

Regulatory Reform & Economic Development Subcommittee

Thursday, February 23, 2023
9:00 AM - 11:00 AM
Webster Hall (212 Knott)

Meeting Packet

Paul Renner
Speaker

Tyler Sirois
Chair

The Florida House of Representatives

Commerce Committee

Regulatory Reform & Economic Development Subcommittee

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Meeting Agenda

Thursday, February 23, 2023
9:00 AM – 11:00 AM
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 179 Florida Kratom Consumer Protection Act by Andrade
- HB 233 Family and Household Members of Homicide Victims and Deceased Minors by Michael
- HB 327 Fire Sprinkler System Projects by Bell
- HB 415 Temporary Commercial Kitchens by Porras
- HB 489 Professional Licensing Requirements for Barbers and Cosmetologists by Chambliss, Plakon
- HB 637 Motor Vehicle Dealers, Manufacturers, Importers, and Distributors by Shoaf

V. Closing Remarks

VI. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
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HB 179

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 179 Florida Kratom Consumer Protection Act
SPONSOR(S): Andrade
TIED BILLS: **IDEN./SIM. BILLS:** SB 136

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Wright	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Kratom, *Mitragyna speciosa*, is a tropical tree native to Southeast Asia that contains psychoactive ingredients in its leaves, which may be crushed and then smoked, brewed with tea, or placed into gel capsules. Consumption of kratom leaves can produce stimulant and sedative effects, and addiction may lead to psychotic symptoms. Currently, kratom is not listed as a controlled substance under federal law or Florida law, and is generally regulated as a food. However, the FDA considers kratom an adulterating agent. There are no specific state laws related to the regulation of kratom.

The bill provides that a kratom processor may not sell, prepare, distribute, or expose for sale, subject to an administrative fine:

- A kratom product that:
  - Is adulterated with a dangerous non-kratom substance that affects the quality or strength of the kratom product to such a degree that it may injure a consumer.
  - Contains a poisonous or otherwise harmful non-kratom ingredient, including, but not limited to, controlled substances.
  - Contains a level of 7-hydroxymitragynine in the alkaloid fraction which is greater than 2 percent of the alkaloid composition of the product.
  - Contains any synthetically derived compound of the plant Mitragyna speciosa.
  - Does not include directions for the safe and effective use of the product on the packaging or label.
  - Has a label that contains any claim that the product is intended to diagnose, treat, cure, or prevent any medical condition or disease.
- Kratom extract that contains levels of residual solvents higher than USP-NF standards.

The bill prohibits processors from distributing, selling, or exposing a kratom product for sale to an individual under 21 years of age.

The bill provides an effective date of July 1, 2023.

The bill does not appear to have a fiscal impact on local governments and may have a negative fiscal impact on state government. *See* Fiscal Analysis and Economic Impact Statement.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Kratom

Kratom, or *Mitragyna speciosa,* is a tropical tree native to Southeast Asia that contains the alkaloids mitragynine and 7-hydroxymytragynine in its leaves, which are two major psychoactive ingredients.[1] The leaves are crushed and then smoked, brewed with tea, or placed into gel capsules.[2]

Some people consumer kratom to treat muscle ache, fatigue, and other conditions.[3] Low doses of kratom are said to produce a stimulant effect, while higher doses may produce an opioid-like effect.[4] Research finds that kratom can be used as a substitute for opiate users to combat withdrawal symptoms,[5] though kratom addiction may lead to psychotic symptoms.[6]

The U.S. Food and Drug Administration (FDA) has found that:[7]

> Kratom is abused for its ability to produce opioid-like effects… Evidence suggests that kratom is abused individually and with other psychoactive substances. Kratom does not have an approved medical use in the United States and has not been studied as a treatment agent in the United States. Kratom has a history of being used as an opium substitute in Southeast Asia. In the United States, kratom is misused to self-treat chronic pain and opioid withdrawal symptoms. Consumption of kratom can lead to a number of health impacts, including, among others, respiratory depression, vomiting, nervousness, weight loss, and constipation. Kratom has been reported to have both narcotic and stimulant-like effects, and withdrawal symptoms may include hostility, aggression, excessive tearing, aching of muscles and bones, and jerky limb movements.

A Centers for Disease Control and Prevention study of approximately 27,000 overdoses that occurred between 2016 and 2017 found that kratom was implicated in less than one percent of deaths.[8] The exact incidence of kratom dependency is not known and there is no U.S. reporting system.[9] It is estimated that there are between 10-16 million kratom users in the U.S.[10] Users indicate self-treatment of anxiety, depression, pain, fatigue, and substance use disorder symptoms.[11]

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[1] Drug Enforcement Administration, *Kratom* (April 2020), available at https://www.dea.gov/sites/default/files/2020-06/Kratom-2020_0.pdf (last visited Feb. 15, 2023).
[2] *Id*.
[3] *Id*.
[4] *See* Dimy Fluyau and Neelambika Revedigar, *Biochemical Benefits, Diagnosis, and Clinical Risks Evaluation of Kratom,* Frontiers in Psychiatry Journal Volume 8 (April 24, 2017).
[5] *Id*.
[6] *Id*.
[7] 86 FR 39038.
[8] Emily O'Malley Olsen, PhD; Julie O'Donnell, PhD; Christine L. Mattson, PhD; Joshua G. Schier, MD; Nana Wilson, PhD; *Notes from the Field: Unintentional Drug Overdose Deaths with Kratom Detected — 27 States, July 2016–December 2017*; CDC Morbidity and Mortality Weekly Report, Apr. 12, 2019; Notes from the Field: Unintentional Drug Overdose Deaths with Kratom Detected — 27 States, July 2016–December 2017 | MMWR (cdc.gov) (last visited Feb. 15, 2023); Maia Szalavitz, *The FDA Shouldn't Support a Ban on Kratom*, Scientific American, Aug. 12, 2021, The FDA Shouldn't Support a Ban on Kratom - Scientific American (last visited Jan. 30, 2022).
[9] Charles Veltri and Oliver Grundmann, *Current Perspectives on the Impact of Kratom Use*. Substance Abuse and Rehabilitation Journal Volume 10 23-31 (July 1, 2019).
[10] Maia Szalavitz, *supra* note 8.
[11] Jeffrey Rogers, Kirsten Smith, Justin Strickland, and David Epstein, *Kratom Use in the US: Both a Regional Phenomenon and a White Middle-Class Phenomenon? Evidence From NSDUH 2019 and an Online Convenience Sample*, Frontiers on Pharmacology, https://www.frontiersin.org/articles/10.3389/fphar.2021.789075/full (last visited Feb. 19, 2023).

Kratom is a $1.3 billion industry in the U.S. with sales generally occurring online and in smoke shops.[12] Hundreds of businesses around Florida sell the product.[13]

Public opinions in the U.S. range on the topic of kratom bans, either citing concerns of addiction or praising perceived health benefits. Some point to kratom's uses for opioid addicts to cease use and aid in withdrawal symptoms.[14] Other reports indicate that the use of kratom may lead to addiction.[15]

State and Federal Prohibitions

Currently, kratom is not listed as a controlled substance under federal law or Florida law. In 2016, the U.S. Drug Enforcement Administration (DEA) submitted a notice of intent to place kratom into Schedule I of the Controlled Substances Act (CSA) based on abuse potential and risk to public health.[16] However, the DEA withdrew the notice a few months later based on public comments.[17] In a letter obtained by an industry group, U.S. Health and Human Services appeared to rescind their recommendation to the DEA to place kratom on Schedule I of the CSA in 2018, stating that such action should wait until it is supported by further research on kratom uses, abuse, and risks.[18] The DEA continues to label kratom as a drug of concern.[19]

The FDA has stated that there is substantial concern regarding the safety of kratom and the risk it may pose to public health, and indicated that there are currently no FDA-approved uses for kratom.[20] The FDA is actively evaluating all available scientific information on the safety and effects of kratom and continues to warn consumers not to use any kratom products.[21]

In 2015, the FDA issued an import alert[22] that labels kratom as an adulterating ingredient.[23] As a result, the FDA seized imports of kratom-containing dietary supplements and bulk dietary ingredients. In May of 2021, the FDA announced the seizure of around 37,500 tons of adulterated kratom in Fort Myers, Florida, worth an estimated $1.3 million.[24] On October 26, 2021, a consent decree of condemnation and destruction against the seized articles by the FDA was entered, which requires the claimants to pay a penal bond and destroy all seized articles.[25]

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[12] Brody Ford, *Opiate Alternative Kratom Spurs Investor Interest*, Bloomberg News, Dec. 20, 2021, https://www.bloomberg.com/news/newsletters/2021-12-20/kratom-attracts-investor-attention-after-regulatory-win (last visited Jan. 30, 2022).
[13] Kirby Wilson, *Florida Kratom for customers under 21 to be banned if this bill passes*, Tampa Bay Times, Jan. 18, 2022, Florida Kratom for customers under 21 to be banned if this bill passes (tampabay.com) (last visited Jan. 30, 2022).
[14] Jennifer Clopton, *Regulations Are On Hold as Kratom Debate Rages*, WebMD, Feb. 11, 2019, https://www.webmd.com/mental-health/addiction/news/20190211/regulations-are-on-hold-as-kratom-debate-rages (last visited Feb. 15, 2023).
[15] Mayo Clinic, *Kratom for opioid withdrawal: Does it work?*, https://www.mayoclinic.org/diseases-conditions/prescription-drug-abuse/in-depth/kratom-opioid-withdrawal/art-20402170 (last visited Feb. 15, 2023).
[16] 81 FR 59929.
[17] 81 FR 70652
[18] Josh Long, *HHS in 2018 rescinded recommendation to schedule kratom as a drug*, Jan. 28, 2021, https://www.naturalproductsinsider.com/regulatory/hhs-2018-rescinded-recommendation-schedule-kratom-drug (last visited Feb. 15, 2023).
[19] U.S. Drug Enforcement Administration, *Kratom*, https://www.dea.gov/factsheets/kratom (last visited Feb. 15, 2023).
[20] U.S. Food and Drug Administration, *FDA and Kratom*, https://www.fda.gov/news-events/public-health-focus/fda-and-kratom (last visited Feb. 15, 2023).
[21] *Id*.
[22] U.S. Food and Drug Administration, *Import Alert 54-15*, Import Alert 54-15 (fda.gov) (last visited Feb. 15, 2023).
[23] *Id*. The FDA labeled kratom as adulterating based on the absence of a history of use or other evidence of safety establishing that kratom will reasonably be expected to be safe as a dietary ingredient, kratom and kratom-containing dietary supplements and bulk dietary ingredients are adulterated because they contain a new dietary ingredient for which there is inadequate information to provide reasonable assurance that such ingredient does not present a significant or unreasonable risk of illness or injury.
[24] U.S. Food and Drug Administration, *FDA Announces Seizure of Adulterated Dietary Supplements Containing Kratom*, May 21, 2021, https://www.fda.gov/news-events/press-announcements/fda-announces-seizure-adulterated-dietary-supplements-containing-kratom (last visited Feb. 15, 2023).
[25] *Id*.

In 2014, Sarasota County banned kratom, labeling it as a designer drug.[26] With the exception of Sarasota County, in Florida, all parts of the plant and its extracts are legal to cultivate, buy, possess, and distribute without a license or prescription. Kratom is illegal in Alabama,[27] Arkansas,[28] Indiana,[29] Vermont,[30] and Wisconsin.[31] Other states such as Arizona,[32] Georgia,[33] and Utah[34] regulate kratom under their state's version of the Kratom Consumer Protection Act.

Federal Food, Drug, and Cosmetic Act

The Federal Food, Drug, and Cosmetic Act (FDCA) is a federal law which establishes the legal framework within which the FDA operates.[35] The FDA develops regulations under the FDCA for the safety of foods, drugs, and cosmetics based on the laws set forth in the FDCA, including when a food is adulterated.[36] Instances where a food must be determined to be adulterated include when it:[37]

- Bears or contains any poisonous or deleterious substance which may render it injurious to health; such as consisting in whole or in part of any filthy, putrid, or decomposed substance;
- Is a dietary supplement or contains a dietary ingredient that presents a significant or unreasonable risk of illness or injury under use pursuant to the label;
- Is a new dietary ingredient for which there is inadequate information to provide reasonable assurance that such ingredient does not present a significant or unreasonable risk of illness or injury.

When a food is determined to be adulterated, the FDA may take the following compliance measures:[38]

- Warning and untitled letters,
- Import alerts,
- Recalls,
- Debarment,
- Civil money penalties,
- Seizure of products,
- Injunctions, and
- Criminal prosecution.

Florida Department of Agriculture and Consumer Services, Division of Food Safety

The Department of Agriculture and Consumer Services (DACS) is the department in charge of regulating agriculture in Florida.[39] As such, DACS promotes Florida agriculture, protects the environment, safeguards consumers, and ensures the safety and wholesomeness of food.[40]

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[26] *See* Sarasota, FL., Code of Ordinances, Sec. 62-351 (2014).
[27] *See* Alabama Public Health, *Controlled Substance List* (Jan. 20, 2021), available at https://www.alabamapublichealth.gov/blog/assets/controlledsubstanceslist.pdf (last visited Jan. 22, 2022).
[28] *See* Arkansas Department of Health, *List of Controlled Substances*, available at http://secureservercdn.net/166.62.109.105/e17.085.myftpupload.com/wp-content/uploads/2016/02/arkansas-controlled_substances_list.pdf (last visited Jan. 22, 2022).
[29] *See* IC 35-31.5-2-321.
[30] *See* Vt. Admin. Code 12-5-23:4.0.
[31] *See* W.S.A. 961.14.
[32] *See* AZ Rev Stat § 36-795.02.
[33] *See* GA Code § 16-13-121.
[34] *See* UT Code § 4-45-101.
[35] 21 U.S.C. 301.
[36] *See* 21 C.F.R. §§ 1-1299.
[37] 21 U.S.C. 342.
[38] CRS Report R43609, *Enforcement of the Food, Drug, and Cosmetic Act: Select Legal Issues*, February 9, 2018, https://www.everycrsreport.com/reports/R43609.html#fn96 (last visited Feb. 15, 2023).
[39] S. 20.14, F.S. DACS also regulates certain professions, unfair and deceptive business practices and provides consumer information.
[40] Florida Department of Agriculture and Consumer Services, *About Us*, h https://www.fdacs.gov/About-Us (last visited Feb. 15, 2023).

The Division of Food Safety (division), under DACS, is responsible for assuring a safe, wholesome, and properly represented food supply in Florida. This is accomplished through the permitting and inspection of food establishments, inspection of food products, and through specialized laboratory analyses on a variety of food products sold or produced in the state. The division monitors food from the farm gate through processing and distribution to the retail point of purchase.[41]

The division is charged with administration and enforcement of food, poultry, and egg laws, and also provides support in the enforcement of other food safety laws. In addition to regulatory surveillance and enforcement, the division evaluates consumer complaints related to food.[42]

"Food" includes:[43]

- Articles used for food or drink for human consumption;
- Chewing gum;
- Articles used for components of any such article;
- Articles for which health claims are made, which claims are approved by the Secretary of the United States Department of Health and Human Services and which claims are made in accordance with s. 343(r) of the federal act, and which are not considered drugs solely because their labels or labeling contain health claims; and
- Certain dietary supplements.

"Food establishment" means a factory, food outlet, or other facility manufacturing, processing, packing, holding, or preparing food or selling food at wholesale or retail. A food permit is required of any person who operates a food establishment.[44]

"Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption.[45]

A food permit from the department is required of any person who operates a food establishment or retail food store, except:[46]

- Persons operating minor food outlets that sell food that is commercially prepackaged, not potentially hazardous, and not time or temperature controlled for safety, if the shelf space for those items does not exceed 12 total linear feet and no other food is sold by the minor food outlet.
- Persons subject to continuous, onsite federal or state inspection.
- Persons selling only legumes in the shell, either parched, roasted, or boiled.
- Persons selling sugar cane or sorghum syrup that has been boiled and bottled on a premise located within the state.

The division or its duly authorized agent has free access at all reasonable hours to any food establishment to ensure food safety laws are followed. The inspectors:[47]

- secure a sample or a specimen of any food after paying or offering to pay for such sample,
- see that all sanitary rules are complied with,
- facilitate tracing of food products in the event of a food-borne illness outbreak or identification of an adulterated or misbranded food item, and
- enforce the special-occupancy provisions of the Florida Building Code which apply to food establishments.

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[41] Florida Department of Agriculture and Consumer Services, *Division of Food Safety*, http://www.freshfromflorida.com/Divisions-Offices/Food-Safety (last visited Feb. 15, 2023).
[42] *Id*.
[43] S. 500.003(1)(n), F.S.
[44] S. 500.03(1)(r), F.S.
[45] S. 500.03(1)(bb), F.S.
[46] S. 500.12(1)(a), F.S.
[47] S, 500.147, F.S.

If a food establishment or retail store violates the FFSA, the division may impose an administrative fine not more than $5,000. The division may also revoke or suspend the permit of any such retail food store or food establishment if the retail food store or food establishment has:[48]

- Violated the FFSA.
- Violated or aided or abetted in the violation of any law of this state governing or applicable to retail food stores or food establishments or any lawful rules of DACS.
- Knowingly committed, or been a party to, any material fraud, misrepresentation, conspiracy, collusion, trick, scheme, or device whereby another person, lawfully relying upon the word, representation, or conduct of a retail food store or food establishment, acts to her or his injury or damage.
- Committed fraud or dishonest dealing.

DACS may determine that a food establishment requires immediate closure when the food establishment fails to comply with the FFSA and presents an imminent threat to the public health, safety, and welfare. DACS may accept inspection results from other state and local building officials and other regulatory agencies as justification for such action.[49]

Many FDA regulations have been adopted as rules of the division.[50]

Florida Food Safety Act

The division is responsible for the administration and enforcement of the Florida Food Safety Act (FFSA).[51] The division regulates food products under the FFSA, which include articles used for food or drink for human consumption, as well as dietary supplements.[52]

The FFSA is designed to:

- Promote public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandizing deceit, flowing from intrastate commerce in food;
- Provide uniform legislation so far as practical with federal regulations; and
- Promote uniform administration and enforcement of federal and state food safety laws.[53]

Adulterated and Misbranded Foods

Under the FFSA, individuals may not sell food that is adulterated, adulterate food, or receive food in commerce that is adulterated or misbranded.[54] These prohibitions are similar to federal law.[55]

The following are examples when food is deemed adulterated: [56]

- Food that bears or contains any poisonous or deleterious substance which may render it injurious to health;
- Food that bears or contains any added poisonous or added deleterious substance; a food additive; or a color additive, which is unsafe;
- Food that is or bears or contains any food additive which is unsafe;
- Food whose container is composed, in whole or in part, of any poisonous or deleterious substance;
- Food where any substance has been substituted wholly or in part therefor;
- Food where damage or inferiority has been concealed in any manner; and

[48] S. 500.121(1), F.S.
[49] S. 500.121(7), F.S.
[50] R. 5K-4.002, F.A.C.
[51] See ch. 500, F.S.
[52] *See* ch. 500, F.S.
[53] S. 500.02, F.S.
[54] S. 500.04, F.S.
[55] 21 U.S.C. 331.
[56] S. 500.10, F.S.

- A dietary supplement or its ingredients that present a significant risk of illness or injury due to certain labeling and ingredient requirements.

Misbranded food includes food offered for sale and its label or labeling does not comply with the requirements of 21 U.S.C. s. 343(r) pertaining to nutritional content claims and health claims. Labels for supplements may not claim to diagnose, mitigate, treat, cure, or prevent a specific disease or class of diseases.[57]

DACS may inspect food that may be adulterated or misbranded;[58] seize food that is adulterated or misbranded;[59] suspend permits of those who sell food that is adulterated or misbranded, adulterate or misbrand food, or receive food in commerce that is adulterated or misbranded;[60] and impose a fine for adulterated or misbranded food, not to exceed $5,000[61] per violation.[62]

Food that contains kratom currently falls within in the definition of "food"[63] in the FFSA, and is subject to all applicable permitting, labeling, sanitation, and other food safety requirements. There are no existing age limits related to the sale of these products.

Controlled Substances in Florida

Section 893.03, F.S., categorizes various controlled substances in Florida into "schedules." The schedule on which a controlled substance is placed is generally based on its accepted medical uses, abuse potential, and likelihood of dependence if abused. Currently, kratom is not listed on a schedule of controlled substances.

USP-NF

The United States Pharmacopeia (USP) and the National Formulary (NF) contains standards for medicines, dosage forms, drug substances, excipients, biologics, compounded preparations, medical devices, dietary supplements, and other therapeutics. The current version of USP-NF standards deemed official by USP are enforceable by the FDA for medicines manufactured and marketed in the United States.

Residual solvents in pharmaceuticals are defined as organic volatile chemicals that are used or produced in the manufacture of drug substances or excipients, or in the preparation of drug products. The residual solvents are not completely removed by practical manufacturing techniques. Drug products should contain no higher levels of residual solvents than can be supported by safety data.[64]

Regulation of Similar Products

Hemp[65] is an agricultural commodity grown and used worldwide to produce a variety of industrial and commercial products, including human food and nutritional supplements.[66] After hemp was removed from Schedule I of the federal CSA, the state hemp program (program) within DACS to regulate the cultivation of hemp in Florida was created in 2019.[67]

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[57] S. 500.11(1)(n), F.S.; 21 U.S.C. s. 343 (r)(6)(C.
[58] S. 500.147(1), F.S.
[59] S. 500.173, F.S.
[60] S. 500.12(4), F.S.
[61] S. 570.971(1)(b), F.S.
[62] S. 500.121, F.S.
[63] S. 500.03(1)(n), F.S.
[64] *See* The United States Pharmacopeia and the National Formulary, *‹467› Residual Solvents*, available at https://www.uspnf.com/sites/default/files/usp_pdf/EN/USPNF/generalChapter467Current.pdf (last visited Feb. 15, 2023).
[65] Hemp is defined as the plant Cannabis sativa L. and any part of that plant with a delta-9 tetrahydrocannabinol (THC) concentration that does not exceed 0.3 percent on a dry weight basis. 7 U.S.C. s. 5940 (2014); 7 U.S.C. s. 1639o (2018); *see also* s. 581.217, F.S
[66] Congressional Research Service (CRS), *Hemp as an Agricultural Commodity*, CRS Report 7-5700 (June 22, 2018), available at https://fas.org/sgp/crs/misc/RL32725.pdf (last visited Feb. 15, 2023).
[67] Ch. 2019-132, L.O.F.; codified as s. 581.217, F.S.

