

Regulatory Reform & Economic Development Subcommittee

Thursday, March 9, 2023
2:00 pm – 5:00 pm
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, March 9, 2023
2:00 pm – 5:00 pm
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I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 27 Judgment Liens by Benjamin
- HB 89 Building Construction by Maggard
- HB 221 Sales of Firearms and Ammunition by Snyder
- HB 233 Family and Household Members of Homicide Victims and Deceased Minors by Michael
- CS/HB 331 Liens and Bonds by Civil Justice Subcommittee, Overdorf
- HB 591 Social Media Protection for Minors by Rayner-Goolsby
- HB 719 Practice of Veterinary Medicine by Killebrew
- HB 761 Telephone Solicitation by Fabricio
- HB 789 Pub. Rec./Employment Accommodations for Family or Household Members of Homicide Victims by Michael

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
(850) 717-4870

- HB 807 License or Permit to Operate Vehicle for Hire by Borrero
- HB 861 Residential Real Estate Listing Agreements by Robinson, W.
- HB 869 Department of Business and Professional Regulation Licensing by McClain

V. Closing Remarks

VI. Adjournment

HB 27

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 27 Judgment Liens
SPONSOR(S): Civil Justice Subcommittee, Benjamin
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N	Mawn	Jones
2) Regulatory Reform & Economic Development Subcommittee		Larkin	Anstead
3) Judiciary Committee			

SUMMARY ANALYSIS

When a plaintiff in a civil lawsuit obtains a monetary judgment in its favor ("judgment creditor"), either the defendant ("judgment debtor") will pay the judgment creditor the money owed or the judgment creditor may seek to satisfy the judgment from the judgment debtor's property which is not exempt from a creditor's reach. To assist in judgment satisfaction, Florida law authorizes a judgment creditor to obtain a lien on the judgment debtor's non-exempt real and tangible personal property. Such a lien is secured by filing a judgment lien certificate with the Department of State ("DOS") or, for real property, by recording the lien in the county where the property lies.

Once a lien is secured, a judgment creditor has numerous judicial remedies available to enforce the lien, including a writ of execution and a proceeding supplementary to execution. However, Florida law provides that a judgment lien on a motor vehicle or vessel, though enforceable against the judgment debtor, is not enforceable against subsequent purchasers for value unless the vehicle's or vessel's title certificate notes the lien. Further, current law does not:

- Allow a judgment lien to attach to intangible personal property; or
- Expressly prohibit a judgment creditor from using self-help methods to satisfy a judgment lien.

HB 27 creates the Judgment Lien Improvement Act to:

- Provide two statutory mechanisms by which a judgment creditor may cause a judgment lien to be noted on the title certificate of a judgment debtor's motor vehicle or vessel, thereby ensuring that a subsequent purchaser of the vehicle or vessel takes title to such property subject to the lien.
- Clarify how the Department of Highway Safety and Motor Vehicles may remove a judgment lien from its records and relevant title certificates where the lienholder files a second judgment lien certificate with the DOS.
- Allow a judgment lien to attach to certain types of intangible personal property (specifically payment intangibles and accounts and the proceeds thereof) and specify the priority of such liens as against pre-existing security agreements in which such property was pledged as collateral to secure the loan.
- Expressly state that a judgment lien on personal property may only be enforced through judicial process absent the judgment debtor's express written consent to do otherwise.
- Clarify that a third party owing money to a judgment debtor under a payment intangible or account may continue to pay the judgment debtor directly until he or she receives specified orders to pay the judgment creditor instead.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Judgment Lien Creation and Enforcement

When a plaintiff in a civil lawsuit obtains a monetary judgment in its favor ("judgment creditor"), either the defendant ("judgment debtor") will pay the judgment creditor the money owed or the judgment creditor may seek to satisfy the judgment from the judgment debtor's property which is not exempt from the reach of creditors.[1] To assist in judgment satisfaction, Florida law authorizes a judgment creditor to obtain a lien[2] on the judgment debtor's non-exempt:[3]

- Real property, secured by recording a certified copy of the judgment in the county in which the real property is located.[4]
- Tangible personal property,[5] secured by recording a judgment lien certificate with the Florida Department of State ("DOS").[6]

The main benefit of a judgment lien is that the judgment debtor can no longer easily sell the liened property because any purchaser would, generally speaking, acquire the property subject to the lien. In other words, a purchaser would assume the obligation to satisfy the lien, making the property unappealing to buy, or else face the possibility that the judgment lienholder may foreclose on the lien. Additionally, a judgment creditor seeking to enforce a judgment lien on personal property has several judicial remedies, including an order, known as a writ of execution, issued by the clerk of the circuit court directing the sheriff to take into possession a judgment debtor's non-exempt property to satisfy the lien.[7]

Further, where the clerk has issued a writ of execution but the judgment remains unsatisfied, a judgment creditor may bring a proceeding supplementary to execution in which the court may summon the judgment debtor and any involved third parties to be questioned about property that may be the subject of the writ and issue an order that the sheriff seize such property.[8] A proceeding supplementary to execution is a continuation of the original lawsuit that resulted in the judgment and, thus, a judgment creditor is not required to file a separate action to initiate the proceeding.[9]

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[1] S. 55.141, F.S.

[2] A lien is a claim against property that evidences a debt, obligation, or duty. Fla. Jur. 2d Liens § 37:1.

[3] A judgment debtor that is an individual may choose to exempt one motor vehicle worth $1,000 or less and, if the debtor does not claim or receive a homestead exemption, additional personal property items with an aggregate worth of $4,000 or less. Corporations and other business entities are not entitled to exemptions. Ss. 55.201-55.209 and 222.25(1) and (4), F.S.; Art. X, s. 4, Fla. Const.; S. 55.10(1), F.S.

[4] Recording the certified copy of the judgment establishes the lien's priority; in other words, the recording of the judgment generally guarantees that the lienholder will be paid before lienholders with later-recorded liens on the same property. However, homestead property is exempt from the reach of creditors. S. 55.10(1), F.S.; Art. X, s. 4, Fla. Const.; S. 55.10(1), F.S.

[5] "Tangible personal property" is property which is capable of being taken into possession by the sheriff. Examples include motor vehicles, vessels, mobile homes, furniture, jewelry, stocks, and artwork. S. 56.061, F.S.

[6] The judgment lien certificate establishes the lien's priority; in other words, the filing of a judgment lien certificate generally guarantees that the lienholder will be paid before lienholders with later-perfected liens on the judgment debtor's tangible personal property.

[7] Other judicial remedies include attachment under ch. 76, F.S; garnishment under ch. 77, F.S.; and a charging order under ss. 605.0503, 620.1703, or 620.8504, F.S. Legal Information Institute, *Writ of Execution*, https://www.law.cornell.edu/wex/writ_of_execution (last visited Feb. 24, 2023).

[8] Judicial process is important for lien satisfaction as it gives the judgment debtor an opportunity to go before the court and argue that specific property the judgment creditor is trying to obtain is exempt from seizure and should not be taken to satisfy the lien. S. 56.29, F.S.

[9] *Id.*

Judgment Liens on Motor Vehicles and Vessels

Florida law requires that a judgment lien on a motor vehicle or vessel be noted on the vehicle's or vessel's title certificate but does not specify a mechanism for a judgment creditor to accomplish this notation. Further, Florida law provides that a judgment lien on such property, though enforceable against the judgment debtor, is not enforceable against subsequent purchasers for value unless noted on the title certificate.[10] Thus, where a judgment creditor obtains a lien on a motor vehicle or vessel and the lien is not noted on the title certificate, the judgment debtor may sell the subject property free of the lien. The only remedy currently available to a judgment creditor is to petition the court to order the Department of Highway Safety and Motor Vehicles ("DHSMV") to note the lien on the tile certificate; however, this process is not spelled out in statute and confusion exists as to whether the judgment creditor needs to institute a separate action to obtain such an order or merely initiate a proceeding supplementary to execution.

Further, a motor vehicle or vessel owner may apply to the DHSMV to have a lien removed from the motor vehicle or vessel's title certificate and from DHSMV records if certain statutory notice requirements are met and the lien has been filed with the DHSMV or noted on the title certificate for at least five years.[11] The lienholder then has ten days to file with the DHSMV a written statement that the lien is outstanding, in which case the DHSMV may not remove the lien until the lienholder proves to the DHSMV that the lien has been satisfied.[12] However, Florida law does not currently address what should happen to a lien notation if the lienholder files a second judgment lien certificate with DOS, thereby extending the lien's duration.

Judgment Liens on Intangible Personal Property

Current law does not allow a judgment lien to attach to intangible personal property, including royalty rights and the right to receive rents or payments for the sale of goods or services.[13] Thus, a judgment debtor's intangible personal property remains outside the reach of a judgment creditor even though the value of such property may be significant and sufficient to satisfy the judgment lien.

Accounts and Payment Intangibles Under the UCC

The Uniform Commercial Code ("UCC"), adopted in all fifty states, is a set of laws governing and providing uniformity in commercial transactions.[14] Florida's UCC provisions are codified in chapters 670-680 of the Florida Statutes.

Article 9 of the UCC (codified in ch. 679, F.S.) governs secured transactions, meaning transactions involving the granting of credit under a security agreement in exchange for the borrower's pledge of personal property ("collateral") which the creditor may take possession of if the debtor defaults on the loan.[15] In addition to tangible personal property, collateral recognized by the UCC includes:

- Accounts, meaning a right to payment of a monetary obligation:
  - For property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;
  - For services rendered or to be rendered;
  - For a policy of insurance issued or to be issued;
  - For a secondary obligation incurred or to be incurred;
  - For energy provided or to be provided;

[10] "Title certificate" means the record that is evidence of ownership of a vehicle, whether a paper certificate authorized by the Department of Highway Safety and Motor Vehicles or a certificate consisting of information that is stored in an electronic form in the department's database. Ss. 319.001(1) and 319.27(2), F.S.
[11] S. 319.241, F.S.
[12] *Id.*
[13] S. 56.061, F.S.
[14] Chs. 670-680, F.S.; Uniform Law Commission, *Uniform Commercial Code*, https://www.uniformlaws.org/acts/ucc (last visited Feb. 24, 2023).
[15] For example, a mortgage loan is typically a secured transaction wherein the home is pledged as collateral for the loan; in other words, if the borrower defaults on his or her mortgage payments, the mortgage company may (through appropriate legal process) taken possession and ownership of the purchased home. *Id.*

    - For the use or hire of a vessel under a charter or other contract;
    - Arising out of the use of a credit or charge card; or
    - As winnings in a lottery or other game of chance operated or sponsored by a state or its governmental unit.[16]
- Payment intangibles, meaning general intangibles[17] under which the account debtor's[18] principal obligation is a monetary obligation.[19]

Accounts and payment intangibles are forms of intangible personal property to which a judgment lien may not attach under current Florida law; such property may only be pledged as collateral in a secured transaction. Thus, such property is out of the reach of a judgment creditor.

Effect of Proposed Changes

Judgment Liens on Intangible Personal Property

HB 27 creates the Judgment Lien Improvement Act ("Act") to allow a judgment lien to attach to payment intangibles and accounts and the proceeds thereof, thus expanding the types of property a judgment creditor may reach to satisfy his or her lien. Under the bill, a judgment lien existing before October 1, 2023, becomes enforceable and perfected as of October 1, 2023, as to the judgment debtor's payment intangibles and accounts, but any security interest in or lien on the judgment debtor's payment intangibles or accounts which is enforceable and perfected before October 1, 2023, continues to have the same rights and priority as existed before that date and may not be primed as to payment intangibles or accounts by a judgment lien certificate filed before October 1, 2023.[20]

Further, the bill specifies that a:

- Judgment creditor's rights are subject to the rights of a secured creditor with a prior-filed security agreement pledging such payment intangibles or accounts as collateral.
- Third party owing money to a judgment debtor under a payment intangible or account may continue to pay such money to the judgment debtor directly until, but not after, the judgment creditor serves the third party with a complaint or petition seeking judicial relief with respect to the payment intangibles or accounts. Thereafter, the third party may pay the money owed only in accordance with the final order or judgment issued in such proceeding.

[16] The term includes healthcare receivables but does not include rights to payment evidenced by chattel paper or an instrument; commercial tort claims; deposit accounts; investment property; letter-of-credit rights or letters of credit; or rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card. S. 9-102(2), UCC; s. 679.1021(1), F.S.
[17] "General intangibles" are any form of intangible personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. Examples include partnership interests, various licenses (such as a liquor license), publication rights, and intellectual property (such as copyrights). S. 9-102, UCC; s. 679.1021(1)(pp), F.S.
[18] "Account debtor" means a person obligated on an account, chattel paper, or general intangible but does not include a person obligated to pay a negotiable instrument. S. 9-102, UCC; s. 679.1021(1)(c), F.S.
[19] S. 9-406, UCC; s. 679.1021(1), F.S.
[20] Lien priority determines the order in which creditors are paid. Generally, under the "first in time, first in right rule," earlier-perfected liens have priority over later-perfected liens; however, some liens, such as property tax liens, generally take priority over pre-existing liens. The bill would not change the priority of existing liens; thus, even where a judgment lien could attach to a payment intangible or account on or after October 1, 2023, any existing liens with a higher priority that could also attach to such property would be paid first.

