655.057, F.S.; providing an exemption from public records requirements for certain information received by the Office of Financial Regulation pursuant to an application for authority to organize a new state bank; defining the term "personal identifying information"; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Present subsections (5) through (14) of section 655.057, Florida Statutes, are redesignated as subsections (6) through (15), respectively, a new subsection (5) is added to that section, and present subsection (14) of that section is amended, to read:

655.057 Records; limited restrictions upon public access.—

(5)(a) Except as otherwise provided in this section and except for those portions that are otherwise public record, the following information received by the office pursuant to an application for authority to organize a new state bank under chapter 658 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

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

1. Personal financial information.

2. A driver license number, a passport number, a military identification number, or any other similar number issued on a government document used to verify identity.

3. Books and records of a current or proposed financial institution.

4. The personal identifying information of a shareholder, subscriber, proposed officer, or proposed director of the proposed state bank when such information has been marked by the applicant as confidential when submitted to the office. As used in this subparagraph, the term "personal identifying information" means names, home addresses, e-mail addresses, telephone numbers, names of relatives, work experience, professional licensing and educational backgrounds, and photographs.

5. The proposed state bank's business plan and any attached supporting documentation when such information has been marked by the applicant as confidential when submitted to the office.

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

(15)~~(14)~~ Subsections (1), (2), (6), and (10) ~~(5), and (9)~~ are subject to the Open Government Sunset Review Act in

accordance with s. 119.15 and are repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that certain information received by the Office of Financial Regulation pursuant to an application for authority to organize a new state bank under chapter 658, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution to the extent that disclosure would reveal personal financial information; reveal a driver license number, a passport number, a military identification number, or any other similar number issued on a government document used to verify identity; reveal books and records of a current or proposed financial institution; reveal the personal identifying information of a shareholder, subscriber, proposed officer, or proposed director; or reveal a proposed state bank's business plan and any attached supporting documentation. The office may receive sensitive personal, financial, and business information in conjunction with its duties related to the review of applications for the organization or establishment of new state banks. An exemption from public records requirements is necessary to ensure the office's ability to administer its regulatory duties while preventing unwarranted damage to the proposed state bank or the shareholders, subscribers, proposed officers, or proposed

directors of the proposed state bank or other financial institutions in this state. The release of information that could lead to the identification of an individual involved in the potential establishment of a new state bank may subject such individual to retribution and jeopardize his or her current employment with, or participation in the affairs of, another financial institution. Thus, the public availability of such information has a chilling effect on the establishment of new state banks. Further, the public availability of the books and financial records of a current or proposed financial institution in this state presents an unnecessary risk of harm to the business operations of such institution. Finally, the public availability of a proposed state bank's business plan may cause competitive harm to such bank's future business operations and presents an unfair competitive advantage for existing financial institutions that are not required to release such information.

Section 3. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 859 Expiration of Permits and Agreements During Natural Emergencies
SPONSOR(S): Grant
TIED BILLS: **IDEN./SIM. BILLS:** SB 912

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Pandemics & Public Emergencies Committee	16 Y, 0 N	Nations	Dearden
2) Commerce Committee		Brackett	Hamon
3) State Affairs Committee			

SUMMARY ANALYSIS

The State Emergency Management Act endows the Governor with authority to declare a state of emergency. It also provides that once the Governor issues a state of emergency for a natural emergency the time-periods for a party to exercise rights under certain permits and other authorized agreements are suspended and extended (tolled) for the duration of the state of emergency, plus an additional six months. These provisions currently apply to:

- Development orders issued by local governments;
- Building permits;
- Permits relating to projects affecting surface water resources that are issued by the Department of Environmental Protection (DEP) or a water management district pursuant to part IV of chapter 373, F.S.; and
- Buildout dates for developments of regional impact, including any extension of a buildout date that was previously granted.

HB 859 provides that the time-periods for certain additional permits and authorizations may also be suspended and extended during a state of emergency for a natural emergency, including:

- Consumptive use water permits issued by DEP or a water management district under Part II of ch. 373, F.S.; and
- Development agreements and development permits entered into or issued by a local government or other governmental entity.
    - These include development agreements and development permits issued or entered into pursuant to the Florida Local Government Development Agreement Act.

The bill applies retroactively to emergency declarations issued by the Governor for natural emergencies on or after March 1, 2020.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides that it is effective upon becoming a law and applies retroactively.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Emergency Management Act

The State Emergency Management Act (Act) [1] establishes the framework for how Florida prepares, responds, and recovers from emergencies and disasters. It confers upon the Governor, the Division of Emergency Management (Division), and the governing body of each county and municipality certain emergency powers in the event of emergencies and disasters resulting from natural, technological, or manmade causes to ensure preparations of the state will be adequate to deal with, reduce vulnerability to, and recover from such emergencies and disasters; to provide for the common defense and to protect the public peace, health, and safety; and to preserve the lives and property of the people of the state.[2]

The Governor, the Division, and counties and municipalities have specific emergency powers and authority granted to them in the event of an emergency. The individual powers are broad, but also include specific parameters in which they may be executed.

The Act vests the authority to declare a state of emergency in the Governor.[3] The Act authorizes the Governor to assume or delegate direct operational control over all or any part of emergency management functions in the event of an emergency. This authority includes issuing executive orders, proclamations, and rules that have the force and effect of law. The Act specifically authorizes the Governor to use all resources of state government and counties and municipalities of the state as reasonably necessary to cope with the emergency.[4]

Declaring a State of Emergency

Upon the existence of an actual or impending "emergency", Florida law allows the Governor to declare a state of emergency through executive order. A state of emergency declaration activates state and local emergency management plans. The Division coordinates with local governments to provide assistance in the distribution of necessary supplies, equipment, and other resources to effectively respond to the emergency. The state of emergency continues until the Governor finds that the threat or danger no longer exists. A state of emergency lasts for 60 days and may be renewed by executive order at the end of that 60-day period. A state of emergency may also be terminated by a concurrent resolution of the Florida Legislature.[5]

Permits

Upon the declaration of an emergency by the Governor for a natural emergency, the period remaining to exercise the rights under a permit or other authorization is suspended and extended for the duration of the emergency declaration. Further, the emergency declaration extends the period remaining to exercise the rights under a permit or other authorization for 6 months in addition to the suspended and extended period. This applies to the following:

- The expiration of a development order issued by a local government;
- The expiration of a building permit;
- The expiration of a permit relating to projects affecting surface water resources that are issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373 of F.S.; and

[1] Part I of ch. 252, F.S.
[2] S. 252.32, F.S.
[3] S. 252.36(2), F.S.
[4] S. 252.36(5)(b), F.S.
[5] S. 252.36(2), F.S.

- The buildout date of a development of regional impact,[6] including any extension of a buildout date that was previously granted as specified in s. 380.06(7)(c).[7]

A "natural emergency" is an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake. The Florida Supreme Court has ruled that a pandemic is a "natural emergency."[8]

The holder of a permit or other authorization must notify the issuing authority of the intent to exercise the suspension and extension provisions within 90 days after the termination of the emergency declaration. The notice must be in writing and identify the specific permit or other authorization qualifying for extension. It is not automatic.[9]

State of Emergencies for Natural Emergencies Issued Since March 2020

On March 9, 2020, Governor DeSantis issued Executive Order 20-52, which declared a state of emergency in all of Florida in response to the COVID-19 pandemic and its impacts on the state of Florida.[10] Executive Order 20-52 has been renewed continuously since March of 2020. The most recent extension was EO 21-45 on February 26, 2021, and expires on April 26, 2021, unless renewed.[11]

On September 14, 2020, Governor DeSantis issued Executive Order 20-224, which declared a state of emergency in response to Hurricane Sally.[12] The state of emergency applies to 14 counties.[13] Executive Order 20-224 has been renewed continuously since September of 2020. The most recent extension was EO 21-64 on March 10, 2021, and expires on May 9, 2021, unless renewed.[14]

On November 7, 2020, Governor DeSantis issued Executive Order 20-277, which declared a state of emergency in response to Tropical Storm Eta. The state of emergency applied to 22 counties. Executive Order 20-277 was renewed on November 18, 2020, and has not been renewed since.[15]

On July 31, 2020, Governor DeSantis issued Executive Order 20-181, which declared a state of emergency in response to Hurricane Isaias. The state of emergency applied to 19 counties. Governor DeSantis terminated Executive Order 20-181 on August 11, 2020.[16]

Florida Water Resources Act of 1972

Chapter 373 of F.S., known as the Florida Water Resources Act (FWRA), creates a framework for a regulatory system that governs water rights, uses, planning, and quality control for the state's water resources. The FWRA provides that the Florida Department of Environmental Protection (DEP) and the 5 cooperating water

---

[6] A development of regional impact is any development that, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county. S. 380.06(1), F.S.
[7] S. 252.363(1)(a), F.S.
[8] S. 252.34(8), F.S.; *See Abramson v. DeSantis*, Case No.: SC20-646, 202 WL 3464376 (Fla. June 25, 2020).
[9] *See* AGO 2012-13, *available at:* http://www.myfloridalegal.com/ago.nsf/Opinions/0DF58A091F0DDBEC852579EB00743D48 (last visited Mar. 4, 2021).
[10] Executive Order 20-52 (Mar. 9, 2020), *available at:* https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf (last visited Mar. 4, 2021).
[11] The state of emergency declared in Executive Order 20-52, as extended by Executive Orders 20-114, 20-166, 20-192, 20-213, 20-276, and 20-316 will be extended for 60 days following the issuance of this order for the entire State of Florida. *See* Executive Order 21-45 (Feb. 26, 2021), *available at:* https://www.flgov.com/wp-content/uploads/orders/2021/EO_21-45.pdf (last visited Mar. 1, 2021).
[12] Executive Orders 20-224 (Sep. 14, 2020) and 20-225 (Sep.15, 2021), *available at:* https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-225.pdf (last visited Mar. 24, 2021).
[13] Executive Order 20-248 (Oct. 1, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-248.pdf (last visited Mar. 24, 2021).
[14] Executive Order 21-64 (Mar. 10, 2021), *available at* https://www.flgov.com/wp-content/uploads/orders/2021/EO_21-64.pdf (last visited Mar. 24, 2021).
[15] Executive Orders 20-277 (Nov. 7, 2020), 20-278 (Nov. 11 2020), and 20-295 (Nov. 18, 2020) *available at:* https://www.flgov.com/2020-executive-orders/ (last visited Mar. 25, 2021).
[16] Executive Orders 20-181 (Jul. 31, 2020) and 20-195 (Aug. 11, 2021) *available at:* https://www.flgov.com/2020-executive-orders/ (last visited Mar. 24, 2021);

management districts[17] partner to ensure the continued water supply, water quality, flood protection and floodplain management, and protecting natural systems.

Consumptive Water Use Permits

Part II of Chapter 373, F.S. creates a framework for permitting consumptive use of water projects. Consumptive water uses are regulated by DEP as well as the water management district with proper jurisdiction.

A consumptive use permit (CUP), also known as a water use permit (WUP), allows the holder to withdraw a specified amount of water from the ground, canals, lakes, or rivers, for reasonable-beneficial uses that will not interfere with any presently existing legal use of water, and is consistent with the public interest. The water removed may be used for numerous purposes including but not limited to, drinking water, agriculture, and golf course irrigation. Water used for domestic purposes, home irrigation, and firefighting are not included under a CUP/WUP. CUP/WUPs require water conservation to prevent wasteful uses, require reclaimed water instead of higher-quality groundwater where appropriate, and set limits on the amount of water that can be withdrawn.[18]

There are projects that require a CUP/WUP that cannot be issued until a permit has been issued under Part IV of ch. 373, F.S. and a recommendation of approval by staff of the issuing agency has been received.[19]

CUP/WUPs are granted for a period of 20 years if:[20]

- requested by the applicant; and
- there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit.

If either of these requirements are not met, a CUP/WUP with a shorter duration may be issued to reflect the period for which reasonable assurances can be provided. The DEP and water management districts may determine the duration of permits based upon a reasonable system of classification according to the water source, type of use, or both.[21]

DEP or a water management district may authorize a CUP/WUP for a duration of up to 50 years in the case of a municipality, other governmental body, public works, or public service corporation where such a period is required to provide for the retirement of bonds for the construction of waterworks and waste disposal facilities.[22]

CUP/WUPs approved by the state after July 1, 2013, for the development of alternative water supplies[23] must have a term of at least 30 years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit.[24]

DEP or a water management district may also authorize a CUP/WUP for a duration of up to 50 years to municipalities, counties, special districts, regional water supply authorities, multijurisdictional water supply entities, and publicly or privately owned utilities when a landowner has made extraordinary land contributions

[17] Florida's five districts are the Northwest Florida Water Management District, the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District, and the South Florida Water Management District. *See* Florida Department of Environmental Protection, *Water Management Districts*, *available at:* https://floridadep.gov/water-policy/water-policy/content/water-management-districts (last visited Mar. 4, 2021).
[18] *See* South Florida Water Management District, *Consumptive Water Use Permits*, https://www.sfwmd.gov/doing-business-with-us/permits/water-use-permits (last visited Mar. 4, 2021).
[19] Florida Department of Environmental Protection*, 2021 Florida Water Plan*, *available at:* https://fdep.maps.arcgis.com/apps/Cascade/index.html?appid=473b768b4af049bf91b2879b83ea961c. (last visited Mar. 4, 2021).
[20] S. 373.236(1), F.S.
[21] *Id.*
[22] S. 373.236(3), F.S.
[23] S. 373.019(1), F.S.
[24] If, within 7 years after the CUP/WUP is granted, the permittee issues bonds to finance the project, completes construction of the project, and requests an extension of the permit duration, the permit must be extended to expire upon the retirement of such bonds or 30 years after the date construction of the project is complete, whichever occurs later. However, a permit's duration may not be extended more than 7 years after the permit's original expiration date. S. 373.236(5), F.S.

or funding for an alternative water supply development project, as long as there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit.[25]

Management and Storage of Surface Waters

Part IV of Ch. 373, F.S. governs construction and other projects that affect surface water resources. Part IV authorizes DEP and the water management district with proper jurisdiction to regulate these projects to further the state's interest in protecting and maintaining its surface water resources.[26]

The projects regulated by Part IV of Ch. 373, F.S. are any construction, alteration, operation, maintenance, abandonment, and removal of any water management system. Water management systems are dams, impoundments, reservoirs, etc.[27] Regulated projects also include any projects that have direct or indirect effects on surface water resources, such as dredging, filling, canal construction, ditch construction, impoundments, fill roads, etc. All of these projects are governed by Part IV of Ch. 373, F.S. and fall within the jurisdiction of DEP and the water management district with proper jurisdiction.

Growth Policy and Land Development Regulation

The Community Planning Act established under Part II of Ch. 163, F.S. governs growth policy and development in Florida. The Community Planning Act establishes a framework for how local governments plan for future developments and adopt and amend comprehensive plans for future growth.[28] One of the responsibilities of a local government's planning procedures is the review and approval of rights related to the development of real property.

Under the Community Planning Act, a "development permit" is any official action of a local government that has the effect of permitting the development of land including, but not limited to, building permits, zoning permits, subdivision approval, rezoning, certifications, special exceptions, and variances.[29]

A "development order" is issued by a local government and grants, denies, or grants with conditions an application for a development permit.[30]

Section 252.363, F.S. provides that upon the declaration of an emergency by the Governor for a natural emergency, the period remaining to exercise the rights under a development order is suspended and extended for the duration of the emergency declaration, and extend for an additional 6 months after the Governor ends the state of emergency.

However, section 252.363, F.S., does not provide that a development permit is suspended and extended when there is an emergency declaration for a natural emergency. As a result, it is unclear if a development permit is suspended and extended when there is an emergency declaration for a natural emergency.

Local Government Development Agreements

The Florida Local Government Development Agreement Act[31] establishes the framework for development agreements between local governments and developers. A development agreement is a contract between a local government and a property owner/developer, which provides the developer with vested rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits."[32]

---

[25] S. 373.236(6), F.S.
[26] *See* Florida Department of Environmental Protection, *Division of Water Resource Management*, *available at:* https://floridadep.gov/water (last visited Mar. 4, 2021).
[27] *See* Environmental Resource Permit Applicant's Handbook, *available at:* https://www.flrules.org/gateway/readRefFile.asp?filename=010_4a--AHI_thruAppendix_D_ADA_3-5-14.doc&refId=3174 (last visited Mar. 4, 2021).
[28] S. 163.3167(1), F.S.
[29] S. 163.3164(16), F.S.
[30] 163.3164(15), F.S.
[31] *See* S. 163.3220-163.3243, F.S.
[32] *Morgran Co., Inc. v. Orange County*, 818 So. 2d 640 (Fla. 5th DCA 2002); 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).

A local government may establish, by ordinance, procedures and requirements for considering and entering into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.[33] A development agreement may provide that the entire agreement, or any phase thereof, must be commenced or completed within a specific time and must include:[34]

- Legal description of the land subject to the agreement, and the names of its legal and equitable owners;
- The duration of the agreement;
- The development uses permitted on the land, including population densities, and building intensities and height;
- A description of public facilities that will service the development, including who shall provide such facilities; the date any new facilities, if needed, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of the development;
- A description of any reservation or dedication of land for public purposes;
- A description of all local development permits approved or needed to be approved for the development of the land;
- A finding that the development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations;
- A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens; and
- A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction.[35]

Within 14 days after a local government enters into a development agreement, the local government must record the agreement with the clerk of the circuit court in the county where the local government is located, and such an agreement is not effective until it is properly recorded.[36] A development agreement binds any person who obtains ownership of a property already subject to an agreement.[37]

A development agreement may be amended or canceled by mutual consent of the local government and the developer or by their successors in interest. A development agreement may not last longer than 30 years, unless it is extended by mutual consent of the local government and the developer.[38]

Prior to amending, canceling, or extending a development agreement, the local government must hold at least two public hearings, one of which may be held by a local planning agency. Notice of the public meetings must be advertised 7 days before each meeting in a newspaper in circulation in the county where the government is located, and be must be mailed to the affected property owners. The day, time, and place of the second meeting must be announced at the first meeting.[39]

Effect of Proposed Changes

The bill amends s. 252.363, F.S. to provide that the time-periods for the following additional permits and authorizations are subject to suspension and extension during a declared state of emergency for a natural emergency:

- CUP/WUPs issued by DEP or a water management district with proper jurisdiction under Part II of ch. 373, F.S.; and
- Development agreements and development permits entered into or issued by a local government or other governmental entity, including development agreements and development permits issued or entered into pursuant to the Florida Local Government Development Agreement Act.

[33] S. 163.3223, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[34] S. 163.3227(1) and (2), F.S.; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[35] 7 Fla. Jur. 2d Building, Zoning, and Land Controls s. 168 (2020) (from s. 163.3223, F.S.)
[36] S. 163.3239, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[37] Commonly referred to as a successor in interest: one who follows another in ownership or control of property and retains the same rights as the original owner. Black's Law Dictionary 1473 (8th ed. 2004); s. 163.3239, F.S.
[38] Ss. 163.3225, 163.3237, and 163.3229, F.S.
[39] *Id.*

The bill is effective upon becoming a law, and applies retroactively to any declaration of a state of emergency issued by the Governor for a natural emergency on or after March 1, 2020. The time-periods for such permits and agreements may be suspended and extended for any state of emergency declared for a natural emergency on or after March 1, 2020, including the state of emergency Governor DeSantis declared on March 9, 2020, in response to the COVID-19 pandemic.

B. SECTION DIRECTORY:

Section 1: Amends s. 252.363 to provide for additional permits to be eligible under the suspension and extension provisions during a declared state of emergency.

Section 2: Provides that the bill applies retroactively.

Section 3: Provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The holders of permits and agreements added to the emergency suspension and extension statute may see a benefit from having more flexibility to exercise the rights under such permits and agreements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to expiration of permits and agreements during natural emergencies; amending s. 252.363, F.S.; tolling and extending the expiration of consumptive use water permits and certain development permits and agreements during a natural emergency declared by the Governor; providing retroactive applicability; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 252.363, Florida Statutes, is amended to read:

252.363 Tolling and extension of permits and other authorizations.—

(1)(a) The declaration of a state of emergency issued by the Governor for a natural emergency tolls the period remaining to exercise the rights under a permit or other authorization for the duration of the emergency declaration. Further, the emergency declaration extends the period remaining to exercise the rights under a permit or other authorization for 6 months in addition to the tolled period. This paragraph applies to the following:

1. The expiration of a development order issued by a local government.

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

2. The expiration of a building permit.

3. The expiration of a permit issued by the Department of Environmental Protection or a water management district pursuant to parts II and ~~part~~ IV of chapter 373.

4. The buildout date of a development of regional impact, including any extension of a buildout date that was previously granted as specified in s. 380.06(7)(c).

5. The expiration of a development permit or development agreement authorized by Florida Statutes, including those authorized under the Florida Local Government Development Agreement Act, or issued by a local government or other governmental agency.

Section 2. This act applies retroactively to any declaration of a state of emergency issued by the Governor for a natural emergency on or after March 1, 2020.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 895 Consumer Finance Loans
SPONSOR(S): Insurance & Banking Subcommittee, Stevenson
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1478

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N, As CS	Hinshelwood	Luczynski
2) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

The Florida Consumer Finance Act in ch. 516, F.S., permits licensed lenders to make secured or unsecured loans up to $25,000 with a tiered interest rate structure such that the maximum annual interest rate allowed on each tier decreases as principle amounts increase:

- 30 percent on the first $3,000.
- 24 percent on principal above $3,000 and up to $4,000.
- 18 percent on principal above $4,000 and up to $25,000.

Consumer finance lenders must maintain liquid assets of at least $25,000. The bill authorizes consumer finance lenders to provide a surety bond, certificate of deposit, or letter of credit of a specified amount in lieu of maintaining liquid assets.

Consumer finance lenders are permitted to charge a borrower certain fees, including up to $25 for investigating the credit and character of the borrower. The exclusion of “prepayment penalties” from the list of permissible fees implies that consumer finance lenders are prohibited from charging prepayment penalties. The bill provides an express prohibition on prepayment penalties for consumer finance loans.

Consumer finance loans are repayable in installments every two weeks, semimonthly, or monthly, but there is no minimum or maximum loan term. The bill requires a minimum loan term of at least 6 months for every loan, including a refinancing, made on or after October 1, 2021.

The bill has no impact on state or local governments and an indeterminate but likely positive impact on the private sector.

The bill provides an effective date of October 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Consumer Finance Loans

The Office of Financial Regulation's (OFR's) Division of Consumer Finance is responsible for the licensing and regulation of non-depository financial service entities and individuals, and conducts examinations and complaint investigations for licensed entities to determine compliance with Florida law.