Any person seeking to cultivate hemp must apply for a hemp cultivation license with DACS[68] and any establishment that manufactures, processes, packs, holds, prepares or sells hemp extract intended for human consumption is considered a hemp food establishment and must have a permit from the division to operate in Florida.[69]

Violations of the hemp laws and rules[70] may result in the imposition of stop-sale/stop-use orders, an administrative fine of up to $5,000 per violation, permit suspension, permit revocation, or any combination thereof.[71] Hemp extract intended for human consumption distributed or sold in violation of hemp laws and rules are considered adulterated or misbranded.

Hemp extract products must be distributed or sold in a container that has certain batch and identifying information[72]

Hemp extract products that are intended for inhalation may not be sold to a person who is under 21 years of age.[73] There is no liability shield for retailers based on misrepresentations by a manufacturer.

Effect of the Bill

The bill may be cited as the "Kratom Consumer Protection Act."

The bill provides the following definitions:

- **"Kratom extract"** means a food product or dietary ingredient that contains any part of the leaf of the plant Mitragyna speciosa which has been extracted and concentrated to provide more standardized dosing.
- **"Kratom product"** means a food product, food ingredient, dietary ingredient, dietary supplement, or beverage intended for human consumption which contains any part of the leaf of the plant Mitragyna speciosa or an extract of such plant and is manufactured as a powder, capsule, pill, beverage, or other edible form.
- **"Processor"** means a person who sells, prepares, manufactures, distributes, or maintains kratom products.

The bill provides that a processor may not sell, prepare, distribute, or expose for sale:

- A kratom product that:
  - Is adulterated with a dangerous non-kratom substance that affects the quality or strength of the kratom product to such a degree that it may injure a consumer.
  - Contains a poisonous or otherwise harmful non-kratom ingredient, including, but not limited to, controlled substances.
  - Contains a level of 7-hydroxymitragynine in the alkaloid fraction which is greater than 2 percent of the alkaloid composition of the product.
  - Contains a synthetic alkaloid, including, but not limited to, synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other synthetically derived compound of the plant Mitragyna speciosa.
  - Does not include directions for the safe and effective use of the product, including, but not limited to, a suggested serving size, on the product's packaging or label.
  - Has a label that contains any claim that the product is intended to diagnose, treat, cure, or prevent any medical condition or disease.
- Kratom extract that contains levels of residual solvents higher than the standards set forth in USP-NF chapter 467.

[68] S. 581.217(5), F.S.
[69] Department of Agriculture and Consumer Services, *Hemp Food Establishment Permit Checklist*, https://www.fdacs.gov/content/download/93802/file/hemp-food-establishment-permit-checklist.pdf (last visited Feb. 15, 2023).
[70] *Id.*; R. 5K-4.034, F.A.C.
[71] R. 5K-4.034(9)(d)-(e), F.A.C.
[72] S. 581.217(7)(a)2., F.S.
[73] S. 581.217(7)(c), F.S.

The bill establishes fines for violations. A processor who violates these prohibitions is subject to an administrative fine of not more than $500 for the first offense, and not more than $1,000 for the second or subsequent offense. A processor selling kratom products at retail is not in violation of these prohibitions if it is shown by a preponderance of the evidence that the processor relied in good faith upon the representations of a manufacturer, processor, packer, or distributor of the kratom product.

The bill prohibits processors from distributing, selling, or exposing a kratom product for sale to an individual under 21 years of age. There is no disciplinary action provided for in the bill for a processor who violates this prohibition.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Creates s. 501.9745, F.S.; providing prohibitions for the sale of certain kratom products.
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There may be an increase in administrative fines and licensing fees collected by DACS, but the amount is indeterminate.

2. Expenditures:

   DACS estimates the following fiscal impact on expenditures:[74]

   The below reflects expenditures for FY23-24:
   25 FTE and HR Services: $1,832,536
   Standard Expense Package & Travel: $341,275
   Equipment and Vehicles: $3,642,812
   Lab Renovations: $4,000,000

   It is estimated that an additional one-hour of inspection time per visit to each retail food establishment operating as a kratom processor will be required to verify compliance with new labeling, age verification, and product testing requirements. This does not include laboratory time associated with testing. This additional inspection time will require an estimated 13 new retail field inspectors, adding one additional inspector per retail district.

   Enforcement of violations of the Act will be handled by the division's enforcement section and will require one additional Regulatory Consultant to draft and process administrative actions.

	(FY 23-24) Amount/ FTE	(FY 24-25) Amount/ FTE	(FY 25-26) Amount/ FTE
Expenditures			
Recurring	$2,056761	$2,599,761	$2,681,211
Non-Recurring	$7,759,862	$0	$0
TOTAL EXPENDITURES	$9,816,623	$2,599,761	$2,681,211

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[74] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2023 Senate Bill 136, pp. 3-4 (Jan. 25, 2023).

1. Revenues:

   None.

2. Expenditures:

   Unknown. Law enforcement may receive complaints about local businesses selling kratom to underage buyers.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Food establishments and kratom processors will need to pay associated costs of complying with new labeling, age verification, and product testing requirements.

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:

No rulemaking authority is granted in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not provide clear enforcement and rulemaking authority for DACS for both regulating kratom products and sales to individuals under age 21.

DACS states that:[75]

- By defining kratom and kratom extract as food, these products will be regulated under the bill and the FFSA, which is in another section of law. New licenses for kratom processors may be needed.
- The division laboratory is not currently trained or equipped to conduct most testing required by the Act. Some of the testing would need to be performed by law enforcement laboratories.
- Consideration should be given to enumerating penalties for the sale of kratom to persons under the age of 21 years.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[75] *Id*. at 7-9.

A bill to be entitled

An act relating to the Florida Kratom Consumer Protection Act; creating s. 501.9745, F.S.; providing a short title; defining the terms "kratom extract," "kratom product," and "processor"; prohibiting processors from selling, preparing, distributing, or exposing for sale certain kratom products; prohibiting processors from distributing, selling, or exposing for sale a kratom product to an individual under 21 years of age; providing civil penalties; providing an exception; providing an effective date.

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

Section 1. Section 501.9745, Florida Statutes, is created to read:

501.9745 Florida Kratom Consumer Protection Act.—

(1) This section may be cited as the "Florida Kratom Consumer Protection Act."

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

(a) "Kratom extract" means a food product or dietary ingredient that contains any part of the leaf of the plant *Mitragyna speciosa* which has been extracted and concentrated to provide more standardized dosing.

(b) "Kratom product" means a food product, food

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

ingredient, dietary ingredient, dietary supplement, or beverage intended for human consumption which contains any part of the leaf of the plant *Mitragyna speciosa* or an extract of such plant and is manufactured as a powder, capsule, pill, beverage, or other edible form.

(c) "Processor" means a person who sells, prepares, manufactures, distributes, or maintains kratom products.

(3) A processor may not sell, prepare, distribute, or expose for sale:

(a) A kratom product that:

1. Is adulterated with a dangerous non-kratom substance that affects the quality or strength of the kratom product to such a degree that it may injure a consumer.

2. Contains a poisonous or otherwise harmful non-kratom ingredient, including, but not limited to, any substance listed in s. 893.03.

3. Contains a level of 7-hydroxymitragynine in the alkaloid fraction which is greater than 2 percent of the alkaloid composition of the product.

4. Contains a synthetic alkaloid, including, but not limited to, synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other synthetically derived compound of the plant *Mitragyna speciosa*.

5. Does not include directions for the safe and effective use of the product, including, but not limited to, a suggested

serving size, on the product's packaging or label.

6. Has a label that contains any claim that the product is intended to diagnose, treat, cure, or prevent any medical condition or disease.

(b) Kratom extract that contains levels of residual solvents higher than the standards set forth in USP-NF chapter 467.

(4) A processor may not distribute, sell, or expose for sale a kratom product to an individual under 21 years of age.

(5) A processor who violates subsection (3) is subject to an administrative fine of not more than $500 for the first offense and not more than $1,000 for the second or subsequent offense. A processor selling kratom products at retail does not violate subsection (3) if it is shown by a preponderance of the evidence that the processor relied in good faith upon the representations of a manufacturer, processor, packer, or distributor of the kratom product.

Section 2. This act shall take effect July 1, 2023.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 179 by Rep. Andrade
Florida Kratom Consumer Protection Act

AMENDMENT SUMMARY
February 23, 2023

Amendment 1 by Rep. Andrade (line 60):

- Prohibits sales of kratom products to individuals under 21 years of age.
- Clarifies enforcement authority to the Department of Agriculture and Consumer Services and applicability to certain food establishments.
- Removes specific new regulations related to kratom in favor of existing regulations related to food products.

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: Regulatory Reform & Economic Development Subcommittee
Representative Andrade offered the following:

Amendment (with title amendment)

Remove lines 15-67 and insert:

Section 1. Section 500.92, Florida Statutes, is created to read:

500.92 Florida Kratom Consumer Protection Act.—

(1) This section may be cited as the "Florida Kratom Consumer Protection Act."

(2) As used in this section, the term "kratom product" means a food product, food ingredient, dietary ingredient, dietary supplement, or beverage intended for human consumption which contains any part of the leaf of the plant *Mitragyna speciosa* or an extract, synthetic alkaloid, or synthetically

derived compound of such plant and is manufactured as a powder, capsule, pill, beverage, or other edible form.

(3) It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 21 years of age, any kratom product.

(4) Any retail food store, food establishment, or cottage food operation who violates subsection (3) is subject to an administrative fine of not more than $100 for the first offense, not more than $500 for the second offense, and not more than $1,000 for the third or subsequent offense.

(5) The department shall adopt rules to administer this section.

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

Remove lines 3-11 and insert:

Protection Act; creating s. 500.92, F.S.; providing a short title; defining the term "kratom product"; providing that it is unlawful to sell, deliver, barter, furnish, or give kratom products to any person who is under 21 years of age, any kratom product; providing penalties; providing an effective date.

HB 233

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 233 Family and Household Members of Homicide Victims and Deceased Minors
SPONSOR(S): Michael
TIED BILLS: HB 789 **IDEN./SIM. BILLS:** SB 490

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Mortellaro	Anstead
2) Constitutional Rights, Rule of Law & Government Operations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Most types of employee leave are governed by employers. However, under certain circumstances, there are employee protections in law for various kinds of employee leave, such as family medical emergencies. Florida currently does not have laws related to leave used for families or household members of homicide victims.

The bill requires certain employers with over 50 employees to grant 3 days of leave in any 12-month period to employees who have been employed for over 3 months if a member of their family or household was a victim of homicide. The leave, which can be paid or unpaid, must be used to:

- Make funeral or burial arrangements or attend a funeral or memorial service;
- Secure his or her home from the perpetrator of the homicide or seek new housing;
- Attend meetings in person with a representative from a law enforcement agency or the state attorney's office responsible for investigating or prosecuting the homicide; or
- Attend or prepare for court or court-related proceedings arising from the homicide.

The bill provides that an employer may not discharge, demote, suspend, or retaliate against an employee for using the leave. If the employee is discriminated against for using the leave, they can bring a civil action for relief.

Currently, Florida law provides a list of rights for victims and witnesses of crimes. There are several enumerated rights for families of certain victims of crime, but no specific mandate that law enforcement agencies provide certain investigative and contact information to the next of kin of deceased minors who were the victim of a homicide.

The bill requires that, during the criminal investigation of the death of a minor, the law enforcement agency that initiates or bears the primary responsibility for the investigation must provide the minor's next of kin with all of the following information:

- The contact information for the primary investigator and each law enforcement agency for the investigation.
- The case number for the investigation, if applicable.
- A list of the minor's personal effects and information on how the minor's next of kin can collect such personal effects, unless providing the information would jeopardize or otherwise interfere with an active investigation.
- Information regarding the status of the investigation, at the discretion of the law enforcement agency.

The bill prohibits the law enforcement agency from providing any of the above information if doing so would jeopardize or otherwise interfere with an active investigation. The law enforcement agency is not required to provide investigative records generated during its investigation to a minor's next of kin for inspection.

The bill provides an effective date of July 1, 2023.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Employment Leave – Current Situation

Most types of employee leave are governed by employers. However, in certain areas, federal and Florida law provides employees with additional protections related to the use of leave. The current law for various types of employee leave is outlined below:

TYPE OF LEAVE	PROTECTIONS	LAWS AT PLAY
Vacation/ Personal	No	Employers are not required to grant vacation leave, paid or unpaid. An employee must comply with the employer's conditions in employment contract, unless the company fails to apply the same rules to all employees,[1] and federal law protects against discriminatory application of personal leave.[2]
Sick	No	Employers are not required to provide employees with sick leave, paid or unpaid. An employee must comply with terms of the employment contract.[3] There is an exception to this under the Family and Medical Leave Act.[4]
Holiday (Private & Public)	Private: No	Private employers are not required to provide employees with holiday leave.
	Public: Yes	Public employers must give state holidays off to employees which are paid. In addition, each full-time employee is entitled to one personal holiday each year.[5]
Jury Duty	Yes	Employers are required to provide employees with unpaid leave for an employee's jury summons and for serving on a jury. The employees have job protection during their leave.[6]
Voting	No	Florida employers are not required to grant voting leave.
Bereavement	No	Florida employers are not required to grant bereavement leave.
Family and Medical Leave Act	Yes	Allows leave for birth/care of child, care of immediate family members with a serious health condition, or care of their own serious health condition. Leave is not to exceed 6 months. Protects employee's job upon returning from leave. It is not required to be paid. If leave is paid, the employee is entitled to all benefits under paid leave status.[7]
Domestic Violence (Florida)	Yes	An employer who employs 50 or more employees shall permit an employee to request and take up to 3 working days of leave in any 12-month-period if the employee, family, or household member of the employee is the victim of domestic violence or sexual violence. The leave can be paid or unpaid. Only applicable if that employee has been employed for 3 or more months.[8]
Military	No	Federally protected, and Florida adds additional protections. Leave of absence may not exceed 240 working hours in any one annual period.[9]
Homicide	No	Employers are not required to grant leave for family or household members of a homicide victim.

[1] Florida Leave Laws, *Employment Law Handbook*, https://www.employmentlawhandbook.com/employment-and-labor-laws/states/florida/leave-laws/#:~:text=Vacation%20Leave%20Florida%20has%20no%20laws%20requiring%20employers,employee%20accrued%20vacation%20leave%20upon%20separation%20from%20employment.

[2] 42 U.S.C. 2000(e)(2). Unlawful Employment Practices, outlines general, unlawful employment practices.

[3] *Id.*

[4] S. 110.221, F.S.

[5] S. 110.117, F.S.

[6] 28 U.S.C. 1875. Protection of Jurors' Employment, outlines that an employer may not fire a juror for serving on a jury.

[7] 29 U.S.C. 2601, *et. seq*. Family and Medical Leave Act.

[8] S. 741.313, F.S.

[9] S. 115.07, F.S.

Family and Medical Leave Act

The Family and Medical Leave Act (FMLA)[10] is a federal law that provides certain employees with up to 12 weeks of unpaid, job-protected leave per year. Group health benefits must be maintained during the leave and employees are entitled to return to their same or an equivalent job at the end of their FMLA leave.[11]

FMLA applies to all public agencies, all public and private elementary and secondary schools, and companies with 50 or more employees. These employers must provide an eligible employee with up to 12 weeks of unpaid leave each year for any of the following reasons:[12]

- For the birth and care of the newborn child of an employee;
- For placement with the employee of a child for adoption or foster care;
- To care for an immediate family member (i.e., spouse, child, or parent) with a serious health condition; or
- To take medical leave when the employee is unable to work because of a serious health condition.
- To handle certain occurrences with military members.

Employees are eligible for FMLA leave if they:[13]

- Have worked for their employer at least 12 months,
- Have worked at least 1,250 hours over the past 12 months, and
- Work at a location where the company employs 50 or more employees within 75 miles.

FMLA allows an employee to elect, or the employer to require the employee, to use accrued paid vacation leave, paid sick or family leave for some or all of the FMLA leave period. An employee must follow the employer's normal leave rules in order to substitute paid leave. When paid leave is used for an FMLA-covered reason, the leave is FMLA-protected.[14]

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than 30 days in advance, the employee must provide notice as soon as practicable – generally, either the same or next business day. When the need for leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, employees must comply with the employer's usual and customary notice and procedural requirements for requesting leave.[15]

If an employer violates FMLA, an employee may:[16]

- File a complaint with the Secretary of Labor; or
- File a private lawsuit pursuant to the judicial enforcement provisions of the FMLA.

If the employee files a private lawsuit, it must be filed within two years after the last action which the employee contends was in violation of FMLA, or three years if the violation was willful.[17]

The employee may be granted the following relief:[18]

- Equitable relief for:

[10] 29 U.S.C. 2601, *et. seq.*; 29 CFR Part 825
[11] U.S. Department of Labor, *Family and Medical Leave (FMLA)*, https://www.dol.gov/general/topic/benefits-leave/fmla (last visited Feb. 20, 2023).
[12] *Id.*
[13] *Id.*
[14] U.S. Department of Labor, *FMLA Frequently Asked Questions*, https://www.dol.gov/agencies/whd/fmla/faq#:~:text=The%20FMLA%20only%20requires%20unpaid,of%20the%20FMLA%20leave%20period. (last visited Feb. 20, 2023).
[15] *Id.*
[16] 29 CFR 825.400(a)
[17] 29 CFR 825.400(b)
[18] 29 CFR 825.400(c)

    - Employment,
    - Reinstatement, and
    - Promotion.
- Monetary relief for:
    - Wages,
    - Employment benefits,
    - Any actual monetary loss sustained by the employee as a direct result of the violation, and
    - Attorney fees.

Employers throughout the country, including Florida employers, must comply with FMLA, which allows eligible employees to take unpaid leave, with the right to reinstatement, for certain reasons. In addition, Florida law gives employees the right to take domestic or sexual violence leave, as explained below.

Generally, FMLA does not provide protections for employees who need leave for homicide-related reasons.

Florida Domestic Violence Leave Protections

In addition to the FMLA, there are protections for family or household members of sexual or domestic violence in Florida.[19] If an employee has been employed by an employer with 50 or more employees for 3 or more months, that employee is entitled to take up to 3 days off in a 12-month period if they themselves or a family or household member are a victim of domestic or sexual violence.[20] The 3 days of leave can be used to:[21]

- Seek an injunction for protection;
- Obtain medical care or mental health counseling;
- Obtain services from a victim's service organizations such as a violence shelter or a rape crisis center;
- Relocate or make the home more secure from perpetrator; or
- Seek legal assistance.

An employee seeking this leave must provide notice to their employer for seeking this leave, unless they are in imminent danger. All other forms of leave must be exhausted, but the employer can waive this requirement. Any person aggrieved by a violation of this law, can bring a civil suit for damages or equitable relief, or both.[22]

Family Members of Homicide Victims Leave Laws in Other States

There are a few states that have adopted leave laws for family and household members of homicide victims. In California, an immediate family member of a victim who is deceased as the direct result of certain crimes may take leave to participate in a related jury trial or judicial proceeding.[23] There must be notice and proof that the employee was affected and needs this type of leave.[24]

In 2021, Missouri signed the Victims' Economic Security and Safety Act (VESSA) into law.[25] Under VESSA, an employee receives leave if they or a family or household member is a victim of any "crime of violence," if the employer has 20 or more employees.[26] For employers with 20-49 employees, an employee has one week of leave, and for employers with 50 or more employees, an employee receives two weeks of leave. The leave can be paid or unpaid.[27] A crime of violence includes: homicide, sex

[19] S. 741.313, F.S.
[20] S. 741.313(3)
[21] S. 741.313(2)(a),(b), F.S.
[22] S. 741.313(4),(6), F.S.
[23] Cal. Labor Code § 230
[24] *Id*.
[25] Missouri HR-417 Victims Economic Safety and Security Act Leave.
[26] *Id*.
[27] *Id*.

offenses, assault, offenses involving bodily harm, harassment, armed violence, obscene communications, terrorism, and similar criminal actions.[28] The leave may be received intermittently or on a reduced work schedule.[29] VESSA also gives employment protection.[30]

Illinois adopted a law similar to VESSA.[31] Victims of crimes of violence or who have family or household members who are victims of such violence may take up to 12 weeks of unpaid leave in any 12-month period to seek medical help, legal advice, counseling, safety precautions, and other related activities.[32]

Household Members of Homicide Victims

An estimated 1 in 10 Americans will lose a loved one to homicide during their lifetime.[33] In the immediate aftermath of a homicide a family member may incur burial and funeral expenses, possible economic or material hardships, and changes in family dynamics.[34] Household members of a homicide victim may need to attend funerals, ceremonies, and court proceedings, and deal with safety concerns. Currently, the Florida law doesn't have employment leave to cover such activities for family and household members of homicide victims.

Employee Leave – Effect of the Bill

The bill requires certain employers with over 50 employees to grant 3 days of leave in any 12-month period to employees who have been employed for over 3 months if a member of their family or household was a victim of homicide.

The definitions for "employee" and "employer" means the same as under the workers compensation statute:[35]

- An "employee" is defined as any person who receives remuneration from an employer for the performance of any work or service while engaged in any employment under an appointment or contract for hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes, but is not limited to, aliens and minors.
- An "employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person.

A "family or household member" means the same as under the domestic violence leave law including spouses, former spouses, persons related by blood or marriage, persons residing together or have resided together in the past, or parents of a child in common. With the exception of people who have a child in common, the family or household members must have resided together in the past or were currently residing in the same dwelling unit prior to the homicide.[36]

The leave must be used to:

- Make funeral or burial arrangements, attend a funeral or memorial service for a family or household member who is a homicide victim;

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[28] *Id*.
[29] EPIC Brokers, Missouri Passes the Victims' Economic Safety and Security Act (2021), https://www.epicbrokers.com/insights/missouri-passes-victims-economic-safety-security-act/#:~:text=On%20August%2028%2C%202021%2C%20Governor%20Mike%20Parson%20of,household%20member%20are%20victims%20of%20violence%20or%20abuse (last visited February 17th, 2023).
[30] *Id*.
[31] 820 Ill. Comp. Stat. 180/5
[32] Illinois Department of Labor, *Victims' Economic Security and Safety Act (VESSA),* https://labor.illinois.gov/laws-rules/conmed/vessa.html (last visited February 2nd, 2023).
[33] Sara Bastomski, PhD & Marina Duane, MID, *Research brief: Homicide Co-Victimization*, Center for Victim Research (2018), https://victimresearch.org/documents/hcv-research-brief-final.pdf.
[34] *Id*.
[35] S. 440.02(15), (16), F.S.
[36] S. 741.28, F.S.