Judgment Liens on Motor Vehicles and Vessels

The bill clarifies that, if a judgment debtor's non-exempt personal property includes a motor vehicle or a vessel for which a Florida title certificate has been issued, and the judgment creditor wants the judgment lien to be enforceable against subsequent purchasers, the judgment creditor may obtain, in a proceeding supplementary to execution, a court order instructing the DHSMV to note the lien on the title certificate. Thus, the judgment creditor would not need to file a separate action to avail himself or herself of the court-ordered process.

Alternatively, the judgment creditor may, under a new process created by the bill, send a written request to the DHSMV to have the lien noted on the title certificate, along with a copy of the judgment lien certificate, after which the DHSMV must add the judgment creditor's name to its records. A judgment creditor utilizing this option must also send a written request to the person possessing the title certificate,[21] by certified mail, who must then forward the certificate to the DHSMV for lien notation. However, under the bill, if the person possessing the title certificate fails to return the certificate to the DHSMV, the DHSMV must void the existing title certificate and issue a replacement certificate noting the judgment lien.

Finally, the bill addresses what happens to a lien notation when a lienholder extends the duration of his or her lien by filing a second judgment lien certificate with DOS. Specifically, the bill states that, where the owner of a motor vehicle or vessel applies to the DHSMV to have an outstanding lien removed from the vehicle's or vessel's title certificate, the lienholder has ten days to file with the DHSMV a statement that the lien is outstanding or that a second judgment lien certificate was filed with DOS. Where the DHSMV receives a statement that a second judgment lien certificate was filed with DOS, the DHSMV must remove the notation of the first judgment lien and note the second judgment lien on the title certificate.

Judgment Lien Creation and Enforcement

The bill clarifies that a judgment lien may only be enforced through judicial process absent the judgment debtor's express consent in a record authenticated after default.[22] In other words, absent such consent, the judgment creditor may not enforce his or her rights through self-help repossession[23] or replevin.[24] This gives a judgment debtor the chance to be heard in court and for the court to determine whether any of the judgment debtor's property is exempt from the judgment creditor's reach.

Miscellaneous Provisions

The bill:

- Makes conforming changes.
- Deletes obsolete language relating to liens created by a writ of execution which has been delivered to the sheriff before October 1, 2001.
- Provides an effective date of July 1, 2023.

[21] This person is either the first lienholder (e.g., the bank that loaned money for a motor vehicle's purchase that is still owed money on the loan) or the property's owner.

[22] Judicial process may include attachment under ch. 76, F.S., execution under ch. 56, F.S., garnishment under ch. 77, F.S., a charging order under ss. 605.0503, 320.1703, or 620.8504, F.S., or a proceeding supplementary to execution under s. 56.29, F.S.

[23] "Repossession" is an act by a creditor to take possession of a debtor's property that is pledged as collateral or in which the creditor has an interest to satisfy a debt. Legal Information Institute, *Repossession*, https://www.law.cornell.edu/wex/repossession (last visited Feb. 24, 2023).

[24] "Replevin" is an action seeking the return of personal property that was wrongfully taken or is wrongfully held by another. Florida law provides a statutory right of replevin that authorizes a plaintiff to bring a replevin action without notice to the defendant in certain circumstances. *See* ch. 78, F.S.; Legal Information Institute, *Replevin*, https://www.law.cornell.edu/wex/replevin (last visited Feb. 24, 2023).

B. SECTION DIRECTORY:

Section 1: Creates a short title.
Section 2: Amends s. 55.202, F.S., relating to judgments, orders, and decrees; lien on personal property.
Section 3: Amends s. 55.205, F.S., relating to effect of judgment lien.
Section 4: Amends s. 55.208, F.S., relating to effect of prior liens on payment intangibles and accounts.
Section 5: Amends s. 55.209, F.S., relating to Department of State; processing fees, responsibilities.
Section 6: Amends s. 56.29, F.S., relating to proceedings supplementary.
Section 7: Amends s. 319.24, F.S., relating to issuance in duplicate; delivery; liens and encumbrances.
Section 8: Amends s. 319.241, F.S., relating to removal of liens from records.
Section 9: 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 may have a positive economic impact on:

- Judgment creditors as it:
  - Expands the types of property to which a judgment lien may attach; and
  - Creates mechanisms whereby judgment creditors can cause a lien to be noted on a motor vehicle's or vessel's title certificate.
- Judgment debtors as it expressly prohibits seizure of their liened property except through judicial process or the debtor's consent, reducing the chance that a judgment creditor may seize a judgment debtor's exempt personal property through self-help methods.
- Third parties owing money to a judgment debtor, as it provides payment direction for such persons that may limit their liability exposure.

However, the bill may have a negative economic impact on judgment debtors as it exposes more of their property (that is, non-exempt payment intangibles and accounts) to the reach of judgment creditors.

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:

Section 319.17, F.S., vests the DHSMV with the authority to adopt rules under ss.120.536 and 120.54, F.S., to implement ch. 319, F.S. Additional rulemaking authority is likely unnecessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to judgment liens; providing a short title; amending s. 55.202, F.S.; specifying that payment intangibles, accounts, and the proceeds thereof are subject to judgment liens; providing construction; amending s. 55.205, F.S.; deleting a provision specifying the priority of certain judgment creditor liens; specifying the validity and enforceability of judgment liens against motor vehicles and vessels; providing a procedure for noting the lien on the certificate of title; specifying restrictions on the enforcement of judgment liens; specifying an account debtor's authority to discharge the account debtor's obligation to pay payment intangibles, accounts, or the proceeds thereof; amending s. 55.208, F.S.; providing construction relating to the effect of liens existing before a specified date on payment intangibles and accounts and the proceeds thereof; deleting an obsolete provision relating to judgment liens on writs of execution previously delivered to a sheriff; amending s. 55.209, F.S.; conforming a cross-reference; amending s. 56.29, F.S.; requiring a court, under certain circumstances, to order the Department of Highway Safety and Motor Vehicles to note certain liens on the certificate of

title of certain motor vehicles or vessels and in the department's records; amending s. 319.24, F.S.; prohibiting the department from issuing a motor vehicle certificate of title under certain circumstances; specifying procedures for a judgment lienholder to place a lien on motor vehicles or vessels; revising requirements for the department if a certificate of title is not forwarded or returned to the department under certain circumstances; revising the authority of certain persons to demand and receive a lien satisfaction; requiring a lienholder to enter a satisfaction in a certificate of title upon satisfaction or lapse of a judgment lien; amending s. 319.241, F.S.; revising circumstances under which the department may not remove a lien from the department's records or a certificate of title and specifying a requirement for the department; providing an effective date.

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

Section 1. This act may be cited as the "Judgment Lien Improvement Act."

Section 2. Subsections (2) and (5) of section 55.202, Florida Statutes, are amended to read:

55.202 Judgments, orders, and decrees; lien on personal property.—

(2) A judgment lien may be acquired on a judgment debtor's interest in all personal property in this state subject to execution under s. 56.061, including payment intangibles and accounts, as those terms are defined in s. 679.1021(1), and the proceeds thereof, but excluding ~~other than~~ fixtures, money, negotiable instruments, and mortgages.

(a) For payment intangibles and accounts and the proceeds thereof:

1. The rights of a judgment lienholder under this section are subject to the rights under chapter 679 of a secured party, as defined in s. 679.1021(1), who has a prior filed financing statement encumbering such payment intangibles or accounts and the proceeds thereof.

2. This section does not affect the obligation under s. 679.607(1) of an account debtor, as defined in s. 679.1021(1), except as the rights and obligations under this paragraph are otherwise adjudicated under applicable law in a legal proceeding to which the secured party and account debtor are joined as parties.

(b) A judgment lien is acquired by filing a judgment lien certificate in accordance with s. 55.203 with the Department of State after the judgment has become final and if the time to move for rehearing has lapsed, no motion for rehearing is

pending, and no stay of the judgment or its enforcement is then in effect. A court may authorize, for cause shown, the filing of a judgment lien certificate before a judgment has become final when the court has authorized the issuance of a writ of execution in the same matter. A judgment lien certificate not filed in compliance with this subsection is permanently void and of no effect.

(c) ~~(b)~~ For any lien, warrant, assessment, or judgment collected by the Department of Revenue, a judgment lien may be acquired by filing the judgment lien certificate information or warrant with the Department of State in accordance with subsection (5).

(d) ~~(c)~~ Except as provided in s. 55.208, the effective date of a judgment lien is the date, including the time of day, of filing. Although no lien attaches to property, and a creditor does not become a lien creditor as to liens under chapter 679, until the debtor acquires an interest in the property, priority among competing judgment liens is determined in order of filing date and time.

(e) ~~(d)~~ Except as provided in s. 55.204(3), a judgment creditor may file only one effective judgment lien certificate based upon a particular judgment.

(5) Liens, assessments, warrants, or judgments filed pursuant to paragraph (2)(c) ~~(2)(b)~~ may be filed directly into the central database by the Department of Revenue, or its

designee as determined by its executive director, through electronic or information data exchange programs approved by the Department of State. Such filings must contain the information set forth in s. 55.203(1).

Section 3. Subsection (1) of section 55.205, Florida Statutes, is amended, and subsections (5), (6), and (7) are added to that section, to read:

55.205 Effect of judgment lien.—

(1) A judgment creditor who has not acquired a judgment lien as provided in s. 55.202 or whose lien has lapsed may nevertheless proceed against the judgment debtor's property through any appropriate judicial process. Such judgment creditor proceeding by writ of execution acquires a lien as of the time of levy and only on the property levied upon. ~~Except as provided in s. 55.208, such judgment creditor takes subject to the claims and interest of priority judgment creditors.~~

(5)(a) If the judgment debtor's personal property, to the extent not exempt from execution, includes a motor vehicle or a vessel for which a Florida certificate of title has been issued, a judgment lien acquired under this section on such property not yet noted on the certificate of title is valid and enforceable against the judgment debtor. However, such judgment lien is not enforceable against creditors or subsequent purchasers of such property for valuable consideration whose interests have been noted on the certificate of title as provided in s. 319.27.

(b) A judgment lienholder may obtain an order instructing the Department of Highway Safety and Motor Vehicles to note the lien on the certificate of title through a court of competent jurisdiction conducting proceedings supplementary to execution under s. 56.29(6)(b).

(6) A judgment lien acquired under s. 55.202 may be enforced only through judicial process, including attachment under chapter 76; execution under chapter 56; garnishment under chapter 77; a charging order under s. 605.0503, s. 620.1703, or s. 620.8504; or proceedings supplementary to execution under s. 56.29. A holder of a judgment lien acquired under this chapter may not enforce his or her rights under this section through self-help repossession or replevin without the express consent of the judgment debtor in a record authenticated after default.

(7) Notwithstanding the attachment of a judgment lien acquired under s. 55.202 to payment intangibles or accounts and the proceeds thereof, the account debtor may, absent receipt of notice under s. 679.607(1)(a) from a secured party, discharge the account debtor's obligation to pay payment intangibles or accounts or the proceeds thereof by paying the judgment debtor until, but not after, the account debtor is served by process with a complaint or petition by the judgment creditor seeking judicial relief with respect to the payment intangibles or accounts. Thereafter, the account debtor may discharge the account debtor's obligation to pay payment intangibles or

accounts or the proceeds thereof under this section only in accordance with a final order or judgment issued in such judicial process that complies with this section.

Section 4. Section 55.208, Florida Statutes, is amended to read:

55.208 Effect of prior liens on payment intangibles and accounts; effect of filed judgment lien on writs of execution previously delivered to a sheriff.—

(1) A judgment lien under s. 55.202 existing before October 1, 2023, becomes enforceable and perfected as of October 1, 2023, as to payment intangibles and accounts and the proceeds thereof of a judgment debtor under s. 55.202(2). Any security interest or lien on payment intangibles or accounts and the proceeds thereof of a judgment debtor which is enforceable and perfected before October 1, 2023, continues to have the same rights and priority as existed before October 1, 2023, and may not be primed as to payment intangibles or accounts by a judgment lien certificate filed before October 1, 2023 ~~Any lien created by a writ of execution which has been delivered to the sheriff of any county before October 1, 2001, remains in effect for 2 years thereafter as to any property of the judgment debtor located in that county before October 1, 2001, and remaining within that county after that date. As to any property of the judgment debtor brought into the county on or after October 1, 2001, such writs create no lien, inchoate or otherwise~~.

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

(2) If a judgment creditor who has delivered a writ of execution to a sheriff in any county prior to October 1, 2001, properly files a judgment lien certificate with the Department of State by October 1, 2003, the resulting judgment lien is deemed filed on the date the writ was delivered to the sheriff as to all property of the judgment debtor subject to execution in this state under s. 56.061 which is located in that county on October 1, 2001, and that remains continuously in that county thereafter. Priority of such judgment liens is determined as of the effective date they are considered to have been filed. As to all other property of the judgment debtor, the effective date of the judgment lien is as provided in s. 55.202. The duration of all judgment liens is as provided in s. 55.204.

(3) If a judgment creditor who has delivered a writ of execution to a sheriff in any county before October 1, 2001, does not properly file a judgment lien certificate with the Department of State by October 1, 2003, such writ is considered to have been abandoned and to be of no effect after October 1, 2003.