One of the loan products regulated by the OFR's Division of Consumer Finance is the Florida Consumer Finance Act, ch. 516, F.S. ("the Act"). Loans permitted under the Act are commonly referred to as "consumer finance loans", which are "loan[s] of money, credit, goods, or choses in action,[1] including, except as otherwise specifically indicated, provision of a line of credit, in an amount or to a value of $25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum."[2] Although consumer finance loans may be secured or unsecured, the Act prohibits lenders from taking a security interest in certain types of collateral.[3]

Consumer finance loans made pursuant to the Act must be repaid in periodic installments as nearly equal as mathematically practicable, except that the final payment may be less than the amount of the prior installments.[4] Installments may be due every two weeks, semimonthly, or monthly.[5] There is no minimum or maximum loan term under the Act. Consumer finance loans have a tiered interest rate structure such that the maximum annual interest rate allowed on each tier decreases as principle amounts increase:

- 30 percent on the first $3,000.
- 24 percent on principal above $3,000 and up to $4,000.
- 18 percent on principal above $4,000 and up to $25,000.[6]

The original principal amount is the amount financed, as defined by the federal Truth in Lending Act (TILA)[7] and TILA's federal implementing regulations.[8] For the purpose of determining compliance with these statutory maximum interest rates, the interest rate computations used must be simple interest.[9] In the event that two or more interest rates are applied to the principal amount of a loan,[10] a lender may charge interest at a single annual percentage rate (APR) which would produce at maturity the total amount of interest as permitted by the tiered interest rate structure above.[11] The APR charged by a lender may not exceed the APR that must be computed and disclosed according to TILA and its

---

[1] "Chose in action" is defined as "1. A property right in personam, such as a debt owed by another person . . . 2. The right to bring an action to recover a debt, money, or thing. 3. Personal property that one person owns but another person possesses, the owner being able to regain possession through a lawsuit." BLACK'S LAW DICTIONARY 101 (3d ed. 1996).
[2] S. 516.01(2), F.S.
[3] *See* s. 516.031(1), F.S. (prohibition on taking a security interest in land for a loan less than $1,000); s. 516.17, F.S. (prohibition on assignment of, or order for payment of, wages given to secure a loan).
[4] S. 516.36, F.S. This section does not apply to lines of credit.
[5] *Id.*
[6] S. 516.031(1), F.S.
[7] Codified at 15 U.S.C. § 1601 *et seq.*
[8] Currently, the statute references TILA's implementing regulations as "Regulation Z of the Board of Governors of the Federal Reserve System." s. 516.031(1), F.S. However, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, H.R. 4173, 124 Stat. 1376-2223, 111th Cong. (July 21, 2010), commonly referred to as the "Dodd-Frank Act", transferred rulemaking authority for TILA to the Bureau of Consumer Financial Protection, effective July 21, 2011. *See also* Truth in Lending (Regulation Z), 76 Fed. Reg. 79768 (Dec. 22, 2011).
[9] *Id.*
[10] For example, on a principle amount of $3,500, an interest rate of 30 percent per annum may be applied to $3,000 of the principle amount, and an interest rate of 24 percent per annum may be applied to the remaining $500 of the principal amount.
[11] S. 516.031(1), F.S.

implementing regulations.[12] A licensee may not induce or permit a borrower to divide a loan and may not induce or permit a person to become obligated to the licensee under more than one loan contract for the purpose of obtaining a greater finance charge than would otherwise be permitted under the parameters described above.[13]

If consideration for a new loan contract includes the unpaid principal balance of a prior loan with the licensee, then the principal amount of the new loan contract may not include more than 60 days' unpaid interest accrued on the prior loan.[14]

The Act prohibits lenders from directly or indirectly charging borrowers additional fees as a condition to the grant of a loan, except for the following allowable fees:

- Up to $25 for investigating the credit and character of the borrower;
- A $25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans, title insurance, and appraisals of real property offered as security;
- Intangible personal property tax on the loan note or obligation if secured by a lien on real property;
- Documentary excise tax and lawful fees for filing, recording, or releasing an instrument securing the loan;
- The premium for any insurance in lieu of perfecting a security interest otherwise required by the licensee in connection with the loan;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security;
- A delinquency charge of up to $15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A bad check charge of up to $20.[15]

The exclusion of "prepayment penalties" from the list of permissible fees implies that consumer finance lenders are prohibited from charging prepayment penalties.[16]

Optional credit property, credit life, and disability insurance may be provided at the borrower's expense via a deduction from the principal amount of the loan.[17]

Licenses granted under the Act are for a single place of business[18] and must be renewed every two years.[19] As of February 16, 2021, there are 170 licensed consumer finance loan companies operating in Florida operating across a total of 382 locations.[20]

The yearly data for licensure under ch. 516, F.S., is contained in the charts below.[21]

Chapter 516, F.S., Licenses by Year										
	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10
Applications Received	318	44	136	82	48	72	192	30	52	32
Applications Approved	228	136	125	76	43	64	95	29	18	19

[12] S. 516.031(2), F.S.
[13] S. 516.031(4), F.S.
[14] S. 516.031(5), F.S.
[15] S. 516.031(3), F.S.
[16] *Id*.; Office of Financial Regulation, Agency Analysis of 2021 House Bill 895, p. 2 (Feb. 17, 2021).
[17] S. 516.35(2), F.S.
[18] Ss. 516.01(1) and 516.05(3), F.S.
[19] Ss. 516.03(1) and 516.05(1) & (2), F.S.
[20] Office of Financial Regulation, *supra* note 16.
[21] Office of Financial Regulation, *Active Licenses*, https://www.flofr.com/sitePages/documents/finregstats.pdf (last visited Mar. 16, 2019).

Active Licenses	589	607	568	609	532	584	626	600	390	386
Renewals & Reactivations	496	1	542	0	523	1	569	0	388	0

Chapter 516, F.S., Licenses by Year (Cont'd)										
	10-11	**11-12**	**12-13**	**13-14**	**14-15**	**15-16**	**16-17**	**17-18**	**18-19**	**19-20**
Applications Received	175	41	82	116	66	102	55	96	109	100
Applications Approved	137	37	53	113	37	81	36	83	104	98
Active Licenses	347	303	293	349	331	349	338	373	348	390
Renewals & Reactivations	226	0	258	0	312	0	326	0	342	0

An application to become a consumer finance lender must be accompanied by a nonrefundable application fee of $625 and a nonrefundable investigation fee of $200.[22] Licenses must be renewed biennially, at which time the licensee must pay a nonrefundable biennial license fee of $625.[23] At the time of application, the applicant must provide evidence of liquid assets of at least $25,000, and a licensee must at all times maintain such liquid assets.[24] Each location of a consumer finance lender must be separately licensed.[25]

The Act does not apply to persons doing business under state or federal laws governing banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies.[26]

Deferred Presentment Transactions (Payday Loans)

Although the bill relates only to consumer finance loans under ch. 516, F.S., questions often arise as to how consumer finance loans compare to other consumer loans authorized in statute, particularly payday loans. Deferred presentment transactions, commonly referred to as "payday loans", are a small-dollar loan product under the OFR's regulatory authority. These transactions are governed by ch. 560, F.S., part IV.

A deferred presentment transaction means providing currency or a payment instrument in exchange for a drawer's (borrower's) check and agreeing to hold the check for a number of days until depositing, presenting, or redeeming the payment instrument.[27] The only persons who may engage in deferred presentment transactions are financial institutions as defined in s. 655.005, F.S.,[28] and money services business licensed under ch. 560, F.S., part II[29] or part III.[30]

[22] S. 516.03(1), F.S.
[23] *Id.*; s. 516.05(1), F.S.
[24] Ss. 516.03(1) and 516.07(1)(b), F.S.
[25] S. 516.05(3), F.S.
[26] S. 516.02(4), F.S.
[27] S. 560.402(2) & (3), F.S.
[28] Section 655.005, F.S., defines a "financial institution" to mean a state or federal savings or thrift association, bank, savings back, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 *et seq*. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 *et seq*.
[29] Licensure as a money transmitter. A money transmitter is defined by s. 560.103(23), F.S., as a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. Money transmitters may engage in check cashing under ch. 560, F.S., part III.
[30] Licensure as a check casher. A check casher is defined by s. 560.103(6), F.S., as a person who sells currency in exchange for payment instruments received, except travelers checks.

There are two types of payday loan products permitted in Florida:

- *Deferred presentment transaction not repayable in installments*: The face amount of a check taken for deferred presentment may not exceed $500, exclusive of fees.[31] Fees may not exceed 10 percent of payment provided to the drawer plus a verification fee of up to $5.[32] The term of a deferred presentment agreement may not be less than seven days or greater than 31 days.[33]
- *Deferred presentment installment transaction*: A deferred presentment installment transaction is repayable in installments, has a term of 60 to 90 days, and may have an outstanding transaction balance (exclusive of fees) of up to $1,000.[34] The permissible fees are a verification fee of up to $5 and up to 8 percent of the outstanding transaction balance on a biweekly basis.[35] The installment periods must be 13 days to one calendar month, except that the first installment period may be longer than the remaining installment periods by not more than 15 days.[36] Prepayment penalties are prohibited.[37]

A deferred presentment provider may not enter into a deferred presentment transaction with a drawer who has an outstanding deferred presentment transaction with any provider or within 24 hours of the termination of a previous transaction.[38] In order to enforce this restriction, the OFR maintains a database against which a deferred presentment provider must verify each transaction before entering into the deferred presentment agreement.[39] A deferred presentment provider may not engage in the rollover of a deferred presentment agreement and may not redeem, extend, or otherwise consolidate a deferred presentment agreement with the proceeds of another deferred presentment transaction made by it or an affiliate.[40]

For deferred presentment transactions not repayable in installments, if the drawer, by the end of the deferment period, informs the deferred presentment provider in person that the drawer cannot redeem or pay in full in cash the amount due, the drawer must be given a grace period that extends the term of the agreement for 60 additional days.[41] As a condition of receiving the grace period, the drawer must make an appointment with a consumer credit counseling agency within seven days after the end of the deferment period and complete counseling by the end of the grace period.[42]

If the drawer in a deferred presentment installment transaction informs the deferred presentment provider in writing or in person by noon of the business day before a scheduled payment that the drawer cannot pay in full the scheduled payment, the provider must give the drawer one opportunity to defer a scheduled payment for no additional fee or charge.[43] The deferred payment is due after the last scheduled installment payment, at an interval which is no shorter than the intervals between the originally scheduled payments.[44] Thus, for a deferred presentment installment transaction in which payments are due once every two weeks, the deferred payment would be due at least two weeks after the final installment payment is due.

A deferred presentment provider may not include in the agreement a hold harmless clause, a confession of judgment clause, an assignment of or order for payment of wages or other compensation for services, or a provision in which the drawer waives any claim or defense arising out of the agreement or any provision of ch. 560, F.S., part IV.[45] A deferred presentment provider must comply

[31] S. 560.404(5), F.S.
[32] S. 560.404(6), F.S.
[33] S. 560.404(8), F.S.
[34] S. 560.404(5) & (8), F.S.
[35] S. 560.404(6), F.S.
[36] S. 560.404(26), F.S.
[37] S. 560.404(6)(c), F.S.
[38] S. 560.404(19), F.S.
[39] S. 560.404(19)(a) & (23), F.S.
[40] S. 560.404(18), F.S.
[41] S. 560.404(22), F.S.
[42] *Id.*
[43] S. 560.404, F.S.
[44] *Id.*
[45] S. 560.404(10), F.S.

with state and federal disclosure requirements.[46]

Effect of the Bill

The bill amends various provisions related to consumer finance loans under ch. 516, F.S.

Surety Bond, Certificate of Deposit, or Letter of Credit in Lieu of Liquid Assets

The bill authorizes consumer finance lenders to provide the OFR a surety bond, certificate of deposit, or irrevocable letter of credit in lieu of maintaining liquid assets. The surety bond must be issued by a bonding company or insurance company authorized to do business in this state. The certificate of deposit must be deposited in a financial institution.[47] The letter of credit must be issued by a financial institution.[48]

The surety bond, certificate of deposit, or letter of credit must be in the amount of at least $25,000. However, a company with multiple licensed locations is authorized to provide a rider or surety bond, certificate of deposit, or letter of credit in the amount of at least $5,000 for each additional license after the first. The aggregate amount of the surety bond, certificate of deposit, or letter of credit required for a company with multiple licenses is capped at $100,000.

The surety bond, certificate of deposit, or letter of credit must name the OFR as beneficiary and must be for the use and benefit of any borrower who is injured by acts of a licensee involving fraud, misrepresentation, or deceit, including willful imposition of illegal or excessive charges; or misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a borrower, where such acts are in connection with making a consumer finance loan. The OFR, or any claimant, may bring an action in a court of competent jurisdiction on the surety bond, certificate of deposit, or letter of credit. The surety bond, certificate of deposit, or letter of credit must be payable on a pro rata basis, but the aggregate amount may not exceed the amount of the surety bond, certificate of deposit, or letter of credit.

The surety bond, certificate of deposit, or letter of credit may not be cancelled by the licensee, bonding or insurance company, or financial institution except upon notice to the OFR by certified mail. A cancellation may not take effect until 30 calendar days after receipt by the OFR of the written notice.

If the bonding or insurance company or financial institution pays a claim, it must give written notice by certified mail to the OFR within 10 calendar days after it pays the claim. The notice must contain details sufficient to identify the claimant and the claim or judgment paid. If the principal sum of the surety bond, certificate of deposit, or letter of credit is reduced by one or more recoveries or payments, the consumer finance lender must furnish to the OFR a new or additional surety bond, certificate of deposit, or letter of credit so that the total or aggregate principal sum equals the required amount. Alternatively, a licensee may furnish an endorsement executed by the bonding or insurance company or financial institution reinstating the required principal amount.

The required surety bond, certificate of deposit, or letter of credit must remain in place for two years after the consumer finance lender ceases licensed operations in this state. During the two-year period, the OFR may allow for a reduction or elimination of the surety bond, certificate of deposit, or letter of credit to the extent the consumer finance lender's outstanding consumer finance loans in this state are reduced.

Failure to maintain the surety bond, certificate of deposit, or letter of credit in the required amount is grounds for denial of license application and grounds for disciplinary action against a consumer finance lender.

[46] S. 560.404(13) & (20), F.S.
[47] As defined in s. 655.005(1)(i), F.S.
[48] As defined in s. 655.005(1)(i), F.S.

The bill makes conforming changes under the Financial Technology Sandbox in s. 559.952, F.S.

Express Prohibition on Prepayment Penalties

The bill provides an express prohibition on prepayment penalties for consumer finance loans.

Minimum Loan Term

The bill requires a minimum loan term of at least 6 months for every consumer finance loan, including a refinancing, made on or after October 1, 2021.

Effective Date

The bill provides an effective date of October 1, 2021.

Comparison Chart

Below is a chart comparing existing law regarding payday loans and consumer finance loans with the changes proposed by the bill.

	Payday Loans (Ch. 560, Part IV, F.S.)		**Consumer Finance Loans (Ch. 516, F.S.)**	
	Payday Loans (Non-Installment)	**Payday Loans (Installment)**	**Current Law**	**HB 895 Proposed Changes**
Loan Amount	$500 (max)	$1,000 (max)	$25,000 (max)	(No change)
Length of Term	7 - 31 days	60 - 90 days	No min. or max.	Add min. loan term of at least 6 months for every loan, including a refinancing, made on or after Oct. 1, 2021
Payments	• Lump sum at end of loan term	• Installments with 13 days to 1 month in between each, except that the first installment period may be longer than the remaining installment periods by a maximum of 15 days	• Installments due monthly, semi-monthly, or every 2 weeks	(No change)
Interest Rate	• APR equivalent (assuming $500 loan amount and $5 verification fee): 129.52% for a 31 day loan, 573.57% for a 7 day loan	• 8% biweekly on the outstanding transaction balance • APR equivalent: approx. 208% (will be slightly higher as a result of the $5 verification fee)	• 30% per year on the first $3,000 of principal • 24% per year on principal above $3,000 and up to $4,000 • 18% per year on principal above $4,000 and up to $25,000	(No change)

	Payday Loans (Ch. 560, Part IV, F.S.)		Consumer Finance Loans (Ch. 516, F.S.)	
	Payday Loans (Non-Installment)	**Payday Loans (Installment)**	**Current Law**	**HB 895 Proposed Changes**
Other Upfront Fees Permitted	• 10% of loan amount • $5 verification fee • No additional fees permitted	• $5 verification fee • No additional fees permitted	• Fees specified in s. 516.031(3), F.S., including up to $25 for investigating the credit and character of the borrower • No additional fees permitted	• Add express prohibition on prepayment penalties

B. SECTION DIRECTORY:

Section 1. Amends s. 516.03, F.S., relating to application for license; fees; etc.

Section 2. Amends s. 516.031, F.S., relating to finance charge; maximum rates.

Section 3. Amends s. 516.05, F.S., relating to license.

Section 4. Amends s. 516.07, F.S., relating to grounds for denial of license or for disciplinary action.

Section 5. Amends s. 516.36, F.S., relating to installment requirement.

Section 6. Amends s. 559.952, F.S., relating to Financial Technology Sandbox.

Section 7. Provides an effective date of October 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's required minimum loan term and express prohibition on prepayment penalties may have a positive impact on consumers by providing a meaningful opportunity to repay the loan rather than the consumer refinancing every so often in order to extend the time for repayment. The bill's provisions relating to authorizing a consumer finance lender to provide a surety bond, certificate of deposit, or letter of credit in lieu of liquid assets may have a positive impact on consumer finance lenders and consumers. Shifting from maintaining liquid assets will free up capital for lending activity. In the event

that consumer harm coincides with a consumer finance lender's bankruptcy, the surety bond, certificate of deposit, or letter of credit may provide consumers greater means of compensation as compared to the liquid assets. The bill's overall impact on the private sector, while likely positive, is indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill expressly grants the Financial Services Commission[49] authority to prescribe by rule forms and procedures to implement the provisions relating to a consumer finance lender providing a surety bond, certificate of deposit, or letter of credit in lieu of liquid assets.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2021, the Insurance & Banking Subcommittee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute makes the following changes to the bill:

- Authorizes a consumer finance lender to provide a surety bond, certificate of deposit, or letter of credit of a specified amount in lieu of the current statutory requirement to maintain $25,000 of liquid assets.
- Amends the minimum loan term, as created by the bill, to 6 months.
- Provides that the minimum loan term is applicable to a loan, including a refinancing, made on or after the effective date of the bill, rather than such minimum loan term applying to currently outstanding loans, as well.
- Makes conforming changes.
- Changes the effective date of the bill.

The staff analysis has been updated to reflect the committee substitute.

[49] The Financial Services Commission (commission) is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S. The commission members are the OFR's agency head for the purpose of rulemaking. S. 20.121(3)(c), F.S.

A bill to be entitled

An act relating to consumer finance loans; amending s. 516.03, F.S.; authorizing an applicant for a license to make and collect loans under the Florida Consumer Finance Act to provide a bond, certificate of deposit, or letter of credit in lieu of liquid assets; amending s. 516.031, F.S.; prohibiting a person licensed to make and collect consumer finance loans from charging prepayment penalties for loans; amending s. 516.05, F.S.; authorizing an applicant for a license to make and collect consumer finance loans or a licensee to provide a surety bond, certificate of deposit, or letter of credit in lieu of liquid assets; providing requirements for such bonds, certificates of deposit, and letters of credit; providing rulemaking authority; amending s. 516.07, F.S.; amending grounds for denial of license or disciplinary action; amending s. 516.36, F.S.; providing requirements for loan terms; amending s. 559.952, F.S.; revising exceptions for a licensee during the Financial Technology Sandbox period; providing an effective date.

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

Section 1. Subsection (1) of section 516.03, Florida

Statutes, is amended to read:

516.03 Application for license; fees; etc.—

(1) APPLICATION.—Application for a license to make loans under this chapter shall be in the form prescribed by rule of the commission. The commission may require each applicant to provide any information reasonably necessary to determine the applicant's eligibility for licensure. The applicant shall also provide information that the office requires concerning any officer, director, control person, member, partner, or joint venturer of the applicant or any person having the same or substantially similar status or performing substantially similar functions or concerning any individual who is the ultimate equitable owner of a 10-percent or greater interest in the applicant. The office may require information concerning any such applicant or person, including, but not limited to, his or her full name and any other names by which he or she may have been known, age, social security number, residential history, qualifications, educational and business history, and disciplinary and criminal history. The applicant must provide evidence of liquid assets of at least $25,000 or documents satisfying the requirements in s. 516.05(10). At the time of making such application the applicant shall pay to the office a nonrefundable biennial license fee of $625. Applications, except for applications to renew or reactivate a license, must also be accompanied by a nonrefundable investigation fee of $200. An

application is considered received for purposes of s. 120.60 upon receipt of a completed application form as prescribed by commission rule, a nonrefundable application fee of $625, and any other fee prescribed by law. The commission may adopt rules requiring electronic submission of any form, document, or fee required by this act if such rules reasonably accommodate technological or financial hardship. The commission may prescribe by rule requirements and procedures for obtaining an exemption due to a technological or financial hardship.

Section 2. Subsection (6) is added to section 516.031, Florida Statutes, to read:

516.031 Finance charge; maximum rates.—

(6) PREPAYMENT PENALTIES PROHIBITED.—A licensee may not require a borrower to pay a prepayment penalty for paying all or part of the loan principal before the date on which the payment is due.

Section 3. Subsection (10) is added to section 516.05, Florida Statutes, to read:

516.05 License.—

(10)(a) In lieu of the $25,000 liquid asset requirement in s. 516.03(1):

1. An applicant or a licensee may provide to the office a surety bond in the amount of at least $25,000 issued by a bonding company or insurance company authorized to do business in this state.

2. A company with at least one currently licensed location must provide to the office a rider or surety bond, in the amount of at least $5,000 for each additional license, issued by a bonding company or insurance company authorized to do business in this state. However, in no event may the aggregate amount of the surety bond required for a company with multiple licenses exceed $100,000.

(b) In lieu of a surety bond, the applicant or the licensee may provide evidence of a certificate of deposit or an irrevocable letter of credit in the same amount of the surety bond required under paragraph (a). The certificate of deposit must be deposited in a financial institution, as defined in s. 655.005(1)(i). The letter of credit must be issued by a financial institution, as defined in s. 655.005(1)(i).

(c) The original surety bond, certificate of deposit, or letter of credit must be filed with the office, and the office must be named as beneficiary. The surety bond, certificate of deposit, or letter of credit must be for the use and benefit of any borrower who is injured by acts of a licensee involving fraud, misrepresentation, or deceit, including willful imposition of illegal or excessive charges; or misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a borrower, where such acts are in connection with a loan made under this chapter. The office, or any claimant, may bring an action in a court of

competent jurisdiction on the surety bond, certificate of deposit, or letter of credit. The surety bond, certificate of deposit, or letter of credit must be payable on a pro rata basis, but the aggregate amount may not exceed the amount of the surety bond, certificate of deposit, or letter of credit.

(d) The surety bond, certificate of deposit, or letter of credit may not be cancelled by the licensee, bonding or insurance company, or financial institution except upon notice to the office by certified mail. A cancellation may not take effect until 30 calendar days after receipt by the office of the written notice.

(e) The bonding or insurance company or financial institution must, within 10 calendar days after it pays a claim, give written notice to the office by certified mail of such payment with details sufficient to identify the claimant and the claim or judgment paid.

(f) If the principal sum of the surety bond, certificate of deposit, or letter of credit is reduced by one or more recoveries or payments, the licensee must furnish to the office a new or additional surety bond, certificate of deposit, or letter of credit so that the total or aggregate principal sum equals the amount required under this subsection. Alternatively, a licensee may furnish an endorsement executed by the bonding or insurance company or financial institution reinstating the required principal amount.

(g) The required surety bond, certificate of deposit, or letter of credit must remain in place for 2 years after the licensee ceases licensed operations in this state. During the 2 year period, the office may allow for a reduction or elimination of the surety bond, certificate of deposit, or letter of credit to the extent the licensee's outstanding consumer finance loans in this state are reduced.

(h) The commission may prescribe by rule forms and procedures to implement this subsection.

Section 4. Paragraph (b) of subsection (1) of section 516.07, Florida Statutes, is amended to read:

516.07 Grounds for denial of license or for disciplinary action.—

(1) The following acts are violations of this chapter and constitute grounds for denial of an application for a license to make consumer finance loans and grounds for any of the disciplinary actions specified in subsection (2):

(b) Failure to maintain liquid assets of at least $25,000 or a surety bond, certificate of deposit, or letter of credit in the amount required by s. 516.05(10) at all times for the operation of business at a licensed location or proposed location.

Section 5. Section 516.36, Florida Statutes, is amended to read:

516.36 Installment requirement.—

(1) Every loan made pursuant to this chapter must be repaid in periodic installments as nearly equal as mathematically practicable, except that the final payment may be less than the amount of the prior installments. Installments may be due every 2 weeks, semimonthly, or monthly. This section does not apply to lines of credit.

(2) Every loan, including a refinancing, made pursuant to this chapter on or after October 1, 2021, must have a minimum loan term of at least 6 months.

Section 6. Paragraph (a) of subsection (4) of section 559.952, Florida Statutes, is amended to read:

559.952 Financial Technology Sandbox.—

(4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE REQUIREMENTS.—

(a) Notwithstanding any other law, upon approval of a Financial Technology Sandbox application, the following provisions and corresponding rule requirements are not applicable to the licensee during the sandbox period:

1. Section 516.03(1), except for the application fee, the investigation fee, the requirement to provide the social security numbers of control persons, evidence of liquid assets of at least $25,000 or documents satisfying the requirements in s. 516.05(10), and the office's authority to investigate the applicant's background. The office may prorate the license renewal fee for an extension granted under subsection (7).