- Secure his or her home from the perpetrator, or his or her associates, of the homicide or seek new housing to escape;
- Attend meetings in person with a representative from a law enforcement agency or the state attorney's office responsible for investigating or prosecuting the homicide; or
- Attend or prepare for court or court-related proceedings arising from the homicide.

The leave can be paid or unpaid. Before using this type of leave, all other leaves must be exhausted unless the employer waives the requirement. Appropriate notice must be given to the employer in accordance with the employer's employment policies, including documentation if required, unless there is imminent danger to the employee. All information given to a private employer is to remain confidential and public employers are under current public exemption laws.

An employee who uses this leave is protected. An employer may not discharge, demote, suspend, retaliate for using the leave. If the employee is discriminated against for using the leave, and they can bring a civil action for damages and equitable relief. Damages may consist or all wages and benefits that would have been due to the person had the violation not occurred.

Investigation Materials – Current Situation

Section 960.001, F.S., provides a list of rights for victims and witnesses in the criminal justice system. The Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Florida Commission on Offender Review, the State Courts Administrator and circuit court administrators, the Department of Law Enforcement, and every sheriff's department, police department, or other law enforcement agency are required to develop and implement guidelines for the use of their respective agencies to achieve the following objectives.

Related to rights of a victim's parent, guardian, or next of kin:

- Law enforcement officers must distribute victim's rights cards or brochures informing on the right of the next of kin of a homicide victim to be informed, to be present, and to be heard when relevant, at all crucial stages of a criminal or juvenile proceeding, to the extent that this right does not interfere with the constitutional rights of the accused.[37]
- In the case of a homicide, sexual offense, attempted murder or sexual offense, stalking, or domestic violence, law enforcement officers or personnel of an organization that provides assistance to the appropriate next of kin of the victim must request that the next of kin of the victim complete a victim notification card, which provides a way of notification if a defendant is released from custody.[38]
- The chief administrator of a county jail, municipal jail, juvenile detention facility, or residential commitment facility must make a reasonable attempt to notify the appropriate next of kin or designated contact of a victim homicide, sexual offense, attempted murder or sexual offense, stalking, or domestic violence before the defendant's or offender's release from custody, if the victim notification card has been provided.[39]
- The appropriate agency must provide notification of certain judicial and postjudicial proceedings to the parent or guardian of a minor victim and a relative of a homicide victim.
    - A victim's parent or guardian if the victim is a minor, or a victim's next of kin may not be excluded from any portion of any proceeding, unless the court determines such person's presence to be prejudicial.[40]
- The state attorney must consult the guardian or family of a victim of a felony involving physical or emotional injury, trauma, or homicide, in order to obtain the views of the victim or family about the disposition of any criminal or juvenile case brought as a result of such crime.[41]

[37] S. 960.001(1)(a)5., F.S.
[38] S. 960.001(1)(b), F.S.
[39] S. 960.001(1)(f), F.S.
[40] S. 960.001(1)(e), F.S.
[41] S. 960.001(1)(g)1., F.S.

- Upon request, the state attorney must allow the victim's parent or guardian if the victim is a minor, or the victim's next of kin in the case of a homicide to review a copy of the presentence investigation report before the sentencing hearing if one was completed.
    - Any confidential information that pertains to medical history, mental health, or substance abuse and any information that pertains to any other victim must be redacted from the copy of the report.
    - Any person who reviews the report pursuant to this paragraph must maintain the confidentiality of the report and may not disclose its contents to any person except statements made to the state attorney or the court.[42]
- The Department of Corrections must, upon request, notify the victim's parent or guardian if the victim is a minor, or the victim's next of kin if the victim is a homicide victim if an inmate has been approved for community work release.[43]

Curtis' Law

In 1997, 16-year-old Curtis Williamson was murdered in California.[44] Afterwards, his mother, Patricia Ward, had difficulty obtaining information related to the investigation of his death.[45] Since then, his mother moved to Florida and began pushing for greater investigation information access for parents of deceased minors.[46] An organization, Curtis's & Co for Children Gone to Soon, Inc., was formed to advocate for law reform nationwide to mandate that certain investigative and contact information be made available to surviving family members in certain circumstances.[47] The proposed law is called Curtis' Law.[48]

In 2022, California passed SB 1268, a version of Curtis' Law, which requires the law enforcement agency that bears the primary responsibility for the investigation to provide a deceased minor victim's parent or guardian[49] with the:[50]

- Contact information of the primary law enforcement agency and the primary contact at such agency,
- Case number,
- List of personal effects found with the minor and contact information to recover such effects, unless doing so would interfere with an investigation,
- Status of the investigation, at the discretion of the law enforcement agency.

Law enforcement is not required to provide any information that would jeopardize or otherwise allow an individual to interfere with the ongoing investigation or any records generated pursuant to their investigation for inspection by a victim's family. Law enforcement agencies providing information may require any family member receiving the information to confirm their identity through a certified declaration.[51]

Investigation Materials – Effect of the Bill

[42] S. 960.001(1)(g)2., F.S.
[43] S. 960.001(1)(g)3., F.S.
[44] Cole Heath, Action News Jax, *Proposed Curtis Law would give families of murdered children information about their child's case*, Proposed Curtis Law would give families of murdered children information about their child's case – Action News Jax (last visited Feb. 19, 2023).
[45] Justice 4 Curtis, *Our Story*, Our Story - Curtis's & Co for Children Gone to Soon (justice4curtis.org) (last visited Feb. 19, 2023).
[46] Action Jax News, *supra* note 39.
[47] Justice 4 Curtis, *supra* note 40.
[48] Justice 4 Curtis, Curtis Law, The Proposed Law - Curtis's & Co for Children Gone to Soon (justice4curtis.org) (last visited Feb. 20, 2023).
[49] Or immediate family if a parent or guardian cannot be located. "Immediate family" means the victim's spouse, parent, guardian, grandparent, aunt, uncle, brother, sister, and children or grandchildren who are related by blood, marriage, or adoption.
[50] Cal. Penal Code § 679.09
[51] Id.

The bill, cited as Curtis' Law, amends s. 960.001, F.S., to require that, during the investigation of the death of a minor, the law enforcement agency that initiates or bears the primary responsibility for the investigation must provide the minor's next of kin with all of the following information:

- The contact information for the primary contact, if known, for the particular investigation, as well as the contact information for each law enforcement agency involved in the investigation.
- The case number for the investigation, if applicable.
- A list of the minor's personal effects that were found on or with the minor and information on how the minor's next of kin can collect such personal effects. A law enforcement agency may withhold the information if providing the information would jeopardize or otherwise interfere with an active investigation.
- Information regarding the status of the investigation, at the discretion of the law enforcement agency.

The law enforcement agency may not provide any of the above information if doing so would jeopardize or otherwise interfere with an active investigation.

The law enforcement agency is not required to provide investigative records generated during its investigation to a minor's next of kin for inspection.

The effective date of the bill is July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Creates s. 448.046, F.S.; providing certain requirements for employee leave.
Section 2: Amends s. 960.001, F.S., requiring certain law enforcement agencies to provide certain investigation information.
Section 3: Provides an effective date.

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:

   Indeterminant. The bill may require more local agencies to comply with information requests by the next of kin of deceased minors.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more employees to attend judicial, funeral, and safety events with employee leave protections.

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:

Law enforcement agencies will need to create guidelines for transmitting certain investigative information to a deceased child's next of kin.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to family and household members of homicide victims and deceased minors; providing a short title; creating s. 448.046, F.S.; providing definitions; providing applicability; requiring an employer to grant certain leave upon the request of an employee; providing requirements for such leave; requiring an employee to provide advance notice and certain documentation to his or her employer except under certain circumstances; requiring confidentiality; prohibiting an employer from taking certain actions relating to the exercise of certain rights; providing construction; providing remedies; providing exceptions; amending s. 960.001, F.S.; requiring law enforcement agencies to provide certain information during the investigation of the death of a minor; providing an exception; providing construction; providing an effective date.

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

Section 1. This act may be cited as "Curtis' Law."

Section 2. Section 448.046, Florida Statutes, is created to read:

448.046 Employment accommodations for family or household

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

members of homicide victims.—

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

(a) "Employee" has the same meaning as in s. 440.02(15).

(b) "Employer" has the same meaning as in s. 440.02(16).

(c) "Family or household member" has the same meaning as in s. 741.28.

(d) "Homicide" means an unlawful act that causes the death of another person.

(e) "Homicide victim" means a deceased person who was killed in a homicide.

(2) This section applies to an employer who employs 50 or more employees and to an employee who has been employed by the employer for at least 3 months.

(3)(a) If an employee has a family or household member who is a homicide victim, the employee may request, and an employer must grant, up to 3 working days of leave in any 12-month period to:

1. Make funeral or burial arrangements, or to attend a funeral or memorial service, for a family or household member who is a homicide victim;

2. Secure his or her home from the perpetrator, or his or her associates, of the homicide or to seek new housing in order to escape the perpetrator, or his or her associates, of the homicide;

3. Attend meetings in person with a representative from

the law enforcement agency or the state attorney's office responsible for the investigation and prosecution of the homicide; or

4. Attend or prepare for court or court-related proceedings arising from the homicide.

(b) Leave requested under this subsection may be with or without pay, at the discretion of the employer.

(c) An employee requesting leave under this subsection must exhaust his or her annual or vacation leave, personal leave, and sick leave, if applicable, before receiving leave under this subsection unless the employer waives this requirement.

(4) Except in cases where there is an imminent danger to the health or safety of the employee or a family or household member of the employee, an employee requesting leave under subsection (3) must provide appropriate advance notice of the leave to his or her employer in accordance with the employer's employment policies, including sufficient documentation of the homicide as required by the employer.

(5)(a) A private employer must keep all information relating to an employee's leave taken under subsection (3) confidential.

(b) An employer that qualifies as an agency, as defined in s. 119.011, must keep all information relating to an employee's leave taken under subsection (3) confidential and exempt from

disclosure to the extent authorized under subsection (8).

(6)(a) An employer may not interfere with, restrain, or deny the exercise or attempted exercise of any right provided under subsection (3).

(b) An employer may not discharge, demote, suspend, retaliate, or in any other manner discriminate against an employee for exercising his or her rights under subsection (3).

(c) An employee does not have any greater rights to continued employment or to other benefits and conditions of employment than if the employee was not entitled to leave under subsection (3).

(d) This subsection does not limit an employer's right to discipline or terminate an employee for any reason, including, but not limited to, a reduction in work force, termination for cause, or for no reason at all, other than exercising his or her rights under subsection (3).

(7) The exclusive remedy for a person aggrieved by a violation of this section is to bring a civil action for damages or equitable relief, or both, in circuit court. An aggrieved person may claim as damages all wages and benefits that would have been due to the person had the violation not occurred up to and including the date of the final judgment. An aggrieved person is not entitled to wages or benefits for any period of leave without pay that the employer granted under subsection (3). This subsection does not relieve the aggrieved person from

his or her obligation to mitigate damages.

Section 3. Paragraph (v) is added to subsection (1) of section 960.001, Florida Statutes, to read:

960.001 Guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.—

(1) The Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Florida Commission on Offender Review, the State Courts Administrator and circuit court administrators, the Department of Law Enforcement, and every sheriff's department, police department, or other law enforcement agency as defined in s. 943.10(4) shall develop and implement guidelines for the use of their respective agencies, which guidelines are consistent with the purposes of this act and s. 16(b), Art. I of the State Constitution and are designed to implement s. 16(b), Art. I of the State Constitution and to achieve the following objectives:

(v) Information concerning an investigation into the death of a minor.—

1. During the investigation of the death of a minor, the law enforcement agency that initiates or bears the primary responsibility for the investigation must provide the minor's next of kin with all of the following information:

a. The contact information for the primary contact, if known, for the particular investigation, as well as the contact information for each law enforcement agency involved in the

investigation.

b. The case number for the investigation, if applicable.

c. A list of the minor's personal effects that were found on or with the minor and information on how the minor's next of kin can collect such personal effects. A law enforcement agency may withhold the information in this sub-subparagraph if providing the information would jeopardize or otherwise interfere with an active investigation.

d. Information regarding the status of the investigation, at the discretion of the law enforcement agency.

2. A law enforcement agency may not provide any of the information under this paragraph if doing so would jeopardize or otherwise interfere with an active investigation.

3. This paragraph does not require a law enforcement agency to provide investigative records generated during its investigation to a minor's next of kin for inspection.

Section 4. This act shall take effect July 1, 2023.

HB 327

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 327 Fire Sprinkler System Projects
SPONSOR(S): Bell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Thompson	Anstead
2) Commerce Committee			

SUMMARY ANALYSIS

Florida's fire prevention and control law, ch. 633, F.S., requires the State Fire Marshal to adopt the Florida Fire Prevention Code (Fire Code). The Fire Code sets forth fire safety standards (including certain national codes) for buildings and structures. The State Fire Marshall adopts a new edition of the Fire Code every three years. All municipalities, counties, and special districts with fire safety responsibilities must enforce the Fire Code to operate uniformly among local governments and in conjunction with the Florida Building Code.

The State Fire Marshal licenses and regulates fire protection system contractors in the state. Currently, a Contractor I or II may design:

- New fire protection systems of 49 or fewer sprinklers;
- An alteration of existing fire sprinkler systems regardless of size if the alteration consists of the relocation, addition, or deletion of no more than 49 sprinklers; or
- An alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers.

The bill provides that a Contractor I or II may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion or 249 or fewer sprinklers.

Local building code enforcement agencies are responsible for permitting fire alarm system projects. An electrical or alarm system contractor cannot install or replace a fire alarm until they obtain a Uniform Fire Alarm Permit. Current law authorizes an expedited permitting process for certain fire alarm system projects that alter a total of 20 or fewer initiating devices. However, the expedited permitting process does not include projects that involve changes to fire sprinkler systems.

The bill creates an expedited permitting process for certain "fire sprinkler system projects," similar to the current process for fire alarm system projects, and prohibits local enforcement agencies from requiring a fire protection system contractor to submit plans to obtain a building permit for a fire sprinkler system project.

This expedited process would allow a contractor I or II to start work on such fire system project without first obtaining a standard permit, and obtain an expedited permit electronically.

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

The bill provides for an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

State Fire Marshal

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 (Division) located 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. DFS 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.

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Prevention 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.[2]

The State Fire Marshall adopts a new edition of the Fire Prevention Code every three years. When adopting a new edition of the Fire Prevention Code, the State Fire Marshal must adopt the most recent version of the National Fire Protection Association (NFPA) Standard 1, Fire Prevention Code, and the NFPA 101 Life Safety Code.[3]

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Prevention Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.[4] Each county, municipality, and special district with fire safety enforcement responsibilities must employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.

Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.[5]

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code

[1] S. 633.104, F.S.

[2] S. 633.202(1) and (2), F.S.

[3] *Id*. The NFPA is the National Fire Protection Association. Founded in 1896, the NFPA delivers information and knowledge through no more than 300 consensus codes and standards, research, training, education, outreach and advocacy. NFPA, *About NFPA*, https://www.nfpa.org/about-nfpa (last visited Feb. 13, 2023).

[4] The Florida Building Code is the statewide building code for all construction in the state. Every local government must enforce the Florida Building Code and issue building permits. *See generally* ch. 553, F.S.

[5] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Feb. 13, 2023).

(Building Code), and that first edition replaced all local codes on March 1, 2002.[6] The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.[7]

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[8]

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within DBPR, is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International Code Council,[9] the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.[10]

Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[11] Every local government must enforce the Building Code and issue building permits.[12]

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[13]

To obtain a building permit an applicant must complete an application for the proposed work on the form furnished by the government entity.[14] A local government that issues building permits must post each type of building permit application on its website.[15]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[16] A building official is a local government employee or a person contracted by a government entity who supervises building code activities, including plans review, enforcement, and inspection.[17]

Any construction work that requires a building permit also requires building plans and inspections by the building official to ensure the work complies with the Building Code.[18] Generally speaking, a permitted project that passes the required inspections is considered completed or closed.[19]

Uniform Fire Alarm Permit

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[6] *Id*.
[7] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Feb. 13, 2023).
[8] *See* s. 553.72(1), F.S.
[9] The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, https://www.iccsafe.org/about/who-we-are/ (last visited Feb. 13, 2023).
[10] Ss. 553.73, and 553.74, F.S.
[11] S. 553.72, F.S.
[12] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[13] *See* ss. 125.56(4)(a) and 553.79(1), F.S.
[14] S. 713.135(5) and (6), F.S.
[15] Ss. 125.56(4)(b) and 553.79(1), F.S.
[16] S. 468.603(2), F.S; S. 202, Seventh edition, Florida Building Code (Building).
[17] *Id*.
[18] Ss. 107, 110.1, and 110.3, Seventh edition, Florida Building Code (Building).
[19] Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%93%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf (last visited Feb. 13, 2023).

Fire protection systems, including fire alarms, must be installed, repaired, operated, and maintained in accordance with the Fire Prevention Code and the Building Code.[20]

An electrical or alarm system contractor must file a uniform fire alarm permit application with a local government in order to obtain a fire alarm permit.[21]

The Uniform Fire Alarm Permit Application must include the following information:[22]

- The name and address of the owner of the property;
- The name, address, and license number of the contractor;
- A description sufficient to identify the property to be improved, including the property's address and legal description;
- A description of the work being performed; and
- The owner and contractor's signature.

An electrical or alarm system contractor cannot install or replace a fire alarm until they obtain a fire alarm permit. However, an electrical or alarm system contractor may make repairs on a fire alarm **without a fire alarm permit**, as long as they have applied for the permit.[23]

Time-Period to Review Building Permit Applications

Current law requires local governments to review the following building permit applications within a specific time-period of receiving the applications:[24]

- Accessory structure;
- **Alarm permit**;
- Nonresidential buildings less than 25,000 square feet;
- Electric;
- Irrigation permit;
- Landscaping;
- Mechanical;
- Plumbing;
- Residential units other than a single family unit;
- Multifamily residential not exceeding 50 units;
- Roofing;
- Signs;
- Site-plan approvals and subdivision plats not requiring public hearings or public notice; and
- Lot grading and site alteration associated with a permit application.

When a local government receives an application for one of the above building permits, it must:[25]

- Inform the applicant within **10 days** of receiving the application, what information, if any, is needed to complete the application.
    - If the local government fails to provide written notice to the applicant within the 10-day window, the application is deemed to be properly completed.
- Notify the applicant within **45 days** of the application being deemed complete, if additional information is necessary to determine the sufficiency of the application;
    - If additional information is needed the local government must specify what additional information is necessary.

[20] Ss. 202 and 901.2, Seventh edition, Florida Building Code (Building).
[21] S. 553.7921(1); Ch. 19-140, Laws of Fla.
[22] S. 553.7921(3), F.S.
[23] S. 553.7921(1) and (2), F.S.
[24] S. 553.792(2), F.S.
[25] S. 553.792(1)(a), F.S.

    - The applicant may submit the additional information to the local government or request that the local government act on the application without the additional information.
- Approve, approve with conditions, or deny the application within **120 days** following receipt of the completed application.
    - This period is tolled during the time an applicant is responding to a request for additional information and may be extended by mutual consent of the parties.

If a local government fails to meet one of the deadlines, it must reduce the building permit fee by ten percent for each business day that it fails to meet the deadline. Each ten percent reduction is based on the original amount of the building permit fee, unless the parties agree to an extension of time.[26]

Over-the-Counter Permits

Generally, over-the-counter permits are building permits that need minimal or no plans reviewed by the local building official. However, an applicant must still fill out an application, and inspections are still required to close or complete the permit. Local government officials typically determine what types of permits qualify as over-the-counter permits for their jurisdictions. Over-the-counter permits can be issued in person or online depending on the jurisdiction.[27]

Typically, an application for a permit must include building plans. A local enforcing agency may not issue a permit until the building official or plans examiner has reviewed the building plans and determined that they comply with the Building Code, unless the project is not required to have plans reviewed by the local building official.[28]

Permits for the following projects are not required to have plans reviewed by the local building official:[29]

- Replacing existing equipment such as mechanical units, water heaters, etc.
- Reroofs.
- Minor electrical, plumbing and mechanical repairs.
- Annual maintenance permits.
- Prototype plans:
    - Except for local site adaptions, siding, foundations and/or modifications, and structures that require a waiver.
- Manufactured buildings except for foundations and modifications of buildings on site.

Fire Alarm System Projects

Current law provides an expedited permitting process for certain fire alarm system projects. The process removes the time required to review plans prior to starting work. The law prohibits a local enforcement agency from requiring a contractor to submit building plans or specifications in order to obtain a permit for a fire alarm system project, but local enforcement is still authorized to require a contractor to submit a completed application and a payment for such permit.[30]

A "fire alarm system project" is defined as a fire alarm system alteration of a total of 20 or fewer initiating devices and notification devices, or the installation or replacement of a fire communicator[31]

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[26] S. 550.792(1)(b), F.S.

[27] City of Boca Raton, *Building Permits and Inspections*, https://www.myboca.us/157/Building-Permits-and-Inspections (last visited Feb. 13, 2023); Charlotte County, *Permits*, https://www.charlottecountyfl.gov/departments/community-development/building-construction/permits/ (last visited Feb. 13, 2023); Nassau County, *Over the Counter Building Permit Application*, https://www.nassaucountyfl.com/DocumentCenter/View/22517/Over-the-Counter-Building-Permit (last visited Feb. 13, 2023); City of Sarasota, *Building and Permitting Online Services*, https://ftgportal.sarasotafl.gov/Permits/Home.aspx?microapp=c (last visited on Feb. 13, 2023).

[28] S. 553.79(2), F.S.

[29] S. 107.3.5, Seventh edition, Florida Building Code (Building).