Section 5. Subsection (1) of section 55.209, Florida Statutes, is amended to read:

55.209 Department of State; processing fees, responsibilities.—

(1) Except for liens, assessments, warrants, or judgments filed electronically as provided in s. 55.202(2)(c) ~~s.~~

~~55.202(2)(b)~~, the Department of State shall collect the following nonrefundable processing fees for all documents filed in accordance with ss. 55.201-55.209:

(a) For any judgment lien certificate or other documents permitted to be filed, $20.

(b) For the certification of any filed document, $10.

(c) For copies of judgment lien documents which are produced by the Department of State, $1 per page or part thereof. However, no charge may be collected for copies provided in an online electronic format via the Internet.

(d) For indexing a judgment lien by multiple judgment debtor names, $5 per additional name.

(e) For each additional facing page attached to a judgment lien certificate or document permitted to be filed, $5.

Section 6. Subsection (6) of section 56.29, Florida Statutes, is amended to read:

56.29 Proceedings supplementary.—

(6)(a) The court may order any property of the judgment debtor~~,~~ not exempt from execution~~,~~ or any property, debt, or other obligation due to the judgment debtor, in the hands of or under the control of any person subject to the Notice to Appear, to be levied upon and applied toward the satisfaction of the judgment debt. The court may enter any orders, judgments, or writs required to carry out the purpose of this section, including those orders necessary or proper to subject property

or property rights of any judgment debtor to execution, and including entry of money judgments as provided in ss. 56.16-56.19 against any person to whom a Notice to Appear has been directed and over whom the court obtained personal jurisdiction irrespective of whether such person has retained the property, subject to applicable principles of equity, and in accordance with chapters 76 and 77 and all applicable rules of civil procedure. Sections 56.16-56.20 apply to any order issued under this subsection.

(b) If the personal property of the judgment debtor includes a motor vehicle or a vessel that is nonexempt to any extent from execution and for which a Florida certificate of title has been issued, on presentation of a copy of a valid judgment lien certificate acquired under s. 55.202, the court must order the Department of Highway Safety and Motor Vehicles to note the liens of the judgment creditor on the certificate of title and in the records of the department.

Section 7. Subsections (2) and (4) and paragraphs (a) and (b) of subsection (5) of section 319.24, Florida Statutes, are amended to read:

319.24 Issuance in duplicate; delivery; liens and encumbrances.—

(2) A duly authorized person shall sign the original certificate of title and each corrected certificate and, if there are no liens or encumbrances on the motor vehicle or

mobile home, as shown in the records of the department or as shown in the application, shall deliver the certificate to the applicant or to another person as directed by the applicant or person, agent, or attorney submitting such application. The motor vehicle dealer license number must be submitted to the department when a dealer applies for or receives a duplicate title. The current odometer reading must be submitted on an application for a duplicate title. If there are one or more liens or encumbrances on the motor vehicle or mobile home, the certificate shall be delivered by the department to the first lienholder as shown by department records or to the owner as indicated in the notice of lien filed by the first lienholder pursuant to s. 319.27. If the notice of lien filed by the first lienholder indicates that the certificate should be delivered to the first lienholder, the department shall deliver to the first lienholder, along with the certificate, a form to be subsequently used by the lienholder as a satisfaction. If the notice of lien filed by the first lienholder directs the certificate of title to be delivered to the owner, then, upon delivery of the certificate of title by the department to the owner, the department shall deliver to the first lienholder confirmation of the receipt of the notice of lien and the date the certificate of title was issued to the owner at the owner's address shown on the notice of lien and a form to be subsequently used by the lienholder as a satisfaction. If the

application for certificate shows the name of a first lienholder different from the name of the first lienholder as shown by the records of the department or if the application does not show the name of a judgment lienholder as shown by the records of the department, the certificate shall not be issued to any person until after all parties who appear to hold a lien and the applicant for the certificate have been notified of the conflict in writing by the department by certified mail. If the parties do not amicably resolve the conflict within 10 days from the date such notice was mailed, then the department shall serve notice in writing by certified mail on all persons appearing to hold liens on that particular vehicle, including the applicant for the certificate, to show cause within 15 days from the date the notice is mailed why it should not issue and deliver the certificate to the person indicated in the notice of lien filed by the lienholder whose name appears in the application as the first lienholder without showing any lien or liens as outstanding other than those appearing in the application or those which may have been filed subsequent to the filing of the application for the certificate. If, within the 15-day period, any person other than the lienholder shown in the application or a party filing a subsequent lien, in answer to such notice to show cause, appears in person or by a representative, or responds in writing, and files a written statement under oath that his or her lien on that particular vehicle is still

outstanding, the department shall not issue the certificate to anyone until after such conflict has been settled by the lien claimants involved or by a court of competent jurisdiction. If the conflict is not settled amicably within 10 days of the final date for filing an answer to the notice to show cause, the complaining party shall have 10 days to obtain a ruling, or a stay order, from a court of competent jurisdiction; if no ruling or stay order is issued and served on the department within the 10-day period, it shall issue the certificate showing no liens except those shown in the application or thereafter filed to the original applicant if there are no liens shown in the application and none are thereafter filed, or to the person indicated in the notice of lien filed by the lienholder whose name appears in the application as the first lienholder if there are liens shown in the application or thereafter filed. A duplicate certificate or corrected certificate shall only show such lien or liens as were shown in the application and subsequently filed liens that may be outstanding.

(4)(a)1. If the owner of the motor vehicle or mobile home, as shown on the title certificate, or the director of the state child support enforcement program, or the director's designee, desires to place a second or subsequent lien or encumbrance against the motor vehicle or mobile home when the title certificate is in the possession of the first lienholder, the owner shall send a written request to the first lienholder by

certified mail, and such first lienholder shall forward the certificate to the department for endorsement. If the title certificate is in the possession of the owner, the owner shall forward the certificate to the department for endorsement.

2. If the holder of a judgment lien acquired under s. 55.202(2) on personal property of the owner desires to place a lien on the motor vehicle or a vessel, the judgment lienholder must send a written request to the department together with a copy of the lienholder's judgment lien certificate. The department shall add the name of the judgment lienholder to the records of the department. The judgment lienholder must also send a written request to the person in possession of the title certificate by certified mail, and that person shall forward the certificate to the department for endorsement.

(b) The department shall return the certificate to either the first lienholder or to the owner, as indicated in the notice of lien filed by the first lienholder, after endorsing the second or subsequent lien on the certificate and on the duplicate. If the first lienholder or owner fails, neglects, or refuses to forward the certificate of title to the department within 10 days after ~~from~~ the date of the owner's, the judgment lienholder's, or the director's or designee's request, the department, on the written request of the subsequent lienholder or an assignee thereof, shall demand of the first lienholder or the owner the return of such certificate for the notation of the

second or subsequent lien or encumbrance. If the first lienholder or owner fails, neglects, or refuses to return the certificate to the department as requested, the department must void the certificate of title and issue a replacement certificate showing the notation of the subsequent lien or encumbrance.

(5)(a) Upon satisfaction of any first lien, judgment lien, or encumbrance recorded at the department or upon lapse of a judgment lien, the owner of the motor vehicle or mobile home, as shown on the title certificate, or the person satisfying the lien is ~~shall be~~ entitled to demand and receive from the lienholder a satisfaction of the lien. If the lienholder, upon satisfaction of the lien and upon demand, fails or refuses to furnish a satisfaction thereof within 30 days after demand, he or she shall be held liable for all costs, damages, and expenses, including reasonable attorney ~~attorney's~~ fees, lawfully incurred by the titled owner or person satisfying the lien in any suit brought in this state for cancellation of the lien. A motor vehicle dealer acquiring ownership of a motor vehicle with an outstanding purchase money lien, shall pay and satisfy the outstanding lien within 10 working days of acquiring ownership. The lienholder receiving final payment as defined in s. 674.215 shall mail or otherwise deliver a lien satisfaction and the certificate of title indicating the satisfaction within 10 working days of receipt of such final payment or notify the

person satisfying the lien that the title is not available within 10 working days of receipt of such final payment. If the lienholder is unable to provide the certificate of title and notifies the person of such, the lienholder shall provide a lien satisfaction and shall be responsible for the cost of a duplicate title, including fast title charges as provided in s. 319.323. The provisions of this paragraph shall not apply to electronic transactions pursuant to subsection (9).

(b) Following satisfaction of a lien or upon satisfaction or lapse of a judgment lien, the lienholder shall enter a satisfaction thereof in the space provided on the face of the certificate of title. If the certificate of title was retained by the owner, the owner shall, within 5 days of the satisfaction of a lien, deliver the certificate of title to the lienholder and the lienholder shall enter a satisfaction thereof in the space provided on the face of the certificate of title. If there are no subsequent liens shown thereon, the certificate shall be delivered by the lienholder to the person satisfying the lien or encumbrance and an executed satisfaction on a form provided by the department shall be forwarded to the department by the lienholder within 10 days of satisfaction of the lien.

Section 8. Section 319.241, Florida Statutes, is amended to read:

319.241 Removal of lien from records.—The owner of a motor vehicle or mobile home upon which a lien has been filed with the

department or noted upon a certificate of title for a period of 5 years may apply to the department in writing for such lien to be removed from the department files or from the certificate of title. The application shall be accompanied by evidence satisfactory to the department that the applicant has notified the lienholder by certified mail, not less than 20 days prior to the date of the application, of his or her intention to apply to the department for removal of the lien. Ten days after receipt of the application, the department may remove the lien from its files or from the certificate of title, as the case may be, if no statement in writing protesting removal of the lien is received by the department from the lienholder within the 10-day period. If, however, the lienholder files with the department within the 10-day period a written statement that the lien is still outstanding or that a second judgment lien certificate has been filed with the Department of State, the department shall not remove the lien until the lienholder presents a satisfaction of lien to the department. If a second judgment lien certificate was filed with the Department of State, the department must remove the notice of the first judgment lien certificate and add notation of the second judgment lien certificate at the end of all noted liens. Ten days after the receipt of an application for a derelict motor vehicle certificate and notification to the lienholder, the department may remove the lien from the derelict motor vehicle record if a written statement protesting removal

of the lien is not received by the department from the lienholder within the 10-day period.

Section 9. This act shall take effect July 1, 2023.

REGULATORY REFORM & ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 27 by Rep. Benjamin
Judgment Liens

AMENDMENT SUMMARY
March 9, 2023

Amendment 1 by Rep. Benjamin (lines 122-139):

- Clarifies the rights between a judgment lien holder and a creditor or purchaser of a vehicle or vessel.
- Clarifies that a judgment lien holder who has no relationship to a vehicle, vessel, or other tangible property:
    - is not given the right to engage in self-help remedies, and
    - must seek a court order or obtain a signed consent from a judgment debtor, whether an electronic record or other writing, after the judgment lien attaches.

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 Benjamin offered the following:

Amendment

Remove lines 122-139 and insert:

against the judgment debtor. However, enforceability under this chapter of such judgment lien against creditors or subsequent purchasers is determined as provided under ss. 319.27(2) or 328.14, as applicable.

(b) A judgment lienholder may obtain an order instructing the Department of Highway Safety and Motor Vehicles to note the lien on the certificate of title through a court of competent jurisdiction conducting proceedings supplementary to execution under s. 56.29(6)(b).

(6) A judgment lien acquired under s. 55.202 may be enforced only through judicial process, including attachment under chapter 76; execution under chapter 56; garnishment under chapter 77; a charging order under s. 605.0503, s. 620.1703, or s. 620.8504; or proceedings supplementary to execution under s. 56.29. A holder of a judgment lien acquired under s. 55.202, who is not enforcing separate lien rights in a judgment debtor's property, may not enforce his or her rights under this section through self-help repossession or replevin without a court order or without the express consent of the judgment debtor contained in a record authenticated in accordance with s. 668.50 or s. 679.1021(1)(g) after the judgment lien attaches.

HB 89

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 89 Building Construction
SPONSOR(S): Maggard
TIED BILLS: **IDEN./SIM. BILLS:** SB 512

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Larkin	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Class A air-conditioning contractors, licensed by the Construction Industry Licensing Board, are allowed to work on central air-conditioning, refrigeration, heating, and ventilating systems. These services include installing, disconnecting, or reconnecting power wiring on the **load side** of the dedicated existing electrical disconnect switch. Currently, an electrical contractor license is required to work on the **line side**.

The bill:

- Allows a class A air-conditioning contractor to work on power wiring, breakers, or fuses on the **line side** of the dedicated existing electrical disconnect switch.

The Florida Building Code is administered, and enforced by local governments through the issuance of permits and completion of inspections by local building officials. Permits are generally issued prior to starting construction projects, and after plans are reviewed by local building officials. A local enforcing agency must identify the specific plan features that do not comply with the Building Code **whenever a permit is denied.** Currently, there is no similar requirement for fire safety officials related to the Fire Prevention Code.