2. Section 516.05(1) and (2), except that the office shall investigate the applicant's background.

3. Section 560.109, only to the extent that the section requires the office to examine a licensee at least once every 5 years.

4. Section 560.118(2).

5. Section 560.125(1), only to the extent that the subsection would prohibit a licensee from engaging in the business of a money transmitter or payment instrument seller during the sandbox period.

6. Section 560.125(2), only to the extent that the subsection would prohibit a licensee from appointing an authorized vendor during the sandbox period. Any authorized vendor of such a licensee during the sandbox period remains liable to the holder or remitter.

7. Section 560.128.

8. Section 560.141, except for s. 560.141(1)(a)1., 3., 7.-10. and (b), (c), and (d).

9. Section 560.142(1) and (2), except that the office may prorate, but may not entirely eliminate, the license renewal fees in s. 560.143 for an extension granted under subsection (7).

10. Section 560.143(2), only to the extent necessary for proration of the renewal fee under subparagraph 9.

11. Section 560.204(1), only to the extent that the

subsection would prohibit a licensee from engaging in, or advertising that it engages in, the selling or issuing of payment instruments or in the activity of a money transmitter during the sandbox period.

12. Section 560.205(2).

13. Section 560.208(2).

14. Section 560.209, only to the extent that the office may modify, but may not entirely eliminate, the net worth, corporate surety bond, and collateral deposit amounts required under that section. The modified amounts must be in such lower amounts that the office determines to be commensurate with the factors under paragraph (5)(c) and the maximum number of consumers authorized to receive the financial product or service under this section.

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

COMMERCE COMMITTEE

CS/HB 895 by Rep. Stevenson
Consumer Finance Loans

AMENDMENT SUMMARY
March 29, 2021

Amendment 1 by Rep. Stevenson (line 62): The amendment updates two statutory references relating to the federal Truth in Lending Act's (TILA's) implementing regulations, which are commonly referred to as Regulation Z. Rulemaking authority for Regulation Z was previously under the Board of Governors of the Federal Reserve System. However, the Dodd-Frank Act transferred rulemaking authority for Regulation Z to the Consumer Financial Protection Bureau, effective July 21, 2011. As such, the amendment replaces two statutory references to "Board of Governors of the Federal Reserve System" with "Bureau of Consumer Financial Protection".

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee
Representative Stevenson offered the following:

Amendment (with directory and title amendments)

Between lines 62 and 63, insert:

(1) INTEREST RATES.—A licensee may lend any sum of money up to $25,000. A licensee may not take a security interest secured by land on any loan less than $1,000. The licensee may charge, contract for, and receive thereon interest charges as provided and authorized by this section. The maximum interest rate shall be 30 percent per annum, computed on the first $3,000 of the principal amount; 24 percent per annum on that part of the principal amount exceeding $3,000 and up to $4,000; and 18 percent per annum on that part of the principal amount exceeding $4,000 and up to $25,000. The original principal amount as used in this section is the same as the amount financed as defined by

the federal Truth in Lending Act and Regulation Z of the Consumer Financial Protection Bureau ~~Board of Governors of the Federal Reserve System~~. In determining compliance with the statutory maximum interest and finance charges set forth herein, the computations used shall be simple interest and not add-on interest or any other computations. If two or more interest rates are applied to the principal amount of a loan, the licensee may charge, contract for, and receive interest at that single annual percentage rate which, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.

(2) ANNUAL PERCENTAGE RATE UNDER FEDERAL TRUTH IN LENDING ACT.—The annual percentage rate of finance charge which may be contracted for and received under any loan contract made by a licensee under this chapter may equal, but not exceed, the annual percentage rate which must be computed and disclosed as required by the federal Truth in Lending Act and Regulation Z of the Consumer Financial Protection Bureau ~~Board of Governors of the Federal Reserve System~~. The maximum annual percentage rate of finance charge which may be contracted for and received is 12 times the maximum monthly rate, and the maximum monthly rate shall be computed on the basis of one-twelfth of the annual rate

for each full month. The commission shall by rule establish the rate for each day in a fraction of a month when the period for which the charge is computed is more or less than 1 month.

D I R E C T O R Y A M E N D M E N T

Remove lines 60-61 and insert:

Section 2. Subsections (1) and (2) of section 516.031, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

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

Remove line 7 and insert:

s. 516.031, F.S.; revising references to implementing regulations of the federal Truth in Lending Act; prohibiting a person licensed to

HB 6053

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6053 Doorstep Waste Containers
SPONSOR(S): Yarborough
TIED BILLS: **IDEN./SIM. BILLS:** SB 904

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	15 Y, 2 N	Brackett	Anstead
2) Commerce Committee		Brackett	Hamon

SUMMARY ANALYSIS

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal, and requires the State Fire Marshal to adopt the Florida Fire Prevention Code (Fire Code) by rule every three years. The Fire Code sets forth fire safety standards (including certain national codes) for property, and is enforced by local fire officials within each local government in the state. The Fire Code provides that a person may not place combustible waste and refuse in a building's means of egress, which includes a building's exit access corridors.

Currently, there are various providers offering doorstep waste collection services to apartment complexes throughout the state. Residents in these complexes place waste outside their front door, and the provider picks it up. An apartment complex resident's front door usually opens to a hallway, corridor, or walkway, which may be or lead to the building's exit access.

During the 2018 Legislative Session, the Legislature temporarily allowed residents in apartment buildings to place combustible waste and refuse in an exit access corridor if certain conditions were met. These statutory changes were not adopted by the State Fire Marshal in the Fire Code. Current law allows waste containers to be placed in an apartment building's exit access corridors if:

- Waste, which is in a container, is not in an exit access corridor for a single period greater than 5 hours;
- Containers do not exceed 13 gallons for apartment buildings with enclosed corridors and interior or exterior stairs, or exceed 27 gallons for apartment buildings with open air corridors and exterior stairs or balconies with exterior exit stairs;
- Containers are not in an exit access corridor for a single period greater than 12 hours for apartment buildings with enclosed corridors and interior or exterior stairs;
- Containers do not reduce the exit access corridor's width below the width required by the Fire Code;
- Containers can stand upright on their own and do not leak fluids when standing upright; and
- The apartment's management staff have written policies and procedures to ensure compliance with the above conditions.

Apartment complexes were given a phase-in period to comply with these requirements, which ended on December 31, 2020.

The provisions allowing the placement of waste and refuse containers in an exit access corridor expire on July 1, 2021.

The bill repeals the July 1, 2021 expiration date for the statutory provisions, thus allowing residents in apartment complexes to continue placing waste outside their front door for pick up by waste collection services, which may conflict with the Fire Code.

The bill is not expected to have a significant fiscal impact on state or local government.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.[1] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.

Adoption and Interpretation of the Florida Fire Prevention Code

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C.

The State Fire Marshal adopts a new edition of the Fire Code every three years.[2] When adopting the Fire Code the Fire Marshal is required to adopt the most current version of the national fire and life safety standards set forth by the National Fire Protection Association (NFPA) including the:

- NFPA's Fire Code (1);
- Life Safety Code (101); and
- Guide on Alternative Approaches to Life Safety (101A).[3]

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state.[4]

The most recent Fire Code is the 7th edition, which is referred to as the 2020 Florida Fire Prevention Code. The 7th edition of the Fire Code took effect on December 31, 2020.[5]

The State Marshal has authority to interpret the Code, and is the only authority that may issue a declaratory statement relating to the Fire Code.[6]

Fire Safety Enforcement by Local Governments

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.[7] These local enforcing authorities may adopt more stringent fire

---

[1] S. 633.104, F.S.
[2] S. 633.202, F.S.
[3] S. 633.202(2), F.S. Founded in 1896, the National Fire Protection Association delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. NFPA, *About NFPA*, http://www.nfpa.org/about-nfpa (last visited on Feb. 28, 2021).
[4] *Id.*
[5] Division of State Fire Marshal, *Florida Fire Prevention Code (FFPC)*, https://www.myfloridacfo.com/division/sfm/bfp/floridafirepreventioncodepage.htm (last visited Feb. 28, 2021).
[6] S. 633.104(6), F.S.
[7] Ss. 633.108 and 633.208, F.S.

safety standards, subject to certain requirements in s. 633.208, F.S., but may not enact fire safety ordinances that conflict with ch. 633, F.S., or any other state law.[8]

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and rules within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal.[9] Each county, municipality, and special district with fire safety enforcement responsibilities is also required to employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.[10]

Section 633.208(5), F.S. states "With regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the Fire Code and that physical limitations may require disproportionate effort or expense with little increase in fire or life safety."

Pursuant to s. 633.208(5), F.S., local fire officials must apply the Fire Code for existing buildings to the extent practical to ensure a reasonable degree of life safety and safety of property. The local fire officials are also required to fashion reasonable alternatives that afford an equivalent degree of life safety and safety of property.

Florida Building Code

The Florida Building Code (Building Code) is the statewide building code for all construction in the state. The Florida Building Commission (Commission), housed within the Department of Business and Professional Regulation (DBPR), implements the Building Code. The Commission reviews the International Code Council's I-Codes and the National Electric Code every three years to determine if it needs to update the Building Code.[11]

Means of Egress

A means of egress is a path available for a person to leave a building. A means of egress is made up of three parts, which includes the following:[12]

- Exit access;
- Exit; and
- Exit discharge.

The exit access is a path, such as a hallway or corridor, from any location in the building to an exit. The exit is usually a door leading outside, or in a multi-story building, an enclosed stairway. The exit discharge is a path from the exit to a space that is dedicated to public use such as a street or alley.[13]

The Fire Code provides that a building's means of egress must be a certain width determined by the number of occupants in the building and the use of the building.[14] The Fire Code further provides that a building's means of egress must be free of all obstructions or impediments in case of fire or other emergency.[15]

[8] Ss. 633.208 and 633.214(4), F.S.
[9] S. 633.118, F.S.
[10] S. 633.216(1), F.S.
[11] S. 553.73(7)(a), F.S.
[12] Section 3.3.182 of the 7th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[13] Section 202 of the 7th edition of the Florida Building Code (Building); Richmond ICC, *2018 Annual Conference Education Sessions, Session: 2018 IBC Essentials – Means of Egress & Fire Protection*, https://www.iccsafe.org/wp-content/uploads/2018-IBC-Essentials-%E2%80%93-Means-of-Egress-Fire-Protection.pdf (last visited Feb. 28, 2021).
[14] *See* Section 7.3.4 of the 7th edition of the Florida Fire Prevention Code (NFPA 101, Life Safety Code).
[15] Section 7.1.10.1 of the 7th edition of the Florida Fire Prevention Code (NFPA 101, Life Safety Code).

The Building Code also provides that a building's means of egress must be a certain width determined by the number of occupants in the building.[16] The Building Code provides that the *required width* of a building's means of egress must be free of all obstructions and impediments.[17]

However, the Building Code provides that maintenance of a building's means of egress must be in accordance with the Fire Code.[18] DBPR has interpreted this to mean that the Fire Code takes precedence when it comes to people placing objects, such as a trashcan, in a building's means of egress.[19]

Combustible Waste and Refuse

The Fire Code defines "combustible waste" as any combustible or loose waste material that is generated by an establishment or process and, if salvageable, is retained for scrap or reprocessing on the premises where generated or transported to a plant for processing.[20]

The Fire Code defines "combustible refuse" as a combustible or loose rubbish, litter, or waste materials generated by an occupancy that are refused, rejected, or considered worthless and are disposed of by incineration on the premises where generated or periodically transported from the premises.[21]

Combustible waste and refuse may be stored in an apartment building if the combustible waste and refuse is:[22]

- Stored in a container less than 1.5 cubic yards (302 gallons) or in an enclosed area with a 1 hour fire resistance rating and an automatic sprinkler system;
- Removed from the building once a day unless the waste and refuse is stored in a noncombustible room; and
- Not stored in the building's exit(s).

Private Doorstep Collection Providers

Currently, there are various providers offering doorstep refuse and recycling collection services to apartment complexes throughout the state. The basic business model requires the residents of an apartment building to place their waste outside of their doorstep, in a specified container approved by the provider. The doorstep refuse and recycling collection providers then come by and collect the waste at a specified time.[23]

An apartment complex resident's front door opens to a hallway, corridor, or walkway, which is usually the building's exit access and therefore part of the building's means of egress. According to DFS, apartments that contract with the doorstep refuse and recycling collection providers are violating the Fire Code by allowing residents to place combustible waste and refuse in their buildings' means of egress.[24]

In 2016, the State Fire Marshal issued declaratory statements determining that apartments may not allow residents to place waste containers outside their front doors regardless of the size of the container or if the waste is removed daily. The State Fire Marshal determined that the Fire Code prohibits apartment residents from placing any type of waste container outside their door because the residents are placing an obstruction in a building's means of egress and combustible waste in a building's exit.[25]

---

[16] Section 1005 of the 7th edition of the Florida Building Code (Building).
[17] Section 1018.1, 1020.3, and 1024.2 of the 7th edition of the Florida Building Code (Building).
[18] Section 1001.3 of the 6th edition of the Florida Building Code (Building).
[19] Email from Vicky Summerhill, Office of Legislative Affairs, Department of Business and Professional Regulation, FW: Florida Building Code questions (Mar. 4, 2021).
[20] Section 3.3.63 of the 7th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[21] Section 3.3.62 of the 7th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[22] Section 10.18.4 and 19.2.1 of the 7th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[23] Department of Financial Services, Agency Analysis of 2018 House Bill 529, p. 1 (Nov. 29, 2017).
[24] *Id.*
[25] *See In the matter of: William Harrison, Fire Marshal Clermont Fire Department*, Case No.: 188696-16-DS (Fla. DFS) (June 21, 2016); *In the matter of: Steve Strong, Fire Marshal Clearwater Fire & Rescue*, Case No.: 196979-16-DS (Fla. DFS) (Dec. 23, 2016).

During the 2018 Legislative Session, the Legislature temporarily allowed refuse and recycling containers to be placed in exit access corridors in apartment buildings if the following conditions are met:[26]

- Waste, which is in a doorstep refuse and recycling collection container, is not placed in an exit access corridor for a single period greater than 5 hours;
- Doorstep refuse and recycling containers do not exceed 13 gallons for apartment buildings with enclosed corridors and interior or exterior stairs;
- Doorstep refuse and recycling collection containers do not exceed 27 gallons for apartment buildings with open air corridors and exterior stairs or balconies with exterior exit stairs;
- Doorstep refuse and recycling collection containers are not in an exit access corridor for a single period greater than 12 hours for apartment buildings with enclosed corridors and interior or exterior stairs;
- Doorstep refuse and recycling collection containers do not reduce the exit access corridor's width below the width required by the Fire Code;
- Doorstep refuse and recycling collection containers are able to stand upright on their own and may not leak fluids when standing upright; and
- The apartment's management staff have written policies and procedures to ensure compliance with the above conditions. Management staff must enforce the policies and must provide a copy of the policies to the authority having jurisdiction upon request.

Apartment complexes were given a phase in period to comply with these requirements. Apartments had to comply with the requirements by December 31, 2020. Local fire marshals were given authority to approve alternative containers or storage arrangements that are equivalent to these requirements.[27] However, these requirements sunset on July 1, 2021. The purpose of the sunset date was to give the various providers time to work with the State Fire Marshal to develop an amendment to the Fire Code, which is the State Fire Marshal's preferred method for amending the Fire Code.[28]

According to DFS, the State Fire Marshal adopted an amendment to the Fire Code, which took effect when the 7th edition of the Fire Code became effective on December 31, 2020, intended to allow the various doorstep refuse and recycling collection providers to keep operating.[29] The amendment provides that waste and refuse may be placed in exits, exit passageways, enclosures for stairs or ramps, corridors, elevator lobbies, or egress balconies if:[30]

- Waste, which is in a doorstep refuse and recycling collection container, is not placed in an exit access corridor for a single period greater than 5 hours;
- Doorstep refuse and recycling containers do not exceed 15 gallons;
- Doorstep refuse and recycling collection containers are not in an exit access corridor for a single period greater than 15 hours;
- Doorstep refuse and recycling collection containers do not reduce the exit access corridor's width below the width required by the Fire Code;
- Management staff have written policies and procedures to ensure compliance with the above conditions. Management staff must enforce the policies and must provide a copy of the policies to the authority having jurisdiction upon request; and
- Waste or refuse must be placed completely inside one or more containers with a closed lid.

After July 1, 2021, the following provisions in the amendment to the Fire Code take effect:[31]

[26] S. 633.202(20), F.S.; *See* House Analysis of 2018 House Bill 529 (Apr. 9, 2018).
[27] *Id.*
[28] *See* The Florida Channel, 1/9/18 House Careers and Competition Subcommittee, https://thefloridachannel.org/videos/1-9-18-house-careers-competition-subcommittee/ (last visited Feb. 28, 2021).
[29] Department of Financial Services, Agency Analysis of 2021 House Bill 6053, p. 1 (Mar. 2, 2021).
[30] Sections 10.18.4.1 and 10.18.4.1.1 of the 7th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[31] *Id.*

- Containers and lids located in an area that is not protected by fire sprinklers must be **made entirely of noncombustible materials** that comply with the Fire Code.[32]
- Containers and lids located in an area that is protected by fire sprinklers does not have to made entirely of noncombustible materials that comply with the Fire Code.

Proponents of repealing the sunset date argue that the amendment to the Fire Code requires apartment complex residents and doorstep refuse and recycling collection providers to use refuse and recycling containers that are not readily available. Opponents of repealing the sunset date argue that repealing the sunset date will allow refuse and recycling containers, which do not comply with the Fire Code, to be placed in apartment access corridors.[33]

Effect of the Bill

The bill repeals the sunset date of July 1, 2021. Thus leaving the provisions in s. 633.202(20), F.S., that allow refuse and recycling containers to be lawfully placed in exit access corridors just as they have been since the adoption of the provisions in 2018.

The bill also repeals the phase in period, which provisions had to be complied with by December 31, 2020.

B. SECTION DIRECTORY:

Section 1. Amends s. 633.202, F.S., repealing a sunset date and a phase in period.

Section 2. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. It is unknown what the cost would be for apartment complex residents and the various doorstep refuse and recycling providers to purchase refuse and recycling containers that meet the requirements of the Fire Code.

[32] Noncombustible materials must meet a peak rate of heat release not exceeding 150 kW/m² when tested in accordance with ASTME 1354 at an incident heat flux of 50kW/m² in the horizontal orientation. Containers and lids must be listed or have a label from an approved agency that the container or lid meets the Fire Code's requirement. *Id.*

[33] *See* The Florida Channel, 3/3/21 Senate Committee on Community Affairs, https://thefloridachannel.org/videos/3-3-21-senate-committee-on-community-affairs/ (last visited Mar. 4, 2021).

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DFS, removing the sunset date and the phase in period would create a conflict between Florida Statutes and amendments to the Fire Code.

> "The proposed bill language would allow trash containers with no fire-rated requirements and located in the hallways used for egress, to obstruct the means of egress which would cause obstacles to life safety in case of emergency. All of subsection (20) needs to be repealed in accordance with the sunset provisions set forth in the law because it is in conflict with and would cause confusion with the 7th edition of the Florida Fire Prevention Code, which became effective December 31, 2020."[34]

However, the statutory requirements for placing refuse and recycling containers in exit access corridors in apartment buildings has been in effect for 3 years, and the State Fire Marshal has not cited any incidents that would indicate problems with the statutory requirements.

The statutory requirements for placing refuse and recycling containers in exit access corridors in apartment buildings would also most likely supersede any requirements in the Fire Code, and thus would not conflict or cause confusion with the Fire Code. The Florida Supreme Court has ruled that a specific statute covering a particular subject area always controls over a statute covering the same and other subjects in more general terms, and when two statutes are in conflict, the later promulgated statute should prevail as the last expression of legislative intent.[35]

The Legislature adopted the statutory requirements placing refuse and recycling containers in exit access corridors in apartment buildings after adopting the statute granting the State Fire Marshal authority to the adopt the Fire Code.[36] The statute providing the requirements for placing refuse and recycling containers in exit access corridors specifically provides such requirements, whereas the statute granting the State Fire Marshal authority to adopt the Fire Code is more general and covers other subjects related to fire safety.

[34] Department of Financial Services *supra* note 29.
[35] *McKendry v. State of Florida*, 641 So. 2d 45 (Fla. 1994).
[36] Ch. 2018-152, Laws of Fla.; Ch. 2000-141, Laws of Fla.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to doorstep waste containers; amending s. 633.202, F.S.; deleting an obsolete provision; removing the scheduled repeal of certain provisions regulating the use of containers in exit access corridors; providing an effective date.

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

Section 1. Paragraphs (d) and (e) of subsection (20) of section 633.202, Florida Statutes, are amended to read:

633.202 Florida Fire Prevention Code.—

(20)

~~(d) The authority having jurisdiction shall allow apartment occupancies a phase-in period until December 31, 2020, to comply with this subsection.~~

~~(e) This subsection is repealed on July 1, 2021.~~

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

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

PCS for CS/HB 15

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 15 Taxation
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 50

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Willson	Hamon

SUMMARY ANALYSIS

The PCS for CS/HB 15 requires marketplace providers and out-of-state retailers with no physical presence in Florida to collect Florida's sales tax on sales of taxable items delivered to purchasers in Florida if the marketplace provider or out-of-state retailer makes a substantial number of sales into Florida. A substantial number of remote sales means conducting any number of taxable retail sales in an amount exceeding $100,000 during the previous calendar year. The PCS makes conforming changes to ensure consistent administration of the new provisions.

The PCS also requires marketplace providers to collect and remit three fees related to the sales tax (the waste tire fee, lead-acid battery fee, and E911 prepaid wireless fee), beginning April 1, 2022, and provides a safe harbor for businesses who failed to collect the sales tax prior to July 1, 2021, as long as they register with the Department of Revenue prior to October 1, 2021.

The PCS removes the requirement that dealers use a bracket system to calculate the applicable sales tax on transactions, and replaces it with a rounding system.

To avoid a significant, unexpected increase in reemployment assistance tax rates on Florida employers, the PCS temporarily directs the Department of Revenue to calculate applicable rates without respect to pandemic effects until such time as the Unemployment Compensation Trust Fund has been replenished to a pre-pandemic level. The PCS also directs $973.6 million (FY 2021-22), increasing to $1.08 billion (FY 2022-23 forward), to be distributed from sales tax collections to the Unemployment Compensation Trust Fund each year, until such time as the trust fund reaches its pre-pandemic balance ($4,071,519,600).

The Revenue Estimating Conference (REC) estimated that the sales tax collection provisions of the PCS will have a positive revenue impact in FY 2021-22 totaling $1,203.4 million ($1,337.0 million recurring) of which $973.6 million ($1,079.7 million recurring) is on General Revenue, $0.3 million ($3.6 million recurring) is on state trust fund revenues, and $229.5 million ($253.7 million recurring) is on local government revenues.

The PCS provides that the act may be cited as the "Park Randall 'Randy' Miller Act."