[30] S. 553.7932(2), F.S.

[31] A "fire alarm communicator" is a device that automatically contacts first responders, if a fire is detected. Norris Inc., https://norrisinc.com/2016/08/12/alarm-system-communicators/ (last visited Feb. 13, 2023).

connected to an existing fire alarm control panel[32] in an existing commercial, residential, apartment, cooperative, or condominium building.[33]

A local enforcement agency must:

- Issue a permit for a fire alarm system project in person or electronically.[34]
- Require at least one inspection of a fire alarm system project to ensure the work complies with the applicable codes and standards. If a fire alarm system project fails an inspection, the contractor must take corrective action as necessary to pass inspection.[35]

The contractor must keep a copy of the plans and specifications at the worksite, and make them available to the inspector at each inspection.[36]

The expedited permitting process for fire alarm system projects does not include projects that involve fire sprinkler systems.

Fire Protection Systems

A "fire protection system" is a system individually designed to protect the interior or exterior of a specific building or buildings, structure, or other special hazard from fire. A fire protection system includes, but is not limited to:[37]

- Water sprinkler systems;
- Water spray systems;
- Foam-water sprinkler systems;
- Foam-water spray systems;
- Carbon dioxide systems;
- Foam extinguishing systems;
- Dry chemical systems; and
- Halon and other chemical systems used for fire protection use.

Fire protection systems also include any tanks and pumps connected to fire sprinkler systems, overhead and underground fire mains, fire hydrants and hydrant mains, standpipes and hoses connected to sprinkler systems, sprinkler tank heaters, air lines, and thermal systems used in connection with fire sprinkler systems.[38]

Fire protection systems must be installed in accordance with the Fire Code and the Florida Building Code. Current law requires local governments to enforce the Fire Code and the Florida Building Code including the permitting, inspecting, and approving the installation of a fire protection system.[39] Owners of fire protection systems are responsible for the maintenance of their fire protection systems, and must contract with a certified fire protection system contractor to regularly inspect such systems.[40]

Fire Protection System Contractors

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[32] A "fire alarm control unit" serves as the brain of the fire alarm system. It is a component of a fire alarm system that receives signals from initiating devices or other fire alarm control units, and processes these signals to determine part or all of the required fire alarm system output. National Fire Protection Association, *A Guide to Fire Alarm Basics*, https://www.nfpa.org/News-and-Research/Publications-and-media/Blogs-Landing-Page/NFPA-Today/Blog-Posts/2021/03/03/A-Guide-to-Fire-Alarm-Basics (last visited Feb. 13, 2023).
[33] S. 553.7932(1)(b), F.S.
[34] S. 553.7932(3), F.S.
[35] S. 553.7932(4), F.S.
[36] S. 553.7932(5), F.S.
[37] S. 633.102(11), F.S.
[38] *Id.*
[39] *See generally* ch. 553 and 633, F.S.; ss. 10.1.2 and 10.1.3 of the 7th edition of the Florida Fire Prevention Code (NFPA Standard 1).
[40] S. 633.312, F.S.; S. 10.2.7 of the 7th edition of the Florida Fire Prevention Code (NFPA Standard 1).

In order to engage in the business of laying out, fabricating, installing, inspecting, altering, repairing, or servicing a fire protection system in Florida, other than a pre-engineered system, a person must be certified as a fire protection system contractor.[41]

Fire protection system contractors are regulated by ch. 633, F.S., which outlines the law pertaining to fire protection system contractors in the state. The State Fire Marshal is responsible for licensing and regulating fire system protection contractors in the state.[42]

Fire protection system contractors are divided into five categories. A contractor's ability to practice is limited to the category or categories that a contractor has obtained certification. The contractor categories are:[43]

- **Contractor I** - means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.

- **Contractor II** - means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.

- **Contractor III** - means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.

- **Contractor IV** - means a person who can lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one- and two- family dwellings and mobile homes.
    - This does not include single-family dwellings in multi-dwelling buildings such as apartments, condominiums, assisted living facilities, or buildings connected to other dwellings.
    - A Contractor IV is limited to the scope of practice specified in the NFPA 13D Standard for the Installation of Sprinkler Systems in One- and Two- Family Dwellings and Manufactured Homes.

- **Contractor V** - means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service and ending no more than 1 foot above the finished floor. A Contractor V may inspect underground piping for a water-based fire protection system under the direction of a Contractor I or Contractor II.[44]

A fire protection system contractor must have insurance providing coverage for comprehensive general liability for bodily injury and property damages, products liability, completed operations, and contractual liability. A Contractor I, Contractor II, Contractor III, or Contractor V must have insurance of not less than $500,000, and a Contractor IV must have insurance of not less than $250,000.[45]

[41] S. 633.336(1), F.S.
[42] Ss. 633.318 and 633.338, F.S.
[43] S. 633.102(3), F.S.
[44] S. 633.318(9), F.S.
[45] S. 633.318(4), and (7), F.S.

In order to obtain certification as a fire protection system contractor, a person must submit a written application to the Division, pay a fee of $300, be at least 18 years of age, be of good moral character, provide proof of insurance, and pass a written exam administered by the Division.[46]

In order to sit for an exam for certification as a contractor, a person must provide evidence of the following experience and/or education depending on the certification sought by the person:[47]

- For certification as a Contractor I, a person must have 4 years of experience in the full time employment with a Contractor I, or a combination of equivalent education and experience in both water-based and chemical fire suppression systems.

- For certification as a Contractor II, a person must have 4 years of verifiable employment experience with a fire protection system as a Contractor I or Contractor II, or a combination of equivalent education and experience in water-based fire suppression systems.

- For certification as a Contractor III, a person must have 4 years of verifiable employment experience with a fire protection system as a Contractor I or Contractor II, or a combination of equivalent education and experience in chemical fire suppression systems.

- For certification as a Contractor IV, a person must be licensed as a certified plumbing contractor and successfully complete a training program of not less than 40 contact hours about the applicable installation standard described in NFPA 13D.

- For certification as a Contractor V, a person must be licensed as a certified underground utility and excavation contractor or certified plumbing contractor, or provide 4 years of verifiable experience in the full time employment of a certified underground utility and excavation contractor or certified plumbing contractor, or a combination of equivalent education and experience.

Design of Fire Protection Systems

The scope of practice for certified contractors does not include designing a fire protection system. In order to design fire protection systems, a person must be licensed as a fire protection engineer[48] or architect with fire protection design experience. A fire protection engineer or architect with fire protection design may design any type of fire protection system and is not limited by type or size of the fire protection system.[49]

Architects in the state are regulated by ch. 481, part I, F.S., and by the Board of Architecture and Interior Design with the Department of Business and Professional Regulation (DBPR).

The practice of engineering is regulated by ch. 471, F.S., and by the Florida Board of Professional Engineers (FBPE).[50]

Current law provides that a Contractor I or II may:[51]

- Design fire protection systems of 49 or fewer sprinklers;
- Design the alteration of an existing fire sprinkler system regardless of size as long as the alteration consists of the relocation, addition, or deletion of no more than 49 sprinklers;

[46] The Division has an exam for each type of fire protection system certification. ss. 633.318(1), (2), and (4), and 633.132(1)(a), F.S.
[47] S. 633.318(3), F.S.
[48] There is no fire protection engineer license provided in current law. However, in order to practice engineering in Florida including fire protection engineering, a person must be licensed as a professional engineer. *See* ch. 471, F.S.
[49] S. 633.102(3), F.S.
[50] S. 471.038(3), F.S.
[51] S. 633.102(3), F.S.

"**or**"

- Design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, regardless of the size of the sprinkler system, as long as:
  - There is no change of occupancy of the affected areas, as defined in the Florida Building Code and the Florida Fire Prevention Code;[52]
  - There is no change in the water demand as defined in NFPA 13, "Standard 76 for the Installation of Sprinkler Systems;" and
  - The occupancy hazard classification as defined in NFPA 13 is not reduced or remains the same.[53]

During the 2021 regular Session, the law was amended to allow a Contractor I or II to provide for the third design option, which is to design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, regardless of the size of the sprinkler system. According to industry members, the wording of the law caused confusion with local enforcement agencies as to whether a contractor is authorized to work on design projects with 49 or 249 sprinklers.[54]

Effect of Proposed Changes

The bill creates an expedited permitting process for fire sprinkler system projects. Specifically, the bill:

- Authorizes local enforcement agencies to require a contractor, as a condition of obtaining a permit for a fire sprinkler system project, to submit a completed application and payment.
- Prohibits local enforcement agencies from requiring a contractor to submit plans or specifications as a condition of obtaining a permit for a fire sprinkler system project.
- Requires local enforcement agencies to issue a permit for a fire sprinkler system project in person or electronically.
- Requires local enforcement agencies to require at least one inspection of a fire sprinkler system project to ensure compliance with applicable codes and standards.
- Provides that if a fire sprinkler system project fails an inspection, the contractor must take corrective action as necessary to pass inspection.

The bill requires contractors to keep a copy of the plans and specifications at the fire sprinkler system project worksite and make such plans and specifications available to the inspector at each inspection for a:

- Fire sprinkler system project to alter an existing fire protection system; and
- Fire alarm system project.

For a fire sprinkler system project to install or replace a component, the bill requires contractors to keep the following documents at the fire sprinkler system project worksite and make them available to the inspector at each inspection:

- A copy of the manufacturer's installation instructions; and
- Any pertinent testing instructions needed to certify or accept the component.

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[52] Every building must have an occupancy classification, which is the formal designation of the primary purpose of the building. Different classifications of occupancy represent varying levels of hazard and risk to building occupants. A change of occupancy is when a building changes its primary purpose or occupancy classification. ss. 202 and 302 of the Seventh Edition of the Building Code.

[53] The occupancy hazard classification is a rating system that is used to help determine the minimum water needed to fight a structural fire. No hazard classification is assigned when a building has an automatic sprinkler system installed in accordance with applicable standards. NFPA, *Step 1 How Much Water is Needed?*, https://www.nfpa.org/assets/gallery/firewise/operationWater/step1_3.htm (last visited Feb. 13, 2023).

[54] Email from Edwards Briggs, Vice President of Government Relations & Community Affairs RSA Consulting Group, LLC, RE: HB 327 Fire Sprinkler System Projects (Feb. 03, 2023).

The bill defines a "fire sprinkler system project" to mean a fire protection system alteration of a total of 20 or fewer fire sprinklers or the installation or replacement of an equivalent fire sprinkler system component in an existing commercial, residential, apartment, cooperative, or condominium building. A component is equivalent if the component has the same or better characteristics, including electrical, hydraulic, pressure losses, and required listings and spacing as the component being replaced.

The bill defines “component” to mean valves, backflow preventers, switches, fire sprinklers, escutcheons, hangers, pumps, pump motors and engines, compressors, hydrants, or any other item deemed acceptable by the local enforcing agency.

The bill provides that a contractor is qualified to engage in the business of fire protection system contracting pursuant to a license or certificate issued by the State Fire Marshal.

The bill clarifies that a Contractor I or II is authorized to design fire sprinkler systems of up to 49 sprinklers, design the alteration of existing fire sprinkler systems of up to 49 sprinklers, “**and**” design the alteration of existing fire sprinkler systems of 249 or fewer sprinklers if no more than 49 altered sprinklers are added to the total number of sprinklers previously protecting the permitted space.

B. SECTION DIRECTORY:

Section 1: amends s. 553.7932, F.S.; revising and providing definitions; providing requirements for a simplified permitting process for certain fire sprinkler system projects.

Section 2: amends s. 633.102, F.S.; revising the definition of the term "contractor" as it relates to fire sprinkler systems.

Section 3: provides for an effective date of July 1, 2023.

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 have a positive economic impact on consumers and contractors by allowing a Fire Protection System Contractor I or II to work on fire sprinkler projects immediately without having to go through the plans review process before repairing broken equipment or systems.

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:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to fire sprinkler system projects; amending s. 553.7932, F.S.; revising and providing definitions; providing requirements for a simplified permitting process for certain fire sprinkler system projects; amending s. 633.102, F.S.; revising the definition of the term "contractor" as it relates to fire sprinkler systems; providing an effective date.

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

Section 1. Section 553.7932, Florida Statutes, is amended to read:

553.7932 Simplified permitting processes ~~process for fire alarm system projects~~.—

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

(a) "Component" means valves, backflow preventers, switches, fire sprinklers, escutcheons, hangers, pumps, pump motors and engines, compressors, hydrants, or any other item deemed acceptable by the local enforcing agency.

(b) ~~(a)~~ "Contractor" means a person who:

1. Is qualified to engage in the business of electrical or alarm system contracting pursuant to a certificate or registration issued by the department under part II of chapter 489; or

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

2. Is qualified to engage in the business of fire protection system contracting pursuant to a license or certificate issued by the State Fire Marshal.

(c) ~~(b)~~ "Fire alarm system project" means a fire alarm system alteration of a total of 20 or fewer initiating devices and notification devices, or the installation or replacement of a fire communicator connected to an existing fire alarm control panel in an existing commercial, residential, apartment, cooperative, or condominium building.

(d) "Fire sprinkler system project" means a fire protection system alteration of a total of 20 or fewer fire sprinklers or the installation or replacement of an equivalent fire sprinkler system component in an existing commercial, residential, apartment, cooperative, or condominium building. For purposes of this paragraph, a component is equivalent if the component has the same or better characteristics, including electrical, hydraulic, pressure losses, and required listings and spacing as the component being replaced.

(2)(a) A local enforcement agency may require a contractor, as a condition of obtaining a permit for a fire alarm system project or fire sprinkler system project, to submit a completed application and payment.

(b) A local enforcement agency may not require a contractor to submit plans or specifications as a condition of obtaining a permit for a fire alarm system project or fire

sprinkler system project.

(3) A local enforcement agency must issue a permit for a fire alarm system project or fire sprinkler system project in person or electronically.

(4) A local enforcement agency must require at least one inspection of a fire alarm system project or fire sprinkler system project to ensure compliance with applicable codes and standards. If a fire alarm system project or fire sprinkler system project fails an inspection, the contractor must take corrective action as necessary to pass inspection.

(5)(a) For a fire alarm system project, a contractor must keep a copy of the plans and specifications at the ~~a~~ fire alarm system project worksite and make such plans and specifications available to the inspector at each inspection.

(b) For a fire sprinkler system project to alter an existing fire protection system, a contractor must keep a copy of the plans and specifications at the fire sprinkler system project worksite and make such plans and specifications available to the inspector at each inspection.

(c) For a fire sprinkler system project to install or replace a component, a contractor must keep a copy of the manufacturer's installation instructions and any pertinent testing instructions needed to certify or accept the component at the fire sprinkler system project worksite and make such documents available to the inspector at each inspection.

Section 2. Subsection (3) of section 633.102, Florida Statutes, is amended to read:

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

(3)(a) "Contractor I" means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.

(b) "Contractor II" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service as defined in this section, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.

(c) "Contractor III" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.

(d) "Contractor IV" means a contractor whose business is

limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings. A Contractor IV is limited to the scope of practice specified in NFPA 13D.

(e) "Contractor V" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than 1 foot above the finished floor. A Contractor V may inspect underground piping for a water-based fire protection system under the direction of a Contractor I or Contractor II.

This subsection may not be construed to include engineers or architects within the defined terms and does not limit or prohibit a licensed fire protection engineer or architect with fire protection design experience from designing any type of fire protection system. A distinction is made between system design concepts prepared by the design professional and system

layout as defined in this section and typically prepared by the contractor. However, a person certified under this chapter as a Contractor I or Contractor II may design new fire protection systems of 49 or fewer sprinklers; may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation, addition, or deletion of 49 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system; and ~~or~~ may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers and no more than 49 altered sprinklers are added to the total number of sprinklers previously protecting the permitted space, notwithstanding the size of the existing fire sprinkler system, if there is no change of occupancy of the affected areas, as defined in the Florida Building Code and the Florida Fire Prevention Code, and there is no change in the water demand as defined in NFPA 13, "Standard for the Installation of Sprinkler Systems," and if the occupancy hazard classification as defined in NFPA 13 is reduced or remains the same as a result of the alteration. Conflicts between the Florida Building Code and the Florida Fire Prevention Code shall be resolved pursuant to s. 553.73(1)(d). A person certified as a Contractor I, Contractor II, or Contractor IV may design a new fire protection system or design the alteration of an existing fire protection system, the scope of which complies with NFPA 13D, "Standard for the Installation of

Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes," as adopted by the State Fire Marshal, notwithstanding the number of fire sprinklers. Contractor-developed plans may not be required by any local permitting authority to be sealed by a registered professional engineer.

Section 3. This act shall take effect July 1, 2023.

REGULATORY REFORM & ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 327 by Rep. Bell
Fire Sprinkler System Projects

AMENDMENT SUMMARY
February 23, 2023

Amendment 1 by Rep. Bell (lines 35-137):

- Clarifies the definition of “fire sprinkler system project.”
- Clarifies the total number of sprinklers that Contractors I or II are authorized to design.

Amendment No. 1

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: Regulatory Reform & Economic Development Subcommittee
Representative Bell offered the following:

Amendment

Remove lines 35-137 and insert:

(d) "Fire sprinkler system project" means a fire protection system alteration of a total of 20 or fewer fire sprinklers, or the installation or replacement of a fire sprinkler system component in an existing commercial, residential, apartment, cooperative, or condominium building. For purposes of this paragraph, a component is equivalent if the component has the same or better characteristics, including electrical, hydraulic, pressure losses, and required listings and spacing as the component being replaced.

(2)(a) A local enforcement agency may require a contractor, as a condition of obtaining a permit for a fire alarm system project or fire sprinkler system project, to submit a completed application and payment.

(b) A local enforcement agency may not require a contractor to submit plans or specifications as a condition of obtaining a permit for a fire alarm system project or fire sprinkler system project.

(3) A local enforcement agency must issue a permit for a fire alarm system project or fire sprinkler system project in person or electronically.

(4) A local enforcement agency must require at least one inspection of a fire alarm system project or fire sprinkler system project to ensure compliance with applicable codes and standards. If a fire alarm system project or fire sprinkler system project fails an inspection, the contractor must take corrective action as necessary to pass inspection.

(5)(a) For a fire alarm system project, a contractor must keep a copy of the plans and specifications at the ~~a~~ fire alarm system project worksite and make such plans and specifications available to the inspector at each inspection.

(b) For a fire sprinkler system project to alter an existing fire protection system, a contractor must keep a copy of the plans and specifications at the fire sprinkler system

project worksite and make such plans and specifications available to the inspector at each inspection.

(c) For a fire sprinkler system project to install or replace a component, a contractor must keep a copy of the manufacturer's installation instructions and any pertinent testing instructions needed to certify or accept the component at the fire sprinkler system project worksite and make such documents available to the inspector at each inspection.

Section 2. Subsection (3) of section 633.102, Florida Statutes, is amended to read:

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

(3)(a) "Contractor I" means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.

(b) "Contractor II" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service as defined in this section, sprinkler tank heaters, air lines,

thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.

(c) "Contractor III" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.

(d) "Contractor IV" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings. A Contractor IV is limited to the scope of practice specified in NFPA 13D.

(e) "Contractor V" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than 1 foot above the finished floor. A Contractor V may inspect underground piping for a

water-based fire protection system under the direction of a Contractor I or Contractor II.

This subsection may not be construed to include engineers or architects within the defined terms and does not limit or prohibit a licensed fire protection engineer or architect with fire protection design experience from designing any type of fire protection system. A distinction is made between system design concepts prepared by the design professional and system layout as defined in this section and typically prepared by the contractor. However, a person certified under this chapter as a Contractor I or Contractor II may design new fire protection systems of 49 or fewer sprinklers; may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation, addition, or deletion of 49 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system; and ~~or~~ may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers and the addition of up to 49 or fewer sprinklers, as long as the cummulative total number of fire sprinklers being added, relocated, or deleted does not exceed 249, notwithstanding the

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 415 Temporary Commercial Kitchens
SPONSOR(S): Porras
TIED BILLS: **IDEN./SIM. BILLS:** SB 752

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Thompson	Anstead
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (DBPR) is charged with enforcing the applicable laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare. Food trucks are regulated by DBPR as a "mobile food dispensing vehicle,"(MFDV). To obtain a license as an MFDV, an applicant must complete a kitchen plan review for sanitation and safety concerns, apply for a license and pay the license fee, and schedule and pass an initial licensing inspection. Once licensed, Division personnel inspect MFDVs as often as necessary for the protection of the public's health, safety, and welfare.

Ghost kitchens are shared temporary commercial kitchens optimized for use by food delivery services such as Grubhub or DoorDash. Ghost kitchens include physical spaces for operators to create food for off-premises consumption, and can have a central, commissary-style set-up with multiple restaurants or brands working out of the same physical space. Ghost kitchens became popular in 2020 during the COVID-19 pandemic, when food delivery and take-out options were being widely utilized. Recently, due to operational and permitting issues, a few major restaurant chains and ghost kitchen provider platforms have reduced their investments in temporary commercial kitchens.

The bill defines the term "temporary commercial kitchen" as a food preparation and cooking facility set up for the preparation of takeout or delivery-only meals housed in portable structures that are movable from place to place by a tow or are self-propelled or otherwise axel mounted. The term does not include a tent or shed. The bill requires the Division to establish rules for the operation of temporary commercial kitchens, which must require temporary commercial kitchens to:

- Be climate-controlled.
- Maintain a humidity factor of less than 60 percent in the space of the unit.
- Have a total gross weight not exceeding 5,000 pounds.
- Maintain Americans with Disability Act (ADA) compliant entrances and access windows.
- Maintain a sink in compliance with DBPR standards.
- Maintain either internal or external fresh water supply and gray water disposal.
- Maintain electrical, plumbing, and mechanical specifications that meet agency or industry standards.
- Maintain a wind rating greater than 70 mph.

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

The effective date of the bill is July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Department of Business and Professional Regulation, Division of Hotels and Restaurants

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (DBPR) is charged with enforcing the applicable laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare.[1]

A "public food service establishment" is defined as:[2]

> …any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

There are several exclusions from the definition of public food service establishment, including:[3]

- Any place maintained and operated by a public or private school, college, or university for the use of students and faculty or temporarily to serve events such as fairs, carnivals, and athletic contests;
- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates or temporarily to serve events such as fairs, carnivals, or athletic contests;
- Any eating place located on an airplane, train, bus, or watercraft which is a common carrier;
- Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families;
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12, F.S.;
- Any vending machine that dispenses any food or beverage other than potentially hazardous food;
- Any place of business serving only ice, beverages, popcorn, and prepackaged items; and
- Any research and development test kitchen limited to use by employees and not open to the general public.