Current law is not clear on whether local governments must notify permitholders about the specific reasons why the buildings plans do not comply with the Building Code or the Fire Prevention Code, if they make or require substantive changes to building plans **after the permit is issued.**

The bill:

- Prohibits a local government from making substantive changes to plans **after a permit has been issued** unless such changes are required under the Building Code, or Fire Prevention Code.
- Requires any changes a local government makes to plans **after a permit has been issued** to identify the specific parts of the plan that do not conform to the applicable code.
- Requires a building official or inspector who asks another person to review the building plans to notify the local government if such person determines the plans do not comply with the Building Code.
- Requires a local fire official to notify the permit applicant of specific reasons why plans do not comply with the Fire Prevention Code.
- Allows a plans reviewer, inspector, building official, or fire safety inspector to have their certificate disciplined for failure to notify the appropriate person of the reasons for making substantive changes to building plans.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Class A Air-Conditioning Contractors- Current Situation

The Florida Department of Business and Professional Regulation (DBPR) regulates and licenses various businesses and professionals in Florida, including construction contractors. Construction contractors are certified or registered and regulated by the Construction Industry Licensing Board (CILB).[1]

Certified contractors are allowed to practice their specific license category in any jurisdiction in the state.[2] One of the license categories is Class A air-conditioning contractor.

To be eligible for licensure as a Class A air-conditioning contractor, an applicant must complete the license application,[3] pass the certification examination, and meet certain combinations of education and experience, which consists of 4 to 5 years of college level courses and/or HVAC[4] work experience.[5]

Class A air-conditioning contractors[6] may install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems.[7] These services include **replacing, disconnecting, or reconnecting power wiring** on the **load** side of the dedicated existing electrical disconnect switch.[8]

HVAC Electrical Disconnect Switch Installation Requirements

HVAC equipment or air-conditioning units are required to be installed in accordance with manufacturer specifications, which include the electrical needs of such equipment as indicated on either the equipment or in the manual. The Building Code requires that listed or labeled equipment be installed and used in accordance with any instructions included in the listing or labeling, which includes rated-load in amperes or rated-load current for the motor-compressor.[9] This ensures the safety of both the contractor and the premises. The manufacturer establishes values for a given load, rated voltage, and rated frequency of the equipment it serves to ensure that the air conditioner disconnecting means (usually a switch) and controller have proper interrupting capacities.[10]

The Building Code specifically requires compliance with the manufacturer's nameplate markings.[11] This information is used to determine the rating or ampacity of the disconnecting means, the branch-circuit conductors, the controller, branch circuit short-circuit and ground-fault protection, and the separate motor overload protection. If the nameplate specifies fuses only, substitution of a listed circuit breaker is a violation of the Building Code and the manufacturer's warranties.

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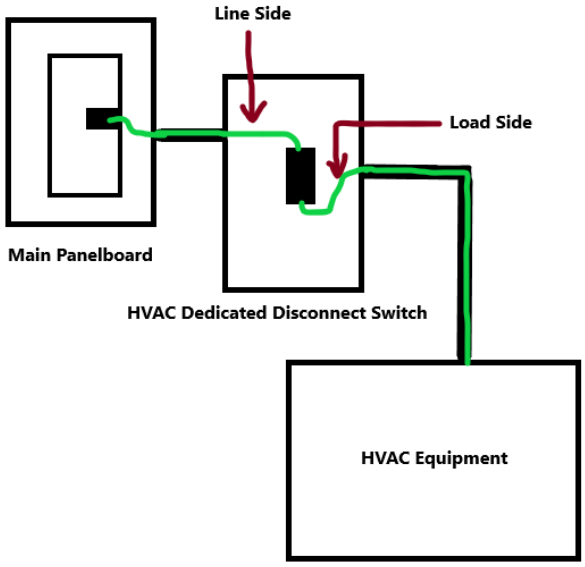
[1] S. 20.165, F.S, creates the divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology.
[2] S. 489.105, F.S.
[3] *Certified Class A Air Conditioning Contractor Application Requirements*, Florida Department of Business & Professional Regulation,https://www.myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=1030&clientCode=0601&XACT_DEFN_ID=2940 (last visited March 3, 2023).
[4] Heating, ventilation, and air conditioning.
[5] *Application for Certified Class-A Air Conditioning Contractor as an Individua*l, p. 7, Florida Department of Business & Professional Regulation, https://www.myfloridalicense.com/datamart/loginFLDBPR.do (last visited March 3, 2023).
[6] Class B and Class C air-conditioning contractors are HVAC contractors with a limited scope.
[7] S. 489.105(3)(f), F.S.
[8] S. 489.105(3)(f), F.S.
[9] Florida Building Code, 6th ed. (2017), s. E3702.11 Branch circuits for air-conditioning and heat pump equipment.
[10] Keith Lofland, International Association of Electrical Inspectors Magazine, *Air-Conditioning Equipment Installations*, https://iaeimagazine.org/2017/julyaugust-2017/air-conditioning-equipment-installations/ (last visited March 3, 2023).
[11] Florida Building Code, 6th ed. (2017), s. E3702.11 Branch circuits for air-conditioning and heat pump equipment.

A disconnecting means is required to be located "within sight from and readily accessible" from the air-conditioning equipment[12], which is usually located on a concrete pad outside the dwelling or structure, under the building in a crawl space, or mounted on a rooftop. This disconnecting means can be installed on or within the air-conditioning equipment itself.[13]

The disconnecting means is typically located next to[14] the air-conditioning unit. Sufficient working space in the direction of access to the equipment, or the part of the equipment, that is likely to be worked on while there are live, exposed parts, must be provided in accordance with the Building Code to access the disconnecting means for purposes of examination, adjustment, servicing, or maintenance while energized. The purpose is to provide a ready and visible means of disconnection for the person who will service or repair the equipment. Safe access must also be provided to the control equipment within the unit at the time the equipment is being installed or serviced. **It is common for service persons to examine or test HVAC equipment while it is energized.[15]**

HVAC Electrical Disconnect Switch Components

The **line side** consists of upstream components and wires coming from the main power source that supply power. **It always carries current when there is power supply from the power source**. The **load side** consists of downstream components and wires that take the electrical current and supply it to other electric devices. **It only carries current when the switch is turned on**, signaling a closed circuit that allows current to flow through.[16] Below is an illustration of the "load" and "line" sides of an HVAC breaker:[17]



A dedicated circuit has its own circuit breaker and only supports one outlet, which means **only one electrically powered device can draw voltage from that circuit at any given time**.[18] **A disconnect switch** is used to isolate electrical circuits by **interrupting the flow of electrical current**. By quickly

[12] Florida Building Code, 6th ed. (2017), s. E4101.5 Disconnecting means.
[13] Keith Lofland, *supra* note 9.
[14] Typically, a locking type of disconnecting means located out of sight from the unit is not acceptable. *Id.*
[15] Keith Lofland, *supra* note 9.
[16] Alex Klein, *How to Identify Line and Load Wires*, Electro University (Aug. 16, 2022), https://electrouniversity.com/how-to-identify-line-and-load-wires/, (last visited Feb. 14, 2023).
[17] *See* Assured Electrical, *Just Answer*, https://ww2-secure.justanswer.com/uploads/AssuredElectrical/2012-05-29_153354_240acdisconnect.gif. (last visited Feb. 27, 2023).
[18] Harrison Electric, Inc. *Dedicated Circuits: What They Are & How to Determine If You Need Them*, Aug. 16, 2021, https://harrison-electric.com/Blog/entryid/243/dedicated-circuits-what-they-are-how-to-determine-if-you-need-them (last visited Mar. 3, 2023)

stopping the flow of power, disconnect switches allow for emergency shutdowns, switching to alternate power sources, and maintenance.[19]

There are several circuit breakers in the main electrical panel, also known as a breaker box or main panelboard. **One of those circuit breakers goes to the outside air-conditioning unit and then runs to a dedicated existing electrical disconnect switch for the unit**.[20]

A circuit breaker and a fuse are both designed to interrupt the flow of electricity, but they operate through different mechanisms. The fuse works as a piece of metal that melts down when overheated, and a circuit breaker works by operating a switching mechanism when an overflow of electricity is detected. Circuit breakers generally have a higher breaking capacity than fuses.[21]

Differences Between Voltage and Amperage

Although voltage and amperage are both measurements of electricity, they measure different aspects of electricity. Amperage is the flow of the electric current. Voltage is the pressure of the electric current. These are both needed to generate power.[22]

$$Power = Amperage\ (Flow)\ x\ Voltage\ (Pressure)$$

For example, an air conditioner requires approximately 15 to 60 amps.[23] In regards to danger to people, the amperage, not voltage, is the most determinant factor in causing injury or fatality.[24] The amount of time that a person is exposed to the electric current is also a factor.[25]

Line Side Work in Florida

While Class A air-conditioning contractors may work on the **load** side, they cannot install, disconnect, or reconnect power wiring on the **line side**[26] of the dedicated existing electrical disconnect switch.[27] Only a licensed electrical contractor can work on the line side.[28] Therefore, Class A air-conditioning contractors have to refer work on the line side to an electrical contractor, which causes Class A air-conditioning contractors to stop their work until an electrical contractor completes this portion.

Line Work and Air-Conditioning Contractor Certification in other states

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[19] Bisco Industries, *What is a Disconnect Switch?*, https://press.biscoind.com/2016/08/18/what-is-a-disconnect-switch/ (last visited Mar. 3, 2023).
[20] Russell E. Smith, "Installation of Heating, Cooling, and Refrigeration Systems." *Electricity for Refrigeration, Heating, and Air Conditioning*, 10th ed., Cengage Learning, Boston, MA, 2018, p. 18 (explaining a disconnect switch allows a contractor to disconnect the power source to the heating, cooling, and refrigeration equipment being worked on). The Florida Building Code requires that a 125-volt, 15- and 20-ampere receptacle for servicing air-conditioning and refrigeration equipment is to be located not less than 7.5 m (25 ft) from, and on the same level as, the equipment itself. The receptacle must be in a readily accessible location from the equipment and must be GFCI-protected as applicable to outdoor receptacles at dwelling occupancies.)
[21] Hi-Lite Electric, Inc., *What's the Difference Between Fuses and Circuit Breakers?*, Aug. 26, 2019, https://hi-liteelectricinc.ca/about-us/blog/power-surges/whats-difference-fuses-circuit-breakers/ (last visited Mar. 4, 2023).
[22] *Electricity Explained Simple: The Difference between Voltage, Amperage and Power*, YouTube, Solar Solution, (Apr. 9, 2021), https://www.youtube.com/watch?v=CA1Y9PkHkr0 (last visited March 5, 2023).
[23] Edwin Jones, How Many AMPS Does an Air Conditioner Use?, Galvin Power (Mar. 1, 2023), https://www.galvinpower.org/how-many-amps-does-an-air-conditioner-use/ (last visited March 5, 2023).
[24] "While any amount of current over 0.01 amp is capable of producing painful to severe shock, currents between 0.1 to 0.2 amp are lethal." *The Fatal Current*, The Ohio State University College of Arts and Sciences, https://www.asc.ohio-state.edu/physics/p616/safety/fatal_current.html (last visited March 5, 2023).
[25] Akash Peshin, *How Much Current Can the Human Body Withstand?*, Science ABC (Nov. 12, 2021), https://www.scienceabc.com/humans/how-many-volts-amps-kill-you-human.html (last visited March 5, 2023).
[26] Klein, *supra* note 13.
[27] S. 489.105(3)(f), F.S.
[28] S. 489.505(12), F.S.

HVAC licensing requirements and specialty categories differ from state to state.[29] Most states limit HVAC contractors to work on the load side.[30]

For example, in North Carolina, licensed HVAC contractors may work on the load side, but not on the line side,[31] and all licensed HVAC contractors are required to perform a room-by-room load calculation for all newly installed residential structures prior to installing heating systems, air conditioning systems, or both.[32] In Hawaii, an HVAC contractor is allowed to put together and install HVAC units including, but not limited to, piping, and controls, but are not allowed to work on the electrical controls.[33] Some other states specifically require licensing as an electrical contractor to work on HVAC systems, such as Washington state.[34]

However, there are a few states that allow HVAC contractors to work on the line side in limited ways. These states have set specific parameters for such work.

For example, in Georgia, HVAC contractors may perform limited work on the line side. Specifically, they may perform service to or installation of the electrical circuit from the main electrical panel to the air-conditioner equipment where the electrical service to the building or site is a single-phase electrical circuit not exceeding 200 amperes.[35] In Alaska, HVAC contractors are required to be licensed as a Mechanical Administrator, and such contractors may install control wiring that alters the electrical characteristics of the mechanical system if they are supervised by a licensed electrical administrator.[36]

Class A Air-Conditioning Contractor – Effect of Bill

The bill expands the scope of service that a class A air-conditioning contractor may provide. The bill allows class A air-conditioning contractors to:

- Replace, disconnect, or reconnect power wiring, **breakers, or fuses** on the **line** side of the dedicated existing electrical **circuit** disconnect switch; and
- Replace, disconnect, or reconnect air-conditioning **disconnect switches and boxes**.