Except as otherwise provided, the PCS takes effect July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Sales and Use Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions,[1] transient rentals,[2] rental of commercial real estate,[3] and a limited number of services. Chapter 212, F.S., authorizes the levy and collection of Florida's sales and use tax, and provides exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the sales price of the taxable good or service and is collected from the purchaser at the time of sale.[4]

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose nine local discretionary sales surtaxes. A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202."[5] The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold, or are delivered. Discretionary sales surtax rates currently levied vary by county in a range from 0.5 to 2.5 percent.[6]

When calculating the tax due, s. 212.12, F.S., provides a bracket system to determine the applicable tax based on the total sales price of a transaction.[7]

Electronic Filing and Payment Requirements

Florida law authorizes the Department of Revenue (Department) to require taxpayers who remitted $20,000 or more in tax payments during the previous state fiscal year to file returns and remit taxes electronically.[8] In some instances, a dealer[9] must file returns and remit taxes electronically irrespective of how much tax is remitted. For example, consolidated filers,[10] dealers who operate two or more places of business and maintain records in a central office, or a dealer claiming a tax credit on behalf of a tenant who donated to an eligible scholarship organization must file returns and remit tax electronically.[11]

---

[1] S. 212.04, F.S.
[2] S. 212.03, F.S.
[3] S. 212.031, F.S.
[4] S. 212.07(2), F.S., and s. 212.06(3)(a), F.S.
[5] S. 212.054, F.S.
[6] Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, 2020 Local Discretionary Sales Surtax Rates in Florida's Counties, 231-232 (20), *available at* http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf (last visited March 9, 2021).
[7] Section 212.12(9)-(11), F.S., provides brackets, or for the provision of brackets, for all transaction amounts ending in specified cents, under the 6% state tax, a 7% tax consisting of the 6% state and 1% discretionary sales surtax, and for combined rates for other than 6% or 7%. The Department of Revenue provides these brackets on their website at https://floridarevenue.com/taxes/taxesfees/Pages/tax_interest_rates.aspx#sales (last visited March 24, 2021).
[8] S. 213.755, F.S.
[9] Section 212.06(2)(a), F.S., defines "dealer" as every person, who manufactures or produces tangible personal property for sale at retail; for use, consumption, or distribution; or for storage to be used or consumed in Florida.
[10] S. 213.755(5), F.S.
[11] S. 212.099, F.S.

Registration Requirements

A person desiring to engage in or conduct business in this state as a dealer must file with the Department an application for a certificate of registration. The application must be submitted to the Department before the person engages in taxable activity. The Department, upon receipt of such application, shall grant to the applicant a certificate of registration and an annual resale certificate, which provides a dealer the necessary documentation to purchase goods for resale exempt from tax.[12]

Remote Sales Tax Collection

As discussed above, sales tax is added to the price of taxable goods and the selling dealer is required to collect the tax from the purchaser at the time of sale.[13] A dealer then remits the collected taxes to the Department.[14]

For items sold by an out-of-state dealer and delivered to the in-state purchaser via mail (mail-order sales), states have depended on their use taxes. Florida imposes a use tax that applies in these situations;[15] however, use tax compliance is notably low.

Having an out-of-state dealer collect the state's sales tax at the time of sale and remit those taxes to the state is simpler for consumers than compliance with a state's use tax laws. However, the U.S. Supreme Court interpreted the Commerce Clause of the U.S. Constitution to require that a dealer have a "substantial nexus" with the taxing state before the taxing state may require the out-of-state dealer to collect its sales taxes.[16] For decades, the U.S. Supreme Court has interpreted this substantial nexus requirement to mean the dealer must have a physical presence (people or property) within the taxing state in order for that state to be able to compel the dealer to collect its sales tax.[17] The Court reasoned that to allow a taxing state to require a dealer located outside the taxing state (without a physical presence) to collect sales tax on behalf of the taxing state was an undue burden on interstate commerce.[18]

Under the "physical presence" standard, Florida, in 1987, adopted its "mail order sales statute," which defines a mail order sale to be the sale of tangible personal property, ordered from a dealer who receives the order in another state and then causes the property to be transported to a person in this state.[19] Although the statute describes dealers who "receive [orders] in another state," application of the statute was still limited by the U.S. Supreme Court's physical presence standard. In fact, much of the statute is written in terms of being physically present within Florida.[20]

Taxation of Mail Order Sales

Section 212.0596, F.S., establishes when a dealer who makes a mail-order sale is subject to the powers of this state to levy and collect Florida's sales tax. A "mail-order sale" is a sale of tangible personal property, ordered by mail or other means of communication, from a dealer who receives the order in another state of the United States, or in a commonwealth, territory, or other area under the jurisdiction of the United States, and transports the property or causes the property to be transported to a person in Florida.[21]

---

[12] S. 212.18(3), F.S.
[13] Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities, available at* https://floridarevenue.com/taxes/taxesfees/Pages/sales_tax.aspx (last visited March 9, 2021).
[14] S. 212.15, F.S.
[15] *See* s. 212.06, F.S.
[16] *See Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274 (1977).
[17] *National Bellas Hess, Inc., v. Illinois*, 386 U.S. 753 (1967); *Quill Corporation v. North Dakota,* 504 U.S. 298 (1992).
[18] *Quill Corporation v. North Dakota,* at 314-315.
[19] *See* s. 212.0596(1), F.S.
[20] *See* s. 212.0596(2)(j), F.S. (requiring dealers to collect tax on mail order sales if the dealer owns real property or tangible personal property that is physically in this state…).
[21] S. 212.0596(1), F.S.

Pursuant to s. 212.0596(2), F.S., a dealer who makes a mail-order sale is subject to the power of this state to levy and collect the tax imposed by ch. 212, F.S., under any of the following circumstances:

- The dealer is a corporation doing business under the laws of this state or is a person domiciled in, a resident of, or a citizen of, this state.
- The dealer maintains retail establishments or offices in this state.
- The dealer has agents in this state who solicit business or transact business on behalf of the dealer.
- The property was delivered in this state in fulfillment of a sales contract that was entered into in this state when a person in this state accepted an offer by ordering the property.
- The dealer, by purposefully or systematically exploiting the market provided by this state by any media-assisted, media-facilitated, or media-solicited means, creates nexus with this state.
- Through compact or reciprocity with another jurisdiction of the United States, that jurisdiction uses its taxing power and its jurisdiction over the retailer in support of this state's taxing power.
- The dealer consents, expressly or by implication, to the imposition of the tax imposed by ch. 212, F.S.
- The dealer is subject to service of process under s. 48.181, F.S.
- The dealer's mail order sales are subject to the power of this state to tax sales or to require the dealer to collect use taxes under a statute or statutes of the United States.
- The dealer owns real property or tangible personal property that is physically in this state.
- The dealer is a corporation that is a member of an affiliated group of corporations and whose members are eligible to file a consolidated tax return for federal corporate income tax purposes and any parent or subsidiary corporation in the affiliated group has nexus with this state.
- The dealer or the dealer's activities have sufficient connection with or relationship to this state or its residents of some type, other than those described above, to create nexus empowering this state to tax its mail order sales or to require the dealer to collect sales tax or accrue use tax.[22]

A dealer who makes a mail order sale into this state is exempt from collecting and remitting any local option surtax on the sale, except under certain circumstances.[23] The Department may establish by rule procedures for collecting the use tax from unregistered persons who but for their remote purchases would not be required to remit sales or use tax directly to the Department.[24]

Currently, a purchaser who remits use tax on an item imported into Florida for use or consumption is not required to include in the remittance any local discretionary sales surtax.[25]

The Wayfair Decision

On June 21, 2018, the U.S. Supreme Court decided *South Dakota v. Wayfair*.[26] *Wayfair* involved a new South Dakota sales tax collection statute and Wayfair, Inc., a large online retailer with no physical presence in South Dakota that sells and ships tangible personal property to customers all over the United States.

The *Wayfair* decision overturned the "physical presence" substantial nexus test under the Commerce Clause of the U.S. Constitution. The removal of the physical presence test expanded states' ability to collect sales taxes; however, the foundational constitutional requirement that state laws may not place an undue burden upon interstate commerce remains.

The facts involved in *Wayfair* provide guidance for states in determining the structure of a state requirement for a remote seller without physical presence in the taxing state to collect and remit that state's sales and use tax:

- The South Dakota law requires only remote sellers with $100,000 of sales or 200 individual transactions into South Dakota to collect its sales tax. The law effectively has a "small seller

[22] S. 212.0596(2), F.S.
[23] S. 212.0596(6), F.S.
[24] S. 212.0596(7), F.S. DOR has adopted Rule 12A-1.091, F.A.C. to, in part, address this issue.
[25] See Rule 12A-1.091(14)(d), F.A.C.
[26] *South Dakota v. Wayfair, Inc.,* 138 S. Ct. 2080 (2018).

exception" allowing small retailers—theoretically, the ones most burdened by remote sales tax collection—to avoid collection responsibilities.
- The South Dakota law did not apply retroactively.
- South Dakota is a member of the Streamlined Sales and Use Tax Agreement, which provides a simplified registration process, as well as free software to assist with collection and reporting.

State Reactions to Wayfair

In response to the *Wayfair* decision, 43 states and the District of Columbia have enacted provisions requiring remote sellers to collect sales tax, and 42 states and the District of Columbia have enacted provisions requiring a marketplace provider/facilitator to collect sales tax.[27]

Fees Related to Sales of Certain Items

Enhanced 911 Fee

The Emergency Communications Number E911 Act established a comprehensive statewide emergency telecommunications number system to provide users of voice communications services within this state rapid direct access to public safety agencies by accessing the telephone number "911." To accomplish this purpose, the Legislature authorized the levy of a reasonable fee on users of voice communications services. With respect to wireless communications services, the fee is bifurcated by non-prepaid wireless service[28] and prepaid wireless service.[29]

The fee imposed on prepaid wireless services is currently 40 cents and is collected by a seller for remittance to the Department. Revenues derived from the fees levied on prepaid wireless services, less the costs of administration, are deposited by the Department into the Emergency Communications Number E911 System Fund[30] and then distributed, in part, to the various counties for specific purposes and costs attributable to providing E911 service.[31] In Local Fiscal Year 2019-20 counties received approximately $15 million of prepaid wireless services fees.[32]

Fees for Waste Tires and Lead-acid Batteries

Waste tires and lead-acid batteries are considered "special wastes" that require special handling and management[33] and must be disposed of accordingly.[34] Each new tire sold at retail is subject to a $1 waste tire fee[35] and each new or remanufactured lead-acid battery is subject to a $1.50 lead-acid battery fee.[36]

The proceeds from the waste tire fee are deposited into the Solid Waste Management Trust Fund and a portion is used to fund the waste tire abatement program.[37] The proceeds from the lead-acid battery fee are deposited into the Water Quality Assurance Trust Fund.[38]

Effect of Proposed Changes

---

[27] Economic Nexus State Guide by the Sales Tax Institute, available at https://www.salestaxinstitute.com/resources/economic-nexus-state-guide (last visited March 9, 2021).
[28] S. 365.172(8), F.S.
[29] S. 365.172(9), F.S.
[30] S. 365.173(1)(b), F.S.
[31] S. 365.173(2), F.S. and s. 365.172(10), F.S.
[32] EDR, *Enhance 911 Fee (Data Source: DMS), County Distributions: LFY 2014-2020* (Oct. 22, 2020), *available at* http://edr.state.fl.us/Content/local-government/data/data-a-to-z/a-f.cfm (last visited Feb. 15, 2021).
[33] S. 403.703(40), F.S.
[34] *See* s. 403.717, F.S., and s. 403.708(12), F.S., encouraging "all persons who sell lead-acid batteries at retail" to "accept used lead-acid batteries as trade-ins for new lead-acid batteries."
[35] S. 403.718, F.S.
[36] S. 403.7185, F.S.
[37] *See* s. 403.7095, F.S.
[38] S. 403.7185, F.S.

Taxation of Remote Sales and Marketplace Sales

The PCS requires out-of-state retailers and marketplace providers with no physical presence in Florida to collect Florida's sales tax on sales of taxable items delivered to purchasers in Florida if the out-of-state retailer or marketplace provider makes a substantial number of sales into Florida.

Remote Sellers

The PCS substantially amends s. 212.0596, F.S. It changes the catch line to refer to the taxation of remote sales, removes references or requirements related to a "mail order sale," and provides that a person who makes a substantial number of remote sales is a dealer for purposes of ch. 212, F.S.

The PCS defines:

- "Remote sale" to mean a retail sale of tangible personal property, ordered by mail, telephone, the Internet, or other means of communication, from a dealer who receives the order outside of this state and transports the property or causes the property to be transported from any jurisdiction, including this state, to a person in this state, including the person who ordered the property.
- "Making a substantial number of remote sales" to mean conducting any number of taxable remote sales of tangible personal property in the prior calendar year to be delivered in Florida, if the total sales exceed $100,000.

The PCS also inserts an express provision in s. 212.0596, F.S., requiring out-of-state retailers and marketplace providers to collect surtax when a taxable item is delivered into a county that imposes a surtax.

Marketplace Provisions

The PCS creates s. 212.05965, F.S., to provide that each marketplace provider that has a physical presence in Florida or that makes or facilitates a substantial number of remote sales in Florida, is a dealer, and is subject to the requirements in ch. 212, F.S., relating to registration and the collection and remittance of tax.

The PCS defines:

- "Marketplace" to mean any physical place or electronic medium through which tangible personal property is offered for sale.
- "Marketplace provider" to mean a person who facilitates a retail sale by a marketplace seller by listing or advertising for sale by the marketplace seller tangible personal property in a marketplace, and who directly, or indirectly through agreements or arrangements with third parties, collects payment from the customer and transmits all or a part of the payment to the marketplace seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for its services.
- Excluded from the definition of marketplace provider is (1) any person who solely provides travel agency services, (2) a delivery network company, unless the delivery network company is a registered dealer that notifies all local merchants that sell through the delivery company's website or mobile application that the delivery network company must remit taxes in the same way as a marketplace provider, or (3) a payment processor business whose sole activity with respect to marketplace sales is to handle payment transactions between two parties..
- "Marketplace seller" to mean a person who has an agreement with a marketplace provider and who makes retail sales of tangible personal property through a marketplace owned, operated, or controlled by the marketplace provider.

Marketplace providers with a physical presence in Florida, or those making or facilitating a substantial number of remote sales into this state, are subject to the requirements imposed on dealers by ch. 212, F.S., for registering, collecting and remitting sales tax. A marketplace provider must certify to its marketplace sellers that it will collect and remit the sales tax to the Department. A marketplace seller may not collect and remit sales tax on transactions facilitated through the marketplace when the

marketplace provider certifies that it will collect and remit the tax. A marketplace seller must exclude sales made through the marketplace from its tax return. A marketplace seller with a physical presence in Florida, or that makes a substantial number of remote sales must register, collect, and remit sales tax on taxable sales made outside of the marketplace.

A marketplace provider must allow the Department to examine and audit its books and records. The marketplace provider is relieved of liability for the tax, and the marketplace seller or customer is liable for the tax imposed under this chapter if the marketplace provider demonstrates that it made a reasonable effort to obtain accurate information related to the retail sales facilitated through the marketplace from the marketplace seller, but the failure to collect and pay the correct amount of tax imposed under this chapter was due to incorrect or incomplete information provided by the marketplace seller to the marketplace provider.

The PCS makes conforming statutory changes to reflect that references to "mail order sales" are now to "remote sales."

The PCS defines:

- "Delivery network company" as a person who maintains a website or mobile application used to facilitate delivery services, the sale of local products, or both.
- "Delivery network courier" as an individual who provides delivery services through a delivery network company website or mobile application using a personal means of transportation, such as a motor vehicle as defined in s. 320.01(1), F.S., bicycle, scooter, or other similar means of transportation; using public transportation; or by walking.
- "Delivery services" as the pickup and delivery by a delivery network courier of one or more local products from a local merchant to a customer, which may include the selection, collection, and purchase of the local product in connection with the delivery. The term does not include any delivery requiring more than 75 miles of travel from the local merchant to the customer.
- "Local merchant" as a kitchen, restaurant, or a third-party merchant, including a grocery store, retail store, convenience store, or business of another type, which is not under common ownership or control of the delivery network company.
- "Local product" as any tangible personal property, including food, but excluding freight, mail, or a package to which postage has been affixed.

The PCS, effective April 1, 2022, amends s. 212.05965, F.S., to allow a marketplace provider and a qualifying marketplace seller to agree contractually to have the marketplace seller collect and remit the taxes for sales on the marketplace. To qualify for this treatment a marketplace seller must have annual U.S. gross sales of more than $1 billion, including the gross sales of any related entities, and in the case of franchised entities, including the combined sales of all franchisees of a single franchisor.

Other fees

The PCS also requires, effective April 1, 2022, a marketplace provider, at the time of sale, to collect and remit the prepaid wireless E911 fee,[39] the waste tire fee,[40] and the lead-acid battery fee, [41] on applicable sales.

Rounding

The PCS removes the bracket system found in s. 212.12, F.S., and replaces it with a rounding algorithm for calculation of tax due. It provides that a seller may elect to compute tax on a per-item basis or on a per-invoice basis. The tax amount must be carried to the third decimal place when it is computed. If the third decimal place is greater than four, the tax shall be rounded to the next whole cent. Dealers have the option to use the traditional bracket system or the rounding system on

[39] S. 365.172, F.S.
[40] S. 403.718, F.S.
[41] S. 403.7185, F.S.

transactions between July 1, 2021, and September 31, 2021. Conforming changes are made in other statutes to change "bracket" to "algorithm."

Administrative and Conforming Changes Related to Sales Tax Collection

The PCS makes conforming changes related to the removal of "mail order sales" and addition of "remote sales." It clarifies that the act first applies to remote sales made or facilitated on or after July 1, 2021, by a person who made or facilitated a substantial number of remote sales in calendar year 2020. A marketplace seller should only consider those sales made outside of a marketplace to determine whether it made a substantial number of remote sales in calendar year 2020.

The PCS grants relief of liability for tax, penalty, and interest to the following persons upon registration with the Department by October 1, 2021: any person who conducted remote sales prior to the effective date of the act; a marketplace seller for those remote sales made before the effective date of the act; and a marketplace provider with a physical presence in this state (relief of liability is limited to those sales the marketplace provider facilitated on behalf of marketplace sellers).

Additionally, the Department may not use data received from registered marketplace providers or persons making remote sales to identify use tax liabilities if the person with the use tax liability is not registered with the Department, is not required to register with the Department, and his or her use tax liability was created before July 1, 2021.

The relief provided to the persons outlined above does not apply if an assessment has been made, an audit commenced, a bill was issued, or court proceedings began before July 1, 2021.

This relief does not establish a right to a refund or credit of taxes already paid.

The PCS provides emergency rulemaking authority to the Department.

Current Situation

Reemployment Assistance Tax

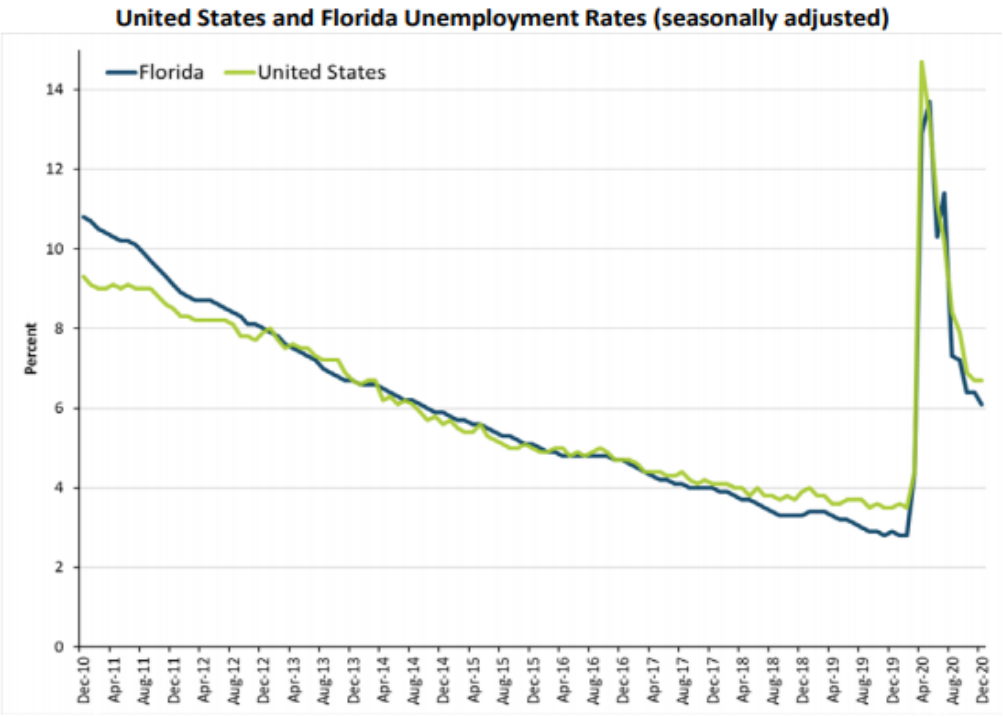
Florida employers pay a state reemployment assistance (RA) tax, the proceeds of which are deposited in the state Unemployment Compensation Trust Fund (UCTF) to pay benefits to unemployed Floridians.[42] In the six months before the COVID-19 pandemic, the average unemployment benefits paid out by the state were $27.2 million per month. Benefit payments for April 2020 were $220.3 million, for May 2020 were $772.1 million, for June 2020 were $761.1 million, and for July 2020 were $810.8 million, before falling to an average of approximately $252 million per month for the rest of the year.[43]

Generally speaking, the cost of RA benefits paid to each unemployed individual are factored in to the rate paid by each employer, because the benefits are either "charged" to the individual's prior employer or are shared among all employers (if certain conditions are met). The rates employers pay are therefore tied directly or indirectly to the number of unemployed people in Florida and the benefits that have been paid out.

From December 2015 through March 2020, the unemployment rate in Florida was less than 5%. The February 2020 rate was a historic low of 2.8%. The March unemployment rate increased to 4.4%. Due

[42] Florida Reemployment Tax, available on the DOR website at https://floridarevenue.com/taxes/taxesfees/Pages/reemployment.aspx (last visited March 15, 2021).
[43] Unemployment Compensation Trust Fund Forecast Adopted January 5, 2021, available on the EDR website at http://edr.state.fl.us/Content/revenues/reports/unemployment-compensation-trust-fund/January2021ForecastSummary.pdf (last visited March 13, 2021).

to the COVID-19 pandemic, that rate increased dramatically to 14.7% in April 2020, before slowly coming back down to 6.1% in December 2020.[44]



Source: U.S. Department of Labor, Bureau of Labor Statistics, Local Area Unemployment Statistics Program, in cooperation with the Florida Department of Economic Opportunity, Bureau of Workforce Statistics and Economic Research.

Generally speaking, the RA tax rate for employers is structured so that it will automatically increase when more benefits are paid out and the trust fund balance decreases. As such, under current law, Florida's employers are subject to unexpectedly large increases in their Reemployment tax liabilities due to the effects of the COVID-19 pandemic. Businesses were mailed rate increase notices in January 2021 for wages paid in calendar year 2021. Taxes are paid quarterly, and the report and tax due for the first quarter must be postmarked by April 30.[45] Because taxes are paid only on the first $7,000 of an employee's wages each year, most of these annual taxes are due in the first quarter of the year, and are payable by April 30th.

The ending balance of the UCTF in December 2019 was $4,071,519,600. Payments made through the end of 2020 brought the balance down to $866.1 million at the end of the year, a decrease of nearly 79%.[46] In January 2021, the Revenue Estimating Conference (REC) estimated that the balance of the UCTF by the end of March 2021 would be $517.9 million. The UCTF balance was $400.4 million as of March 12, 2021.

Tax Liability Calculation[47]

An employer's state tax liability is calculated by multiplying the employer's state-assigned tax rate by taxable wages paid to employees. The Department annually recalculates and assigns employer tax

[44] Florida Department of Economic Opportunity, *Florida's December Employment Figures Released*, available at http://lmsresources.labormarketinfo.com/library/press/release.pdf (last visited March 13, 2021).
[45] Reemployment Tax Report and Payment Information, available at https://floridarevenue.com/taxes/taxesfees/Pages/rt_return_pay.aspx (last visited March 15, 2021).
[46] Unemployment Compensation Trust Fund Forecast Adopted January 5, 2021, available on the EDR website at http://edr.state.fl.us/Content/revenues/reports/unemployment-compensation-trust-fund/January2021ForecastSummary.pdf (last visited March 13, 2021).
[47] General information available from: Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, Reemployment Assistance Tax, 154-156 (20), *available at* http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf (last visited March 12, 2021).

rates. Additionally, the federal government levies an annual payroll tax under the Federal Unemployment Tax Act (FUTA).