Food Trucks[4] are regulated by DBPR as a "mobile food dispensing vehicle,"(MFDV),[5] and defined as:[6]

> …any vehicle that is a public food service establishment and that is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

To obtain a license as an MFDV, an applicant must:[7]

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[1] S. 509.032, F.S.
[2] S. 509.013(5)(a), F.S.
[3] S. 509.013(5)(b), F.S.
[4] Generally, a food truck is a large wheeled vehicle from which food is sold that typically contains cooking facilities where the food is prepared. Merriam-Webster Dictionary, *Food Truck*, https://www.merriam-webster.com/dictionary/food%20truck (last visited Feb. 15, 2023).
[5] S. 509.101, F.S.
[6] S. 509.032, F.S.; R. 61C-1.002, F.A.C.
[7] Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants – Guide to Mobile Food Dispensing Vehicles, http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/mfdv-guide/ (last visited Feb. 15, 2023).

- Complete a kitchen plan review for sanitation and safety concerns (if required);[8]
    - No plan review is required if an operator:
        - buys a vehicle already licensed by the Division and no changes are made
    - A plan review is required if an operator:
        - constructs or uses a vehicle that has never been licensed by the Division;
        - uses a vehicle that has been closed for more than one year; or
        - uses a vehicle that has been remodeled;
    - Plan review requires:
        - a plan of the vehicle with equipment labeled;
        - a sample menu;
        - a side photograph of the vehicle showing the wheels and open service window; and
        - the water/sewer or commissary location;
- Apply for a license and pay the license fee;[9]
    - A $50 application fee is paid in addition to license fees ($347 annual and $178.50 half year fee) when making an application for a new or change of ownership license; and
- Schedule and pass the licensing inspection;[10]
    - All new licensees are required to pass a sanitation and safety inspection prior to opening.

Once licensed, Division personnel have the right to inspect MFDVs as often as necessary for enforcement of the provisions of law and rule, and for the protection of the public's health, safety, and welfare.[11]

The Division is required, upon proper finding, to immediately issue an order to close a licensed public food service establishment in the instance of a severe and immediate public health or safety or welfare threat.[12]

Local Regulation

The regulation of public food service establishments is preempted to the state. This does not preempt the authority of a local government or local enforcement district to conduct inspections for compliance with the Florida Building Code and the Florida Fire Prevention Code.[13]

The regulation of MFDVs involving licenses, registrations, permits, and fees is preempted to the state. A municipality, county, or other local government entity is prohibited from:[14]

- Requiring a separate license, registration, or permit beyond those established by DBPR as a condition for the MFDV's operation within the jurisdiction;
- Requiring a separate fee beyond those established by DBPR as a condition for the MFDV's operation within the jurisdiction; or
- Prohibiting MFDVs from operating within the entirety of the entity's jurisdiction.

The preemption does not apply to any port authority, aviation authority, airport, or seaport.[15]

Sanitation Rules

[8] R. 61C-1.002(5)(c), F.A.C.
[9] R. 61C-1.008(4), F.A.C.
[10] R.61C-1.008(3), F.A.C.
[11] S. 509.032(2)(b), F.S.
[12] S. 509.035, F.S.
[13] S. 509.032(7), F.S.
[14] S. 509.102, F.S.
[15] *Id.*

The Division is required to adopt and enforce sanitation rules to ensure the protection of the public from food-borne illness in those establishments it licenses. These rules must provide the standards and requirements for obtaining, storing, preparing, processing, serving, or displaying food in public food service establishments, approving public food service establishment facility plans, conducting inspections for compliance with sanitation regulations, cooperating and coordinating with the Department of Health in epidemiological investigations, and initiating enforcement actions, and for other such responsibilities deemed necessary by the Division.[16]

Effective November 1, 2019, the Division has adopted the 2017 Food and Drug Administration (FDA) Food Code (Food Code), which establishes practical, science-based guidance and enforceable provisions for reducing risk factors known to cause or contribute to foodborne illness.[17]

The Food Code is a model for safeguarding public health and ensuring food is unadulterated and honestly presented when offered to the consumer. It represents FDA's best advice for a uniform system of provisions that address the safety and protection of food offered at retail and in food service. This model is offered for adoption by local, state, and federal governmental jurisdictions for food service, retail food stores, or food vending operations.[18]

The Food Code provides a plan review and inspectional guide for "mobile food establishments" based on the mobile unit's menu and operation. Mobile units range in type from push carts to food preparation catering vehicles. The guide provides a matrix of requirements that a mobile food establishment must follow based on the type of food that is available for sale to the consumer. This includes requirements for "time/temperature control for the safety of food"[19] that is prepared on board a mobile food establishment.[20]

Mobility Requirements

Current law describes MFDVs as "mounted public food service establishments which are self-propelled or otherwise movable from place to place…"[21] DBPR's Guide to Mobile Food Establishments (Guide) provides that an MFDV license is a vehicle mounted food service license where the vehicle has adequate hand washing and dishwashing facilities, food protection, refrigeration, power and plumbing system. The guide provides that an MFDV operator performs food service activities inside the vehicle like food storage, cooking or preparation of food and dishwashing.[22]

According to the Guide, one of the basic requirements for obtaining an MFDV license is to be a vehicle, and to be mobile. In order to be mobile, the Guide provides that "a side photograph of the vehicle showing its wheels and open service window must be submitted at time of application."[23]

Ghost Kitchens

Ghost kitchens, also known as dark kitchens or virtual restaurants, are shared commercial kitchens optimized for food delivery service. Ghost kitchens are typically located in areas with a high concentration of delivery demand. The kitchens don't have a storefront and the staff prepares dishes off

[16] S. 509.032(2)(d), F.S.
[17] Rule 61C-1.001(12), F.A.C.
[18] U.S. Public Health Service, FDA Food Code 2017, p. 327, http://www.myfloridalicense.com/dbpr/hr/statutes/documents/2017-FDA-Food-Code.pdf (last visited Feb. 16, 2022).
[19] "Time/temperature control for safety food" is defined in chapter 1 of the Food Code as a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.
[20] U.S. Public Health Service, FDA Food Code 2017, p. 754, http://www.myfloridalicense.com/dbpr/hr/statutes/documents/2017-FDA-Food-Code.pdf (last visited Feb. 23, 2023).
[21] S. 509.101, F.S., and R. 61C-1.002, F.A.C.
[22] Florida Department, *supra* note 5.
[23] *Id.*

of their menus that are only available for delivery. By eliminating the dining room and the wait-staff, this allows food businesses to save on overhead costs by utilizing the shared kitchen model.[24]

Unlike a restaurant with a physical location, ghost kitchen customers do not know exactly where the food is coming from. This may pose a health concern. The Food Code is used to regulate ghost kitchen establishments; however, the Food Code mentions the regulation of Mobile Food Establishments, but not ghost kitchens or similar structures. Ghost kitchens that are not mobile may fall outside of the regulations.[25]

Ghost kitchens became popular in 2020 during the COVID-19 pandemic, when restaurants were shut down due to restrictions, or business volume slowed significantly due to low numbers of patrons being allowed in restaurants.[26] Throughout the pandemic, the delivery-only virtual brand model grew, and through much of 2022 it continued to grow.[27] As a result, venture capitalists invested heavily in the model, which allows access by established restaurant chains and new food entrepreneurs.[28] Recently, due to operational and permitting issues, a few major restaurant chains and provider platforms have reduced their investments in the shared kitchen model. As a result, some of the companies are shifting toward more conventional restaurant development plans.[29]

The U.S. online food delivery market size attained a value of $18.5 billion in the year 2020. The market is further expected to grow between 2023 and 2028 to reach a value of almost $33.7 billion by 2026.[30] However, a recent survey of nearly 1,600 Americans shows that consumers are changing their dining and tipping habits, with 67 percent saying they're dining out less and 31 percent tipping less when they are dining out.[31]

Ghost kitchens come in all shapes and sizes, with some spaces being shared and others being used by just one restaurant brand. The three main types are depicted in the following table:[32]

Type 1	Incubator/Pop-Up Kitchens	An incubator/pop-up ghost kitchen is affiliated with a traditional restaurant but focuses primarily on online orders and deliveries.
Type 2	Kitchen Pods	Kitchen pods are small shipping containers that come with outfitted kitchens.
Type 3	Commissary/Shared Kitchens	Commissary kitchens are shared kitchen spaces owned and operated by a third-party company or

[24] CloudKitchens, *What is a ghost kitchen?: the ultimate guide for your restaurant*, https://cloudkitchens.com/blog/ultimate-guide-to-ghost-kitchens/#:~:text=The%20kitchens%20themselves%20don't,working%20on%20fulfilling%20online%20orders. (last visited Feb. 15, 2023).
[25] Coppolino, Andrew, *Ghost Kitchens, Home Cooks Shake up Food Industry but Raise Safety Concerns*, CBCnews, CBC/Radio Canada (Jan. 28, 2023), https://www.cbc.ca/news/canada/kitchener-waterloo/andrew-coppolino-food-safety-home-cooks-ghost-kitchens-1.6728312 (last visited Feb. 20, 2023).
[26] GlobalData, *Struggling foodservice brands must embrace dark kitchens*, says GlobalData, https://www.globaldata.com/media/consumer/struggling-foodservice-brands-must-embrace-dark-kitchens-says-globaldata/ (last visited Feb. 15, 2023).
[27] PYMNTS, *Inflation Puts Pressure on Ghost Kitchen Model*, https://www.pymnts.com/restaurant-innovation/2023/inflation-puts-pressure-on-ghost-kitchen-model/ (last visited Feb. 15, 2023).
[28] TechCrunch, *The next big restaurant chain may not own any kitchens*, https://techcrunch.com/2018/10/07/the-next-big-restaurant-chain-may-not-own-any-kitchens/ (last visited Feb. 15, 2023).
[29] Restaurant Dive, *Ghost kitchens need to go omnichannel if they want to survive*, experts say, https://www.restaurantdive.com/news/ghost-kitchens-need-to-go-omnichannel-if-they-want-to-survive-experts-say/641555/ (last visited Feb. 15, 2023).
[30] Expert Market Research, *United States Online Food Delivery Market Outlook*, https://www.expertmarketresearch.com/reports/united-states-Online-food-delivery-market (last visited Feb. 15, 2023).
[31] Lending Tree, *Nearly 70% of Americans Say They're Dining Out Less Frequently Due to Inflation, and Almost a Third Are Tipping Less*, https://www.lendingtree.com/credit-cards/study/restaurants-groceries-inflation/#:~:text=Nearly%207%20in%2010%20(67,impacted%20their%20grocery%20shopping%20habits. (last visited Feb. 16, 2023).
[32] Cheetah, 3 Types of Ghost Kitchens and Which One Is the Best Business to Start, https://www.gocheetah.com/blog/types-of-ghost-kitchens-best-for-you/ (last visited Feb. 17, 2023).

		entrepreneur rather than a restaurant. They usually house multiple restaurants, brands, or concepts under one roof, where staff shares everything from refrigerator space to frying pans.

Miami Pilot Program for App-based Mobile Operations

On March 11, 2021, the City of Miami created a pilot program for previously unregulated "mobile operating units." The pilot program defined "mobile operation unit" as a movable stand, cart, vehicle, truck, van, or trailer through which mobile operations are performed on a parking lot site or on vacant land, and "delivery food vehicle" is defined as any vehicle used as or in conjunction with a mobile operation unit operating with app-based meal production for delivery only to be consumed off-premises.[33] The regulations require the mobile operating units to refrain from providing on-site takeout or dine-in service.

Mobile operating units are required to obtain city permits, and provide information about the number of participating sites and employees to the city, and to report on the total number of code violations. Violations are punishable by a fine of $250 for a first offense and $500 for each subsequent offense. The pilot was renewed on March 24, 2022, for a second year.[34]

According to reports, in the year since Miami adopted the pilot program, other cities have followed suit, including Orlando.[35]

Other States

In 2020, the U.S. had 1,500 ghost kitchens open across the country.[36] It has been reported that ghost kitchens have continued to open and operate in states such as New Jersey[37], California[38], Texas[39], and New York.[40] In 2021, the global ghost kitchen market was estimated to be worth approximately $56 billion.[41]

Currently, the regulation of ghost kitchens among the states appears to primarily be conducted at the local level. Policymakers are considering how to adapt existing regulations to fit the unique challenges that ghost kitchens present. Because ghost kitchens do not fit the traditional definition of a restaurant, government officials are unsure how to regulate them. Depending on their operations, ghost kitchens may fall under the definition of "food facilities," which must be registered with FDA and are subject to FDA inspections. They also must abide by various safety requirements, including allergy management, hazard planning, and sanitation.[42]

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[33] City of Miami Ordinance S. 31-51. Food trucks operating on private land.
[34] City of Miami, City Commission Agenda March 24, 2022, http://miamifl.iqm2.com/Citizens/FileOpen.aspx?Type=15&ID=2611&Inline=True (last visited Feb. 16, 2023).
[35] The Community Paper, *Ghost kitchens pilot program passed by the City*, https://www.yourcommunitypaper.com/articles/ghost-kitchens-pilot-program-passed-by-city/ (last visited Feb. 16, 2023).
[36] Emma Liem Beckett, *Ghost Kitchens Could Be a $1t Global Market by 2030, Says Euromonitor*, Restaurant Dive (July 10, 2020), https://www.restaurantdive.com/news/ghost-kitchens-global-market-euromonitor/581374/ (last visited Feb. 20, 2023).
[37] Townsquare Media, Inc., *This Restaurant's Rare Ghost Kitchen Is Available in New Jersey*, 92.7 WOBM, 92.7 WOBM (Feb. 16, 2023), https://wobm.com/ixp/942/p/pancake-kitchen-cracker-barrel/ (last visited Feb. 20,2023).
[38] Iman Palm, *Chipotle to Open Spinoff Restaurant in Santa Monica*, KTLA News (Feb. 15, 2023), https://ktla.com/news/california/chipotle-to-open-spinoff-restaurant-in-santa-monica/ (last visited Feb. 20, 2023).
[39] Brandi Addison, *Ghost Kitchens Are Taking North Texas by Storm. Here's a Guide to Ghost Kitchens around Grapevine*, Dallas New (May 3, 2022), https://www.dallasnews.com/food/restaurant-news/2022/05/03/ghost-kitchens-are-taking-north-texas-by-storm-heres-a-guide-to-ghost-kitchens-around-grapevine/ (last visited Feb. 20, 2023).
[40] Luke Fortney, *This New Manhattan Ghost Kitchen Will Have Di Fara Pizza and a Steak Spot from Bobby Flay*, Eater NY, Eater NY (Feb. 14, 2023), https://ny.eater.com/2023/2/14/23597544/wonder-manhattan-ghost-kitchen-di-fara-pizza-bobby-flay-steak-nyc.
[41] Statista, Ghost Kitchens - Statistics & Facts, *Statista Research Department* (Nov. 25, 2022), https://www.statista.com/topics/7563/ghost-kitchens/#:~:text=As%20of%202022%2C%20the%20market,reach%20223.7%20billion%20by%202027 (last visited Feb. 20, 2023).
[42] The Food and Drug Administration, *Questions and Answers Regarding Food Facility Registration (Seventh*

If a kitchen is defined as a restaurant, "a facility that prepares and sells food directly to consumers for immediate consumption," it is exempt from FDA registration, but still regulated by state law and local health authorities. Central kitchens that prepare food for a restaurant chain do not fall under the restaurant exemption unless they sell directly to consumers.[43]

Effect of Proposed Changes

The bill defines the term "temporary commercial kitchen" as:

> …a food preparation and cooking facility set up for the preparation of takeout or delivery-only meals housed in portable structures that are movable from place to place by a tow or are self-propelled or otherwise axel mounted. The term does not include a tent or shed.

The bill requires the Division to establish rules for the operation of temporary commercial kitchens, which must require temporary commercial kitchens to:

- Be climate-controlled.
- Maintain a humidity factor of less than 60 percent in the space of the unit.
- Have a total gross weight not exceeding 5,000 pounds.
- Maintain ADA compliant entrances and access windows.
- Maintain a sink in compliance with DBPR standards.
- Maintain either internal or external fresh water supply and gray water disposal.
- Maintain electrical, plumbing, and mechanical specifications that meet or exceed national agency standards or best industry standards.
- Maintain a wind rating greater than 70 mph.

B. SECTION DIRECTORY:

Section 1: amends s. 509.101, F.S.; defining the term "temporary commercial kitchen," and authorizing the Division to adopt by rule operational requirements for a temporary commercial kitchen.

Section 2: provides an effective date of July 1, 2023.

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.

Edition): Guidance for Industry, https://www.fda.gov/files/food/published/Questions-and-Answers-Regarding-Food-Facility-Registration-%28Seventh-Edition%29.pdf (last visited Feb. 20, 2023).

[43] *Id.*

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on owners of temporary commercial kitchens by clearly authorizing them to operate in the state.

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 expenditure 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 bill requires DBPR to establish rules for the operation of temporary commercial kitchens. Such broad rulemaking authority may be an improper delegation of legislative authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires DBPR to create certain weight, humidity, disability, water, electrical, plumbing, mechanical, and wind ratings requirements for the facilities to follow, but does not provide DBPR with regulatory, licensure, or enforcement authority or requirements.

The bill defines temporary commercial kitchens as portable structures that are movable from place to place by a tow or are self-propelled or otherwise axel mounted; however, the bill does not include them in the existing statute for food trucks.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to temporary commercial kitchens; amending s. 509.101, F.S.; defining the term "temporary commercial kitchen"; authorizing the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to adopt by rule operational requirements for a temporary commercial kitchen; providing an effective date.

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

Section 1. Subsection (4) is added to section 509.101, Florida Statutes, to read:

509.101 Establishment rules; posting of notice; food service inspection report; maintenance of guest register; mobile food dispensing vehicle registry.—

(4)(a) For purposes of this subsection, "temporary commercial kitchen" means a food preparation and cooking facility set up for the preparation of takeout or delivery-only meals housed in portable structures that are movable from place to place by a tow or are self-propelled or otherwise axel mounted. The term does not include a tent or shed.

(b) The division shall establish rules for the operation of temporary commercial kitchens. Such rules must require temporary commercial kitchens to:

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

1. Be climate-controlled.

2. Maintain a humidity factor of less than 60 percent in the space of the unit.

3. Have a total gross weight not exceeding 5,000 pounds.

4. Maintain ADA compliant entrances and access windows.

5. Maintain a sink in compliance with Department of Business and Professional Regulation standards.

6. Maintain either internal or external fresh water supply and gray water disposal.

7. Maintain electrical, plumbing, and mechanical specifications that meet or exceed national agency standards or best industry standards.

8. Maintain a wind rating greater than 70 mph.

Section 2. This act shall take effect July 1, 2023.

REGULATORY REFORM & ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 415 by Rep. Porras
Temporary Commercial Kitchens

AMENDMENT SUMMARY
February 23, 2023

Amendment 1 by Rep. Porras (Strike-All):

- Allows temporary commercial kitchens to operate as licensed public food service establishments.
- Requires operators of public food service establishments who provide commissary services to temporary commercial kitchens to maintain a registry.
- Requires temporary commercial kitchen operators to display the license number on the side of the kitchen.
- Preempts the regulation of temporary commercial kitchens to the state.
- Authorizes mobile food dispensing vehicles and temporary commercial kitchens that are operated by a separately licensed public food service establishment to operate during the same hours of operation as the public food service establishment.

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: Regulatory Reform & Economic Development Subcommittee
Representative Porras offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (3) of section 509.101, Florida Statutes, is amended to read:

509.101 Establishment rules; posting of notice; food service inspection report; maintenance of guest register; mobile food dispensing vehicle registry.—

(3) It is the duty of each operator of a public food service establishment that provides commissary services to maintain a daily registry verifying that each mobile food dispensing vehicle or temporary commercial kitchen that receives such services is properly licensed by the division. In order

that such licensure may be readily verified, each mobile food dispensing vehicle operator or temporary commercial kitchen operator shall permanently affix in a prominent place on the side of the vehicle or kitchen, in figures at least 2 inches high and in contrasting colors from the background, the operator's public food service establishment license number. Prior to providing commissary services, each public food service establishment must verify that the license number displayed on the vehicle or kitchen matches the number on the vehicle or kitchen operator's public food service establishment license.

Section 2. Subsections (1), (2) and (3) of section 509.102, Florida Statutes, are amended to read:

509.102 Mobile food dispensing vehicles; temporary commercial kitchens; preemption.—

(1)(a) As used in this section, the term "mobile food dispensing vehicle" means any vehicle that is a public food service establishment and that is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

(b) As used in this section, the term "temporary commercial kitchen" means any kitchen that is a public food service establishment, used for the preparation of takeout or delivery-only meals housed in portable structures that are movable from place to place by a tow or are self-propelled or

otherwise axel mounted, that include self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal. Such kitchens are subject to all provisions of this chapter except as may be provided herein. The term does not include a tent.

(2)(a) Regulation of mobile food dispensing vehicles, and temporary commercial kitchens, involving licenses, registrations, permits, and fees is preempted to the state. A municipality, county, or other local governmental entity may not require a separate license, registration, or permit other than the license required under s. 509.241, or require the payment of any license, registration, or permit fee other than the fee required under s. 509.251, as a condition for the operation of a mobile food dispensing vehicle or temporary commercial kitchen within the entity's jurisdiction. A municipality, county, or other local governmental entity may not prohibit mobile food dispensing vehicles or temporary commercial kitchens from operating within the entirety of the entity's jurisdiction.

(b) Any mobile food dispensing vehicle or temporary commercial kitchen that is operated on the same premises as and by a separately licensed public food service establishment may operate during the same hours of operation as the separately licensed public food service establishment that operates such mobile food dispensing vehicle or temporary commercial kitchen.

(3) This section may not be construed to affect a municipality, county, or other local governmental entity's authority to regulate the operation of mobile food dispensing vehicles or temporary commercial kitchens other than the regulations described in subsection (2).