Building Plans Requirements- Current Situation

Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code. In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work and a study was commissioned to make recommendations. In 1998, the Legislature adopted the 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

[29] Hans Howk, *What Licenses Does an HVAC Contractor Need?*, Wolters Kluwer (July 1, 2021), https://www.wolterskluwer.com/en/expert-insights/hvac-contractor-licenses (last visited March 5, 2023).
[30] There are several states, such as Illinois, Indiana, Kanas, Massachusetts, Maine, Missouri, Montana, Minnesota, Colorado, and New York, that license air conditioning contractors at the local level. *Id*.
[31] N.C.G.S.A. § 87-2121 (a)(4) and N.C. Admin. Code 50.0505(e).
[32] N.C. Admin. Code 50.0505(e).
[33] "Electrical work" means the installation, alteration, reconstruction, or repair of electrical wiring. Haw. Code R. § 16-80-3; *see also*, "Any person who performs electrical work in the State is required to have a journey worker electrician's license." Haw. Code R. § 16-80-4.
[34] Wash. Admin. Code 296-200A-016(28) and 296-46B-901(c)(B); "There is no official HVAC license in Washington. However, HVAC contractors are required to have an electrical license to perform HVAC duties such as inspecting, repairing, installing, and altering heating, ventilation, air conditioning, and refrigeration units." *How to Get an HVAC License in Washington: A Complete Guide*, General Contractor License Guide (Aug. 23, 2022), https://generalcontractorlicenseguide.com/washington-hvac-license/ (last visited March 6, 2023).
[35] Ga. Code Ann., § 43-14-2(3)
[36] Alaska Admin. Code tit. 12, § 39.232(c).

(Building Code), and that first edition replaced all local codes on March 1, 2002.[37] The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.[38]

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (Act). The Act provides 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.[39]

The Florida Building Commission (Building Commission) implements the Building Code. The Building Commission, which is housed within DBPR, reviews several International Codes published by the International Code Council, 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.[40]

A local enforcement agency is an agency of local government with jurisdiction to make inspections of buildings and to enforce the Building Code.[41]

Building Code Administrators, Inspectors, and Plans Examiners

Building code administrators, inspectors, and plans examiners are regulated by the Building Code Administrators and Inspectors Board (BCAIB) within DBPR.[42]

A building code administrator, also known as a building official, is a local government employee or a person contracted by a local government who supervises Building Code activities, including plans review, enforcement, and inspection.[43]

A building code inspector (inspector) is a local government employee or a person contracted by a local government who inspects construction that requires permits to determine compliance with the Building Code and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories for which the inspector has been licensed. The inspector categories are:[44]

- Building inspector;
- Coastal construction inspector;
- Commercial electrical inspector;
- Residential electrical inspector;
- Mechanical inspector;
- Plumbing inspector;
- Residential inspector; and
- Electrical inspector.

A plans examiner, also known as a plans reviewer, reviews plans submitted for building permits to determine design compliance with the Building Code. A plans examiner's ability to practice is limited to the category or categories for which the examiner is licensed. The plans examiner categories are:[45]

- Building plans examiner;
- Plumbing plans examiner;
- Mechanical plans examiner; and

[37] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, http://www.floridabuilding.org/fbc/2006_Legislature_Rpt_rev2.pdf (last visited Feb. 13, 2023).
[38] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Feb. 13, 2023).
[39] *See* s. 553.72(1), F.S.
[40] Ss. 553.73, and 553.74, F.S.
[41] S. 553.71(5), F.S.
[42] *See* Ss. 120.569, 120.57(1)-(2), 468.605, 468.606, and 468.621, F.S.
[43] S. 468.603(2), F.S.
[44] S. 468.603(4) and (5), F.S.
[45] S. 468.603(8), F.S.

- Electrical plans examiner.

The BCAIB may discipline building code administrators, plans examiners, and inspectors for violations of the practice act, such as violating BCAIB or DBPR rules, and failing to properly enforce applicable building codes or permit requirements.[46] Types of discipline includes:[47]

- Denial of an application for certification.
- Permanent revocation.
- Suspension of a certificate.
- Fines.
- Probation.

Florida Fire Prevention Code

Florida law designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, within the Department of Financial Services (DFS), is charged with enforcing laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.[48]

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 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[49].

The State Fire Marshal adopts a new edition of the Fire Prevention Code every three years.[50] When adopting the Fire Prevention Code, the Fire Marshal is required to adopt the most current version of the national fire and life safety standards set forth by the National Fire Protection Association (NFPA), including the:[51]

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

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state.[52] The most recent Fire Prevention Code is the 7th edition, which is referred to as the 2020 Florida Fire Prevention Code. The 7th edition of the Fire Prevention Code took effect on December 31, 2020.[53]

[46] Ss. 468.601, 486.621, and 468.633, F.S.; *see also* R. 61G19-5.003, F.A.C.
[47] S. 486.621, F.S.
[48] S. 633.104, F.S.
[49] ch. 69A-60, F.A.C.
[50] S. 633.202, F.S.
[51] S. 633.202(2), F.S. Founded in 1896, the National Fire Protection Association delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. NFPA, *About NFPA*, http://www.nfpa.org/about-nfpa (last visited on Feb. 13, 2023).
[52] *Id.*
[53] Division of State Fire Marshal, *Florida Fire Prevention Code (FFPC)*, https://www.myfloridacfo.com/division/sfm/bfp/floridafirepreventioncodepage.htm (last visited Feb. 13, 2023).

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.[54] These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements, but may not enact fire safety ordinances that conflict with other state law.[55]

Fire Safety Inspectors

Each county, municipality, and special district with fire safety enforcement responsibilities is required to employ or contract with a fire safety inspector to conduct all fire safety inspections required by law.[56] A fire safety inspector is a person who is officially assigned the duties of conducting fire safety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with fire safety responsibilities. Fire safety inspectors are certified and regulated by the State Fire Marshal and are separate from building code administrators, inspectors, and plans examiners who are regulated by the BCAIB.[57]

The State Fire Marshal may discipline fire safety inspectors by denying, refusing to renew, suspending, or revoking their certificate if the State Fire Marshal finds that the fire safety inspector has violated the practice act, including:[58]

- Violating Fire Prevention laws or any rule or order of the State Fire Marshal, and
- Failing to properly enforce applicable fire codes or permit requirements within this state which the certificateholder knows are applicable by "committing willful misconduct, gross negligence, gross misconduct, repeated negligence, or negligence resulting in a significant danger to life or property."

Conflicting Requirements in The Building Code and the Fire Prevention Code

The Building Code and the Fire Prevention Code work together, but are independent of each other. The Building Commission must reference the Fire Prevention Code in the Building Code. However, the Building Commission may not adopt a fire prevention or life safety code, and nothing in the Building Code may affect the statutory powers, duties, and responsibilities of any local fire safety official or DFS.[59]

Conflicting requirements between the Building Code and the Fire Prevention Code must be resolved by agreement between the Building Commission and the State Fire Marshal, or the question must be referred to a mediator to resolve the conflict.[60]

Building Permits

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.[61] Every local government must enforce the Building Code and issue building permits.[62]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[63] Any construction work that requires a building permit also requires

[54] Ss. 633.108 and 633.208, F.S.
[55] Ss. 633.208 and 633.214(4), F.S.
[56] S. 633.216(1), F.S.
[57] Ss. 633.102(12) and 633.216, F.S.
[58] S. 633.216(5)(a)-(g), F.S.; *see also*, s. 633.106, F.S.
[59] S. 553.73(1), F.S.; Florida Department of Financial Services, Agency Analysis of 2022 House Bill 635, p.3 (Jan. 4, 2022).
[60] *Id.*
[61] S. 553.72, F.S.
[62] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[63] S. 468.603(2), F.S; S. 202 of the Seventh edition of the Florida Building Code (Building).

plan reviews and inspections by the building official, inspector, or plans reviewer to ensure the work complies with the Building Code.[64]

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.[65] A building permit is not valid until the fees for the permit have been paid.[66]

Building Plans

To obtain a permit an applicant must complete an application for the proposed work on the form furnished by the local enforcing agency, which must be posted on its website.[67]

An application for a permit must include building plans. Building plans are plans for construction, erection, alteration, modification, repair, or demolition of any building or structure and must comply with the applicable building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other applicable construction codes in the Building Code.[68]

A local enforcing agency may not issue a permit until the building official or plans reviewer has reviewed the building plans and determined that they comply with the Building Code.[69]

When the building official issues the permit, the building official must approve the plans by writing or stamping, "Reviewed for Code Compliance" on the plans. The local building official must keep one set of plans and another set must be returned to the applicant, who must keep the set at the work site.[70]

Fire Prevention Code Plans Review

With respect to fire inspections and review, building officials or plans reviewers do not review building plans to determine if they comply with the Fire Prevention Code. If the building or structure is subject to the Fire Prevention Code, the local fire safety official must also review the building plans.[71] A local enforcing agency may not issue the permit until the local fire safety official has approved the plans. However, if the building or structure is not subject to the Fire Prevention Code, the local enforcing agency may not require the local fire safety inspector to review the plans.[72]

Changes to the Building Permit or Plans

Construction work must be in accordance with the approved plans, and any changes made during construction that are not in compliance with the approved plans must be resubmitted for approval as an amended set of construction documents.[73]

If the local building official or plans reviewer finds that building plans do not comply with the Building Code, the local building official or inspector **must identify** the specific plan features that do not comply with the **Building Code**, identify the specific chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. The local enforcing agency must provide this information **to the permit applicant**.[74]

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[64] Ss. 107, 110.1, and 110.3 of the Seventh edition of the Florida Building Code (Building).
[65] *See* ss. 125.56(4)(a) and 553.79(1), F.S.
[66] S. 109.1 of the Seventh edition of the Florida Building Code (Building).
[67] Ss. 125.56(4)(b), 553.79(1), and 713.135(5) and (6), F.S.
[68] Ss. 468.603(8), and 553.79(2), F.S.
[69] S. 553.79(2), F.S.
[70] S. 107.3.1 of the Seventh edition of the Florida Building Code (Building).
[71] *Id.*
[72] *Id.*
[73] S. 107.4 of the Seventh edition of the Florida Building Code (Building).
[74] S. 553.79(2), F.S.

Whenever a permit is denied or revoked because plans are found to not comply with the Building Code, the local enforcing agency must identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information **to the permit applicant**.[75] A plans reviewer or building official who is responsible for issuing a denial, revocation, or modification request but fails to provide to the permit applicant a reason for denying, revoking, or requesting a modification, based on compliance with the Building Code, is subject to licensure disciplinary action.[76]

There is no similar requirement for fire safety officials or inspectors when they deny, revoke, or modify plans based on the Fire Prevention Code.

Current law is not clear on whether local governments must notify **permitholders** about the specific reasons why the buildings plans do not comply with the Building Code or the Fire Prevention Code, if they make or require **substantive changes to building plans after the permit is issued**.

According to construction industry representatives, there have been industry reports that building inspectors and local fire officials are making substantive changes to building plans after the building permit has been issued, which deviate from the Building Code or Fire Prevention Code. These changes can lead to delays in construction and can also increase the costs of construction.[77]

Building Plans Requirements– Effect of the Bill

The bill provides that after a local enforcement agency or local government issues a building permit, the local government may not make or require any substantive changes to the building plans unless the changes are required for compliance with the Building Code, the Fire Prevention Code, or local amendments thereto.

If changes are needed after the permit has been issued, the local enforcement agency must identify specific parts of the plan that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the permitholder.

The bill provides that if the building code administrator or inspector requests another person to review the plans and such person identifies specific plan features that do not comply with the Building Code, the building code administrator or inspector must provide this information to the local enforcing agency.

The bill provides that a plans reviewer or inspector who fails to provide the building code administrator with the reasons for making or requiring substantive changes to building plans is subject to discipline against their license.

The bill provides that a building code administrator who fails to provide a permit applicant or permit holder with the reasons for making or requiring substantive changes to building plans is subject to discipline against his or her license.

The bill provides that if a county, municipality, or special district concludes that the building plans for a building permit application do not comply with the Florida Fire Prevention Code or Life Safety Code or local amendments thereto, the local fire official must identify the specific parts of the plan that do not comply with the applicable codes, identify the specific chapters and sections upon which the determination is based, and provide the information to the permit applicant.

[75] S. 553.79(2), F.S.
[76] S. 553.79(1), F.S.
[77] Testimony from Representative Randall Scott Maggard, *1/12/2022 House Regulatory Reform Subcommittee*, https://thefloridachannel.org/videos/1-12-22-house-regulatory-reform-subcommittee/ (last visited Feb. 13, 2023); Email from Edward Briggs, Vice President of Government Relations & Community Affairs for RSA Consulting Group, LLC, Florida Refrigeration and Air Conditioning Contractors Association, RE: HB 89 Back Up HVA Training (Jan. 10, 2023).

If the local fire official requires changes to a permit that has already been issued, and fails to cite specific parts in the plans that need changes to comply with the applicable codes and does not provide the information to the permit applicant, the local fire official is subject to disciplinary action against his or her license.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 489.105, F.S., relating to definitions.
Section 2. Amends s. 553.79, F.S., relating to permit application and issuance.
Section 3. Amends s. 633.208, F.S., relating to minimum fire safety standards.
Section 4. 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:

The impact on revenues is unknown.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There would be a positive economic impact for class A air-conditioning contractors and homeowners as they would be able to complete more tasks without needing to refer homeowners to an electrical contractor.

There may be a negative economic impact for electrical contractors who work on the line side of HVAC systems.

The bill may have a positive impact on construction industry professionals and companies due to increased information on completing a permit application timely.