In general, an employer's state RA tax rate is determined using three factors: the fund size factor; the non-charges and excess payments factor; and a variable factor based on each employer's unemployment experience.[48] The fund size factor is based upon the amount in the UCTF. Non-charges are the result, for instance, of an employee working for less than 90 days and being laid off. The employer is not charged for that separation of employment but the cost is spread among all employers. Excess payments occur when a business that is paying the maximum rate has unemployment experience greater than the business is paying in taxes, so that all persons separated from employment from that business are not covered by the RA tax payments from that business. Those costs are also spread across all employers. The variable factor is generally based upon an employer's unemployment compensation experience. These factors combined are used in calculating an employer's RA tax rate. Generally, the maximum tax rate is 5.4%, regardless of what would otherwise be dictated by the three factors.

Taxable wages include all remuneration for employment, including commissions, bonuses, and back pay awards. However, remuneration to an individual during a calendar year in excess of the first $7,000 paid is exempt.

The FUTA tax rate levied by the federal government is 6.0%. However, employers in Florida currently receive a 5.4% credit against that tax, resulting in an effective federal tax rate of 0.6% applied to taxable wages.

Expected Tax Payments

Under current law, the REC forecasts total RA tax payments of $963 million in Fiscal Year (FY) 2020-21, roughly $1.4 billion in tax payments in FYs 2021-22 and 2022-23, and tax payments of $1.1 billion in FY 2023-24.[49]

[48] Section 443.131, F.S.

[49] Unemployment Compensation Trust Fund Forecast Adopted January 5, 2021, available on the EDR website at http://edr.state.fl.us/Content/revenues/reports/unemployment-compensation-trust-fund/January2021ForecastSummary.pdf (last visited March 12, 2021).

Effect of Proposed Changes

Reemployment Assistance Tax Provisions

The PCS provides for annual transfers to the UCTF in the amount of the expected first-year recurring revenue ($1.08 billion) from adopting remote seller and marketplace provider sales tax collection provisions except for FY 2021-2022, when the transfer will be the first-year cash revenue from those provisions ($973.6 million).[50] It does so by requiring transfers to the UCTF of $324.5 million on or before July 25, August 25, and September 25, 2021, and by requiring transfers of $90 million each month beginning in July 2022. These distributions of $1.08 billion per year will be used to replenish the UCTF, which is significantly depleted due to the COVID-19 pandemic's effects in Florida. Distributions will automatically end when the Office of Economic and Demographic Research notifies the Department that the UCTF reaches the pre-pandemic balance from December 31, 2019, or December 31, 2025, whichever is earlier. At that point, those collections will instead go to General Revenue.

The RA tax calculation provisions are temporarily amended by the PCS to disallow adjustments that are related to the pandemic and to further adjust rates as needed to ensure pandemic-related effects are not adversely affecting employers in the coming years. These changes are retroactive to June 29, 2020, and will require the Department to notify employers of any changes to their RA tax rate as a result of the adjustments in the PCS. For any 2021 RA tax payments that are made based on the existing calculation, the PCS requires the Department to issue refunds for the difference between the old and new RA tax liabilities. Certain rate adjustments will continue until the pandemic period is no longer included in the calculation (e.g., provisions that completely remove all benefits paid from April 1, 2020, through December 31, 2020, from the calculation). Other adjustment factors (e.g., a provision that prevents the tax rate from being increased if the trust fund balance is too low) will revert to the standard calculation once the Office of Economic and Demographic Research notifies the Department that as of the end of the fiscal year, the UCTF has reached the balance from December 31, 2019. The goal of these changes is to prevent any increase to an employer's rates due to the effects of the pandemic, but to retain the integrity of the RA rate calculation which, per federal requirements, is normally based on the employer's actual employment history.

To ensure the balance of the UCTF stays positive throughout 2021, any refunds issued before August 31, 2021, will be paid from General Revenue. Distributions to the UCTF in July, August, and September 2021, will be reduced by the amount of any refunds paid from General Revenue.

The Department is authorized to contract with a qualified vendor without using a competitive solicitation process to ensure programming is completed in a timely manner, and is appropriated $353,000 in nonrecurring funds from General Revenue to provide revised RA rate notices for 2021 to Florida employers.

The PCS takes effect on July 1, 2021, except as otherwise provided.

[50] The Marketplace provision has an estimated first year recurring impact of $968.5 million (Adopted impact by the Revenue Estimating Impact Conference is available on the EDR website at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/page22-25.pdf (last visited March 15, 2021), and the Remote Sellers provision has an estimated first year recurring impact of $111.2 (Adopted impact by the Revenue Estimating Impact Conference is available on the EDR website at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/page26-33.pdf (last visited March 15, 2021).

B. SECTION DIRECTORY:

Section 1 provides that the act may be cited as the "Park Randall 'Randy' Miller Act."

Section 2 amends the definition of "retail sale" in s. 212.02, F.S., to include a remote sale and a sale facilitated through a marketplace.

Section 3 amends s. 212.05, F.S., to amend legislative intent to apply the sales and use tax to remote sales.

Section 4 amends s. 212.054, F.S., to distribute the proceeds of the discretionary surtax remitted by out-of-state retailers and marketplace providers to counties that impose a surtax.

Section 5 substantially amends s. 212.0596, F.S. This section changes the catch line to refer to the taxation of remote sales, removes references or requirements related to a "mail order sale," and provides that a person who makes a substantial number of remote sales is a dealer for purposes of ch. 212, F.S.

Section 6 creates s. 212.05965, F.S., which provides for the taxation of sales through marketplace providers.

Section 7 effective April 1, 2022, amends s. 212.05965, F.S., to allow a marketplace provider and a qualifying marketplace seller to agree contractually to have the marketplace seller collect and remit the taxes for sales on the marketplace. To qualify for this treatment a marketplace seller must have annual U.S. gross sales of more than $1 billion, including the gross sales of any related entities, and in the case of franchised entities, including the combined sales of all franchisees of a single franchisor.

This section also requires, effective April 1, 2022, a marketplace provider, at the time of sale, to collect and remit the prepaid wireless E911 fee, the waste tire fee, and the lead-acid battery fee, on applicable sales.

Section 8 amends s. 212.06, F.S., to specify that the term "dealer" includes a retailer who transacts a substantial number of remote sales or is a marketplace provider.

Section 9 amends s. 212.07, F.S., to make conforming changes.

Section 10 amends s. 212.11, F.S., to require remote sellers and marketplace providers to file returns and remit taxes electronically.

Section 11 amends s. 212.12, F.S., to (1) remove the authority given to the executive director of the Department to negotiate a collection allowance with a dealer who makes mail order sales, (2) remove language requiring the use of brackets when calculating tax and replacing it with a rounding algorithm, and (3) delete language that kept dealers who made mail order sales from participating in the state's 2.5 percent collection allowance.

Section 12 makes conforming changes to s. 212.18 F.S., to change the term "mail order sale" to "remote sale" and clarify that remote sellers and marketplace providers must register electronically.

Section 13 amends s. 212.20(4), F.S., to include sales taxes collected as provided in s. 212.05965, F.S., as a tax for which if found unconstitutional requires the Department to issue a refund to any person who paid such tax in the amount of tax paid.

This section also amends s. 212.20(6), F.S., to provide for transfers to the Unemployment Compensation Trust Fund until the balance of that fund reaches the balance from December 31, 2019, or December 31, 2025, whichever is earlier.

Section 14 amends s. 443.1216, F.S., to correct a cross-reference.

Section 15 amends s. 443.131, F.S., to provide for an alternative calculation of an employer's applicable rate for reemployment taxes during certain years. This provision is retroactive to June 29, 2020.

Section 16 amends s. 443.191. F.S., to allow for transfers to the Unemployment Compensation Trust Fund.

Section 17 amends s. 212.04, F.S., to make a conforming change related to rounding.

Section 18 amends s. 212.0506, F.S., to make a conforming change related to rounding.

Section 19 amends s. 213.015, F.S., to correct a cross-reference.

Section 20 provides that taxpayers can calculate tax using either the bracket system or the rounding algorithm for transactions between July 1, 2021, and September 30, 2021.

Section 21 makes conforming changes to s. 213.27(5), F.S., to clarify that s. 213.27(5), F.S., regarding contract auditing, applies to a person making or facilitating remote sales under s. 212.0596, F.S. or s. 212.05965, F.S.

Section 22 reenacts s. 212.055(2)(c), (3)(c), (8)(c), and (9)(c), F.S., to incorporate changes made by the PCS.

Section 23 provides that this act first applies to remote sales made or facilitated on or after July 1, 2021, by a person who made or facilitated a substantial number of remote sales in calendar year 2020.

Section 24 grants relief of liability for tax, penalty, and interest to certain persons upon registration with the Department by October 1, 2021.

Section 25 authorizes the Department to adopt emergency rules to implement the PCS. The emergency rulemaking grant is authorized upon the act becoming law and expires July 1, 2022.

Section 26 provides that the Department is authorized to contract with a qualified vendor without using a competitive solicitation process for purposes of administering this act.

Section 27 provides an appropriation to the Department of $353,000 in nonrecurring funds for FY 2020-2021.

Section 28 provides that, if any provision of the act is found to be invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application and, to this end, the provisions of the act are severable.

Section 29 provides that this section takes effect upon becoming law, and, except as otherwise provided, the PCS takes effect July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS section.

2. Expenditures:

   The PCS provides a one-time appropriation of $353,000 to the Department of Revenue for FY 2020-21.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS section.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCS will prevent substantial increases in reemployment assistance taxes facing most Florida businesses under current law. The PCS will also address a competitive disadvantage Florida businesses currently face when competing against out-of-state businesses that do not collect Florida sales tax on sales they make into Florida.

D. FISCAL COMMENTS:

The Revenue Estimating Conference (REC) estimated that the sales tax collection provisions of the PCS will have a positive revenue impact in FY 2021-22 totaling $1,203.4 million ($1,337.0 million recurring) of which $973.6 million ($1,079.7 million recurring) is on General Revenue, $0.3 million ($3.6 million recurring) is on state trust funds, and $229.5 million ($253.7 million recurring) is on local government. The PCS also provides that beginning in FY 2021-22, $973.6 million a year (increasing to $1.080 million in FY 2022-23 and thereafter) will be transferred to the Unemployment Compensation Trust Fund until such time as the trust fund reaches its pre-pandemic balance ($4,071,519,600).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This PCS does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The PCS provides emergency rulemaking authority to the Department of Revenue.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to taxation; providing a short title; amending s. 212.02, F.S.; revising the definition of the term "retail sale" to include sales facilitated through a marketplace; conforming a provision to changes made by the act; amending s. 212.05, F.S.; conforming provisions to changes made by the act; amending s. 212.054, F.S.; requiring marketplace providers and persons located outside of this state to remit discretionary sales surtax when delivering tangible personal property to a county imposing a surtax; amending s. 212.0596, F.S.; replacing provisions relating to the taxation of mail order sales with provisions relating to the taxation of remote sales; defining the terms "remote sale" and "substantial number of remote sales"; providing that every person making a substantial number of remote sales is a dealer for purposes of the sales and use tax; authorizing the Department of Revenue to adopt rules for collecting use taxes from unregistered persons; requiring marketplace providers and persons required to report remote sales to remit discretionary sales surtax when delivering tangible personal property to a county imposing a surtax; creating s. 212.05965, F.S.; defining terms; providing that

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

certain marketplace providers are dealers for purposes of the sales and use tax; requiring certain marketplace providers to provide a certain certification to their marketplace sellers; specifying requirements for marketplace sellers; requiring certain marketplace providers to allow the Department of Revenue to examine and audit their books and records; specifying the examination and audit authority of the Department of Revenue; providing that a marketplace seller, rather than the marketplace provider, is liable for sales tax collection and remittance under certain circumstances; authorizing marketplace providers and marketplace sellers to enter into agreements for the recovery of certain taxes, interest, and penalties; providing construction and applicability; amending s. 212.05965, F.S.; requiring marketplace providers to collect and remit certain additional fees at the time of sale; authorizing marketplace providers and marketplace sellers to contractually agree for marketplace sellers to collect applicable taxes and fees; specifying requirements for marketplace sellers who collect such taxes and fees; providing for liability of sellers who fail to collect or remit such taxes and fees; amending s. 212.06, F.S.; revising the definition of the term "dealer";

conforming provisions to changes made by the act; amending 212.07, F.S.; conforming a cross-reference; amending 212.11, F.S.; requiring certain marketplace providers or persons required to report remote sales to file returns and pay taxes electronically; amending s. 212.12, F.S.; deleting the authority of the Department of Revenue's executive director to negotiate a collection allowance with certain dealers; deleting the requirement that certain sales and use taxes on communications services be collected on the basis of a certain addition; requiring that certain sales and use taxes be calculated based on a specified rounding algorithm, rather than specified brackets; conforming provisions to changes made by the act; amending s. 212.18, F.S.; requiring certain marketplace providers or persons required to report remote sales to file a registration application electronically; conforming a provision to changes made by the act; amending s. 212.20, F.S.; providing applicability of requirements for refund of taxes adjudicated unconstitutionally collected to taxes levied or collected pursuant to marketplace provisions; requiring certain amounts to be deposited into the Unemployment Compensation Trust Fund during specified periods; specifying requirements for the

Department of Revenue in reducing distributions by certain refund amounts paid out of the General Revenue Fund; requiring the Office of Economic and Demographic Research to certify to the Department of Revenue whether the trust fund balance exceeds a certain amount; providing for contingent future repeal; amending s. 443.1216, F.S.; conforming a cross-reference; amending s. 443.131, F.S.; specifying, at certain periods, multipliers to be applied to employer chargeable benefits for purposes of calculating employer reemployment assistance contribution rates; excluding reemployment benefits paid during a certain timeframe and certain COVID-19-related benefits paid from being included in a variable rate calculation; requiring that contribution rates in certain years be calculated without applying a trust fund positive adjustment factor; excluding reemployment benefits paid during a certain timeframe and certain COVID-19-related benefits paid from being calculated in the noncharge benefits and excess payments adjustment factors; requiring the tax collection service provider to reissue rates for a certain year; specifying requirements for employers and the Department of Revenue; requiring a refund of excess paid amounts under certain circumstances; specifying requirements

for calculating and assigning contribution rates for certain years; specifying requirements for the Department of Economic Opportunity and the tax collection service provider; providing for contingent future repeal of modified rate calculations; specifying requirements for calculating adjustments to a benefit ratio multiplier; conforming a cross-reference; providing retroactive applicability; amending s. 443.191, F.S.; adding a specified source of revenues to the Unemployment Compensation Trust Fund; amending ss. 212.04 and 212.0506, F.S.; conforming provisions to changes made by the act; amending 213.015, F.S.; conforming a cross-reference; authorizing taxpayers to use one of two methods for calculating sales tax for a specified timeframe providing construction; amending s. 213.27, F.S.; conforming provisions to changes made by the act; reenacting s. 212.055(2)(c), (3)(c), (8)(c), and (9)(c), F.S., relating to discretionary sales surtaxes, to incorporate the amendment made to s. 212.054, F.S., in references thereto; providing applicability; providing relief to certain persons for liability for tax, penalty, and interest due on certain remote sales and owed on certain purchases that occurred before a certain date; providing

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

applicability; prohibiting the department from using data received from marketplace providers or persons making remote sales for certain purposes; providing applicability; providing construction; authorizing the department to adopt emergency rules; providing for expiration of that authority; authorizing the department to contract with a qualified vendor for certain purposes without using a competitive solicitation process; providing an appropriation; providing for severability; providing effective dates.

WHEREAS, during the 2020 calendar year, the United States economy was significantly strained by the COVID-19 pandemic, and such economic stress is continuing in the 2021 calendar year and may have impacts in later years, and

WHEREAS, the State of Florida was in full lockdown during April 2020 and then began to reopen the Florida economy in a measured manner thereafter, and

WHEREAS, the financial strain of lockdowns and reduced economic activity caused some Florida businesses to close permanently and others to terminate portions of their workforce, and

WHEREAS, in the 6-month period before April 2020, Florida's average monthly reemployment assistance benefits expense was $27.2 million, and

WHEREAS, beginning in April 2020, Florida's monthly reemployment assistance benefits expense increased by 800 percent over the prior 6-month average, and at times, the increase exceeded 2,000 percent, and

WHEREAS, in the current time of recovery, Florida's reemployment assistance benefits expense remains 473 percent over the 6-month average benefit amount before April 2020, and is estimated to continue at elevated levels for the foreseeable future, and

WHEREAS, to the fullest extent possible, the Legislature intends to relieve individual Florida businesses of increases in the Reemployment Assistance Tax which are due to increased reemployment assistance benefits resulting from the pandemic, and

WHEREAS, the Legislature intends to ensure that the Unemployment Compensation Trust Fund remains solvent for the purposes of providing benefits to Floridians impacted by these extraordinary events, and

WHEREAS, the Legislature intends to equalize the tax collection responsibilities of retailers both inside and outside Florida who make sales of taxable items to Florida residents, NOW, THEREFORE,

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

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

Section 1. This act may be cited as the "Park Randall 'Randy' Miller Act."

Section 2. Paragraph (e) of subsection (14) of section 212.02, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

212.02 Definitions.—The following terms and phrases when used in this chapter have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(14)

(e) The term "retail sale" includes a remote ~~mail order~~ sale~~,~~ as defined in s. 212.0596(1).

(f) The term "retail sale" includes a sale facilitated through a marketplace as defined in s. 212.05965(1).

Section 3. Section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making or facilitating remote ~~mail order~~ sales;~~,~~ ~~or~~ who rents or furnishes any of the things or services taxable under this chapter;~~,~~ or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the

state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(a)1.a. At the rate of 6 percent of the sales price of each item or article of tangible personal property when sold at retail in this state, computed on each taxable sale for the purpose of remitting the amount of tax due the state, and including each and every retail sale.

b. Each occasional or isolated sale of an aircraft, boat, mobile home, or motor vehicle of a class or type which is required to be registered, licensed, titled, or documented in this state or by the United States Government shall be subject to tax at the rate provided in this paragraph. The department shall by rule adopt any nationally recognized publication for valuation of used motor vehicles as the reference price list for any used motor vehicle which is required to be licensed pursuant to s. 320.08(1), (2), (3)(a), (b), (c), or (e), or (9). If any party to an occasional or isolated sale of such a vehicle reports to the tax collector a sales price which is less than 80 percent of the average loan price for the specified model and year of such vehicle as listed in the most recent reference price list, the tax levied under this paragraph shall be computed by the department on such average loan price unless the parties to the sale have provided to the tax collector an

affidavit signed by each party, or other substantial proof, stating the actual sales price. Any party to such sale who reports a sales price less than the actual sales price is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The department shall collect or attempt to collect from such party any delinquent sales taxes. In addition, such party shall pay any tax due and any penalty and interest assessed plus a penalty equal to twice the amount of the additional tax owed. Notwithstanding any other provision of law, the Department of Revenue may waive or compromise any penalty imposed pursuant to this subparagraph.

2. This paragraph does not apply to the sale of a boat or aircraft by or through a registered dealer under this chapter to a purchaser who, at the time of taking delivery, is a nonresident of this state, does not make his or her permanent place of abode in this state, and is not engaged in carrying on in this state any employment, trade, business, or profession in which the boat or aircraft will be used in this state, or is a corporation none of the officers or directors of which is a resident of, or makes his or her permanent place of abode in, this state, or is a noncorporate entity that has no individual vested with authority to participate in the management, direction, or control of the entity's affairs who is a resident of, or makes his or her permanent abode in, this state. For purposes of this exemption, either a registered dealer acting on

his or her own behalf as seller, a registered dealer acting as broker on behalf of a seller, or a registered dealer acting as broker on behalf of the purchaser may be deemed to be the selling dealer. This exemption shall not be allowed unless:

a. The purchaser removes a qualifying boat, as described in sub-subparagraph f., from the state within 90 days after the date of purchase or extension, or the purchaser removes a nonqualifying boat or an aircraft from this state within 10 days after the date of purchase or, when the boat or aircraft is repaired or altered, within 20 days after completion of the repairs or alterations; or if the aircraft will be registered in a foreign jurisdiction and:

(I) Application for the aircraft's registration is properly filed with a civil airworthiness authority of a foreign jurisdiction within 10 days after the date of purchase;

(II) The purchaser removes the aircraft from the state to a foreign jurisdiction within 10 days after the date the aircraft is registered by the applicable foreign airworthiness authority; and

(III) The aircraft is operated in the state solely to remove it from the state to a foreign jurisdiction.

For purposes of this sub-subparagraph, the term "foreign jurisdiction" means any jurisdiction outside of the United States or any of its territories;

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

b. The purchaser, within 90 days from the date of departure, provides the department with written proof that the purchaser licensed, registered, titled, or documented the boat or aircraft outside the state. If such written proof is unavailable, within 90 days the purchaser shall provide proof that the purchaser applied for such license, title, registration, or documentation. The purchaser shall forward to the department proof of title, license, registration, or documentation upon receipt;

c. The purchaser, within 30 days after removing the boat or aircraft from Florida, furnishes the department with proof of removal in the form of receipts for fuel, dockage, slippage, tie-down, or hangaring from outside of Florida. The information so provided must clearly and specifically identify the boat or aircraft;

d. The selling dealer, within 30 days after the date of sale, provides to the department a copy of the sales invoice, closing statement, bills of sale, and the original affidavit signed by the purchaser attesting that he or she has read the provisions of this section;

e. The seller makes a copy of the affidavit a part of his or her record for as long as required by s. 213.35; and

f. Unless the nonresident purchaser of a boat of 5 net tons of admeasurement or larger intends to remove the boat from this state within 10 days after the date of purchase or when the

boat is repaired or altered, within 20 days after completion of the repairs or alterations, the nonresident purchaser applies to the selling dealer for a decal which authorizes 90 days after the date of purchase for removal of the boat. The nonresident purchaser of a qualifying boat may apply to the selling dealer within 60 days after the date of purchase for an extension decal that authorizes the boat to remain in this state for an additional 90 days, but not more than a total of 180 days, before the nonresident purchaser is required to pay the tax imposed by this chapter. The department is authorized to issue decals in advance to dealers. The number of decals issued in advance to a dealer shall be consistent with the volume of the dealer's past sales of boats which qualify under this sub-subparagraph. The selling dealer or his or her agent shall mark and affix the decals to qualifying boats in the manner prescribed by the department, before delivery of the boat.

(I) The department is hereby authorized to charge dealers a fee sufficient to recover the costs of decals issued, except the extension decal shall cost $425.

(II) The proceeds from the sale of decals will be deposited into the administrative trust fund.

(III) Decals shall display information to identify the boat as a qualifying boat under this sub-subparagraph, including, but not limited to, the decal's date of expiration.

(IV) The department is authorized to require dealers who

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

purchase decals to file reports with the department and may prescribe all necessary records by rule. All such records are subject to inspection by the department.

(V) Any dealer or his or her agent who issues a decal falsely, fails to affix a decal, mismarks the expiration date of a decal, or fails to properly account for decals will be considered prima facie to have committed a fraudulent act to evade the tax and will be liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, and shall be liable for fine and punishment as provided by law for a conviction of a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

(VI) Any nonresident purchaser of a boat who removes a decal before permanently removing the boat from the state, or defaces, changes, modifies, or alters a decal in a manner affecting its expiration date before its expiration, or who causes or allows the same to be done by another, will be considered prima facie to have committed a fraudulent act to evade the tax and will be liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, and shall be liable for fine and punishment as provided by law for a conviction of a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

(VII) The department is authorized to adopt rules necessary to administer and enforce this subparagraph and to

publish the necessary forms and instructions.

(VIII) The department is hereby authorized to adopt emergency rules pursuant to s. 120.54(4) to administer and enforce the provisions of this subparagraph.

If the purchaser fails to remove the qualifying boat from this state within the maximum 180 days after purchase or a nonqualifying boat or an aircraft from this state within 10 days after purchase or, when the boat or aircraft is repaired or altered, within 20 days after completion of such repairs or alterations, or permits the boat or aircraft to return to this state within 6 months from the date of departure, except as provided in s. 212.08(7)(fff), or if the purchaser fails to furnish the department with any of the documentation required by this subparagraph within the prescribed time period, the purchaser shall be liable for use tax on the cost price of the boat or aircraft and, in addition thereto, payment of a penalty to the Department of Revenue equal to the tax payable. This penalty shall be in lieu of the penalty imposed by s. 212.12(2). The maximum 180-day period following the sale of a qualifying boat tax-exempt to a nonresident may not be tolled for any reason.