Section 3. This act shall take effect July 1, 2023.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to temporary commercial kitchens; amending s. 509.101, F.S.; requiring operators of public food service establishments who provide commissary services to maintain a temporary commercial kitchen registry; requiring temporary commercial kitchen operators to display license number; amending s. 509.102, F.S.; defining the term "temporary commercial kitchen"; preempting regulation of temporary commercial kitchens to the state; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 489 Professional Licensing Requirements for Barbers and Cosmetologists
SPONSOR(S): Chambliss and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Wright	Anstead
2) Commerce Committee			

SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR) regulates and licenses several Florida professions, including barbers and cosmetologists. In 2019, the Legislature created a time-limited review process for considering the criminal history of applicants for licensure as a barber or cosmetologist. Under s. 455.213(3)(b)1., F.S., the Barbers' Board and Board of Cosmetology may only deny an application for licensure on the basis of an applicant's criminal history for:

- A conviction for a crime that occurred within five years of the date of the receipt of an application for licensure, or
- A criminal history record that includes a forcible felony or crime that would require a person, upon conviction, to register as a sexual predator, if such crime relates to the practice of the applicable profession.

The bill reduces the time frame to look back at and use a criminal conviction as grounds to deny an application for licensure as a barber or cosmetologist from five years to three years.

The bill allows a board to consider an applicant's criminal history, regardless of when a conviction occurred if the applicant was convicted of a crime at any time during the three-year period immediately preceding the application. Boards may also continue to consider forcible felonies and crimes that require a person to register as a sexual predator regardless of when they occurred if they relate to the practice of the profession as a barber or cosmetologist.

The bill requires the Barbers' Board and Board of Cosmetology to approve educational program credits received from vocational training programs or industry certification programs offered to inmates in any correctional institution or facility to satisfy training requirements for licensure as a barber or cosmetologist.

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

The bill has an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (DBPR) has 12 divisions that regulate several Florida professions and businesses.[1] Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."[2] Chapter 455, F.S., also provides general DBPR powers and sets forth the procedural and administrative framework for all professional DBPR boards.[3]

Barbers

The Barbers' Board under DBPR governs the regulation and licensing of barbers and barbershops in the state. A barber license is required to perform barbering services.[4] Barbering services include hair services and limited skin care services when done for compensation, but not for medical purposes.[5]

To be eligible for a barber license, an applicant must:[6]

- Be at least 16 years old,
- Complete the required training,
- Pass the written examination,
- Not have a disqualifying criminal record, and
- Pay an application fee.

Cosmetologists

The Board of Cosmetology under DBPR governs the licensing and regulation of cosmetologists, nail specialists, facial specialists, full specialists, and related salons in the state. A cosmetology license or a specialty registration is required to perform cosmetology services. Cosmetology services include hair services, nail services, and skin care services when done for compensation, but not for medical purposes.[7]

To be eligible for a cosmetology or specialty license, an applicant must:[8]

- Be at least 16 years old or have a high school diploma,
- Complete the required training,
- Pass the licensure examination (if applicable),
- Not have a disqualifying criminal record, and
- Pay an application fee.

Criminal History – Barbers and Cosmetologists

[1] The divisions include: Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology. S. 20.165, F.S.
[2] S. 455.01(6), F.S.
[3] DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. Ss. 455.203 and 455.221(1), F.S.
[4] S. 476.144(1), F.S.
[5] S. 476.034(2), F.S.
[6] S. 476.114, F.S.
[7] S. 477.013(4), F.S.
[8] S. 477.019(2), F.S.

In 2019, the Legislature created a time-limited review process for considering the criminal history of applicants for specified professions, including barbers and cosmetologists.[9] Section 455.213(3)(b)1., F.S., provides the Barbers' Board and Board of Cosmetology may only deny an application for licensure on the basis of an applicant's criminal history for:

- A conviction[10] for a crime that occurred within five years of the date of the receipt of an application for licensure, or
- A criminal history record that includes a forcible felony or a crime that would require a person, upon conviction, to register as a sexual predator, if such crime relates to the practice of the applicable profession.

Sexual Predators

A person is a sexual predator in Florida if he or she:

- Was convicted of a qualifying offense committed on or after October 1, 1993; and
- Has not received a pardon or otherwise had the conviction set aside for the qualifying offense.

Qualifying convictions for sexual predator designation include:

- Capital, life, or first degree felony kidnapping or false imprisonment, when the victim is a minor and there is a sexual component to the crime;[11]
- Capital, life, or first degree felony sexual battery;[12]
- Capital, life, or first degree felony lewd or lascivious battery or molestation;[13]
- Capital, life, or first degree felony selling or buying minors to engage in sexually explicit conduct;[14]
- An offense that would require registration as a sexual offender, other than transmission of child pornography by electronic device or transmission of material harmful to minors, by a person with a prior conviction for a sexual offense;[15] or
- A conviction for a similar offense committed in another jurisdiction.[16]

The court must make written findings designating a person who meets the criteria as a sexual predator.[17]

Forcible Felonies

Section 776.08, F.S., defines a forcible felony as any of the following crimes:

- Treason;
- Murder;
- Manslaughter;
- Sexual battery;
- Carjacking;
- Home-invasion robbery;
- Robbery;
- Burglary;
- Arson;
- Kidnapping;
- Aggravated assault;
- Aggravated battery;
- Aggravated stalking;

[9] Ch. 2019-167, Laws of Fla.
[10] For purpose of licensing, the term "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld. S. 455.213(3)(b)1., F.S.
[11] Ss. 787.01 and 787.02, F.S.; *Raines v. State*, 805 So.2d 999 (Fla. 4th DCA 2001).
[12] S. 794.011, F.S.
[13] S. 800.04, F.S.
[14] S. 847.0145, F.S.
[15] S. 775.21(4)(a)1.b., F.S.
[16] S. 775.21(4), F.S.
[17] Ss. 775.21(4)(c) and 775.21(5), F.S.

- Aircraft piracy;
- Unlawful throwing, placing, or discharging of a destructive device or bomb; and
- Any other felony that involves the use or threat of physical force or violence against any individual.

Vocational Training in Correctional Facilities

The Florida Department of Corrections Bureau of Education partners with state colleges, technical colleges, and community education organizations to provide vocational training in 37 trades to incarcerated inmates.[18] Included in these vocational programs are barbering programs at Blackwater River Correctional Facility,[19] Graceville Correctional Facility,[20] and Lake City Correctional Facility,[21] as well as cosmetology programs at Lowell Correctional Institution,[22] Homestead Correctional Institution,[23] and Gadsden Correctional Facility.[24]

Effect of Proposed Changes

Criminal History – Barbers and Cosmetologists

The bill amends s. 455.213, F.S., to reduce the time frame, from five years to three years, that an applicable board may look back at and use a criminal conviction as grounds to deny an application for licensure as a barber or cosmetologist.[25]

The bill provides the applicable board may consider an applicant's criminal history, regardless of when a conviction occurred if, at any time during the three-year period immediately preceding the application, the applicant was convicted of a crime. Boards may also continue to consider forcible felonies and crimes that require a person to register as a sexual predator regardless of when they occurred if they relate to the practice of the profession as a barber or cosmetologist.

Vocational Training in Correctional Facilities

The bill requires the Barbers' Board and Board of Cosmetology to approve educational program credits received from vocational training programs or industry certification programs offered to inmates in any correctional institution or facility to satisfy training requirements for licensure as a barber or cosmetologist.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 455.213, F.S., relating to general licensing provisions.
Section 2: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[18] Florida Department of Corrections, *Bureau of Education*, http://www.dc.state.fl.us/development/programs.html (last visited Feb. 15, 2023).
[19] Florida Department of Corrections, *Blackwater River Correctional Facility,* http://www.dc.state.fl.us/ci/185.html (last visited Feb. 15, 2023).
[20] Florida Department of Corrections, *Graceville Correctional Facility*, http://www.dc.state.fl.us/ci/159.html (last visited Feb. 15, 2023).
[21] Florida Department of Corrections, *Lake City Correctional Facility*, http://www.dc.state.fl.us/ci/219.html (last visited Feb. 15, 2023).
[22] Florida Department of Corrections, *Lowell Correctional Institution*, http://www.dc.state.fl.us/ci/314.html (last visited Feb. 15, 2023).
[23] Florida Department of Corrections, *Homestead Correctional Institution*, http://www.dc.state.fl.us/ci/419.html (last visited Feb. 15, 2023).
[24] Florida Department of Corrections, *Gadsden Correctional Facility*, http://www.dc.state.fl.us/ci/111.html (last visited Feb. 15, 2023).
[25] For purposes of calculating the recidivism rate for inmates released from custody, the Florida Department of Corrections uses the definition of "recidivism" in s. 945.041(2), F.S., which means an inmate's rearrest, reconviction, reincarceration, or probation revocation within a three-year time period following the inmate's release from incarceration.

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 allow more people to become licensed as barbers or cosmetologists by reducing disqualifications to licensure.

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to professional licensing requirements for barbers and cosmetologists; amending s. 455.213, F.S.; providing a period of time when a conviction, or any other adjudication, for a crime may not be grounds for denial of licensure as a barber or cosmetologist; providing an exception; requiring the applicable board to approve certain educational program credits offered to inmates in certain institutions or facilities for purposes of satisfying training requirements for licensure as a barber or cosmetologist; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 455.213, Florida Statutes, is amended, paragraph (f) is added to that subsection, and paragraph (a) of that subsection is republished, to read:

455.213 General licensing provisions.—

(3)(a) Notwithstanding any other law, the applicable board shall use the process in this subsection for review of an applicant's criminal record to determine his or her eligibility for licensure as:

1. A barber under chapter 476;

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

2. A cosmetologist or cosmetology specialist under chapter 477;

3. Any of the following construction professions under chapter 489:

a. Air-conditioning contractor;

b. Electrical contractor;

c. Mechanical contractor;

d. Plumbing contractor;

e. Pollutant storage systems contractor;

f. Roofing contractor;

g. Sheet metal contractor;

h. Solar contractor;

i. Swimming pool and spa contractor;

j. Underground utility and excavation contractor; or

k. Other specialty contractors; or

4. Any other profession for which the department issues a license, provided the profession is offered to inmates in any correctional institution or correctional facility as vocational training or through an industry certification program.

(b)1. A conviction, or any other adjudication, for a crime more than 3 years before the date the application is received by the applicable board may not be grounds for denial of a license specified in subparagraph (a)1. or subparagraph (a)2., unless the applicant was convicted of a crime at any time during the 3-year period immediately preceding the application. A conviction,

or any other adjudication, for a crime more than 5 years before the date the application is received by the applicable board may not be grounds for denial of a license specified in subparagraph (a)3. or subparagraph (a)4. ~~paragraph (a)~~. For purposes of this paragraph, the term "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld. This paragraph does not limit the applicable board from considering an applicant's criminal history that includes a crime listed in s. 775.21(4)(a)1. or s. 776.08 at any time, but only if such criminal history has been found to relate to the practice of the applicable profession.

2. The applicable board may consider the criminal history of an applicant for licensure under subparagraph (a)3. if such criminal history has been found to relate to good moral character.

(f) The applicable board shall approve educational program credits offered to inmates in any correctional institution or correctional facility as vocational training or through an industry certification program for purposes of satisfying applicable training requirements for licensure in a profession under subparagraph (a)1. or subparagraph (a)2.

Section 2. This act shall take effect July 1, 2023.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 637 Motor Vehicle Dealers, Manufacturers, Importers, and Distributors
SPONSOR(S): Shoaf
TIED BILLS: **IDEN./SIM. BILLS:** SB 712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Thompson	Anstead
2) Civil Justice Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Division of Motor Vehicles (Division) within the Department of Highway Safety and Motor Vehicles (DHSMV) is responsible for administering and enforcing the "Florida Automobile Dealers Act" (Act). The Act primarily regulates the contractual business relationship between franchised motor vehicle dealers (dealers), and manufacturers, factory branches, distributors, and importers (manufacturers); and provides for the licensure of manufacturers. The Act prohibits certain manufacturers with established dealerships from conducting direct-sales or owning or operating a motor vehicle dealership; however, a manufacturer without a franchised dealership is exempt from this prohibition.

The bill revises provisions related to the licensure of, and contractual agreements between, dealers and manufacturers, as follows:

- Broadens the definition of "common entity," and expands the prohibitions on direct-to-consumer motor vehicle sales, and dealer ownership, by manufacturers that have established dealers.
- Broadens the definition of "sell," to include additional types of financial agreements, including deposits, leases, exchanges, subscriptions, reservations, or use of vehicles.
- Prohibits new franchise agreements with manufacturers that do not include all types of "line-make."
- Prohibits manufacturers from reserving or incentivizing the sale or lease of a motor vehicle.
- Prohibits manufacturers from engaging in certain motor vehicle dealer activities.
- Authorizes manufacturers to sell certain motor vehicle accessories, upgrades, and options through remote electronic transmission;
- Requires the manufacturer to pay the dealer at least ten percent of the gross revenue from an upgrade if such upgrade is made within three years after the sale of the vehicle.
- Prohibits manufacturers from refusing to provide a dealer with an "equitable supply" of new vehicles by model, mix, or color as it offers or allocates to dealers.
- Prohibits manufacturers from using the number of motor vehicles pre-ordered or reserved by consumers when determining allocations to dealers.
- Limits the administrative authority of DHSMV to provide certain exceptions to the restriction on dealer ownership by manufacturers that have established dealers.
- Prohibits manufacturers from "controlling by contract, agreement or otherwise" a dealership for any "line-make" if the line-make is offered by a franchise with an "independent person."
- Authorizes "motor vehicle dealer associations" (associations) standing to bring an administrative action on behalf of their members against manufacturers.
- Allows dealers and associations to obtain an injunction without having to show irreparable harm, except for manufacturers that have never had a franchise agreement with an "independent person."

The bill does not appear to have a significant fiscal impact to state or local government.

The effective date of the bill is July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background of Motor Vehicle Dealer Franchise Agreements

The first automobile franchise in the United States was established by General Motors in 1898.[1]Franchise agreements were initially voluntary.[2] Most state auto franchise laws now extensively regulate the contractual obligations between manufacturers and dealers. In an effort to protect consumers, these laws prevent manufacturers from selling new vehicles, new brands, and related services directly to the public.[3]

Florida has substantially regulated motor vehicle manufacturers and dealers since before 1950.[4] Initially, Florida implemented consumer protections aimed at preventing consumer abuse by dealers.[5] In 1970, more comprehensive regulations were adopted, embodied in Ch. 320, F.S.,[6] which regulates the contractual relationship between manufacturers and franchised dealers,[7] requires the licensing of manufacturers, and regulates numerous aspects of the contracts between the manufacturers and dealers.

Florida's Automobile Dealer Franchise Law states that "it is the intent of the Legislature to protect the public health, safety, and welfare of the citizens of the state by regulating the licensing of motor vehicle dealers and manufacturers, maintaining competition, providing consumer protection and fair trade and providing minorities with opportunities for full participation as motor vehicle dealers."[8]

Today, certain manufacturers with established dealer franchises have indicated an intent to separate their electric vehicle and internal combustion vehicle business models, similar to how they currently separate cars and trucks into separate dealership agreements. Manufacturers indicate they plan to offer a business model that is a hybrid between the current model and the direct-to-consumer model used by some EV manufacturers for both EV and internal combustion vehicle lines.[9] Certain EV manufactures have developed a cost-effective method of auto distribution known as build-to-order.[10]

Newer automakers that do not have franchise agreements with auto dealers have been using captive (manufacturer-owned) dealerships and the direct-to-consumer model in which consumers custom-design their vehicles on the internet and receive them directly from the manufacturer. However, for in-person needs, these automakers provide their own dealerships and service centers. State franchise

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[1] Francine Lafontaine and Fiona Scott Morton, *State Franchise Laws, Dealer Terminations, and the Auto Crisis*, 24 J. ECON. PERSP. 233, 234 (2010), https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.24.3.233 (last visited Feb. 21, 2023).
[2] *Id*. at 238-239.
[3] Congressional Research Service, R40712, *U.S. Motor Vehicle Industry Restructuring and Dealership Terminations*, https://www.everycrsreport.com/files/20100108_R40712_461532aa2624faaa80c6e8f950d6b0ad0719195e.pdf (last visited Feb. 21, 2023).
[4] Chapter 9157, Laws of Fla. (1923); Chapter 20236, Laws of Fla. (1941).
[5] Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 FLA. ST. UNIV. LAW REV. 1058, 1064 (2002), http://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1632&context=lr (last visited February 20, 2023).
[6] Ch. 70-424, Laws of Fla.
[7] S. 320.60(11), F.S.
[8] S. 320.605, F.S.
[9] Greg Rosalsky, *Inside the rise of 'stealerships' and the shady economics of car buying*, National Public Radio (NPR) (Aug. 30, 2022), https://www.npr.org/sections/money/2022/08/30/1119715886/inside-the-rise-of-stealerships-and-the-shady-economics-of-car-buying (last visited February 20, 2023).
[10] The United States Department of Justice, *Economic Effects of State Bans on Direct Manufacturer Sales to Car Buyers*, https://www.justice.gov/sites/default/files/atr/legacy/2009/05/28/246374.pdf (last visited Feb. 18, 2023).

laws protect independent dealerships and thus, auto manufacturers that already have franchise agreements with dealers are unable to offer this new way of buying a vehicle to consumers.[11]

Recently, manufacturers and dealers have engaged in public disputes about how vehicles should be sold in the future, and about whether dealer franchise laws have contributed to dealers pricing their new cars at an all-time high.[12] Ford Motor Company recently wrote a formal letter to its dealers asking them to cut down on markups, additional waiting list fees and deposits for EVs, and gave notice to dealers that it would cut back on sending them Ford's most popular vehicles if prices did not come down.[13] Dealers have responded by arguing that manufacturer actions will not solve pricing issues and will interfere with market competition.

Florida Automobile Dealers Act

Manufacturers must be licensed to engage in business in Florida.[14] The "Florida Automobile Dealers Act"[15] (Act), primarily regulates the contractual business relationship between dealers and manufacturers; and provides for the licensure of the manufacturers. The Division of Motor Vehicles (Division) within the Department of Highway Safety and Motor Vehicles (DHSMV) is responsible for administering and enforcing the Act.[16] The Act specifies, in part:[17]

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

The Act applies to all presently existing or future systems of distribution of motor vehicles in Florida, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. Generally, all agreements that are renewed, amended, or entered into subsequent to October 1, 1988, are governed by the Act, including amendments to the Act, unless the amendment specifically provides otherwise.[18]

Definitions

"**Common entity**" is defined to mean a person:[19]

- Who "is either controlled or owned, beneficially or of record, by one or more persons who also control or own more than 40 percent of the voting equity interests of a manufacturer;" or
- Who "shares directors or officers or partners with a manufacturer."

[11] NPR, *supra* note 8.
[12] Motor Biscuit, *Ford Threatens to Cut Dealer Inventories to Demolish Price Markups*, https://www.motorbiscuit.com/ford-threatens-cut-dealer-inventories-demolish-price-markups/?utm_source=npr_newsletter&utm_medium=email&utm_content=20220826&utm_term=7163011&utm_campaign=money&utm_id=4320608&orgid=&utm_att1= (last visited Feb. 18, 2023).
[13] *Id*.
[14] S. 320.61(1), F.S.
[15] Forehand, *supra* note 5, at 1065.
[16] S. 320.011, F.S.
[17] *See* ss. 320.60-320.70, F.S.
[18] S. 320.6992, F.S.
[19] S. 320.60(2), F.S.

"**Distributor**" is defined to mean "a person, resident or nonresident, who, in whole or in part, sells or distributes motor vehicles to motor vehicle dealers or who maintains distributor representatives."[20]

"**Factory branch**" is defined to mean "a branch office maintained by a manufacturer, distributor, or importer for the sale of motor vehicles to distributors or to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives in this state."[21]

"**Importer**" is defined to mean "any person who imports vehicles from a foreign country into the United States or into this state for the purpose of sale or lease."[22]

"**Licensee**" is defined to mean "any person licensed or required to be licensed under s. 320.61, F.S., which includes motor vehicle manufacturers, distributors, and importers."[23]

"**Manufacturer**" is defined to mean "any person, whether a resident or nonresident of this state, who manufactures or assembles motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment which, when installed, form an integral part of the motor vehicle and which constitute a major manufacturing alteration. The term "manufacturer" includes a central or principal sales corporation or other entity through which, by contractual agreement or otherwise, it distributes its products."[24]

"**Line-make vehicles**" are defined as "motor vehicles which are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the manufacturer of same" (such as Ford, General Motors, or Honda). "However, motor vehicles sold or leased under multiple brand names or marks shall constitute a single line-make when they are included in a single franchise agreement and every motor vehicle dealer in this state authorized to sell or lease any such vehicles has been offered the right to sell or lease all of the multiple brand names or marks covered by the single franchise agreement."[25]

"**Motor vehicle dealer**" is defined to mean "any person, firm, company, corporation, or other entity, who:"[26]

- Is licensed as a "**franchised motor vehicle dealer**" and, "for commission, money, or other things of value, repairs or services motor vehicles or used motor vehicles pursuant to a franchise agreement;"
- Who "sells, exchanges, buys, leases or rents, or offers, or attempts to negotiate a sale or exchange of any interest in, motor vehicles;" or
- Who "is engaged wholly or in part in the business of selling motor vehicles, whether or not such motor vehicles are owned by such person, firm, company, or corporation."

Such persons, or persons who buy, sell, or deal in three or more motor vehicles in any 12-month period or who offer or display for sale three or more motor vehicles in any 12-month period are prima facie presumed to be a motor vehicle dealer.[27]

The terms "**selling**" and "**sale**" "include lease-purchase transactions."[28]

The term "**motor vehicle dealer**" does not include:[29]

[20] S. 320.60(5), F.S.
[21] S. 320.60(6), F.S.
[22] S. 320.60(7), F.S.
[23] S. 320.60(8), F.S.
[24] S. 320.60(9), F.S.
[25] S. 320.60(14), F.S.
[26] S. 320.60(11), F.S.
[27] *Id*.
[28] *Id*.
[29] *Id*.

- "Public officers while performing their official duties;"
- "Receivers, trustees, administrators, executors, guardians, or other persons appointed by, or acting under the judgment or order of, any court;"
- "Banks, finance companies, or other loan agencies that acquire motor vehicles as an incident to their regular business;" or
- "Motor vehicle rental and leasing companies that sell motor vehicles to licensed motor vehicle dealers."