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:

According to DBPR, the BCAIB may need to engage in rulemaking to develop penalty guidelines for the new violations established by the bill.[78] In addition, the Florida Building Commission will need to engage in rulemaking to add the new permit requirements to the Florida Building Code.[79]

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill inserts the ability to work on the line side, and appears to inadvertently remove the ability to work on the load side. This may potentially take away the Class-A air conditioning contractors' existing ability to work on the load side.

The bill references both the Florida Fire Prevention Code and the Life Safety Code in the permitting provisions. The Life Safety Code is a national model code (NFPA 101) which is incorporated into the Florida Fire Prevention Code.[80] Thus, referring to the Florida Fire Prevention Code without referring to the Life Safety Code would likely be adequate.[81]

DBPR states it may not have enough time for any necessary rulemaking by the Building Code Administrators and Inspectors Board and the Florida Building Commission to be completed by July 1, 2023.[82]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[78] Florida Department of Business and Professional Regulation, Agency Analysis of 2023 House Bill 89, p. 3 (January 11, 2023); *See generally*, Rule 61G19-5.002, F.A.C.
[79] *Id.*; *See generally*, Rule 61G20-1.001, F.A.C.
[80] *Id.*; *see also* 86-60 Fla. Op. Att'y Gen. (1986)
[81] *Id.*
[82] *Id.* at 6.

A bill to be entitled

An act relating to building construction; amending s. 489.105, F.S.; revising the definition of the term "class A air-conditioning contractor"; amending s. 553.79, F.S.; requiring local building code administrators or inspectors to provide certain information to the local enforcing agency; prohibiting local enforcing agencies from making or requiring substantive changes to plans or specifications after a permit has been issued; providing exceptions; requiring local enforcing agencies that require substantive changes to plans or specifications after a permit has been issued to provide certain information to the permitholder; providing that a building code administrator, inspector, or plans reviewer is subject to disciplinary action under certain circumstances; amending s. 633.208, F.S.; requiring local fire officials to provide certain information to a permit applicant if building plans do not comply with the Florida Fire Prevention Code or Life Safety Code; prohibiting a municipality, county, or special district from making or requiring substantive changes to building plans after a permit has been issued; providing exceptions; requiring a local fire official to provide certain information to the permitholder if

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

a municipality, county, or special district requires substantive changes to building plans after a permit is issued; providing that a local fire official who is a certified firesafety inspector is subject to disciplinary action under certain circumstances; providing an effective date.

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

Section 1. Paragraph (f) of subsection (3) of section 489.105, Florida Statutes, is amended to read:

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height;

and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(f) "Class A air-conditioning contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, and pneumatic control piping; to replace, disconnect, or reconnect power wiring, breakers, or fuses on the line ~~load~~ side of the dedicated existing electrical circuit disconnect switch; to replace, disconnect, or reconnect air-conditioning disconnect switches and boxes; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control

wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class A air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

Section 2. Subsection (2) of section 553.79, Florida Statutes, is amended to read:

553.79 Permits; applications; issuance; inspections.—

(2)(a)1. Except as provided in subsection (8), an enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building or structure until the local building code administrator or inspector has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found the plans to be

in compliance with the Florida Building Code. If the local building code administrator or inspector finds that the plans are not in compliance with the Florida Building Code, the local building code administrator or inspector shall identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. If the building code administrator or inspector requests another person to review the plans and such person identifies specific plan features that do not comply with the applicable codes, the building code administrator or inspector must provide this information to the local enforcing agency. The local enforcing agency shall provide this information to the permit applicant.

2. ~~In addition,~~ An enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building until the appropriate firesafety inspector certified pursuant to s. 633.216 has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found that the plans comply with the Florida Fire Prevention Code and the Life Safety Code. Any building or structure which is not subject to a firesafety code shall not be required to have its plans reviewed by the firesafety inspector.

3. Any building or structure that is exempt from the local

building permit process may not be required to have its plans reviewed by the local building code administrator. Industrial construction on sites where design, construction, and firesafety are supervised by appropriate design and inspection professionals and which contain adequate in-house fire departments and rescue squads is exempt, subject to local government option, from review of plans and inspections, providing owners certify that applicable codes and standards have been met and supply appropriate approved drawings to local building and firesafety inspectors.

4. The enforcing agency shall issue a permit to construct, erect, alter, modify, repair, or demolish any building or structure when the plans and specifications for such proposal comply with the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as determined by the local authority in accordance with this chapter and chapter 633.

(b) After the local enforcing agency issues a permit, the local enforcing agency may not make or require any substantive changes to the plans or specifications except changes required for compliance with the Florida Building Code, the Florida Fire Prevention Code, or the Life Safety Code, or local amendments thereto. If a local enforcing agency makes or requires substantive changes to the plans or specifications after a permit is issued, the local enforcing agency must identify the specific plan features that do not comply with the applicable

codes, identify the specific code chapters and sections upon which the finding is based, and provide the information to the permitholder.

(c)1. A plans reviewer or inspector who fails to provide the building code administrator with the reasons for making or requiring substantive changes to the plans or specifications is subject to disciplinary action against his or her certificate under s. 468.621(1)(i).

2. A building code administrator who fails to provide a permit applicant or permitholder with the reasons for making or requiring substantive changes to the plans or specifications is subject to disciplinary action against his or her certificate under s. 468.621(1)(i).

Section 3. Subsection (2) of section 633.208, Florida Statutes, is amended to read:

633.208 Minimum firesafety standards.—

(2)(a) Pursuant to subsection (1), each municipality, county, and special district with firesafety responsibilities shall enforce the Florida Fire Prevention Code as the minimum firesafety code required by this section.

(b) If a municipality, county, or special district determines that the building plans for a building permit application do not comply with the Florida Fire Prevention Code or Life Safety Code, or local amendments thereto, the local fire official must identify the specific plan features that do not

comply with the applicable codes, identify the specific code chapters and sections upon which the determination is based, and provide this information to the permit applicant.

(c) After a municipality, county, or special district issues a building permit, it may not make or require any substantive changes to the building plans except those required for compliance with the Florida Fire Prevention Code or Life Safety Code, or local amendments thereto. If a municipality, county, or special district makes or requires substantive changes to building plans after a permit is issued, the local fire official must identify the specific plan features that do not comply with the Florida Fire Prevention Code or Life Safety Code, or local amendments thereto, identify the specific code chapters and sections upon which the finding is based, and provide this information to the permitholder.

(d) A local fire official, who is also a certified firesafety inspector, who fails to comply with paragraph (b) or paragraph (c) is subject to disciplinary action against his or her certificate under s. 633.216(6)(f).

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

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 89 by Rep. Maggard
Building Construction

AMENDMENT SUMMARY
March 9, 2023

Amendment 1 by Rep. Maggard (line 35):

- Clarifies when a Class A A/C contractor may work on the line side, specifying that they may work on the line side of the switch, but not on the main breaker.
- Allows mechanical contractors to perform the same limited work on the line side.
- Clarifies that if a person or employee other than a building official, plans examiner, or inspector identifies a specific issue with building plans, the information must be given to the permit applicant.
- Requires written notice to be given to the permit applicant when the plans do not meet the Building Code.

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 Maggard offered the following:

Amendment

Remove lines 35-153 and insert:

Section 1. Paragraphs (f) and (i) of subsection (3) of section 489.105, Florida Statutes, is amended to read:

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for

others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(f) "Class A air-conditioning contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, and

pneumatic control piping; to replace, disconnect, or reconnect power wiring, breakers, or fuses on the load side of the dedicated existing electrical circuit disconnect switch; to replace, disconnect, or reconnect power wiring, breakers, or fuses on the line side directly connected to the dedicated existing electrical circuit disconnect switch and not the main breaker; to replace, disconnect, or reconnect air-conditioning disconnect switches and boxes; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class A air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(i) "Mechanical contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, lift station equipment and piping, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, gasoline tanks and pump installations and piping for same, standpipes, air piping, vacuum line piping, oxygen lines, nitrous oxide piping, ink and chemical lines, fuel transmission lines, liquefied petroleum gas lines within buildings, and natural gas fuel lines within buildings; to replace, disconnect, or reconnect power wiring<u>, breakers, or fuses</u> on the load side of the dedicated existing electrical <u>circuit</u> disconnect switch; <u>to replace, disconnect, or reconnect power wiring, breakers, or fuses on the line side directly connected to the dedicated existing electrical circuit</u>

disconnect switch and not the main breaker; to replace, disconnect, or reconnect air-conditioning disconnect switches and boxes; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as potable water lines or connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring. A mechanical contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

Section 2. Subsection (2) of section 553.79, Florida Statutes, is amended to read:

553.79 Permits; applications; issuance; inspections.—

(2)(a)1. Except as provided in subsection (8), an enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building or structure until the local building code administrator or inspector has reviewed the plans and specifications required by the Florida Building Code, or local

amendment thereto, for such proposal and found the plans to be in compliance with the Florida Building Code. If the local building code administrator or inspector finds that the plans are not in compliance with the Florida Building Code, the local building code administrator or inspector shall identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. If the building code administrator, plans examiner, or inspector requests another local enforcing agency employee or a person contracted by the local enforcement agency to review the plans and such employee or person identifies specific plan features that do not comply with the applicable codes, the building code administrator, plans examiner, or inspector, must provide this information to the local enforcing agency. The local enforcing agency shall provide this information to the permit applicant.

2. ~~In addition,~~ An enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building until the appropriate firesafety inspector certified pursuant to s. 633.216 has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found that the plans comply with the Florida Fire Prevention Code and the Life Safety Code. Any building or structure which

is not subject to a firesafety code shall not be required to have its plans reviewed by the firesafety inspector.

3. Any building or structure that is exempt from the local building permit process may not be required to have its plans reviewed by the local building code administrator. Industrial construction on sites where design, construction, and firesafety are supervised by appropriate design and inspection professionals and which contain adequate in-house fire departments and rescue squads is exempt, subject to local government option, from review of plans and inspections, providing owners certify that applicable codes and standards have been met and supply appropriate approved drawings to local building and firesafety inspectors.

4. The enforcing agency shall issue a permit to construct, erect, alter, modify, repair, or demolish any building or structure when the plans and specifications for such proposal comply with the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as determined by the local authority in accordance with this chapter and chapter 633.

(b) After the local enforcing agency issues a permit, the local enforcing agency may not make or require any substantive changes to the plans or specifications except changes required for compliance with the Florida Building Code, the Florida Fire Prevention Code, or the Life Safety Code, or local amendments thereto. If a local enforcing agency makes or requires

substantive changes to the plans or specifications after a permit is issued, the local enforcing agency must identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide the information to the permitholder in writing.

HB 221

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 221 Sales of Firearms and Ammunition
SPONSOR(S): Snyder and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 214

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

SUMMARY ANALYSIS

A Merchant Category Code (MCC) is a code used by credit card payment associations that categorizes where a credit card purchase is made without showing the specific items that were purchased. Payment organizations use the MCC codes to classify different merchants and businesses by goods or services so that they can track and restrict transactions, report taxes, interchange promotions, gather information on purchasing behaviors, file reports with the Internal Revenue Service (IRS), determine rewards, identify high-risk business models and prohibited business types, and track customer spending.

Historically, MCCs have allowed retailers who sell firearm and ammunition to be categorized under general retail or sporting goods stores. Recently, the International Organization for Standardization (ISO) updated the MCC and created a new MCC for firearm and ammunition retailers. Some argue that the information gathered from the use of this new code could be construed as a firearm registry maintained by private entities.

The bill:

- Prohibits payment settlement entities, merchant acquiring entities, or third-party settlement organizations from classifying merchants or assigning them with an MCC that identifies them as sellers of firearms or ammunition; and
- Authorizes the Department of Agriculture and Consumer Services (DACS) to conduct investigations of alleged violations and bring an administrative action seeking to impose a Class III administrative fine for violations.

The fiscal impact on state government is unknown.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation of Merchant Category Codes When Purchasing Firearms

Merchant Category Codes

The International Organization for Standardization (ISO) is an independent, non-governmental organization that develops international standards. One of the standards that the ISO created are the Merchant Category Codes (MCC). The MCCs are used by Mastercard, Visa, Amex, and other major card payment organizations.[1] The MCCs are a 4-digit number that is assigned to a merchant by an acquiring bank in compliance with the card association. Once the business opens a merchant account with the MCC, the business is classified by that market segment and it allows the business to begin accepting credit cards as a form of payment.[2]

Payment organizations use the MCC codes to classify different merchants and businesses by the goods or services they offer so that they can track and restrict transactions, report taxes, interchange promotions, gather information on purchasing behaviors, file reports with the Internal Revenue Service (IRS), determine rewards, identify high-risk business models and prohibited business types, and track customer spending.[3]

Merchant Category Codes in Relation to Firearms

An MCC shows where the purchase is made, but it does not show the specific items that were purchased. Each credit card network has its own master list of MCCs. There are many codes that are being standardized based on the ISO standard, but some financial organizations, third party settlement organizations, or processors have their own MCC lists.[4]

Historically, retailers who sell firearms and ammunition have been assigned an MCC of general retail stores or sporting goods stores.[5] On September 7, 2022, the ISO approved an application by a New York-based bank to adopt a new MCC for firearm retailers, which includes a gun code for "gun and ammunition shops."[6] MCCs adopted by the ISO are not required to be used, but card associations like Visa, MasterCard, and American Express, have all agreed to use the new MCC.[7] However, Visa and MasterCard have not yet updated their lists to include the new MCC for firearm retailers.[8]

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[1] The ISO, *About Us & Retail financial services – Merchant category codes*, https://www.iso.org/about-us.html#:~:text=ISO%20is%20an%20independent%2C%20non-governmental%20international%20organization%20with,support%20innovation%20and%20provide%20solutions%20to%20global%20challenges (last visited Feb. 28, 2023).