(b) At the rate of 6 percent of the cost price of each item or article of tangible personal property when the same is not sold but is used, consumed, distributed, or stored for use

or consumption in this state; however, for tangible property originally purchased exempt from tax for use exclusively for lease and which is converted to the owner's own use, tax may be paid on the fair market value of the property at the time of conversion. If the fair market value of the property cannot be determined, use tax at the time of conversion shall be based on the owner's acquisition cost. Under no circumstances may the aggregate amount of sales tax from leasing the property and use tax due at the time of conversion be less than the total sales tax that would have been due on the original acquisition cost paid by the owner.

(c) At the rate of 6 percent of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein; however, the following special provisions apply to the lease or rental of motor vehicles:

1. When a motor vehicle is leased or rented for a period of less than 12 months:

a. If the motor vehicle is rented in Florida, the entire amount of such rental is taxable, even if the vehicle is dropped off in another state.

b. If the motor vehicle is rented in another state and dropped off in Florida, the rental is exempt from Florida tax.

2. Except as provided in subparagraph 3., for the lease or rental of a motor vehicle for a period of not less than 12 months, sales tax is due on the lease or rental payments if the

vehicle is registered in this state; provided, however, that no tax shall be due if the taxpayer documents use of the motor vehicle outside this state and tax is being paid on the lease or rental payments in another state.

3. The tax imposed by this chapter does not apply to the lease or rental of a commercial motor vehicle as defined in s. 316.003(13)(a) to one lessee or rentee for a period of not less than 12 months when tax was paid on the purchase price of such vehicle by the lessor. To the extent tax was paid with respect to the purchase of such vehicle in another state, territory of the United States, or the District of Columbia, the Florida tax payable shall be reduced in accordance with the provisions of s. 212.06(7). This subparagraph shall only be available when the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to such business.

(d) At the rate of 6 percent of the lease or rental price paid by a lessee or rentee, or contracted or agreed to be paid by a lessee or rentee, to the owner of the tangible personal property.

(e)1. At the rate of 6 percent on charges for:

a. Prepaid calling arrangements. The tax on charges for prepaid calling arrangements shall be collected at the time of sale and remitted by the selling dealer.

(I) "Prepaid calling arrangement" has the same meaning as

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

provided in s. 202.11.

(II) If the sale or recharge of the prepaid calling arrangement does not take place at the dealer's place of business, it shall be deemed to have taken place at the customer's shipping address or, if no item is shipped, at the customer's address or the location associated with the customer's mobile telephone number.

(III) The sale or recharge of a prepaid calling arrangement shall be treated as a sale of tangible personal property for purposes of this chapter, regardless of whether a tangible item evidencing such arrangement is furnished to the purchaser, and such sale within this state subjects the selling dealer to the jurisdiction of this state for purposes of this subsection.

(IV) No additional tax under this chapter or chapter 202 is due or payable if a purchaser of a prepaid calling arrangement who has paid tax under this chapter on the sale or recharge of such arrangement applies one or more units of the prepaid calling arrangement to obtain communications services as described in s. 202.11(9)(b)3., other services that are not communications services, or products.

b. The installation of telecommunication and telegraphic equipment.

c. Electrical power or energy, except that the tax rate for charges for electrical power or energy is 4.35 percent.

Charges for electrical power and energy do not include taxes imposed under ss. 166.231 and 203.01(1)(a)3.

2. Section 212.17(3), regarding credit for tax paid on charges subsequently found to be worthless, is equally applicable to any tax paid under this section on charges for prepaid calling arrangements, telecommunication or telegraph services, or electric power subsequently found to be uncollectible. As used in this paragraph, the term "charges" does not include any excise or similar tax levied by the Federal Government, a political subdivision of this state, or a municipality upon the purchase, sale, or recharge of prepaid calling arrangements or upon the purchase or sale of telecommunication, television system program, or telegraph service or electric power, which tax is collected by the seller from the purchaser.

(f) At the rate of 6 percent on the sale, rental, use, consumption, or storage for use in this state of machines and equipment, and parts and accessories therefor, used in manufacturing, processing, compounding, producing, mining, or quarrying personal property for sale or to be used in furnishing communications, transportation, or public utility services.

(g)1. At the rate of 6 percent on the retail price of newspapers and magazines sold or used in Florida.

2. Notwithstanding other provisions of this chapter, inserts of printed materials which are distributed with a

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

newspaper or magazine are a component part of the newspaper or magazine, and neither the sale nor use of such inserts is subject to tax when:

a. Printed by a newspaper or magazine publisher or commercial printer and distributed as a component part of a newspaper or magazine, which means that the items after being printed are delivered directly to a newspaper or magazine publisher by the printer for inclusion in editions of the distributed newspaper or magazine;

b. Such publications are labeled as part of the designated newspaper or magazine publication into which they are to be inserted; and

c. The purchaser of the insert presents a resale certificate to the vendor stating that the inserts are to be distributed as a component part of a newspaper or magazine.

(h)1. A tax is imposed at the rate of 4 percent on the charges for the use of coin-operated amusement machines. The tax shall be calculated by dividing the gross receipts from such charges for the applicable reporting period by a divisor, determined as provided in this subparagraph, to compute gross taxable sales, and then subtracting gross taxable sales from gross receipts to arrive at the amount of tax due. For counties that do not impose a discretionary sales surtax, the divisor is equal to 1.04; for counties that impose a 0.5 percent discretionary sales surtax, the divisor is equal to 1.045; for

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

counties that impose a 1 percent discretionary sales surtax, the divisor is equal to 1.050; and for counties that impose a 2 percent sales surtax, the divisor is equal to 1.060. If a county imposes a discretionary sales surtax that is not listed in this subparagraph, the department shall make the applicable divisor available in an electronic format or otherwise. Additional divisors shall bear the same mathematical relationship to the next higher and next lower divisors as the new surtax rate bears to the next higher and next lower surtax rates for which divisors have been established. When a machine is activated by a slug, token, coupon, or any similar device which has been purchased, the tax is on the price paid by the user of the device for such device.

2. As used in this paragraph, the term "operator" means any person who possesses a coin-operated amusement machine for the purpose of generating sales through that machine and who is responsible for removing the receipts from the machine.

a. If the owner of the machine is also the operator of it, he or she shall be liable for payment of the tax without any deduction for rent or a license fee paid to a location owner for the use of any real property on which the machine is located.

b. If the owner or lessee of the machine is also its operator, he or she shall be liable for payment of the tax on the purchase or lease of the machine, as well as the tax on sales generated through the machine.

c. If the proprietor of the business where the machine is located does not own the machine, he or she shall be deemed to be the lessee and operator of the machine and is responsible for the payment of the tax on sales, unless such responsibility is otherwise provided for in a written agreement between him or her and the machine owner.

3.a. An operator of a coin-operated amusement machine may not operate or cause to be operated in this state any such machine until the operator has registered with the department and has conspicuously displayed an identifying certificate issued by the department. The identifying certificate shall be issued by the department upon application from the operator. The identifying certificate shall include a unique number, and the certificate shall be permanently marked with the operator's name, the operator's sales tax number, and the maximum number of machines to be operated under the certificate. An identifying certificate shall not be transferred from one operator to another. The identifying certificate must be conspicuously displayed on the premises where the coin-operated amusement machines are being operated.

b. The operator of the machine must obtain an identifying certificate before the machine is first operated in the state and by July 1 of each year thereafter. The annual fee for each certificate shall be based on the number of machines identified on the application times $30 and is due and payable upon

application for the identifying device. The application shall contain the operator's name, sales tax number, business address where the machines are being operated, and the number of machines in operation at that place of business by the operator. No operator may operate more machines than are listed on the certificate. A new certificate is required if more machines are being operated at that location than are listed on the certificate. The fee for the new certificate shall be based on the number of additional machines identified on the application form times $30.

c. A penalty of $250 per machine is imposed on the operator for failing to properly obtain and display the required identifying certificate. A penalty of $250 is imposed on the lessee of any machine placed in a place of business without a proper current identifying certificate. Such penalties shall apply in addition to all other applicable taxes, interest, and penalties.

d. Operators of coin-operated amusement machines must obtain a separate sales and use tax certificate of registration for each county in which such machines are located. One sales and use tax certificate of registration is sufficient for all of the operator's machines within a single county.

4. The provisions of this paragraph do not apply to coin-operated amusement machines owned and operated by churches or synagogues.

5. In addition to any other penalties imposed by this chapter, a person who knowingly and willfully violates any provision of this paragraph commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

6. The department may adopt rules necessary to administer the provisions of this paragraph.

(i)1. At the rate of 6 percent on charges for all:

a. Detective, burglar protection, and other protection services (NAICS National Numbers 561611, 561612, 561613, and 561621). Fingerprint services required under s. 790.06 or s. 790.062 are not subject to the tax. Any law enforcement officer, as defined in s. 943.10, who is performing approved duties as determined by his or her local law enforcement agency in his or her capacity as a law enforcement officer, and who is subject to the direct and immediate command of his or her law enforcement agency, and in the law enforcement officer's uniform as authorized by his or her law enforcement agency, is performing law enforcement and public safety services and is not performing detective, burglar protection, or other protective services, if the law enforcement officer is performing his or her approved duties in a geographical area in which the law enforcement officer has arrest jurisdiction. Such law enforcement and public safety services are not subject to tax irrespective of whether the duty is characterized as "extra duty," "off-duty," or "secondary employment," and irrespective of whether the officer

is paid directly or through the officer's agency by an outside source. The term "law enforcement officer" includes full-time or part-time law enforcement officers, and any auxiliary law enforcement officer, when such auxiliary law enforcement officer is working under the direct supervision of a full-time or part-time law enforcement officer.

b. Nonresidential cleaning, excluding cleaning of the interiors of transportation equipment, and nonresidential building pest control services (NAICS National Numbers 561710 and 561720).

2. As used in this paragraph, "NAICS" means those classifications contained in the North American Industry Classification System, as published in 2007 by the Office of Management and Budget, Executive Office of the President.

3. Charges for detective, burglar protection, and other protection security services performed in this state but used outside this state are exempt from taxation. Charges for detective, burglar protection, and other protection security services performed outside this state and used in this state are subject to tax.

4. If a transaction involves both the sale or use of a service taxable under this paragraph and the sale or use of a service or any other item not taxable under this chapter, the consideration paid must be separately identified and stated with respect to the taxable and exempt portions of the transaction or

the entire transaction shall be presumed taxable. The burden shall be on the seller of the service or the purchaser of the service, whichever applicable, to overcome this presumption by providing documentary evidence as to which portion of the transaction is exempt from tax. The department is authorized to adjust the amount of consideration identified as the taxable and exempt portions of the transaction; however, a determination that the taxable and exempt portions are inaccurately stated and that the adjustment is applicable must be supported by substantial competent evidence.

5. Each seller of services subject to sales tax pursuant to this paragraph shall maintain a monthly log showing each transaction for which sales tax was not collected because the services meet the requirements of subparagraph 3. for out-of-state use. The log must identify the purchaser's name, location and mailing address, and federal employer identification number, if a business, or the social security number, if an individual, the service sold, the price of the service, the date of sale, the reason for the exemption, and the sales invoice number. The monthly log shall be maintained pursuant to the same requirements and subject to the same penalties imposed for the keeping of similar records pursuant to this chapter.

(j)1. Notwithstanding any other provision of this chapter, there is hereby levied a tax on the sale, use, consumption, or storage for use in this state of any coin or currency, whether

in circulation or not, when such coin or currency:

a. Is not legal tender;

b. If legal tender, is sold, exchanged, or traded at a rate in excess of its face value; or

c. Is sold, exchanged, or traded at a rate based on its precious metal content.

2. Such tax shall be at a rate of 6 percent of the price at which the coin or currency is sold, exchanged, or traded, except that, with respect to a coin or currency which is legal tender of the United States and which is sold, exchanged, or traded, such tax shall not be levied.

3. There are exempt from this tax exchanges of coins or currency which are in general circulation in, and legal tender of, one nation for coins or currency which are in general circulation in, and legal tender of, another nation when exchanged solely for use as legal tender and at an exchange rate based on the relative value of each as a medium of exchange.

4. With respect to any transaction that involves the sale of coins or currency taxable under this paragraph in which the taxable amount represented by the sale of such coins or currency exceeds $500, the entire amount represented by the sale of such coins or currency is exempt from the tax imposed under this paragraph. The dealer must maintain proper documentation, as prescribed by rule of the department, to identify that portion of a transaction which involves the sale of coins or currency

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

and is exempt under this subparagraph.

(k) At the rate of 6 percent of the sales price of each gallon of diesel fuel not taxed under chapter 206 purchased for use in a vessel, except dyed diesel fuel that is exempt pursuant to s. 212.08(4)(a)4.

(l) Florists located in this state are liable for sales tax on sales to retail customers regardless of where or by whom the items sold are to be delivered. Florists located in this state are not liable for sales tax on payments received from other florists for items delivered to customers in this state.

(m) Operators of game concessions or other concessionaires who customarily award tangible personal property as prizes may, in lieu of paying tax on the cost price of such property, pay tax on 25 percent of the gross receipts from such concession activity.

(2) The tax shall be collected by the dealer, as defined herein, and remitted by the dealer to the state at the time and in the manner as hereinafter provided.

(3) The tax so levied is in addition to all other taxes, whether levied in the form of excise, license, or privilege taxes, and in addition to all other fees and taxes levied.

(4) The tax imposed pursuant to this chapter shall be due and payable according to the algorithm provided ~~brackets set forth~~ in s. 212.12.

(5) Notwithstanding any other provision of this chapter,

the maximum amount of tax imposed under this chapter and collected on each sale or use of a boat in this state may not exceed $18,000 and on each repair of a boat in this state may not exceed $60,000.

Section 4. Paragraph (c) of subsection (4) of section 212.054, Florida Statutes, is amended to read:

212.054 Discretionary sales surtax; limitations, administration, and collection.—

(4)

(c)1. Any dealer located in a county that does not impose a discretionary sales surtax, any marketplace provider that is a dealer under this chapter, or any person located outside this state who is required to collect and remit sales tax on remote sales ~~but~~ who collects the surtax due to sales of tangible personal property or services delivered to a county imposing a surtax ~~outside the county~~ shall remit monthly the proceeds of the surtax to the department to be deposited into an account in the Discretionary Sales Surtax Clearing Trust Fund which is separate from the county surtax collection accounts. The department shall distribute funds in this account using a distribution factor determined for each county that levies a surtax and multiplied by the amount of funds in the account and available for distribution. The distribution factor for each county equals the product of:

a. The county's latest official population determined

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

pursuant to s. 186.901;

b. The county's rate of surtax; and

c. The number of months the county has levied a surtax during the most recent distribution period;

divided by the sum of all such products of the counties levying the surtax during the most recent distribution period.

2. The department shall compute distribution factors for eligible counties once each quarter and make appropriate quarterly distributions.

3. A county that fails to timely provide the information required by this section to the department authorizes the department, by such action, to use the best information available to it in distributing surtax revenues to the county. If this information is unavailable to the department, the department may partially or entirely disqualify the county from receiving surtax revenues under this paragraph. A county that fails to provide timely information waives its right to challenge the department's determination of the county's share, if any, of revenues provided under this paragraph.

Section 5. Section 212.0596, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 212.0596, F.S., for present text.)

212.0596 Taxation of remote sales.—

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

(1) As used in this chapter, the term:

(a) "Remote sale" means a retail sale of tangible personal property ordered by mail, telephone, the Internet, or other means of communication from a person who receives the order outside of this state and transports the property or causes the property to be transported from any jurisdiction, including this state, to a location in this state. For purposes of this paragraph, tangible personal property delivered to a location within this state is presumed to be used, consumed, distributed, or stored to be used or consumed in this state.

(b) "Substantial number of remote sales" means any number of taxable remote sales in the previous calendar year in which the sum of the sales prices, as defined in s. 212.02(16), exceeded $100,000.

(2) Every person making a substantial number of remote sales is a dealer for purposes of this chapter.

(3) The department may establish by rule procedures for collecting the use tax from unregistered persons who but for their remote purchases would not be required to remit sales or use tax directly to the department. The procedures may provide for waiver of registration, provisions for irregular remittance of tax, elimination of the collection allowance, and nonapplication of local option surtaxes.

(4) A marketplace provider that is a dealer under this chapter or a person who is required to collect and remit sales

tax on remote sales is required to collect surtax when the taxable item of tangible personal property is delivered within a county imposing a surtax as provided in s. 212.054(3)(a).

Section 6. Section 212.05965, Florida Statutes, is created to read:

212.05965 Taxation of marketplace sales.—

(1) As used in this chapter, the term:

(a) "Marketplace" means any physical place or electronic medium through which tangible personal property is offered for sale.

(b) "Marketplace provider" means a person who facilitates a retail sale by a marketplace seller by listing or advertising for sale by the marketplace seller tangible personal property in a marketplace and who directly, or indirectly through agreements or arrangements with third parties, collects payment from the customer and transmits all or part of the payment to the marketplace seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for its services.

1. The term does not include a person who solely provides travel agency services. As used in this subparagraph, the term "travel agency services" means arranging, booking, or otherwise facilitating for a commission, fee, or other consideration vacation or travel packages, rental cars, or other travel reservations; tickets for domestic or foreign travel by air,

rail, ship, bus, or other mode of transportation; or hotel or other lodging accommodations.

2. The term does not include a person who is a delivery network company unless the delivery network company is a registered dealer for purposes of this chapter and the delivery network company notifies all local merchants that sell through the delivery network company's website or mobile application that the delivery network company is subject to the requirements of a marketplace provider under this section. As used in this subparagraph, the term:

a. "Delivery network company" means a person who maintains a website or mobile application used to facilitate delivery services, the sale of local products, or both.

b. "Delivery network courier" means a person who provides delivery services through a delivery network company website or mobile application using a personal means of transportation, such as a motor vehicle as defined in s. 320.01(1), bicycle, scooter, or other similar means of transportation; using public transportation; or by walking.

c. "Delivery services" means the pickup and delivery by a delivery network courier of one or more local products from a local merchant to a customer, which may include the selection, collection, and purchase of the local product in connection with the delivery. The term does not include any delivery requiring more than 75 miles of travel from the local merchant to the

customer.

d. "Local merchant" means a kitchen, a restaurant, or a third-party merchant, including a grocery store, retail store, convenience store, or business of another type, which is not under common ownership or control of the delivery network company.

e. "Local product" means any tangible personal property, including food but excluding freight, mail, or a package to which postage has been affixed.

3. The term does not include a payment processor business that processes payment transactions from various channels, such as charge cards, credit cards, or debit cards, and whose sole activity with respect to marketplace sales is to process payment transactions between two or more parties.

(c) "Marketplace seller" means a person who has an agreement with a marketplace provider that is a dealer under this chapter and who makes retail sales of tangible personal property through a marketplace owned, operated, or controlled by the marketplace provider.

(2) A marketplace provider that has a physical presence in this state or who is making or facilitating through a marketplace a substantial number of remote sales as defined in s. 212.0596(1) is a dealer for purposes of this chapter.

(3) A marketplace provider that is a dealer under this chapter shall certify to its marketplace sellers that it will

collect and remit the tax imposed under this chapter on taxable retail sales made through the marketplace. Such certification may be included in the agreement between the marketplace provider and the marketplace seller.

(4)(a) A marketplace seller may not collect and remit the tax under this chapter on a taxable retail sale when the sale is made through the marketplace and the marketplace provider certifies, as required under subsection (3), that it will collect and remit such tax. A marketplace seller shall exclude such sales made through the marketplace from the marketplace seller's tax return under s. 212.11.

(b)1. A marketplace seller who has a physical presence in this state shall register and shall collect and remit the tax imposed under this chapter on all taxable retail sales made outside of the marketplace.

2. A marketplace seller who is not described under subparagraph 1. but who makes a substantial number of remote sales as defined in s. 212.0596(1) shall register and shall collect and remit the tax imposed under this chapter on all taxable retail sales made outside of the marketplace. For the purpose of determining whether a marketplace seller made a substantial number of remote sales, the marketplace seller shall consider only those sales made outside of a marketplace.

(5)(a) A marketplace provider that is a dealer under this chapter shall allow the department to examine and audit its

books and records pursuant to s. 212.13. For retail sales facilitated through a marketplace, the department may not examine or audit the books and records of marketplace sellers, nor may the department assess marketplace sellers except to the extent that the marketplace provider seeks relief under paragraph (b). The department may examine, audit, and assess a marketplace seller for retail sales made outside of a marketplace under paragraph (4)(b). This paragraph does not provide relief to a marketplace seller who is under audit; has been issued a bill, notice, or demand for payment; or is under an administrative or judicial proceeding before July 1, 2021.

(b) The marketplace provider is relieved of liability for the tax on the retail sale and the marketplace seller or customer is liable for the tax imposed under this chapter if the marketplace provider demonstrates to the department's satisfaction that the marketplace provider made a reasonable effort to obtain accurate information related to the retail sales facilitated through the marketplace from the marketplace seller, but that the failure to collect and remit the correct amount of tax imposed under this chapter was due to the provision of incorrect or incomplete information to the marketplace provider by the marketplace seller. This paragraph does not apply to a retail sale for which the marketplace provider is the seller if the marketplace provider and the marketplace seller are related parties or if transactions

between a marketplace seller and marketplace buyer are not conducted at arm's length.

(6) For purposes of registration pursuant to s. 212.18, a marketplace is deemed a separate place of business.

(7) A marketplace provider and a marketplace seller may agree by contract or otherwise that if a marketplace provider pays the tax imposed under this chapter on a retail sale facilitated through a marketplace for a marketplace seller as a result of an audit or otherwise, the marketplace provider has the right to recover such tax and any associated interest and penalties from the marketplace seller.

(8) This section may not be construed to authorize the state to collect sales tax from both the marketplace provider and the marketplace seller on the same retail sale.

(9) Chapter 213 applies to the administration of this section to the extent that chapter does not conflict with this section.

Section 7. Effective April 1, 2022, subsections (10) and (11) are added to section 212.05965, Florida Statutes, as created by this act, to read:

212.05965 Taxation of marketplace sales.—

(10) Notwithstanding any other law, the marketplace provider is also responsible for collecting and remitting any prepaid wireless E911 fee under s. 365.172, waste tire fee under s. 403.718, and lead-acid battery fee under s. 403.7185 at the

time of sale for taxable retail sales made through its marketplace.

(11) Notwithstanding paragraph (4)(a), the marketplace provider and the marketplace seller may contractually agree to have the marketplace seller collect and remit all applicable taxes and fees if the marketplace seller:

(a) Has annual United States gross sales of more than $1 billion, including the gross sales of any related entities, and in the case of franchised entities, including the combined sales of all franchisees of a single franchisor;

(b) Provides evidence to the marketplace provider that it is registered under s. 212.18; and

(c) Notifies the department in a manner prescribed by the department that the marketplace seller will collect and remit all applicable taxes and fees on its sales through the marketplace and is liable for failure to collect or remit applicable taxes and fees on its sales.

Section 8. Paragraph (c) of subsection (2) and paragraph (a) of subsection (5) of section 212.06, Florida Statutes, are amended to read:

212.06 Sales, storage, use tax; collectible from dealers; "dealer" defined; dealers to collect from purchasers; legislative intent as to scope of tax.—

(2)

(c) The term "dealer" is further defined to mean every

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

person, as used in this chapter, who sells at retail or who offers for sale at retail, or who has in his or her possession for sale at retail; or for use, consumption, or distribution; or for storage to be used or consumed in this state, tangible personal property as defined herein, including a retailer who transacts a substantial number of remote sales or a marketplace provider that has a physical presence in this state or that makes or facilitates through its marketplace a substantial number of remote sales ~~mail order sale~~.