The terms "**sell**," "**selling**," "**sold**," "**exchange**," "**retail sales**," and "**leases**" are defined, as follows:[30]

- "Any transaction where the title of motor vehicle or used motor vehicle is transferred to a retail consumer."
- "Any retail lease transaction where a retail customer leases a vehicle for a period of at least 12 months."
- "Establishing a price for sale when an applicant or licensee has sold a motor vehicle to any retail consumer in the state except through a motor vehicle dealer holding a franchise agreement for the line-make that includes the motor vehicle does not constitute a sale or lease."[31]

Grounds for Denial, Suspension, or Revocation of a License

An application for a manufacturer, distributor, and importer license (license) may be denied, or a license may be revoked or suspended, on various grounds. Denials, suspensions, or revocations of licenses can be based on consumer protection; however, the grounds for acting against manufacturers arise principally out of their dealings with motor vehicle franchised dealers with whom the manufacturers have a contractual relationship allowing the dealer to sell and service the manufacturer's new motor vehicles.[32, 33]

Currently, there are 42 different criteria that may cause DHSMV to deny, suspend, or revoke a manufacturer's license. The criteria cross many topics, including: contractual obligations; coercion or threats; discontinuation, canceling, nonrenewing, modifying, or replacing franchise agreements; requiring changes to a dealer's sales or service facility; reducing the supply of new vehicles or parts to a franchised dealer; audits; disclosure of confidential financial information; failure to pay the dealer; and denying a warranty repair claim.[34]

An applicant or manufacturer is prohibited from establishing or implementing a system of motor vehicle allocation or distribution to its franchised motor vehicle dealers which reduces or alters allocations or supplies of new motor vehicles to the dealer to achieve, directly or indirectly, a purpose that is prohibited by the Act, or which otherwise is unfair, inequitable, unreasonably discriminatory, or not supportable by reason and good cause after considering the equities of the affected motor vehicles dealer or dealers.[35]

An applicant or manufacturer is required to maintain for three years records that describe its methods or formula of allocation and distribution of its motor vehicles, and records of its actual allocation and distribution of motor vehicles, to its dealers in this state. As used in this provision, "unfair" includes, without limitation, the refusal or failure to offer to any dealer an equitable supply of new vehicles under its franchise, by model, mix, or colors as the manufacturer offers or allocates to its other same line-make dealers in the state.[36]

[30] S. 320.60(15), F.S.
[31] *Id*.
[32] S. 320.64, F.S.
[33] S. 320.60(l) (defining "agreement" or "franchise agreement").
[34] S. 320.64, F.S.
[35] S. 320.64(18), F.S.
[36] *Id*.

An applicant or manufacturer is prohibited from competing (with respect to any activity covered by the franchise agreement) with a franchised dealer of the same line-make located in this state with whom the manufacturer has entered into a franchise agreement.[37]

An applicant or manufacturer is prohibited from selling a motor vehicle to any retail consumer in the state except through a dealer holding a franchise agreement for the line-make that includes the motor vehicle. This does not apply to sales by the applicant or manufacturer to its current employees, employees of companies affiliated by common ownership, charitable not-for-profit organizations, and the federal government.[38]

Dealer Licenses in Areas Previously Served

Any manufacturer who proposes to establish an additional motor vehicle dealership, or relocate an existing dealer, to a location within a community or territory where the same line-make vehicle is presently represented by a franchised dealer, is required to give written notice of its intention to DHSMV.[39]

An existing franchised dealer or dealers has standing to protest a proposed additional or relocated motor vehicle dealer when the existing dealer or dealers have a franchise agreement for the same line-make vehicle to be sold or serviced by the proposed dealer and certain physical location mileage requirements are met. Specific mileage requirements that are based on county population are as follows:[40]

- In counties with a population of less than 300,000, the existing dealer has standing if the existing dealer of the same line-make has a licensed franchise location within a radius of 20 miles of the location of the proposed dealer.[41]
- In counties with a population over 300,000, an existing dealer has standing if the existing dealer of the same line-make has a licensed franchise location within a radius of 12.5 miles of the location of the proposed additional or relocated motor vehicle dealer.[42]

When a proposed addition or relocation concerns a dealership that performs or is to perform only service and not the sale or lease of new motor vehicles, the proposal is subject to the notice and protest provisions. Standing to protest the addition or relocation of a service-only dealership is limited to those instances in which the applicable mileage requirements based on county populations are met.[43]

The addition or relocation of a service-only dealership is not subject to protest if:

- The applicant for the service-only dealership location is an existing motor vehicle dealer of the same line-make as the proposed additional or relocated service-only dealership;
- There is no existing dealer of the same line-make closer than the applicant to the proposed location of the additional or relocated service-only dealership; and
- The proposed location of the additional or relocated service-only dealership is at least seven miles from all existing motor vehicle dealerships of the same line-make, other than motor vehicle dealerships owned by the applicant.[44]

In determining whether existing franchised dealers are providing adequate representations in the community or territory for the line-make in question in a protest of the proposed addition or relocation of a service-only dealership, DHSMV is authorized to consider certain elements.[45]

[37] S. 320.64(23), F.S.
[38] S. 320.64(24), F.S.
[39] S. 320.642(1), F.S.
[40] S. 320.642(3), F.S.
[41] S. 320.642(3)(a)2., F.S.
[42] S. 320.642(3)(b)1., F.S.
[43] S. 320.642(6)(a), F.S.
[44] S. 320.642(6)(b), F.S.
[45] S. 320.642(6)(c), F.S.

If an application for a service-only dealership is granted, DHSMV is required to issue a license which permits only service, and does not permit the selling or leasing of new motor vehicles. If a service-only dealership subsequently seeks to sell new motor vehicles at its location, the notice and protest provisions apply.[46]

Restriction on Ownership Of Dealerships

Current law prohibits the following entities from owning or operating a dealership in this state for the sale or service of motor vehicles that are already offered for sale under a franchise agreement with a dealer in this state:[47]

- "Licensees;"
- "Distributors;"
- "Manufacturers;"
- "Agents of a manufacturer or distributor;" or
- "Any parent, subsidiary, common entity, or officer or representative of the licensee."

In such cases, manufacturers may not be issued a dealer license. However, manufacturers are not deemed to be in violation under the following circumstances:[48]

- When operating a dealership for a temporary period of up to a year, during the transition from one owner of the dealership to another;
- When operating a dealership temporarily for a reasonable period for the exclusive purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who:
    - are part of a group that has historically been underrepresented in its dealer body; or
    - who the "deems lack the resources to purchase or capitalize the dealership outright; or
- If DHSMV determines, after an administrative hearing on the matter, at the request of any person, that there is no independent person" available in the community or territory to own and operate the dealership in a manner consistent with the public interest.

In any such case, the manufacturer is required to continue to make the dealership available for sale to an independent person at a fair and reasonable price, and approval of the sale may not be unreasonably withheld.

"**Independent person**" is defined as a person who is not an officer, director, or employee of the manufacturer.

Procedure for Administrative Hearings and Adjudications

A franchised dealer who is directly and adversely affected by the action or conduct of a manufacturer which is alleged to be in violation of the Act, may seek a declaration and adjudication of its rights by filing one of the following with DHSMV: [49]

- Request for a proceeding and administrative hearing; or
- Written objection or notice of protest.

Hearings are held no sooner than 180 days, or later than 240 days, from the date a written objection or notice of protest is filed, unless extended with good cause by the administrative law judge.[50]

[46] S. 320.642(6)(d), F.S.
[47] S. 320.645(1), F.S.
[48] *Id*.
[49] S. 320.699(1), F.S.
[50] S. 320.699(2), F.S.

Civil Damages

A franchised dealer who can demonstrate that a violation of, or failure to comply with, any of the provisions of the Act by an applicant or manufacturer will or can adversely and pecuniarily affect the dealer, is entitled to pursue treble damages and attorney's fees in civil court.[51] The manufacturer has the burden to prove that such violation did not occur upon a prima facie showing by the person bringing the action.[52]

Injunctions

A franchised dealer may make an application to any circuit court of the state for a temporary or permanent injunction, or both, restraining any manufacturer from violating or continuing to violate any of the provisions of the Act or from failing or refusing to comply with these statutory requirements.[53]

Market Background

Electric Vehicle Sales

In the United States revenue in the electric vehicles (EV) market is projected to reach approximately $61 billion in 2023, and will result in a market volume of $139 billion by 2027. The growth of the EV market has been significant despite the COVID-19 pandemic and the resulting supply chain bottlenecks. Despite such challenges and rising production costs as a result of increasing raw material prices, EV sales are still increasing.[54]

As more automakers introduce EVs, they're rethinking the sales process, including selling new vehicles largely, if not fully, online. Historically, dealers rely on automakers for product to fill and move off lots, and the automakers rely on dealers to sell and service the vehicles and customers. How that historical relationship fits into an all-electric future is at the forefront of discussions between automakers and dealers.[55]

Direct-Sales

According to the National Conference of State Legislatures (NCSL),[56] a number of states have amended dealer franchise laws to either explicitly prohibit or allow for direct-sales of motor vehicles. Most enacted state laws authorizing limited direct-sales appear to be narrowly tailored to apply to Tesla by requiring that a manufacturer either have no existing franchise agreements in a relevant market area and/or have an existing direct-sales operation. Recently, legislation has trended toward providing for new manufacturers to engage in direct-sales. NCSL provides that:[57]

- Approximately 17 states have laws on the books that expressly ban direct-sales.
- Approximately 18 states have laws that expressly allow for manufacturers to directly sell vehicles to consumers.

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[51] Ss. 320.64, 320.694, and 320.697, F.S.
[52] S. 320.697, F.S.
[53] S. 320.695, F.S.
[54] Statista, *Electric Vehicles – United States*, https://www.statista.com/outlook/mmo/electric-vehicles/united-states (last visited Feb. 16, 2023).
[55] Michael Wayland, *Carmakers face a crossroads as they work to fit auto dealers into their EV plans*, CNBC (Jan. 28, 2023), https://www.cnbc.com/2023/01/28/ev-sales-automakers-dealers.html?__source=sharebar|email&par=sharebar (last visited Feb. 16, 2023).
[56] National Conference of State Legislatures, *State Laws on Direct Sales*, https://www.wispolitics.com/wp-content/uploads/2021/08/State-Laws-on-Direct-Sales.pdf (last visited Feb. 16, 2023).
[57] *Id.*

- Approximately nine states have laws prohibiting all new direct-sales, while allowing for manufacturers already engaged in direct-sales in the state to maintain a certain number of sales locations.

- Of the states that provide for direct-sales, at least eight states tied their direct-sales provisions to a requirement that the manufacturer exclusively sell non-fossil-fuel, electric, or zero-emission vehicles.

- Most states that provide for the direct-sales model still require a manufacturer to obtain a dealer license or permit to be able to operate in the state. Some states, like Utah, restrict the use of the direct-sales model to only those manufacturers that sell new non-fossil fuel powered vehicles, like those that rely on electricity or hydrogen fuel.

- Other states, like Ohio, provide for the direct-sales model, but only for manufacturers engaged in the market by a certain date and place a limit on the number of dealerships that direct-sale manufacturers may operate within the state.

- In states like Arizona, Tesla's ability to sell vehicles through its direct-sales model is a result of a favorable judicial or administrative ruling regarding the applicability of state law as opposed to changes in the statutory text. In these states, the question of whether manufacturers may sell vehicles directly to consumers would likely be decided on a case-by-case basis.

- Some states, like Louisiana, have recently enhanced protections for franchise dealerships by explicitly prohibiting direct-sales.

Effect of Proposed Changes

Definitions

The bill expands the definition of "common entity" to mean a person who:

- Is directly or indirectly controlled, or has more than 30 percent of his or her equity interest directly or indirectly owned, beneficially or of record, through any form of ownership structure, by a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof.

- Has more than 30 percent of his or her equity interest directly or indirectly controlled or owned, beneficially or of record, through any form of ownership structure, by one or more persons who also directly or indirectly control or own, beneficially or of record, more than 30 percent of equity interests of a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof.

The bill deletes the provision in the definition of "common entity" that includes a person who shares directors or officers or partners with a manufacturer.

The bill defines a "motor vehicle dealer association" to mean a not-for-profit entity organized under the laws of this state which:

- Is qualified for tax-exempt status under s. 501(c)(6) of the Internal Revenue Code;
- Acts as a trade association that primarily represents the interests of franchised motor vehicle dealers; and
- Has a membership of at least 500 franchised motor vehicle dealers.

The bill expands the definition of "sell," "selling," "sold," "exchange," "retail sales," and "leases," as follows:

- Includes:
  - Accepting a deposit or receiving a payment for the purchase, lease, exchange, subscription, or use of a motor vehicle;

    - Accepting a reservation from a retail consumer for a specific motor vehicle identified by a vehicle identification number or other product identifier;
    - Setting the retail price for the purchase, lease, or exchange of a motor vehicle;
    - Offering or negotiating with a retail consumer the terms for the purchase, lease, financing, or exchange of a motor vehicle;
    - Negotiating directly with a retail consumer the value of a motor vehicle being traded in as part of the purchase, lease, exchange, subscription, or use of a motor vehicle;
    - Offering or negotiating directly with a retail consumer any service contract, extended warranty, vehicle maintenance contract, or guaranteed asset protection agreement or any other vehicle-related products or services in connection with the purchase, lease, or exchange of a motor vehicle;
- Clarifies that the reference to a “retail customer” refers to a “retail consumer” in the provision describing a 12-month lease; and
- Removes a provision that exempts the establishment of a price for sale under certain circumstances from the definition of sell.

Grounds for Denial, Suspension, or Revocation of a License

The bill includes additional actions that constitute grounds for which a license of a motor vehicle manufacturer, distributor, or importer may be denied, suspended, or revoked, as follows:

- Conditionally or unconditionally reserving a specific motor vehicle identified by a vehicle identification number or other unique identifier for a specifically named person;
- Requiring or incentivizing a motor vehicle dealer to sell or lease, or to negotiate the sale or lease of, a specific motor vehicle identified by a vehicle identification number or other unique identifier to a specifically named person; or
- Requiring or incentivizing a motor vehicle dealer to sell or lease a motor vehicle at a specified price or profit margin.

The bill revises the term "unfair" for purposes of this provision to include using the number of motor vehicles pre-ordered or reserved by consumers as a factor in determining the allocation of motor vehicles to motor vehicle dealers.

The bill revises the violation criteria related to competition, as follows:

- Specifies that it is a violation for the applicant or licensee to engage in any of the activities of a motor vehicle dealer as defined in s. 320.60(11)(a) or (15), F.S.

- Creates an exception for the remote electronic transmission of a motor vehicle accessory, option, add-on, feature, improvement, or upgrade.

The bill revises the violation criteria relating to selling a motor vehicle to any retail consumer in the state except through a motor vehicle dealer holding a franchise agreement for the line-make that includes the motor vehicle, as follows:

- Prohibits the applicant or licensee, or a common entity thereof, from selling or leasing a motor vehicle of a line-make manufactured, imported, or distributed by the applicant or licensee.

- Prohibits, for a motor vehicle of such line-make, activation for a fee or sale of, any permanent or temporary motor vehicle accessory, option, add-on, feature, improvement, or upgrade, to any retail consumer in the state except through a motor vehicle dealer properly licensed and holding a franchise agreement for the line-make that includes the motor vehicle.

- Provides an exception if the accessory, option, add-on, feature, improvement, or upgrade is provided directly to the motor vehicle through remote electronic transmission, and the following conditions are met:

- If such motor vehicle was sold or leased as new by a franchised motor vehicle dealer in this state within three years before such remote electronic transmission, the applicant or licensee must pay such franchised motor vehicle dealer at least ten percent of the gross revenue received by the applicant, licensee, or common entity for such sale or activation and renewals during such three-year period.

- The applicant or licensee must provide each of its franchised motor vehicle dealers with a quarterly statement of the revenue received by the applicant, the licensee, or its common entity during that quarter for such sales or activations and renewals relating to those motor vehicles sold or leased by the dealer during the preceding three years.

Restriction on Ownership Of Dealerships

The bill revises the restriction on ownership of dealerships by licensees, distributors, manufacturers, or agents of a manufacturer or distributor, or any parent, subsidiary, common entity, or officer or representative of the licensee, as follows:

- Adds "importer" to the list of entities that are restricted;
- Specifies that a manufacturer, importer, or distributor may not directly or indirectly own, operate, or control by contract, agreement, or otherwise a motor vehicle dealership for any line-make in this state if the licensee, manufacturer, importer, or distributor has manufactured, imported, or distributed motor vehicles of any line-make which have been offered for sale under a franchise agreement in this state with an independent person.
- Specifies that a person not prohibited from owning, operating, or controlling a motor vehicle dealership may be issued a motor vehicle dealer license.
- Specifies that a person prohibited from owning, operating, or controlling a motor vehicle dealership may not be issued a motor vehicle dealer license.

The bill limits the administrative authority of DHSMV to provide an exception to the ownership requirements in situations where no independent person is available in the community or territory to own and operate a motor vehicle dealership in a manner consistent with the public interest. The bill:

- Specifies that DHSMV's authority only applies in these situations if the motor vehicle dealership sells motor vehicles of a line-make which, at the time of the hearing, are offered for sale by at least one other existing motor vehicle dealership not owned, operated, or controlled by:
  - The licensee;
  - An officer or employed representative of the licensee;
  - A parent, subsidiary, or common entity of the licensee; or
  - A manufacturer, an importer, or a distributor.
- Provides standing to a motor vehicle dealer association to intervene in any hearing held under this provision.

The bill clarifies that dealerships that are owned and operated under any of the three exceptions to the restriction on dealership ownership requirements must be continually made available for sale to an independent person at a fair and reasonable price.

The bill expands the definition of "independent person" to mean a person who is not an agent, parent, subsidiary, common entity, officer, or employed representative of a licensee, manufacturer, importer, or distributor.

Injunctions

The bill revises the provision that authorizes motor vehicle franchised dealers to make an application to a circuit court of the state for a temporary or permanent injunction to restrain any licensee from violating or continuing to violate any of the provisions of the Act or from failing or refusing to comply with these statutory requirements, as follows:

- Adds motor vehicle dealer associations to the entities that are allowed to apply to the circuit court for an injunction;
- Requires that the judicial jurisdiction of the injunction process include any court of competent jurisdiction instead of only the circuit court;
- Specifies that it is not necessary to establish irreparable harm in order to issue an injunction; and
- Prohibits a motor vehicle dealer association from seeking an injunction for a violation of the Act against an applicant, licensee, manufacturer, importer, or distributor that has never, and has no common entity that has ever, manufactured, imported, or distributed motor vehicles that were offered for sale pursuant to a franchise agreement in this state with an independent person.

Procedure for Administrative Hearings and Adjudications

The bill revises provisions that allow franchised dealers to seek a declaration and adjudication of its rights by either filing a request with DHSMV for a proceeding and administrative hearing, or filing a written objection or notice of protest with DHSMV, as follows:

- Adds motor vehicle dealer associations with one or more members who are directly and adversely affected to the entities that are allowed to file a request with DHSMV;
- Specifies that motor vehicle associations may file such a request based on the rights of its members;
- Prohibits a motor vehicle dealer association from seeking a declaration or adjudication under this provision for a violation of any provision of the Act against an applicant or licensee that has never, and has no common entity that has ever, manufactured, imported, or distributed motor vehicles that were offered for sale pursuant to a franchise agreement in this state with an independent person; and
- Specifies that a motor vehicle dealer with standing to protest a proposed dealer based on physical location may file with DHSMV a written objection or notice of protest.

B. SECTION DIRECTORY:

Section 1: amends s. 320.60, F.S.; revising and providing definitions.

Section 2: amends s. 320.64, F.S.; prohibiting a motor vehicle manufacturer, distributor, or importer from certain actions in the allocation or distribution of motor vehicles to franchised motor vehicle dealers; revising the definition of the term "unfair"; authorizing such manufacturer, distributor, or importer to sell or activate certain motor vehicle accessories or features through remote electronic transmission; providing revenue-sharing and reporting requirements regarding such sale or activation.

Section 3: amends s. 320.642, F.S.; conforming cross-references.

Section 4: amends s. 320.645, F.S.; revising provisions prohibiting a manufacturer, distributor, or importer from owning, operating, or controlling a motor vehicle dealership in this state; providing application of provisions relating to certain hearings; revising the definition of the term "independent person."

Section 5: amends s. 320.695, F.S.; authorizing a motor vehicle dealer or motor vehicle dealer association to apply for the grant of a certain injunction without establishing irreparable harm; prohibiting a motor vehicle association from seeking such injunction under certain circumstances.

Section 6: amends s. 320.699, F.S.; authorizing a motor vehicle dealer association to seek a declaration and adjudication of its members' rights with respect to certain violations by a manufacturer, distributor, or importer; prohibiting a motor vehicle dealer association from seeking such declaration or adjudication under certain circumstances.

Section 7: provides an effective date of July 1, 2023.

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 appears to further prevent manufacturers with established dealer franchises from conducting direct-to-consumer sales or operating a dealership regardless of the type of product being sold. Manufacturers have indicated an intent to separate their electric vehicle and internal combustion vehicle business models, similar to how they currently separate cars and trucks, and some plan to offer a business model that is a hybrid between the current model and the direct-to-consumer model used by some EV manufacturers.

There is debate about the economic impacts from allowing manufacturers to sell their vehicles directly to consumers or changing current practices. Proponents generally argue that the direct sales model lowers end prices for consumers, increases consumer choice between industry brands, and gives manufacturers greater control over marketing and sales. Opponents argue that the model reduces price competition, lowers consumer safety, and reduces investments in local communities.[58]

News reports indicate that dealers have recently priced their new cars at an all-time high. According to some reports, in addition to the dealer franchise laws, a large uptick in demand and decrease in inventory in the new car market are contributing factors.[59] Ford Motor Company and Hyundai Motor Company recently urged dealers to cut down on markups, and asked dealers to end certain practices like demanding customers, already on waiting lists, pay additional deposits or payments for certain vehicles like the F-150 Lightening EV,[60] and advertising a low price online and then charging a much higher price when customers go to the dealership.[61]

[58] Connecticut General Assembly, Office of Legislative Research, *Arguments For and Against Direct Sales by Motor Vehicle Manufacturers*, https://www.cga.ct.gov/2019/rpt/pdf/2019-R-0088.pdf (last visited Feb. 20, 2023).
[59] Motor1.com, Christopher Smith, *Dealership Profits Are At Record Levels Through Q1 2022: Report: The average profit for new-car dealerships is estimated at $7.1 million*; https://www.motor1.com/news/589765/dealership-profits-at-record-levels-q1-2022/ (Last visited February 20, 2023) (Data from 2022 shows dealerships profits at record levels: The average gross profit per new vehicle is $6,244; 180 percent increase from pre-pandemic levels in 2019.)
[60] Motor Biscuit, *supra* note 15.
[61] Bruce, *supra* note 18.