[2] Dwyer, B., *CardFellow, Merchant Category Code: Reporting & Rates (2020)*, Apr. 6, 2020, https://www.cardfellow.com/blog/merchant-category-code-mcc/ (last visited Feb. 28, 2023).

[3] Citi, *Merchant Category Codes*, Treasury and Trade Solutions, available at https://www.citibank.com/tts/solutions/commercial-cards/assets/docs/govt/Merchant-Category-Codes.pdf (last visited Feb. 28, 2023).

[4] Motola, C., *Merchant Maverick, Merchant Category Codes (MCC): All You Need to Know*, May 26, 2021, https://www.merchantmaverick.com/merchant-category-code-mcc/ (last visited Feb. 28, 2023).

[5] Kerber, R., Reuters, *Global Standards Body Approves New Merchant code for Gun Sellers*, Sept. 9, 2022, https://www.reuters.com/world/exclusive-global-standards-body-approves-new-merchant-code-gun-sellers-2022-09-09/ (last visited Feb. 28, 2023).

[6] *See id* at The ISO.

[7] Mion, L., Fox Business, *Visa, MasterCard, Amex, to Categorize Gun Store Sales Separately*, Sept. 11, 2022, https://www.foxbusiness.com/economy/visa-mastercard-amex-categorize-gun-store-sales-separately (last visited Mar. 1, 2023).

[8] Visa MCC Manual; MasterCard, *Quick Reference Booklet – Merchant Edition*, Nov. 15, 2018, https://www.mastercard.us/content/dam/mccom/en-us/documents/rules/quick-reference-booklet-merchant-edition.pdf (last visited Feb.

17, 2023) (In Visa's and MasterCard's MCC lists, noting firearms under codes 5099 and 5999, for durable goods (not elsewhere classified) and miscellaneous and specialty retail shops, respectively).

Advocates in support of the new MCC note that this helps to identify and report suspicious activity, such as unusually large purchases of weapons or ammunition.[9] Opponents of the new MCC, have concerns that the new MCC may be too close to a national registry for gun owners.[10]

On September 20, 2022, twenty-four attorneys general, including the Florida Attorney General, sent a letter to Visa, MasterCard, and American Express, expressing concerns about the possibility to misuse the new MCC by tracking data which could infringe upon consumers privacy. In addition, they stated it could result in "arbitrary disparate treatment" of firearm retailers and consumers because the new MCC would only capture firearm purchases from gun retailers but not from department stores.[11]

Current Situation of Credit Card Laws

Relevant Federal Credit Card Laws

Anti-money Laundering Laws

Anti-money Laundering Laws, aim to detect and prevent money laundering and deter financial criminal activity.[12] One provision in these laws, authorizes the Secretary of the Treasury to require any financial institution or those related to financial institutions, to report any suspicious transactions.[13] Banks, federally and non-federally regulated, are required to establish anti-money laundering programs which must meet specified requirements.[14] This includes ongoing monitoring to identify and report suspicious activity and transactions.[15] The U.S. Department of Homeland Security website contains "Signs of Suspicious Activity" which displays images and a description of categories for signs of suspicious activities, one of which is firearm related.[16]

Internal Revenue Code

Payment settlement entities are required to make an annual return to the Internal Revenue Service (IRS) which contains, the gross amount of the reportable payment transactions[17] for each participating payee.[18] The Secretary has the authority to determine the time, form, and manner in which the return must be made,[19] and is reported through Form 1099-K. The form contains a box to report the MCC assigned to the participating payee. The MCC may be excluded from the form if the filing entity uses an industry classification system other than or in addition to MCCs or is a third-party settlement organization.[20] Broadly speaking, the MCCs classify businesses based on what they predominately furnish, services or goods. Payments for services are reportable whereas payments for goods are not reportable.[21]

Relevant Florida Credit Card Laws

Relevant Florida laws that relate to credit cards[22] are contained in the Financial Institutions Code and the Consumer Protection Act.[23] Florida's Credit Card Bank Act provides that a credit card account between a domestic lender or credit card bank and a borrower must be governed by the laws of Florida or federal law unless otherwise expressly agreed in writing by the parties but such writing may not supersede the interest rate provisions of s. 655.954, F.S.[24] Florida consumer protection laws set out a limited number of protections relating to credit cards, such as provisions relating to issuing credit cards, imposing a surcharge, or printing certain information on a merchant's receipt.[25] No provisions were identified that explicitly restrict or address the use of MCCs.

Similar Pending Legislation in Other States Related to MCCs

Pending legislation that addresses similar issues:

Kentucky HB 221: Purchases from Licensed Gun Dealers (2023)	Creates a new section to prohibit credit card companies, financial institutions, or other persons from using an MCC or other method that categorizes purchases from licensed gun dealers separately from other retailers.[26]

Mississippi HB 1110: Second Amendment Financial Privacy Act (2023) - PASSED	Prohibits a financial institution or its agent from requiring or "assigning" a specific firearm or ammunition merchant code to any firearms business located in Mississippi.[27]
Texas HB 2041: Notice to Consumers Regarding Firearm or Ammunition Transactions (2023-2024)	Requires notice given to consumers when a financial institution generates or collects prohibited firearm or ammunition purchase information.[28]
West Virginia SB 555: Prohibiting Banks and Payment Networks from Tracking Firearm-related Data and Outlining Penalties (2023)	Prohibits banks and payment networks from tracking firearm-related data and outlines penalties regarding the state and local purchasing card contract if banks and payment networks track firearm-related data.[29]

Current Situation Firearms Records

Background

The Second Amendment states "a well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."[30] As with many amendments in the Constitution, the courts have had to evaluate how far the right extends. The Supreme Court has determined that the individual right to keep and bear arms is not unlimited.[31] Many cases have evaluated the right to bear arms, how far the right extends, and the records that can be kept regulating gun owners.[32]

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[9] CBS New York Team, CBS New York, *New York Leaders Call for Establishment of Merchant Category Code for Gun and Ammunition Stores*, Aug. 30, 2022, https://www.cbsnews.com/newyork/news/new-york-gun-ammunition-store-merchant-category-code/#:~:text=August%2030%2C%202022%20%2F%207%3A44%20PM%20%2F%20CBS,merchant%20category%20code%20for%20gun%20and%20ammunition%20stores (last visited Mar. 1, 2023).

[10] Marek, L. Industry Dive. *Visa Raises Concerns on New Gun Code*, Sept. 14, 2022, https://www.paymentsdive.com/news/visa-concerns-new-gun-code-payments-nra/631845/ (last visited Mar. 1, 2023).

[11] Skrmetti, J. and others, Letter from Attorneys General to Card Associations regarding MCCs, *Tennessee State Government*, International Organization for Standardization (ISO), https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2022/pr22-36-letter.pdf (last visited Mar. 1, 2023).

[12] 31 U.S.C. s. 5311(2) and (3).

[13] 31 U.S.C. s. 5318(g)(1).

[14] 31 C.F.R. 1020.210.

[15] 31 C.F.R. 1020.10(a)(2)(v)(B) and (b)(2)(v)(B).

[16] The United States Department of Homeland Security, *Recognize Suspicious Activity*, https://www.dhs.gov/see-something-say-something/recognize-the-signs (last visited Mar. 1, 2023).

[17] 26 U.S.C. s. 6050W(c) defines "reportable payment transaction" as any payment card or third-party network transaction.

[18] 26 U.S.C. s. 6050W(a).

[19] *Id*.

[20] IRS, *Instructions for Form 1099-K (01/2022)*, Jan. 2022, https://www.irs.gov/pub/irs-pdf/i1099k.pdf (last visited Mar. 1, 2023).

[21] *Id*.

[22] S. 658.995(2)(a), F.S.

[23] S. 655.005(1)(i), F.S.

[24] S. 658.995(2)(d), F.S.

[25] S. 658.995(3), F.S.

[26] KY HB 221.

[27] Mike Maharrey, *Mississippi House Passes Bill to Prohibit Using Credit Card Information to Track Firearms Purchases*, Tenth Amendment Center, Feb. 13, 2023, https://blog.tenthamendmentcenter.com/2023/02/mississippi-house-passes-bill-to-prohibit-using-credit-card-information-to-track-firearms-purchases/#:~:text=Titled%20the%20Second%20Amendment%20Financial%20Privacy%20Act%2C%20the,code%20to%20any%20firearms%20business%20located%20in%20Mississippi (last visited Mar. 1, 2023).

[28] TX HB 2041.

[29] WV SB 555.

[30] U.S. Const. am. 2.

[31] *Heller v. District of Columbia*, 670 F. 3d 1244, 1254-55 (D.C.Cir.2011).

[32] *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 213 L. Ed. 2d 387, 142 S. Ct. 2111 (2022).

Federal Records Requirements

In 1938, the Federal Firearms Act[33] created a regulation for those selling certain firearms. Firearm sellers were required to obtain a Federal Firearms License to **maintain records** with the name and address of those who bought a firearm.[34]

Following the assassinations of President John F. Kennedy, Senator Robert Kennedy, and Dr. Martin Luther King, Jr., Congress passed the Gun Control Act of 1968 (GCA).[35] The GCA required individuals engaged in the business of dealing in firearms to obtain a federal license, prohibited transfers of firearms to certain persons, restricted the interstate transportation, and regulated the importation not suitable for sporting purposes.

Persons engaged in the business of manufacturing, importing, or dealing in firearms - referred to as "federal firearms licensees" (FFLs) - must obtain a license from the Secretary of the Treasury. The license entitles the holder to ship, transport, and receive firearms in interstate or foreign commerce. The FFL **must maintain records** of all acquisitions and dispositions of firearms and comply with applicable state and local laws in transferring firearms. The **recordkeeping requirements** help allow some crime guns to be traced. Combined with other obligations and restrictions imposed on firearms dealers, manufacturers, and importers, these requirements help provide a basis for investigating illegal firearms trafficking.[36]

In 1986, the Firearm Owners' Protection Act (FOPA)[37] passed which amended many provisions in the Gun Control Act of 1968.[38] Congress loosened several controls it had previously established in the GCA, **including records requirements**.[39]

The provisions that **prohibit any rule or regulation** from requiring records to be kept related to firearms also prohibits those records from being recorded or **transferred to a facility owned, managed, or controlled by the United States, any State, or any political subdivision**. FOPA also directly prohibits any registration systems of firearms, firearm owners, or firearms transactions from being established. However, the Secretary can inquire into a firearm in the course of a criminal investigation.[40]

The law requires a licensed importer, manufacturer, or dealer to **handle records** of firearms transactions and national instant criminal background checks in a certain manner.[41] In certain instances the criminal background check system **must destroy all records**.[42] In other instances, the dealer

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[33] 15 U.S.C. s. 901-910.

[34] Robert Longley, *Timeline of Gun Control in the United States*, ThoughtCo, Jan. 8, 2023, https://www.thoughtco.com/us-gun-control-timeline-3963620 (last visited Mar. 1, 2023).

[35] P.L. 90-351, OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968, Senate Report (Judiciary Committee) No. 90-1097, Apr. 29, 1968.

[36] The Enforcement Branch of the Alcohol and Tobacco Tax Division of the Internal Revenue Service initially enforced the GCA. On July 1, 1972, the Bureau of Alcohol, Tobacco and Firearms (ATF) was created as an independent Bureau within the Treasury Department.

[37] 18 U.S.C ch. 44 s. 921 et seq.

[38] 18 U.S.C. ch. 44 s. 921 (amended)

[39] *Id*. See Gun Violence Reduction: National Integrated Firearms Violence Reduction Strategy Appendix C, History Of Federal Firearms Laws In The United States, https://www.justice.gov/archive/opd/AppendixC.htm#:~:text=Kennedy%2C%20Senator%20Robert%20Kennedy%2C%20and,the%20federal%20regulation%20of%20firearms. (It also opened up certain loopholes allowing gun sales from people that are not dealers. Allowing FFLs to temporarily conduct business at gun shows; narrowing the scope of those who are required to be licensed: "hobby," or who "sell all or part of a personal collection;" reducing the criminal penalties for certain recordkeeping offenses; prohibiting ATF from computerizing firearms purchase records; permitting sales of ammunition without a license; allowing a convicted felon to obtain firearms where the convicting jurisdiction automatically restored the felons' civil rights.)

[40] 18 U.S.C. s. 926(a).

[41] 18 U.S.C. s. 922(t).