(5)(a)1. Except as provided in subparagraph 2., it is not the intention of this chapter to levy a tax upon tangible personal property imported, produced, or manufactured in this state for export, provided that tangible personal property may not be considered as being imported, produced, or manufactured for export unless the importer, producer, or manufacturer delivers the same to a licensed exporter for exporting or to a common carrier for shipment outside the state or mails the same by United States mail to a destination outside the state; or, in the case of aircraft being exported under their own power to a destination outside the continental limits of the United States, by submission to the department of a duly signed and validated United States customs declaration, showing the departure of the aircraft from the continental United States; and further with respect to aircraft, the canceled United States registry of said aircraft; or in the case of parts and equipment installed on

aircraft of foreign registry, by submission to the department of documentation, the extent of which shall be provided by rule, showing the departure of the aircraft from the continental United States; nor is it the intention of this chapter to levy a tax on any sale which the state is prohibited from taxing under the Constitution or laws of the United States. Every retail sale made to a person physically present at the time of sale shall be presumed to have been delivered in this state.

2.a. Notwithstanding subparagraph 1., a tax is levied on each sale of tangible personal property to be transported to a cooperating state as defined in sub-subparagraph c., at the rate specified in sub-subparagraph d. However, a Florida dealer will be relieved from the requirements of collecting taxes pursuant to this subparagraph if the Florida dealer obtains from the purchaser an affidavit setting forth the purchaser's name, address, state taxpayer identification number, and a statement that the purchaser is aware of his or her state's use tax laws, is a registered dealer in Florida or another state, or is purchasing the tangible personal property for resale or is otherwise not required to pay the tax on the transaction. The department may, by rule, provide a form to be used for the purposes set forth herein.

b. For purposes of this subparagraph, "a cooperating state" is one determined by the executive director of the department to cooperate satisfactorily with this state in

collecting taxes on remote ~~mail order~~ sales. No state shall be so determined unless it meets all the following minimum requirements:

(I) It levies and collects taxes on remote ~~mail order~~ sales of property transported from that state to persons in this state, as described in s. 212.0596, upon request of the department.

(II) The tax so collected shall be at the rate specified in s. 212.05, not including any local option or tourist or convention development taxes collected pursuant to s. 125.0104 or this chapter.

(III) Such state agrees to remit to the department all taxes so collected no later than 30 days from the last day of the calendar quarter following their collection.

(IV) Such state authorizes the department to audit dealers within its jurisdiction who make remote ~~mail order~~ sales that are the subject of s. 212.0596, or makes arrangements deemed adequate by the department for auditing them with its own personnel.

(V) Such state agrees to provide to the department records obtained by it from retailers or dealers in such state showing delivery of tangible personal property into this state upon which no sales or use tax has been paid in a manner similar to that provided in sub-subparagraph g.

c. For purposes of this subparagraph, "sales of tangible

personal property to be transported to a cooperating state" means remote ~~mail order~~ sales to a person who is in the cooperating state at the time the order is executed, from a dealer who receives that order in this state.

d. The tax levied by sub-subparagraph a. shall be at the rate at which such a sale would have been taxed pursuant to the cooperating state's tax laws if consummated in the cooperating state by a dealer and a purchaser, both of whom were physically present in that state at the time of the sale.

e. The tax levied by sub-subparagraph a., when collected, shall be held in the State Treasury in trust for the benefit of the cooperating state and shall be paid to it at a time agreed upon between the department, acting for this state, and the cooperating state or the department or agency designated by it to act for it; however, such payment shall in no event be made later than 30 days from the last day of the calendar quarter after the tax was collected. Funds held in trust for the benefit of a cooperating state shall not be subject to the service charges imposed by s. 215.20.

f. The department is authorized to perform such acts and to provide such cooperation to a cooperating state with reference to the tax levied by sub-subparagraph a. as is required of the cooperating state by sub-subparagraph b.

g. In furtherance of this act, dealers selling tangible personal property for delivery in another state shall make

available to the department, upon request of the department, records of all tangible personal property so sold. Such records shall include a description of the property, the name and address of the purchaser, the name and address of the person to whom the property was sent, the purchase price of the property, information regarding whether sales tax was paid in this state on the purchase price, and such other information as the department may by rule prescribe.

Section 9. Paragraph (b) of subsection (1) of section 212.07, Florida Statutes, is amended to read:

212.07 Sales, storage, use tax; tax added to purchase price; dealer not to absorb; liability of purchasers who cannot prove payment of the tax; penalties; general exemptions.—

(1)

(b) A resale must be in strict compliance with s. 212.18 and the rules and regulations adopted thereunder. A dealer who makes a sale for resale that is not in strict compliance with s. 212.18 and the rules and regulations adopted thereunder is liable for and must pay the tax. A dealer who makes a sale for resale shall document the exempt nature of the transaction, as established by rules adopted by the department, by retaining a copy of the purchaser's resale certificate. In lieu of maintaining a copy of the certificate, a dealer may document, before the time of sale, an authorization number provided telephonically or electronically by the department, or by such

other means established by rule of the department. The dealer may rely on a resale certificate issued pursuant to s. 212.18(3)(e) ~~s. 212.18(3)(d)~~, valid at the time of receipt from the purchaser, without seeking annual verification of the resale certificate if the dealer makes recurring sales to a purchaser in the normal course of business on a continual basis. For purposes of this paragraph, "recurring sales to a purchaser in the normal course of business" refers to a sale in which the dealer extends credit to the purchaser and records the debt as an account receivable, or in which the dealer sells to a purchaser who has an established cash or C.O.D. account, similar to an open credit account. For purposes of this paragraph, purchases are made from a selling dealer on a continual basis if the selling dealer makes, in the normal course of business, sales to the purchaser at least once in every 12-month period. A dealer may, through the informal protest provided for in s. 213.21 and the rules of the department, provide the department with evidence of the exempt status of a sale. Consumer certificates of exemption executed by those exempt entities that were registered with the department at the time of sale, resale certificates provided by purchasers who were active dealers at the time of sale, and verification by the department of a purchaser's active dealer status at the time of sale in lieu of a resale certificate shall be accepted by the department when submitted during the protest period, but may not be accepted in

any proceeding under chapter 120 or any circuit court action instituted under chapter 72.

Section 10. Paragraph (f) is added to subsection (4) of section 212.11, Florida Statutes, to read:

212.11 Tax returns and regulations.—

(4)

(f) A marketplace provider that is a dealer under this chapter or a person who is required to collect and remit sales tax on remote sales shall file returns and pay taxes by electronic means under s. 213.755.

Section 11. Subsections (12) and (13) of section 212.12, Florida Statutes, are renumbered as subsections (11) and (12) respectively, and paragraph (a) of subsection (1), paragraph (a) of subsection (5), and subsections (9), and (10), present subsection (11), and subsection (14) of that section, are amended to read:

212.12 Dealer's credit for collecting tax; penalties for noncompliance; powers of Department of Revenue in dealing with delinquents; rounding ~~brackets applicable to taxable transactions~~; records required.—

(1)(a)~~1.~~ Notwithstanding any other law and for the purpose of compensating persons granting licenses for and the lessors of real and personal property taxed hereunder, for the purpose of compensating dealers in tangible personal property, for the purpose of compensating dealers providing communication services

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

and taxable services, for the purpose of compensating owners of places where admissions are collected, and for the purpose of compensating remitters of any taxes or fees reported on the same documents utilized for the sales and use tax, as compensation for the keeping of prescribed records, filing timely tax returns, and the proper accounting and remitting of taxes by them, such seller, person, lessor, dealer, owner, and remitter ~~(except dealers who make mail order sales)~~ who files the return required pursuant to s. 212.11 only by electronic means and who pays the amount due on such return only by electronic means shall be allowed 2.5 percent of the amount of the tax due, accounted for, and remitted to the department in the form of a deduction. However, if the amount of the tax due and remitted to the department by electronic means for the reporting period exceeds $1,200, an allowance is not allowed for all amounts in excess of $1,200. For purposes of this paragraph ~~subparagraph~~, the term "electronic means" has the same meaning as provided in s. 213.755(2)(c).

~~2. The executive director of the department is authorized to negotiate a collection allowance, pursuant to rules promulgated by the department, with a dealer who makes mail order sales. The rules of the department shall provide guidelines for establishing the collection allowance based upon the dealer's estimated costs of collecting the tax, the volume and value of the dealer's mail order sales to purchasers in this~~

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

~~state, and the administrative and legal costs and likelihood of achieving collection of the tax absent the cooperation of the dealer. However, in no event shall the collection allowance negotiated by the executive director exceed 10 percent of the tax remitted for a reporting period.~~

(5)(a) The department is authorized to audit or inspect the records and accounts of dealers defined herein, including audits or inspections of dealers who make remote ~~mail order~~ sales ~~to the extent permitted by another state~~, and to correct by credit any overpayment of tax, and, in the event of a deficiency, an assessment shall be made and collected. No administrative finding of fact is necessary prior to the assessment of any tax deficiency.

(9) Taxes imposed by this chapter upon the privilege of the use, consumption, storage for consumption, or sale of tangible personal property, admissions, license fees, rentals, ~~communication services,~~ and upon the sale or use of services as herein taxed shall be collected upon the basis of an addition of the tax imposed by this chapter to the total price of such admissions, license fees, rentals, ~~communication or other~~ services, or sale price of such article or articles that are purchased, sold, or leased at any one time by or to a customer or buyer; the dealer, or person charged herein, is required to pay a privilege tax in the amount of the tax imposed by this chapter on the total of his or her gross sales of tangible

personal property, admissions, license fees, and rentals~~, and communication services~~ or to collect a tax upon the sale or use of services, and such person or dealer shall add the tax imposed by this chapter to the price, license fee, rental, ~~or~~ admissions, ~~and communication~~ or ~~other~~ services and collect the total sum from the purchaser, admittee, licensee, lessee, or consumer. ~~The department shall make available in an electronic format or otherwise the tax amounts and the following brackets applicable to all transactions taxable at the rate of 6 percent:~~

~~(a) On single sales of less than 10 cents, no tax shall be added.~~

~~(b) On single sales in amounts from 10 cents to 16 cents, both inclusive, 1 cent shall be added for taxes.~~

~~(c) On sales in amounts from 17 cents to 33 cents, both inclusive, 2 cents shall be added for taxes.~~

~~(d) On sales in amounts from 34 cents to 50 cents, both inclusive, 3 cents shall be added for taxes.~~

~~(e) On sales in amounts from 51 cents to 66 cents, both inclusive, 4 cents shall be added for taxes.~~

~~(f) On sales in amounts from 67 cents to 83 cents, both inclusive, 5 cents shall be added for taxes.~~

~~(g) On sales in amounts from 84 cents to $1, both inclusive, 6 cents shall be added for taxes.~~

~~(h) On sales in amounts of more than $1, 6 percent shall be charged upon each dollar of price, plus the appropriate~~

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

~~bracket charge upon any fractional part of a dollar.~~

(10)(a) A dealer must calculate the tax due on the privilege of the use, consumption, storage for consumption, or sale of tangible personal property, admissions, license fees, rentals, and upon the sale or use of services, based on a rounding algorithm that meets the following criteria:

1. The computation of the tax must be carried to the third decimal place.

2. The tax must be rounded to the whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

(b) A dealer may apply the rounding algorithm to the aggregate tax amount computed on all taxable items on an invoice or to the taxable amount on each individual item on the invoice ~~In counties which have adopted a discretionary sales surtax at the rate of 1 percent, the department shall make available in an electronic format or otherwise the tax amounts and the following brackets applicable to all taxable transactions that would otherwise have been transactions taxable at the rate of 6 percent:~~

~~(a) On single sales of less than 10 cents, no tax shall be added.~~

~~(b) On single sales in amounts from 10 cents to 14 cents, both inclusive, 1 cent shall be added for taxes.~~

~~(c) On sales in amounts from 15 cents to 28 cents, both~~

~~inclusive, 2 cents shall be added for taxes.~~

~~(d) On sales in amounts from 29 cents to 42 cents, both inclusive, 3 cents shall be added for taxes.~~

~~(e) On sales in amounts from 43 cents to 57 cents, both inclusive, 4 cents shall be added for taxes.~~

~~(f) On sales in amounts from 58 cents to 71 cents, both inclusive, 5 cents shall be added for taxes.~~

~~(g) On sales in amounts from 72 cents to 85 cents, both inclusive, 6 cents shall be added for taxes.~~

~~(h) On sales in amounts from 86 cents to $1, both inclusive, 7 cents shall be added for taxes.~~

~~(i) On sales in amounts from $1 up to, and including, the first $5,000 in price, 7 percent shall be charged upon each dollar of price, plus the appropriate bracket charge upon any fractional part of a dollar.~~

~~(j) On sales in amounts of more than $5,000 in price, 7 percent shall be added upon the first $5,000 in price, and 6 percent shall be added upon each dollar of price in excess of the first $5,000 in price, plus the bracket charges upon any fractional part of a dollar as provided for in subsection (9).~~

~~(11) The department shall make available in an electronic format or otherwise the tax amounts and brackets applicable to all taxable transactions that occur in counties that have a surtax at a rate other than 1 percent which would otherwise have been transactions taxable at the rate of 6 percent. Likewise,~~

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

~~the department shall make available in an electronic format or otherwise the tax amounts and brackets applicable to transactions taxable at 4.35 percent pursuant to s. 212.05(1)(c)1.c. or the applicable tax rate pursuant to s. 212.031(1) and on transactions which would otherwise have been so taxable in counties which have adopted a discretionary sales surtax.~~

~~(14) If it is determined upon audit that a dealer has collected and remitted taxes by applying the applicable tax rate to each transaction as described in subsection (9) and rounding the tax due to the nearest whole cent rather than applying the appropriate bracket system provided by law or department rule, the dealer shall not be held liable for additional tax, penalty, and interest resulting from such failure if:~~

~~(a) The dealer acted in a good faith belief that rounding to the nearest whole cent was the proper method of determining the amount of tax due on each taxable transaction.~~

~~(b) The dealer timely reported and remitted all taxes collected on each taxable transaction.~~

~~(c) The dealer agrees in writing to future compliance with the laws and rules concerning brackets applicable to the dealer's transactions.~~

Section 12. Present paragraphs (c) through (f) of subsection (3) of section 212.18, Florida Statutes, are redesignated as paragraphs (d) through (g), respectively, a new

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

paragraph (c) is added to that subsection, and present paragraph (f) of that subsection is amended, to read:

212.18 Administration of law; registration of dealers; rules.—

(3)

(c) A marketplace provider that is a dealer under this chapter or a person who is required to collect and remit sales tax on remote sales must file with the department an application for a certificate of registration electronically.

(g) ~~(f)~~ As used in this paragraph, the term "exhibitor" means a person who enters into an agreement authorizing the display of tangible personal property or services at a convention or a trade show. The following provisions apply to the registration of exhibitors as dealers under this chapter:

1. An exhibitor whose agreement prohibits the sale of tangible personal property or services subject to the tax imposed in this chapter is not required to register as a dealer.

2. An exhibitor whose agreement provides for the sale at wholesale only of tangible personal property or services subject to the tax imposed by this chapter must obtain a resale certificate from the purchasing dealer but is not required to register as a dealer.

3. An exhibitor whose agreement authorizes the retail sale of tangible personal property or services subject to the tax imposed by this chapter must register as a dealer and collect

the tax on such sales.

4. An exhibitor who makes a remote ~~mail order~~ sale pursuant to s. 212.0596 must register as a dealer.

A person who conducts a convention or a trade show must make his or her exhibitor's agreements available to the department for inspection and copying.

Section 13. Subsection (4) and paragraph (d) of subsection (6) of section 212.20, Florida Statutes, are amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.—

(4) When there has been a final adjudication that any tax pursuant to s. 212.0596 or s. 212.05965 was levied, collected, or both, contrary to the Constitution of the United States or the State Constitution, the department shall, in accordance with rules, determine, based upon claims for refund and other evidence and information, who paid such tax or taxes, and refund to each such person the amount of tax paid. For purposes of this subsection, a "final adjudication" is a decision of a court of competent jurisdiction from which no appeal can be taken or from which the official or officials of this state with authority to make such decisions has or have decided not to appeal.

(6) Distribution of all proceeds under this chapter and ss. 202.18(1)(b) and (2)(b) and 203.01(1)(a)3. is as follows:

(d) The proceeds of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be distributed as follows:

1. In any fiscal year, the greater of $500 million, minus an amount equal to 4.6 percent of the proceeds of the taxes collected pursuant to chapter 201, or 5.2 percent of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in monthly installments into the General Revenue Fund.

2. After the distribution under subparagraph 1., 8.9744 percent of the amount remitted by a sales tax dealer located within a participating county pursuant to s. 218.61 shall be transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to be transferred shall be reduced by 0.1 percent, and the department shall distribute this amount to the Public Employees Relations Commission Trust Fund less $5,000 each month, which shall be added to the amount calculated in subparagraph 3. and distributed accordingly.

3. After the distribution under subparagraphs 1. and 2., 0.0966 percent shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and distributed pursuant to s. 218.65.

4. After the distributions under subparagraphs 1., 2., and 3., 2.0810 percent of the available proceeds shall be

transferred monthly to the Revenue Sharing Trust Fund for Counties pursuant to s. 218.215.

5. After the distributions under subparagraphs 1., 2., and 3., 1.3653 percent of the available proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for Municipalities pursuant to s. 218.215. If the total revenue to be distributed pursuant to this subparagraph is at least as great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, no municipality shall receive less than the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000. If the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

6. Of the remaining proceeds:

a. In each fiscal year, the sum of $29,915,500 shall be divided into as many equal parts as there are counties in the state, and one part shall be distributed to each county. The distribution among the several counties must begin each fiscal year on or before January 5th and continue monthly for a total

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

of 4 months. If a local or special law required that any moneys accruing to a county in fiscal year 1999-2000 under the then-existing provisions of s. 550.135 be paid directly to the district school board, special district, or a municipal government, such payment must continue until the local or special law is amended or repealed. The state covenants with holders of bonds or other instruments of indebtedness issued by local governments, special districts, or district school boards before July 1, 2000, that it is not the intent of this subparagraph to adversely affect the rights of those holders or relieve local governments, special districts, or district school boards of the duty to meet their obligations as a result of previous pledges or assignments or trusts entered into which obligated funds received from the distribution to county governments under then-existing s. 550.135. This distribution specifically is in lieu of funds distributed under s. 550.135 before July 1, 2000.

b. The department shall distribute $166,667 monthly to each applicant certified as a facility for a new or retained professional sports franchise pursuant to s. 288.1162. Up to $41,667 shall be distributed monthly by the department to each certified applicant as defined in s. 288.11621 for a facility for a spring training franchise. However, not more than $416,670 may be distributed monthly in the aggregate to all certified applicants for facilities for spring training franchises.

Distributions begin 60 days after such certification and continue for not more than 30 years, except as otherwise provided in s. 288.11621. A certified applicant identified in this sub-subparagraph may not receive more in distributions than expended by the applicant for the public purposes provided in s. 288.1162(5) or s. 288.11621(3).

c. Beginning 30 days after notice by the Department of Economic Opportunity to the Department of Revenue that an applicant has been certified as the professional golf hall of fame pursuant to s. 288.1168 and is open to the public, $166,667 shall be distributed monthly, for up to 300 months, to the applicant.

d. Beginning 30 days after notice by the Department of Economic Opportunity to the Department of Revenue that the applicant has been certified as the International Game Fish Association World Center facility pursuant to s. 288.1169, and the facility is open to the public, $83,333 shall be distributed monthly, for up to 168 months, to the applicant. This distribution is subject to reduction pursuant to s. 288.1169.

e. The department shall distribute up to $83,333 monthly to each certified applicant as defined in s. 288.11631 for a facility used by a single spring training franchise, or up to $166,667 monthly to each certified applicant as defined in s. 288.11631 for a facility used by more than one spring training franchise. Monthly distributions begin 60 days after such

certification or July 1, 2016, whichever is later, and continue for not more than 20 years to each certified applicant as defined in s. 288.11631 for a facility used by a single spring training franchise or not more than 25 years to each certified applicant as defined in s. 288.11631 for a facility used by more than one spring training franchise. A certified applicant identified in this sub-subparagraph may not receive more in distributions than expended by the applicant for the public purposes provided in s. 288.11631(3).

f. Beginning 45 days after notice by the Department of Economic Opportunity to the Department of Revenue that an applicant has been approved by the Legislature and certified by the Department of Economic Opportunity under s. 288.11625 or upon a date specified by the Department of Economic Opportunity as provided under s. 288.11625(6)(d), the department shall distribute each month an amount equal to one-twelfth of the annual distribution amount certified by the Department of Economic Opportunity for the applicant. The department may not distribute more than $13 million annually under this sub-subparagraph.

g. The department shall distribute $15,333 monthly to the State Transportation Trust Fund.

h.(I) On or before July 25, 2021, August 25, 2021, and September 25, 2021, the department shall distribute $324,533,334 in each of those months to the Unemployment Compensation Trust

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

Fund, less an adjustment for refunds issued from the General Revenue Fund pursuant to s. 443.131(3)(e)3. before making the distribution. The adjustments made by the department to the total distributions shall be equal to the total refunds made pursuant to s. 443.131(3)(e)3. If the amount of refunds to be subtracted from any single distribution exceeds the distribution, the department may not make that distribution and must subtract the remaining balance from the next distribution.

(II) Beginning July 2022, and on or before the 25th day of each month, the department shall distribute $90 million monthly to the Unemployment Compensation Trust Fund.

(III) If the ending balance of the Unemployment Compensation Trust Fund exceeds $4,071,519,600 on the last day of any month, as determined from United States Department of the Treasury data, the Office of Economic and Demographic Research shall certify to the department that the ending balance of the trust fund exceeds such amount.

(IV) This sub-subparagraph is repealed, and the department shall end monthly distributions under sub-sub-subparagraph (II), on the date the department receives certification under sub-sub-subparagraph (III) or December 31, 2025, whichever is earlier.

7. All other proceeds must remain in the General Revenue Fund.

Section 14. Paragraph (a) of subsection (1) of section 443.1216, Florida Statutes, is amended to read:

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

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

1. An officer of a corporation.

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

a. However, except for the internal employees of an employee leasing company, each employee leasing company may make a separate one-time election to report and pay contributions under the tax identification number and contribution rate for each client of the employee leasing company. Under the client method, an employee leasing company choosing this option must

assign leased employees to the client company that is leasing the employees. The client method is solely a method to report and pay unemployment contributions, and, whichever method is chosen, such election may not impact any other aspect of state law. An employee leasing company that elects the client method must pay contributions at the rates assigned to each client company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(IX) After an employee leasing company is licensed pursuant to part XI of chapter 468, each newly licensed entity has 30 days after the date the license is granted to notify the

tax collection service provider in writing of their selection of the client method. A newly licensed employee leasing company that fails to timely select reporting pursuant to the client method of reporting must report under the employee leasing company's tax identification number and contribution rate.

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

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

(I) The trade or establishment name;

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

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

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

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

(VI) The address of the physical location;

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

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

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

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

(XI) The month and year that the client terminated the contract for services.

c. The report must be submitted electronically or in a manner otherwise prescribed by the Department of Economic Opportunity in the format specified by the Bureau of Labor Statistics of the United States Department of Labor for its Multiple Worksite Report for Professional Employer Organizations. The report must be provided quarterly to the Labor Market Statistics Center within the department, or as otherwise directed by the department, and must be filed by the last day of the month immediately after the end of the calendar quarter. The information required in sub-sub-subparagraphs b.(X)

and (XI) need be provided only in the quarter in which the contract to which it relates was entered into or terminated. The sum of the employment data and the sum of the wage data in this report must match the employment and wages reported in the reemployment assistance quarterly tax and wage report.

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

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

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

a. As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or drycleaning services for his or her principal.

b. As a traveling or city salesperson engaged on a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in the business operations. This sub-

subparagraph does not apply to an agent-driver or a commission-driver and does not apply to sideline sales activities performed on behalf of a person other than the salesperson's principal.

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

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

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

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

Section 15. Effective upon becoming a law and applying retroactively to April 1, 2020, present paragraphs (f) through (k) of subsection (3) of section 443.131, Florida Statutes, are redesignated as paragraphs (g) through (l), respectively, a new paragraph (f) is added to that subsection, and paragraphs (b) and (e) of that subsection are amended, to read:

443.131 Contributions.—

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

(b) *Benefit ratio.*—

1. As used in this paragraph, the term "annual payroll"

means the calendar quarter taxable payroll reported to the tax collection service provider for the quarters used in computing the benefit ratio. The term does not include a penalty resulting from the untimely filing of required wage and tax reports. All of the taxable payroll reported to the tax collection service provider by the end of the quarter preceding the quarter for which the contribution rate is to be computed must be used in the computation.