The Federal Trade Commission (FTC) has advocated relaxing state franchise laws so that manufacturers can create new, direct-to-consumer business models: "States should allow consumers to choose not only the cars they buy, but also how they buy them."[62]

The FTC has also proposed new rules aimed at combating rising consumer prices.[63] The FTC's new rules propose to ban deceptive advertising in which dealerships market cars as way cheaper than they actually intend to sell them for; ban "junk fees for fraudulent add-on products and services that provide no benefit to the consumer"; and require dealerships to disclose upfront all costs and conditions for buying their vehicles.[64]

NADA opposes these proposed rules: "The FTC's proposed rules would cause great harm to consumers by significantly extending transaction times, making the customer experience much more complex and inefficient, and increasing prices, and NADA again urges the FTC to go back to the drawing board before forcing implementation of a series of unstudied and untested mandates that will have such significant negative impacts on customers."[65]

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 expenditure 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:

Federal Contracts Clause

The Federal Contracts Clause[66] provides that no state shall pass any law impairing the obligation of contracts. However, the Contracts Clause prohibition must be weighed against the state's inherent power to safeguard its people's interests. Three factors are considered when evaluating a claim that the Contracts Clause has been violated: (1) whether the law substantially impairs a contractual relationship; (2) whether there is a significant and legitimate public purpose for the law; and (3) whether the adjustments of rights and responsibilities of the contracting parties are based upon reasonable conditions and are of an appropriate nature.[67]

Some state laws regulating contracts between automobile manufacturers and franchised dealers have been found to be unconstitutional while other laws have been upheld as constitutional.[68]

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[62] Marina, et al., *Direct-to-consumer auto sales: It's not just about Tesla*, Federal Trade Commission (May 11, 2015), https://www.ftc.gov/enforcement/competition-matters/2015/05/direct-consumer-auto-sales-its-not-just-about-tesla (last visited Feb. 21, 2023).

[63] Federal Trade Commission, FTC Proposes Rule to Ban Junk Fees, Bait-and-Switch Tactics Plaguing Car Buyers, https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-proposes-rule-ban-junk-fees-bait-switch-tactics-plaguing-car-buyers (last visited Feb. 21, 2023).

[64] *Id*.

[65] NPR, *supra* note 8.

[66] U.S. Const. art I § 10.

[67] *Vesta Fire Ins. Corp. v. State of Fla.*, 141 F.3d 1427, 1433 (11th Cir. 1998).

[68] *See All. of Auto. Mfrs., Inc. v. Currey*, 984 F. Supp. 2d 32 (D. Conn. 2013), *aff'd*, 610 Fed. Appx. 10 (2d Cir. 2015), and *aff'd*, 610 Fed. Appx. 10 (2d Cir. 2015) (upholding state law that revised statutory method for calculating reasonable compensation for vehicle warranty work and prohibited manufacturers from recovering any additional cost of the new method from the dealers); *Arapahoe*

Standing to Allege Violations of the Florida Automobile Dealers Act

Under the Act, a franchised motor vehicle dealer who is "directly and adversely affected" by the action or conduct of a licensee, may seek a declaration and adjudication of its rights by either filing a request with DHSMV for a proceeding and administrative hearing, or filing a written objection or notice of protest with DHSMV.[69]

On May 3, 2022, the First District Court of Appeal affirmed a decision by DHSMV that the Florida Automobile Dealers Association lacked standing to challenge Hyundai Motor America Corporations' alleged violation of the Florida Automobile Dealers Act[70] by making members of the association enter into separate franchise agreements as a condition to receive a vehicle model of the Hyundai line-make electric vehicles. The court reasoned that the association lacked standing because the association was not a motor vehicle dealer or a person that had entitlements to or in a motor vehicle dealer, and the association was not directly and negatively impacted by Hyundai's action or conduct.[71]

Historically, in order to have standing to bring a civil action for damages in court or bring an action for an injunction, a person must, among other things, show that they suffered concrete injury.[72]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Motors, Inc. v. Gen. Motors Corp., CIV.A. 99 N 1985, 2001 WL 36400171, at *13 (D. Colo. Mar. 28, 2001) (holding the retroactive application of state law would be unconstitutional as it would create a new obligation or impose a new duty upon General Motors).

[69] S. 320.699(1), F.S.

[70] S. 320.64(22), F.S.

[71] *See Fla. Auto. Dealers Ass'n v. Hyundai Motor Am. Corp.*, 337 So. 3d 893, 894 (Fla. 1st DCA 2022), *reh'g denied* (May 3, 2022).

[72] *TransUnion LLC v. Ramirez*, 210 L. Ed. 2d 568 (2021), citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

A bill to be entitled

An act relating to motor vehicle dealers, manufacturers, importers, and distributors; amending s. 320.60, F.S.; revising and providing definitions; amending s. 320.64, F.S.; prohibiting a motor vehicle manufacturer, distributor, or importer from certain actions in the allocation or distribution of motor vehicles to franchised motor vehicle dealers; revising the definition of the term "unfair"; authorizing such manufacturer, distributor, or importer to sell or activate certain motor vehicle accessories or features through remote electronic transmission; providing revenue-sharing and reporting requirements regarding such sale or activation; amending s. 320.642, F.S.; conforming cross-references; amending s. 320.645, F.S.; revising provisions prohibiting a manufacturer, distributor, or importer from owning, operating, or controlling a motor vehicle dealership in this state; providing application of provisions relating to certain hearings; revising the definition of the term "independent person"; amending s. 320.695, F.S.; authorizing a motor vehicle dealer or motor vehicle dealer association to apply for the grant of a certain injunction without establishing irreparable harm; prohibiting a motor vehicle association from seeking

such injunction under certain circumstances; amending s. 320.699, F.S.; authorizing a motor vehicle dealer association to seek a declaration and adjudication of its members' rights with respect to certain violations by a manufacturer, distributor, or importer; prohibiting a motor vehicle dealer association from seeking such declaration or adjudication under certain circumstances; providing an effective date.

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

Section 1. Subsections (12) through (16) of section 320.60, Florida Statutes, are renumbered as subsections (13) through (17), respectively, subsection (2) and present subsection (15) are amended, and a new subsection (12) is added to that section, to read:

320.60 Definitions for ss. 320.61-320.70.—Whenever used in ss. 320.61-320.70, unless the context otherwise requires, the following words and terms have the following meanings:

(2) "Common entity" means a person:

(a) Who is directly or indirectly ~~either~~ controlled, or has more than 30 percent of his or her equity interest directly or indirectly owned, beneficially or of record, through any form of ownership structure, by a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof; or

(b) Who has more than 30 percent of his or her equity interest directly or indirectly controlled or owned, beneficially or of record, through any form of ownership structure, by one or more persons who also directly or indirectly control or own, beneficially or of record, more than 30 ~~40~~ percent of the ~~voting~~ equity interests of a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof~~; or~~

~~(b) Who shares directors or officers or partners with a manufacturer~~.

(12) "Motor vehicle dealer association" means a not-for-profit entity organized under the laws of this state which is qualified for tax-exempt status under s. 501(c)(6) of the Internal Revenue Code, acts as a trade association that primarily represents the interests of franchised motor vehicle dealers, and has a membership of at least 500 franchised motor vehicle dealers as defined in s. 320.27(1)(c)1.

(16) ~~(15)~~ "Sell," "selling," "sold," "exchange," "retail sales," and "leases" includes:

(a) Accepting a deposit or receiving a payment for the purchase, lease, exchange, subscription, or use of a motor vehicle;

(b) Accepting a reservation from a retail consumer for a specific motor vehicle identified by a vehicle identification number or other product identifier;

(c) Setting the retail price for the purchase, lease, or exchange of a motor vehicle;

(d) Offering or negotiating with a retail consumer the terms for the purchase, lease, financing, or exchange of a motor vehicle;

(e) Negotiating directly with a retail consumer the value of a motor vehicle being traded in as part of the purchase, lease, exchange, subscription, or use of a motor vehicle;

(f) Offering or negotiating directly with a retail consumer any service contract, extended warranty, vehicle maintenance contract, or guaranteed asset protection agreement or any other vehicle-related products or services in connection with the purchase, lease, or exchange of a motor vehicle;

(g) Any transaction in which ~~where~~ the title of a motor vehicle or a used motor vehicle is transferred to a retail consumer; or~~, and also~~

(h) Any retail lease transaction in which ~~where~~ a retail consumer ~~customer~~ leases a motor vehicle for ~~a period of~~ at least 12 months,

but does not include administering lease agreements, taking assignments of leases, or receiving payments under a lease agreement that was originated by a motor vehicle dealer. ~~Establishing a price for sale pursuant to s. 320.64(24) does not constitute a sale or lease.~~

Section 2. Subsections (18), (23), and (24) of section 320.64, Florida Statutes, are amended to read:

320.64 Denial, suspension, or revocation of license; grounds.—A license of a licensee under s. 320.61 may be denied, suspended, or revoked within the entire state or at any specific location or locations within the state at which the applicant or licensee engages or proposes to engage in business, upon proof that the section was violated with sufficient frequency to establish a pattern of wrongdoing, and a licensee or applicant shall be liable for claims and remedies provided in ss. 320.695 and 320.697 for any violation of any of the following provisions. A licensee is prohibited from committing the following acts:

(18) The applicant or licensee has established a system of motor vehicle allocation or distribution or has implemented a system of allocation or distribution of motor vehicles to one or more of its franchised motor vehicle dealers which:

(a) Reduces or alters allocations or supplies of new motor vehicles to the dealer to achieve, directly or indirectly, a purpose that is prohibited by ss. 320.60-320.70;

(b) Conditionally or unconditionally reserves a specific motor vehicle identified by a vehicle identification number or other unique identifier for a specifically named person;

(c) Requires or incentivizes a motor vehicle dealer to sell or lease, or to negotiate the sale or lease of, a specific

motor vehicle identified by a vehicle identification number or other unique identifier to a specifically named person;

(d) Requires or incentivizes a motor vehicle dealer to sell or lease a motor vehicle at a specified price or profit margin;~~,~~ or

(e) ~~which~~ Otherwise is unfair, inequitable, unreasonably discriminatory, or not supportable by reason and good cause after considering the equities of the affected motor vehicle ~~vehicles~~ dealer ~~or dealers~~. As used in this paragraph, the term "unfair" includes, but is not limited to:

1. Refusing or failing to offer to any dealer an equitable supply of new vehicles under its franchise, by model, mix, or color as the licensee offers or allocates to its other same line-make dealers in this state; or

2. Using the number of motor vehicles pre-ordered or reserved by consumers as a factor in determining the allocation of motor vehicles to motor vehicle dealers.

An applicant or licensee shall maintain for 3 years records that describe its methods or formula of allocation and distribution of its motor vehicles and records of its actual allocation and distribution of motor vehicles to its motor vehicle dealers in this state. ~~As used in this subsection, "unfair" includes, without limitation, the refusal or failure to offer to any dealer an equitable supply of new vehicles under its franchise,~~

~~by model, mix, or colors as the licensee offers or allocates to its other same line-make dealers in the state.~~

(23) The applicant or licensee has engaged in any of the activities of a motor vehicle dealer as defined in s. 320.60(11)(a) or (15) or has competed or is competing with respect to any activity covered by the franchise agreement with a motor vehicle dealer of the same line-make located in this state with whom the applicant or licensee has entered into a franchise agreement, except as permitted in s. 320.645 or in subsection (24) with respect to the remote electronic transmission of a motor vehicle accessory, option, add-on, feature, improvement, or upgrade.

(24) The applicant or licensee, or a common entity thereof, has sold or leased a motor vehicle of a line-make manufactured, imported, or distributed by the applicant or licensee, or has for a motor vehicle of such line-make activated for a fee or sold any permanent or temporary motor vehicle accessory, option, add-on, feature, improvement, or upgrade, to any retail consumer in the state except through a motor vehicle dealer properly licensed under s. 320.27 and holding a franchise agreement for the line-make that includes the motor vehicle. However, an applicant or licensee, or a common entity thereof, may activate for a fee or sell a permanent or temporary motor vehicle accessory, option, add-on, feature, improvement, or upgrade for a motor vehicle of a line-make manufactured,

imported, or distributed by the applicant or licensee and registered in this state if the accessory, option, add-on, feature, improvement, or upgrade is provided directly to the motor vehicle through remote electronic transmission. If such motor vehicle was sold or leased as new by a franchised motor vehicle dealer in this state within 3 years before such remote electronic transmission, the applicant or licensee must pay such franchised motor vehicle dealer at least 10 percent of the gross revenue received by the applicant, licensee, or common entity for such sale or activation and renewals during such 3-year period. The applicant or licensee must provide each of its franchised motor vehicle dealers with a quarterly statement of the revenue received by the applicant, the licensee, or its common entity during that quarter for such sales or activations and renewals relating to those motor vehicles sold or leased by the dealer during the preceding 3 years. This section does not apply to sales by the applicant or licensee of motor vehicles to its current employees, employees of companies affiliated by common ownership, charitable not-for-profit organizations, and the Federal Government.

A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with, any of the preceding provisions by an applicant or licensee will or may adversely and pecuniarily affect the complaining dealer, shall be entitled to pursue all

of the remedies, procedures, and rights of recovery available under ss. 320.695 and 320.697.

Section 3. Subsection (6) of section 320.642, Florida Statutes, is amended to read:

320.642 Dealer licenses in areas previously served; procedure.—

(6) When a proposed addition or relocation concerns a dealership that performs or is to perform only service, as defined in s. 320.60(17) ~~s. 320.60(16)~~, and will not or does not sell or lease, as defined in s. 320.60(16), new motor vehicles, ~~as defined in s. 320.60(15),~~ the proposal shall be subject to notice and protest pursuant to ~~the provisions of~~ this section.

(a) Standing to protest the addition or relocation of a service-only dealership shall be limited to those instances in which the applicable mileage requirement established in subparagraphs (3)(a)2. and (3)(b)1. is met.

(b) The addition or relocation of a service-only dealership shall not be subject to protest if:

1. The applicant for the service-only dealership location is an existing motor vehicle dealer of the same line-make as the proposed additional or relocated service-only dealership;

2. There is no existing dealer of the same line-make closer than the applicant to the proposed location of the additional or relocated service-only dealership; and

3. The proposed location of the additional or relocated

service-only dealership is at least 7 miles from all existing motor vehicle dealerships of the same line-make, other than motor vehicle dealerships owned by the applicant.

(c) In determining whether existing franchised motor vehicle dealers are providing adequate representations in the community or territory for the line-make in question in a protest of the proposed addition or relocation of a service-only dealership, the department may consider the elements set forth in paragraph (2)(b), provided:

1. With respect to subparagraph (2)(b)1., only the impact as it relates to service may be considered;

2. Subparagraph (2)(b)3. shall not be considered;

3. With respect to subparagraph (2)(b)9., only service facilities shall be considered; and

4. With respect to subparagraph (2)(b)11., only the volume of service business transacted shall be considered.

(d) If an application for a service-only dealership is granted, the department shall issue a license that ~~which~~ permits only service, as defined in s. 320.60(17) ~~s. 320.60(16)~~, and does not permit the selling or leasing, as defined in s. 320.60(16), of new motor vehicles~~, as defined in s. 320.60(15)~~. If a service-only dealership subsequently seeks to sell new motor vehicles at its location, the notice and protest provisions of this section shall apply.

Section 4. Subsection (1) and paragraph (a) of subsection

(2) of section 320.645, Florida Statutes, are amended to read:

320.645 Restriction upon ownership of dealership by licensee.—

(1) A ~~No~~ licensee, a manufacturer, an importer, or a distributor, an ~~manufacturer, or~~ agent of a licensee, a manufacturer, an importer, or a distributor, or a ~~any~~ parent, a subsidiary, a common entity, an ~~or~~ officer, or an employed representative of a ~~the~~ licensee, a manufacturer, an importer, or a distributor may not directly or indirectly ~~shall~~ own, ~~or~~ operate, or control by contract, agreement, or otherwise ~~either directly or indirectly~~, a motor vehicle dealership for any line-make in this state if the licensee, manufacturer, importer, or distributor has manufactured, imported, or distributed ~~for the sale or service of~~ motor vehicles of any line-make which have been or are offered for sale under a franchise agreement ~~with a motor vehicle dealer~~ in this state with an independent person. A person not prohibited by this section from owning, operating, or controlling a motor vehicle dealership may be issued a license pursuant to s. 320.27. A person prohibited by this section from owning, operating, or controlling a motor vehicle dealership ~~licensee~~ may not be issued a motor vehicle dealer license pursuant to s. 320.27. However, a ~~no such~~ licensee subject to the prohibition in this section will not be deemed to be in violation of this section:

(a) When operating a motor vehicle dealership for a

temporary period, not to exceed 1 year, during the transition from one owner of the motor vehicle dealership to another;

(b) When operating a motor vehicle dealership temporarily for a reasonable period for the exclusive purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group that has historically been underrepresented in its dealer body, or for other qualified persons who the licensee deems lack the resources to purchase or capitalize the dealership outright, in a bona fide relationship with an independent person, other than a licensee or its agent or affiliate, who has made a significant investment that is subject to loss in the dealership within the dealership's first year of operation and who can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions; or

(c) If the department determines, after a hearing on the matter~~,~~ pursuant to chapter 120~~,~~ at the request of any person, that there is no independent person available in the community or territory to own and operate the motor vehicle dealership in a manner consistent with the public interest. This paragraph applies only if the motor vehicle dealership sells motor vehicles of a line-make which, at the time of the hearing, are offered for sale by at least one other existing motor vehicle dealership not owned, operated, or controlled by the licensee, an officer or employed representative of the licensee, a parent,

subsidiary, or common entity of the licensee, or a manufacturer, an importer, or a distributor. A motor vehicle dealer association shall have standing to intervene in any hearing held under this paragraph.

In the ~~any such~~ case of a~~, the licensee must continue to make the~~ motor vehicle dealership owned or operated pursuant to paragraph (a), paragraph (b), or paragraph (c), the dealership must be continually made available for sale to an independent person at a fair and reasonable price. Approval of the sale of such a motor vehicle dealership to a proposed motor vehicle dealer shall not be unreasonably withheld.

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

(a) "Independent person" is a person who is not an agent, parent, subsidiary, common entity, officer, ~~director,~~ or employed representative of a ~~employee of the~~ licensee, manufacturer, importer, or distributor.

Section 5. Section 320.695, Florida Statutes, is amended to read:

320.695 Injunction.—In addition to the remedies provided in this chapter, and notwithstanding the existence of any adequate remedy at law, the department, or any motor vehicle dealer or motor vehicle dealer association in the name of the department and state, and for the use and benefit of the motor vehicle dealer or motor vehicle dealer association, may ~~is~~

~~authorized to~~ make application to any ~~circuit~~ court of competent jurisdiction ~~the state~~ for the grant, upon a hearing and for cause shown, of a temporary or permanent injunction, or both, restraining any person from acting as a licensee under the terms of ss. 320.60-320.70 without being properly licensed hereunder, or from violating or continuing to violate any of the provisions of ss. 320.60-320.70, or from failing or refusing to comply with the requirements of this law or any rule or regulation adopted hereunder. Such injunction shall be issued without bond. A single act in violation of the provisions of ss. 320.60-320.70 shall be sufficient to authorize the issuance of an injunction without the necessity of establishing irreparable harm therefrom. However, this statutory remedy shall not be applicable to any motor vehicle dealer after final determination by the department under s. 320.641(3). Also, a motor vehicle dealer association may not seek an injunction under this section for a violation of any provision of ss. 320.60-320.70 against an applicant, licensee, manufacturer, importer, or distributor that has never, and has no common entity that has ever, manufactured, imported, or distributed motor vehicles that were offered for sale pursuant to a franchise agreement in this state with an independent person.

Section 6. Section 320.699, Florida Statutes, is amended to read:

320.699 Administrative hearings and adjudications;

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

procedure.—

(1) A motor vehicle dealer, or a person with entitlements to or in a motor vehicle dealer, who is directly and adversely affected, or a motor vehicle dealer association with one or more members who are directly and adversely affected, by the action or conduct of an applicant or licensee which is alleged to be in violation of any provision of ss. 320.60-320.70~~,~~ may seek a declaration and adjudication of its rights or the rights of such members with respect to the alleged action or conduct of the applicant or licensee by~~:~~

~~(a)~~ filing with the department a request for a proceeding and an administrative hearing which conforms substantially with the requirements of ss. 120.569 and 120.57. However, a motor vehicle dealer association may not seek a declaration or adjudication under this section for a violation of any provision of ss. 320.60-320.70 against an applicant or licensee that has never, and has no common entity that has ever, manufactured, imported, or distributed motor vehicles that were offered for sale pursuant to a franchise agreement in this state with an independent person.~~; or~~

(2)~~(b)~~ A motor vehicle dealer with standing under s. 320.642(3) may file ~~Filing~~ with the department a written objection or notice of protest pursuant to s. 320.642.

(3)~~(2)~~ If a written objection or notice of protest is filed with the department under subsection (2) ~~paragraph (1)(b)~~,

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a hearing shall be held not sooner than 180 days nor later than 240 days from the date of filing of the first objection or notice of protest, unless the time is extended by the administrative law judge for good cause shown. This subsection shall govern the schedule of hearings in lieu of any other provision of law with respect to administrative hearings conducted by the Department of Highway Safety and Motor Vehicles or the Division of Administrative Hearings, including performance standards of state agencies, which may be included in current and future appropriations acts.

Section 7. This act shall take effect July 1, 2023.