2. As used in this paragraph, the term "benefits charged to the employer's employment record" means the amount of benefits paid to individuals multiplied by:

a. For benefits paid prior to July 1, 2007, 1.

b. For benefits paid during the period beginning on July 1, 2007, and ending March 31, 2011, 0.90.

c. For benefits paid after March 31, 2011, 1.

d. For benefits paid during the period beginning April 1, 2020, and ending December 31, 2020, 0.

e. For benefits paid during the period beginning January 1, 2021, and ending June 30, 2021, 1, except as otherwise adjusted in accordance with paragraph (f).

3. For each calendar year, the tax collection service provider shall compute a benefit ratio for each employer whose employment record was chargeable for benefits during the 12 consecutive quarters ending June 30 of the calendar year preceding the calendar year for which the benefit ratio is

computed. An employer's benefit ratio is the quotient obtained by dividing the total benefits charged to the employer's employment record during the 3-year period ending June 30 of the preceding calendar year by the total of the employer's annual payroll for the 3-year period ending June 30 of the preceding calendar year. The benefit ratio shall be computed to the fifth decimal place and rounded to the fourth decimal place.

4. The tax collection service provider shall compute a benefit ratio for each employer who was not previously eligible under subparagraph 3., whose contribution rate is set at the initial contribution rate in paragraph (2)(a), and whose employment record was chargeable for benefits during at least 8 calendar quarters immediately preceding the calendar quarter for which the benefit ratio is computed. The employer's benefit ratio is the quotient obtained by dividing the total benefits charged to the employer's employment record during the first 6 of the 8 completed calendar quarters immediately preceding the calendar quarter for which the benefit ratio is computed by the total of the employer's annual payroll during the first 7 of the 9 completed calendar quarters immediately preceding the calendar quarter for which the benefit ratio is computed. The benefit ratio shall be computed to the fifth decimal place and rounded to the fourth decimal place and applies for the remainder of the calendar year. The employer must subsequently be rated on an annual basis using up to 12 calendar quarters of benefits

charged and up to 12 calendar quarters of annual payroll. That employer's benefit ratio is the quotient obtained by dividing the total benefits charged to the employer's employment record by the total of the employer's annual payroll during the quarters used in his or her first computation plus the subsequent quarters reported through June 30 of the preceding calendar year. Each subsequent calendar year, the rate shall be computed under subparagraph 3. The tax collection service provider shall assign a variation from the standard rate of contributions in paragraph (c) on a quarterly basis to each eligible employer in the same manner as an assignment for a calendar year under paragraph (e).

(e) *Assignment of variations from the standard rate.*—

1. As used in this paragraph, the terms "total benefit payments," "benefits paid to an individual," and "benefits charged to the employment record of an employer" mean the amount of benefits paid to individuals multiplied by:

a. For benefits paid prior to July 1, 2007, 1.

b. For benefits paid during the period beginning on July 1, 2007, and ending March 31, 2011, 0.90.

c. For benefits paid after March 31, 2011, 1.

d. For benefits paid during the period beginning April 1, 2020, and ending December 31, 2020, 0.

e. For benefits paid during the period beginning January 1, 2021, and ending June 30, 2021, 1, except as otherwise

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

adjusted in accordance with paragraph (f).

2. For the calculation of contribution rates effective January 1, 2012, and thereafter:

a. The tax collection service provider shall assign a variation from the standard rate of contributions for each calendar year to each eligible employer. In determining the contribution rate, varying from the standard rate to be assigned each employer, adjustment factors computed under sub-sub-subparagraphs (I)-(IV) are added to the benefit ratio. This addition shall be accomplished in two steps by adding a variable adjustment factor and a final adjustment factor. The sum of these adjustment factors computed under sub-sub-subparagraphs (I)-(IV) shall first be algebraically summed. The sum of these adjustment factors shall next be divided by a gross benefit ratio determined as follows: Total benefit payments for the 3-year period described in subparagraph (b)3. are charged to employers eligible for a variation from the standard rate, minus excess payments for the same period, divided by taxable payroll entering into the computation of individual benefit ratios for the calendar year for which the contribution rate is being computed. The ratio of the sum of the adjustment factors computed under sub-sub-subparagraphs (I)-(IV) to the gross benefit ratio is multiplied by each individual benefit ratio that is less than the maximum contribution rate to obtain variable adjustment factors; except that if the sum of an

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

employer's individual benefit ratio and variable adjustment factor exceeds the maximum contribution rate, the variable adjustment factor is reduced in order for the sum to equal the maximum contribution rate. The variable adjustment factor for each of these employers is multiplied by his or her taxable payroll entering into the computation of his or her benefit ratio. The sum of these products is divided by the taxable payroll of the employers who entered into the computation of their benefit ratios. The resulting ratio is subtracted from the sum of the adjustment factors computed under sub-sub-subparagraphs (I)-(IV) to obtain the final adjustment factor. The variable adjustment factors and the final adjustment factor must be computed to five decimal places and rounded to the fourth decimal place. This final adjustment factor is added to the variable adjustment factor and benefit ratio of each employer to obtain each employer's contribution rate. An employer's contribution rate may not, however, be rounded to less than 0.1 percent. In determining the contribution rate, varying from the standard rate to be assigned, the computation shall exclude any benefit that is excluded by the multipliers under subparagraph (b)2. and subparagraph 1. The computation of the contribution rate, varying from the standard rate to be assigned, shall also exclude any benefit paid as a result of a governmental order related to COVID-19 to close or reduce capacity of a business. In addition, the contribution rate for

the 2021 and 2022 calendar years shall be calculated without the application of the positive adjustment factor in sub-sub-subparagraph (III).

(I) An adjustment factor for noncharge benefits is computed to the fifth decimal place and rounded to the fourth decimal place by dividing the amount of noncharge benefits during the 3-year period described in subparagraph (b)3. by the taxable payroll of employers eligible for a variation from the standard rate who have a benefit ratio for the current year which is less than the maximum contribution rate. For purposes of computing this adjustment factor, the taxable payroll of these employers is the taxable payrolls for the 3 years ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the same calendar year. As used in this sub-sub-subparagraph, the term "noncharge benefits" means benefits paid to an individual, as adjusted pursuant to subparagraph (b)2. and subparagraph 1., from the Unemployment Compensation Trust Fund~~, but~~ which were not charged to the employment record of any employer, but excluding any benefit paid as a result of a governmental order related to COVID-19 to close or reduce capacity of a business.

(II) An adjustment factor for excess payments is computed to the fifth decimal place, and rounded to the fourth decimal place by dividing the total excess payments during the 3-year period described in subparagraph (b)3. by the taxable payroll of

employers eligible for a variation from the standard rate who have a benefit ratio for the current year which is less than the maximum contribution rate. For purposes of computing this adjustment factor, the taxable payroll of these employers is the same figure used to compute the adjustment factor for noncharge benefits under sub-sub-subparagraph (I). As used in this sub-subparagraph, the term "excess payments" means the amount of benefits charged to the employment record of an employer, as adjusted pursuant to subparagraph (b)2. and subparagraph 1., during the 3-year period described in subparagraph (b)3., but excluding any benefit paid as a result of a governmental order related to COVID-19 to close or reduce capacity of a business, less the product of the maximum contribution rate and the employer's taxable payroll for the 3 years ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the same calendar year. As used in this sub-sub-subparagraph, the term "total excess payments" means the sum of the individual employer excess payments for those employers that were eligible for assignment of a contribution rate different from the standard rate.

(III) With respect to computing a positive adjustment factor:

(A) Beginning January 1, 2012, if the balance of the Unemployment Compensation Trust Fund on September 30 of the calendar year immediately preceding the calendar year for which

the contribution rate is being computed is less than 4 percent of the taxable payrolls for the year ending June 30 as reported to the tax collection service provider by September 30 of that calendar year, a positive adjustment factor shall be computed. The positive adjustment factor is computed annually to the fifth decimal place and rounded to the fourth decimal place by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year into a sum equal to one-fifth of the difference between the balance of the fund as of September 30 of that calendar year and the sum of 5 percent of the total taxable payrolls for that year. The positive adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the effective date of the contribution rate equals or exceeds 4 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year.

(B) Beginning January 1, 2018, and for each year thereafter, the positive adjustment shall be computed by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar

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

year into a sum equal to one-fourth of the difference between the balance of the fund as of September 30 of that calendar year and the sum of 5 percent of the total taxable payrolls for that year. The positive adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the effective date of the contribution rate equals or exceeds 4 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year.

(IV) If, beginning January 1, 2015, and each year thereafter, the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the calendar year for which the contribution rate is being computed exceeds 5 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year, a negative adjustment factor must be computed. The negative adjustment factor shall be computed annually beginning on January 1, 2015, and each year thereafter, to the fifth decimal place and rounded to the fourth decimal place by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the calendar

year into a sum equal to one-fourth of the difference between the balance of the fund as of September 30 of the current calendar year and 5 percent of the total taxable payrolls of that year. The negative adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the effective date of the contribution rate is less than 5 percent, but more than 4 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year. The negative adjustment authorized by this section is suspended in any calendar year in which repayment of the principal amount of an advance received from the federal Unemployment Compensation Trust Fund under 42 U.S.C. s. 1321 is due to the Federal Government.

(V) The maximum contribution rate that may be assigned to an employer is 5.4 percent, except employers participating in an approved short-time compensation plan may be assigned a maximum contribution rate that is 1 percent greater than the maximum contribution rate for other employers in any calendar year in which short-time compensation benefits are charged to the employer's employment record.

(VI) As used in this subsection, "taxable payroll" shall be determined by excluding any part of the remuneration paid to an individual by an employer for employment during a calendar

year in excess of the first $7,000. Beginning January 1, 2012, "taxable payroll" shall be determined by excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year as described in s. 443.1217(2). For the purposes of the employer rate calculation that will take effect in January 1, 2012, and in January 1, 2013, the tax collection service provider shall use the data available for taxable payroll from 2009 based on excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first $7,000, and from 2010 and 2011, the data available for taxable payroll based on excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first $8,500.

b. If the transfer of an employer's employment record to an employing unit under paragraph (g) ~~(f)~~ which, before the transfer, was an employer, the tax collection service provider shall recompute a benefit ratio for the successor employer based on the combined employment records and reassign an appropriate contribution rate to the successor employer effective on the first day of the calendar quarter immediately after the effective date of the transfer.

3. The tax collection service provider shall reissue rates for the 2021 calendar year. However, an employer shall continue to timely file its employer's quarterly reports and pay the

contributions due in a timely manner in accordance with the rules of the Department of Economic Opportunity. The Department of Revenue shall post the revised rates on its website to enable employers to securely review the revised rates. For contributions for the first quarter of the 2021 calendar year, if any employer remits to the tax collection service provider an amount in excess of the amount that would be due as calculated pursuant to this paragraph, the tax collection service provider shall refund the excess amount from the amount erroneously collected. Notwithstanding s. 443.141(6), refunds issued through August 31, 2021, for first quarter 2021 contributions must be paid from the General Revenue Fund.

4. The tax collection service provider shall calculate and assign contribution rates effective January 1, 2022, through December 31, 2022, excluding any benefit charge that is excluded by the multipliers under subparagraph (b)2. and subparagraph 1.; without the application of the positive adjustment factor in sub-sub-subparagraph 2.a.(III); and without the inclusion of any benefit charge directly related to COVID-19 as a result of a governmental order to close or reduce capacity of a business, as determined by the Department of Economic Opportunity, for each employer who is eligible for a variation from the standard rate pursuant to paragraph (d). The Department of Economic Opportunity shall provide the tax collection service provider with all necessary benefit charge information by August 1, 2021,

including specific information for adjustments related to COVID-19 charges resulting from a governmental order to close or reduce capacity of a business, to enable the tax collection service provider to calculate and issue tax rates effective January 1, 2022. The tax collection service provider shall calculate and post rates for the 2022 calendar year by March 1, 2022.

5. Subject to subparagraph 6., the tax collection service provider shall calculate and assign contribution rates effective January 1, 2023, through December 31, 2025, excluding any benefit charge that is excluded by the multipliers under subparagraph (b)2. and subparagraph 1.; without the application of the positive adjustment factor in sub-sub-subparagraph 2.a.(III); and without the inclusion of any benefit charge directly related to COVID-19 as a result of a governmental order to close or reduce capacity of a business, as determined by the Department of Economic Opportunity, for each employer who is eligible for a variation from the standard rate pursuant to paragraph (d). The Department of Economic Opportunity shall provide the tax collection service provider with all necessary benefit charge information by August 1 of each year, including specific information for adjustments related to COVID-19 charges resulting from a governmental order to close or reduce capacity of a business, to enable the tax collection service provider to calculate and issue tax rates effective the following January.

6. If the balance of the Unemployment Compensation Trust Fund on June 30 of any year exceeds $4,071,519,600, subparagraph 5. is repealed for rates effective the following years. The Office of Economic and Demographic Research shall advise the tax collection service provider of the balance of the trust fund on June 30 by August 1 of that year. After the repeal of subparagraph 5. and notwithstanding the dates specified in that subparagraph, the tax collection service provider shall calculate and assign contribution rates for each subsequent calendar year as otherwise provided in this section.

(f) *Adjustment in benefit ratio multiplier.*—For purposes of calculating the benefits charged for the period beginning January 1, 2021, and ending June 30, 2021, pursuant to sub-subparagraphs (b)2.e. and (e)1.e., the amount of benefits paid to individuals shall be multiplied by 1, unless such calculation results in estimated total contributions of more than $475.5 million for calendar year 2022 as estimated by the Office of Economic and Demographic Research, based on the preliminary 2022 computed rate. If the estimated total contributions calculated are more than $475.5 million, the multiplier in sub-subparagraphs (b)2.e. and (e)1.e. shall be reduced by increments of 0.05 until the estimated total contributions are $475.5 million or less. The Office of Economic and Demographic Research shall provide the incremental reduction, if any, to the tax collection service provider by January 1, 2022.

Section 16. Subsection (1) of section 443.191, Florida Statutes, is amended to read:

443.191 Unemployment Compensation Trust Fund; establishment and control.—

(1) There is established, as a separate trust fund apart from all other public funds of this state, an Unemployment Compensation Trust Fund, which shall be administered by the Department of Economic Opportunity exclusively for the purposes of this chapter. The fund must consist of:

(a) All contributions and reimbursements collected under this chapter;

(b) Interest earned on any moneys in the fund;

(c) Any property or securities acquired through the use of moneys belonging to the fund;

(d) All earnings of these properties or securities;

(e) All money credited to this state's account in the federal Unemployment Compensation Trust Fund under 42 U.S.C. s. 1103;

(f) All money collected for penalties imposed pursuant to s. 443.151(6)(a); ~~and~~

(g) Advances on the amount in the federal Unemployment Compensation Trust Fund credited to the state under 42 U.S.C. s. 1321, as requested by the Governor or the Governor's designee; and

(h) All money deposited in this account as a distribution

pursuant to s. 212.20(6)(d)6.h.

Except as otherwise provided in s. 443.1313(4), all moneys in the fund must be mingled and undivided.

Section 17. Paragraph (b) of subsection (1) of section 212.04, Florida Statutes, is amended to read:

212.04 Admissions tax; rate, procedure, enforcement.—

(1)

(b) For the exercise of such privilege, a tax is levied at the rate of 6 percent of sales price, or the actual value received from such admissions, which 6 percent shall be added to and collected with all such admissions from the purchaser thereof, and such tax shall be paid for the exercise of the privilege as defined in the preceding paragraph. Each ticket must show on its face the actual sales price of the admission, or each dealer selling the admission must prominently display at the box office or other place where the admission charge is made a notice disclosing the price of the admission, and the tax shall be computed and collected on the basis of the actual price of the admission charged by the dealer. The sale price or actual value of admission shall, for the purpose of this chapter, be that price remaining after deduction of federal taxes and state or locally imposed or authorized seat surcharges, taxes, or fees, if any, imposed upon such admission. The sale price or actual value does not include separately stated ticket service

charges that are imposed by a facility ticket office or a ticketing service and added to a separately stated, established ticket price. The rate of tax on each admission shall be according to the algorithm provided in s. 212.12 ~~brackets established by s. 212.12(9)~~.

Section 18. Subsection (6) of section 212.0506, Florida Statutes, is amended to read:

212.0506 Taxation of service warranties.—

(6) This tax shall be due and payable according to the algorithm provided ~~brackets set forth~~ in s. 212.12.

Section 19. Subsection (3) of section 213.015, Florida Statutes, is amended to read:

213.015 Taxpayer rights.—There is created a Florida Taxpayer's Bill of Rights to guarantee that the rights, privacy, and property of Florida taxpayers are adequately safeguarded and protected during tax assessment, collection, and enforcement processes administered under the revenue laws of this state. The Taxpayer's Bill of Rights compiles, in one document, brief but comprehensive statements which explain, in simple, nontechnical terms, the rights and obligations of the Department of Revenue and taxpayers. Section 192.0105 provides additional rights afforded to payors of property taxes and assessments. The rights afforded taxpayers to ensure that their privacy and property are safeguarded and protected during tax assessment and collection are available only insofar as they are implemented in other

parts of the Florida Statutes or rules of the Department of Revenue. The rights so guaranteed Florida taxpayers in the Florida Statutes and the departmental rules are:

(3) The right to be represented or advised by counsel or other qualified representatives at any time in administrative interactions with the department, the right to procedural safeguards with respect to recording of interviews during tax determination or collection processes conducted by the department, the right to be treated in a professional manner by department personnel, and the right to have audits, inspections of records, and interviews conducted at a reasonable time and place except in criminal and internal investigations (see ss. 198.06, 199.218, 201.11(1), 203.02, 206.14, 211.125(3), 211.33(3), 212.0305(3), 212.12(5)(a), (6)(a), and (12) ~~(13)~~, 212.13(5), 213.05, 213.21(1)(a) and (c), and 213.34).

Section 20. (1) For the period of July 1, 2021, through September 30, 2021, a taxpayer may calculate the tax due under chapter 212, Florida Statutes, by applying s. 212.12, Florida Statutes, as amended by this act, or by applying the appropriate bracket system pursuant to former s. 212.12, Florida Statutes 2020.

(2) This section does not establish a right to a refund or credit of taxes already paid.

(3) This section is repealed October 1, 2021.

Section 21. Subsection (5) of section 213.27, Florida

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

Statutes, is amended to read:

213.27 Contracts with debt collection agencies and certain vendors.—

(5) The department may, for the purpose of ascertaining the amount of or collecting any taxes due from a person making or facilitating remote sales under s. 212.0596 or s. 212.05965 ~~doing mail order business~~ in this state, contract with any auditing agency doing business within or without this state for the purpose of conducting an audit of such person ~~mail order business~~; however, such audit agency may not conduct an audit on behalf of the department of any person domiciled in this state, person registered for sales and use tax purposes in this state, or corporation filing a Florida corporate tax return, if any such person or corporation objects to such audit in writing to the department and the auditing agency. The department shall notify the taxpayer by mail at least 30 days before the department assigns the collection of such taxes.

Section 22. For the purpose of incorporating the amendment made by this act to section 212.054, Florida Statutes, in references thereto, paragraph (c) of subsection (2), paragraph (c) of subsection (3), paragraph (c) of subsection (8), and paragraph (c) of subsection (9) of section 212.055, Florida Statutes, are reenacted to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent

that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(c) Pursuant to s. 212.054(4), the proceeds of the surtax levied under this subsection shall be distributed to the county and the municipalities within such county in which the surtax was collected, according to:

1. An interlocal agreement between the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population, which agreement may include a school district with the consent of the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population; or

2. If there is no interlocal agreement, according to the formula provided in s. 218.62.

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

Any change in the distribution formula must take effect on the first day of any month that begins at least 60 days after written notification of that change has been made to the department.

(3) SMALL COUNTY SURTAX.—

(c) Pursuant to s. 212.054(4), the proceeds of the surtax levied under this subsection shall be distributed to the county and the municipalities within the county in which the surtax was collected, according to:

1. An interlocal agreement between the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population, which agreement may include a school district with the consent of the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population; or

2. If there is no interlocal agreement, according to the formula provided in s. 218.62.

Any change in the distribution formula shall take effect on the first day of any month that begins at least 60 days after written notification of that change has been made to the department.

(8) EMERGENCY FIRE RESCUE SERVICES AND FACILITIES SURTAX.—

(c) Pursuant to s. 212.054(4), the proceeds of the discretionary sales surtax collected under this subsection, less an administrative fee that may be retained by the Department of Revenue, shall be distributed by the department to the county. The county shall distribute the proceeds it receives from the department to each local government entity providing emergency fire rescue services in the county. The surtax proceeds, less an administrative fee not to exceed 2 percent of the surtax collected, shall be distributed by the county based on each entity's average annual expenditures for fire control and emergency fire rescue services in the 5 fiscal years preceding the fiscal year in which the surtax takes effect in proportion to the average annual total of the expenditures for such entities in the 5 fiscal years preceding the fiscal year in which the surtax takes effect. The county shall revise the distribution proportions to reflect a change in the service area of an entity receiving a distribution of the surtax proceeds. If an entity declines its share of surtax revenue, such revenue shall be redistributed proportionally to the entities that are participating in the sharing of such revenue based on each participating entity's average annual expenditures for fire control and emergency fire rescue services in the preceding 5 fiscal years in proportion to the average annual total of the expenditures for the participating entities in the preceding 5 fiscal years.

(9) PENSION LIABILITY SURTAX.—

(c) Pursuant to s. 212.054(4), the proceeds of the surtax collected under this subsection, less an administrative fee that may be retained by the department, shall be distributed by the department to the local government.

Section 23. This act first applies to remote sales made or facilitated on or after July 1, 2021, by a person who made or facilitated a substantial number of remote sales in calendar year 2020. A marketplace seller shall consider only those sales made outside of a marketplace to determine whether it made a substantial number of remote sales in calendar year 2020.

Section 24. (1) A person subject to the requirements of this act to collect and remit the tax under chapter 212, Florida Statutes, on remote sales is relieved of liability for tax, penalty, and interest due on remote sales that occurred before July 1, 2021, provided that the person registers with the department before October 1, 2021. This subsection is also intended to provide relief to a marketplace seller for remote sales made before July 1, 2021, which were facilitated by a marketplace provider. For a marketplace provider with a physical presence in this state, this subsection is intended to provide relief only for sales facilitated by the marketplace provider on behalf of a marketplace seller. This subsection does not apply to a person who is under audit; has been issued a bill, notice, or demand for payment; or is under an administrative or judicial

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

proceeding as of July 1, 2021.

(2) The department may not use data received from registered marketplace providers or persons making remote sales for the purposes of identifying use tax liabilities occurring before July 1, 2021, from unregistered persons who but for their purchases from the registered taxpayer would not be required to remit sales or use tax directly to the department. This subsection does not apply to a person who is under audit; has been issued a bill, notice, or demand for payment; or is under an administrative or judicial proceeding as of July 1, 2021.

(3) This section does not establish a right to a refund or credit of taxes already paid.

Section 25. (1) The Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of administering this act.

(2) Notwithstanding any other law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) This section shall take effect upon this act becoming a law and expires July 1, 2023.

Section 26. Notwithstanding s. 287.057, Florida Statutes, the Department of Revenue is authorized to contract with a

qualified vendor to provide services necessary to administer this act without using a competitive solicitation process. The authority granted to the Department of Revenue by this section applies solely to the implementation and administration of this act and may not be used for any other purpose. Such authority ends, and any contract entered into pursuant to this section still in force becomes void, upon the expiration of this section. This section expires June 30, 2023.

Section 27. For the 2020-2021 fiscal year, the sum of $353,000 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of implementing this act. Funds remaining unexpended or unencumbered from this appropriation as of June 30, 2021, shall revert and be reappropriated for the same purpose in the 2021-2022 fiscal year.

Section 28. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 29. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2021.