[42] 18 U.S.C. s. 922(t)(2).

through the attorney general must report certain information, such as the identity of the person, to the local law enforcement authority.[43]

Florida Firearm Regulations

The Florida Constitution guarantees:

> SECTION 8. Right to bear arms.—
> (a) The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.
> (b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. ….”[44]

Generally, a person does not need a license to possess or use a firearm in Florida. However, a person is prohibited from openly carrying a firearm on or about his or her person unless the person is a law enforcement officer or engaged in certain activities, such as hunting, camping, or military service.[45],[46]

Florida Records Related Requirements

The Department of Agriculture and Consumer Services (DACS) is in charge of issuing a concealed weapon or firearm license to a person who meets the specified qualifications under s. 790.06, F.S.[47] Personal identifying information for applicants or concealed weapons licensees are **confidential and exempt** from public records disclosure requirements under s. 119.07(1), F.S., and s. 24(a), Art. 1 of the State Constitution.[48]

Any records pertaining to a buyer or transferee who is not prohibited from receipt or transfer of a firearm under federal or Florida law and whose records are created by the Florida Department of Law Enforcement (FDLE) to conduct the criminal history record check are **confidential and exempt.** These records **may not be disclosed by the FDLE** to any person or to another agency. The FDLE must destroy these records after communicating the approval or non-approval numbers to the licensee and no later than 48 hours after responding to the licensee’s request.[49] However, the FDLE may maintain records of National Crime Information Center transactions as required under federal law, and may keep:

- A log of dates of requests for criminal history records checks;[50]
- Unique approval and non-approval numbers;
- License identification numbers; and
- Transaction numbers corresponding to such dates for a period of no longer than 2 years or as otherwise required by law.

These provisions may not be construed to allow the State of Florida to maintain records containing the names of purchasers or transferees who receive unique approval numbers or to keep records of firearm transactions.[51] Any current or former officer or employee of the FDLE or law enforcement agency who intentionally or maliciously violates these provisions is guilty of a third-degree felony.[52]

Effect of the Bill

[43] 18 U.S.C. s. 925B(a).
[44] Art. I, s. 8(a), FLA. CONST.
[45] S. 790.053(3), F.S.
[46] S. 790.053(1), F.S.
[47] S. 790.06(2), F.S.
[48] S. 790.0601(1), F.S.
[49] S. 790.065(4)(a), F.S.
[50] S. 790.065(4)(b), F.S.
[51] S. 790.065(4)(c), F.S.
[52] S. 790.065(4)(d), F.S.

The bill includes legislative findings indicating that MCC codes, without a "substantial and historical business need" or requirement imposed by law, may frustrate the right to keep and bear arms and violate the reasonable privacy rights of lawful purchasers of firearms and ammunition.

The bill prohibits a payment settlement entity,[53] merchant acquiring entity,[54] or a third-party settlement organization[55] from classifying those who sell firearms or ammunition "separately from general merchandise or sporting goods retailers" under an MCC.

The bill authorizes DACS to:

- Investigate alleged violations; and
- Bring an administrative action seeking to impose a class III $10,000 fine[56] for each violation.

The effective date of the bill July 1, 2023.

B. SECTION DIRECTORY:

Section 1: amends s. 790.335(1)(a), F.S., to include an additional Legislative finding; adds s. 790.335(2)(b), F.S., related to prohibitions; amends the penalties in 790.335(4); authorizes DACS to investigate, and bring an administrative action and impose a Class III $10,000 fine.

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:

   Indeterminate. The Florida Department of Agriculture and Consumer Services (FDACS) would be granted statutory authority under this bill to investigate alleged violations of the MCC. FDACS would also be empowered to bring an administrative action and impose a Class III administrative fine for each violation. The office of Agricultural Law Enforcement (OALE) Regulatory Investigation Section would be in charge of investigating the unlawfully classified retailer violations and the Office of General Counsel would initiate and litigate the administrative actions. Currently, FDACS is not able to estimate fiscal impact on the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[53] 26 U.S.C. s. 6050W(d)(1)(A). The merchant acquiring entity or third-party settlement organization.
[54] 26 U.S.C. s. 6050W(b)(2). The bank or other entity that has the contractual obligation to pay merchants in settlement of credit card transactions.
[55] 26 U.S.C. s. 6050W(b)(3). The organization which has the contractual obligation to pay merchants of third-party network transactions, such as PayPal, Venmo, or CashApp.
[56] S. 570.971(1)(c), F.S.

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill may require DACS to create rules related to regulatory investigations.[57]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[57] S. 493.6103, F.S.

A bill to be entitled

An act relating to sales of firearms and ammunition; amending s. 790.335, F.S.; providing legislative findings; prohibiting payment settlement entities, merchant acquiring entities, or third party settlement organizations from assigning merchant category codes or otherwise classifying merchants of firearms or ammunition separately from general merchandise or sporting goods retailers; authorizing the Department of Agriculture and Consumer Services to investigate certain alleged violations and bring administrative actions; providing an exception to complaint investigations by state attorneys; making technical changes; providing an effective date.

WHEREAS, the International Standards Organization, based in Switzerland, recently approved a new merchant category code for firearm and ammunition merchants, and

WHEREAS, firearm and ammunition merchants historically have been classified as sporting goods retailers or general merchandise retailers, which has been sufficient for credit card companies' business needs, and

WHEREAS, according to advocates for the new merchant category code, the new code will allow credit card companies to flag "suspicious" transactions, ostensibly for the purpose of

predicting and preventing future gun violence, and

WHEREAS, proponents indicate that the new merchant category code is a "first step" but have given no guidance as to how to distinguish suspicious activity from lawful sales, and

WHEREAS, the use of either merchant category code cannot distinguish the sale of a firearm from the sale of a gun safe by a firearms and ammunition merchant, and

WHEREAS, the use of the new merchant category code to detect suspicious activities predicting future unlawful activity will likely discourage financial institutions from serving lawful retailers of firearms and ammunition and chill the lawful exercise of Second Amendment rights, and

WHEREAS, current law requires a firearm retailer to conduct a criminal history records check on a potential purchaser before delivering a firearm to the purchaser, and

WHEREAS, the new merchant category code may result in credit card companies reporting law abiding citizens to a law enforcement agency based on overbroad definitions of suspicious activity and the creation of a de facto gun registry and watchlists of law abiding citizens, and

WHEREAS, the use of the new merchant category code will likely make the job of law enforcement officers more difficult, as those purchasing a firearm from a firearm retailer for an unlawful purpose will likely purchase firearms with cash, cryptocurrency, or other means that are difficult or impossible

to trace, and

WHEREAS, developing appropriate regulations for the sale of firearms and ammunition while protecting the right of self-defense is the role of democratically elected officials, not the role of unelected bankers and foreign organizations, NOW, THEREFORE,

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

Section 1. Paragraph (a) of subsection (1) and subsections (2) and (4) of section 790.335, Florida Statutes, are amended to read:

790.335 Prohibition of registration of firearms; electronic records.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds and declares that:

1. The right of individuals to keep and bear arms is guaranteed under both the Second Amendment to the United States Constitution and s. 8, Art. I of the State Constitution.

2. A list, record, or registry of legally owned firearms or law-abiding firearm owners is not a law enforcement tool and can become an instrument for profiling, harassing, or abusing law-abiding citizens based on their choice to own a firearm and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution. Further, such a

list, record, or registry has the potential to fall into the wrong hands and become a shopping list for thieves.

3. A list, record, or registry of legally owned firearms or law-abiding firearm owners is not a tool for fighting terrorism, but rather is an instrument that can be used as a means to profile innocent citizens and to harass and abuse American citizens based solely on their choice to own firearms and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution.

4. The creation or maintenance of records of purchases of firearms or ammunition or the tracking of sales made by a retailer of firearms or ammunition by a nongovernmental entity, including a financial institution, without a substantial and historical business need or a requirement imposed by law, may frustrate the right to keep and bear arms and violate the reasonable privacy rights of lawful purchasers of firearms or ammunition.

5. Law-abiding firearm owners whose names have been illegally recorded in a list, record, or registry are entitled to redress.

(2) PROHIBITIONS.—

(a) A ~~No~~ state governmental agency or local government, special district, or other political subdivision or official, agent, or employee of the ~~such~~ state or other governmental entity or any other person, public or private, may not ~~shall~~

knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms.

(b) A payment settlement entity, merchant acquiring entity, or third party settlement organization as those terms are defined in s. 6050W of the Internal Revenue Code may not assign a merchant category code to or otherwise classify a merchant that is a seller of firearms or ammunition separately from general merchandise retailers or sporting goods retailers.

(4) PENALTIES.—

(a) Any person who, or entity that, violates paragraph (2)(a) ~~a provision of this section~~ commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as required by ~~the provisions of~~ s. 16, Art. I of the State Constitution or the Sixth Amendment to the United States Constitution, ~~no~~ public funds may not ~~shall~~ be used to defend the unlawful conduct of any person charged with a violation of this section, unless the charges against the ~~such~~ person are dismissed or the ~~such~~ person is determined to be not guilty at trial. Notwithstanding this paragraph, public funds may be expended to provide the services of the office of public defender or court-appointed conflict counsel as provided by law.

(c) The governmental entity, or the designee of the ~~such~~ governmental entity, in whose service or employ a list, record, or registry was compiled in violation of paragraph (2)(a) ~~this~~

~~section~~ may be assessed a fine of up to ~~not more than~~ $5 million~~,~~ if the court determines that the evidence shows that the list, record, or registry was compiled or maintained with the knowledge or complicity of the management of the governmental entity. The Attorney General may bring a civil cause of action to enforce the fines assessed under this paragraph.

(d) The Department of Agriculture and Consumer Services may investigate alleged violations of paragraph (2)(b) and, upon finding a violation, bring an administrative action seeking to impose an administrative fine pursuant to s. 570.971 in the Class III category for each violation of paragraph (2)(b) for each instance of an unlawfully classified retailer.

(e) The state attorney in the appropriate jurisdiction shall investigate complaints of criminal violations of this section, except for alleged violations of paragraph (2)(b), and shall prosecute violators~~,~~ where evidence indicates that a violation may have occurred~~, shall prosecute violators~~.

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

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

REGULATORY REFORM & ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 221 by Rep. Snyder
Sales of Firearms and Ammunition

AMENDMENT SUMMARY
March 9, 2023

Amendment 1 by Rep. Snyder (lines 110-143):

- Includes additional credit card payment and financial entities covered by the bill.
- Authorizes a merchant of firearms or ammunition to be assigned or use a merchant category code for general merchandise retailers or sporting goods retailers.
- Specifies that agreements or contractual provisions to the contrary are void and in violation of the public policy of this state.
- Authorizes the Department of Agriculture and Consumer Services to enforce violations.

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 Snyder offered the following:

Amendment (with title amendment)

Remove lines 110-143 and insert:

(c) An entity involved in facilitating or processing a payment card transaction, including, but not limited to, a financial institution, an acquirer, a payment card network, or a payment card issuer, may not assign to a merchant, or require a merchant to use, a merchant category code that classifies the merchant as a firearms or ammunition retailer or a similar classification. A merchant of firearms or ammunition may be assigned or may use a merchant category code for general merchandise retailers or sporting goods retailers. Any agreement

or contractual provision to the contrary is void in violation of the public policy of this state.

(4) PENALTIES.—

(a) Any person who, or entity that, violates paragraph (2)(a) ~~a provision of this section~~ commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as required by ~~the provisions of~~ s. 16, Art. I of the State Constitution or the Sixth Amendment to the United States Constitution, ~~no~~ public funds may not ~~shall~~ be used to defend the unlawful conduct of any person charged with a violation of this section, unless the charges against the ~~such~~ person are dismissed or the ~~such~~ person is determined to be not guilty at trial. Notwithstanding this paragraph, public funds may be expended to provide the services of the office of public defender or court-appointed conflict counsel as provided by law.

(c) The governmental entity, or the designee of the ~~such~~ governmental entity, in whose service or employ a list, record, or registry was compiled in violation of paragraph (2)(a) ~~this section~~ may be assessed a fine of up to ~~not more than~~ $5 million~~,~~ if the court determines that the evidence shows that the list, record, or registry was compiled or maintained with the knowledge or complicity of the management of the governmental entity. The Attorney General may bring a civil cause of action to enforce the fines assessed under this paragraph.

(d) The Department of Agriculture and Consumer Services may investigate an alleged violation of paragraphs (2)(b) or (c) and, upon finding a violation, bring an administrative action seeking to impose an administrative fine pursuant to s. 570.971 in the Class III category for each violation of paragraphs (2)(b) or (c) for each instance of an unlawfully classified retailer.

(e) The state attorney in the appropriate jurisdiction shall investigate complaints of criminal violations of this section, except for alleged violations of paragraph (2)(b) or (c), and shall prosecute violators~~,~~ where evidence indicates that a violation may have occurred~~, shall prosecute violators.~~

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

Remove line 9 and insert:
sporting goods retailers; prohibiting entities involved in facilitating or processing payment card transactions from assigning to or requiring a merchant to use certain merchant category codes; authorizing a merchant of firearms or ammunition to be assigned or to use certain merchant category codes; specifying that any agreement or contractual provision to the contrary is void and in violation of the public policy of this state; authorizing the Department

66

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.

Family and Medical Leave Act

[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.

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:
    - Employment,

[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)

    - 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 offenses, assault, offenses involving bodily harm, harassment, armed violence, obscene

[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*.

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, 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;
- Secure his or her home from the perpetrator, or his or her associates, of the homicide or seek new housing to escape;

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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.

- 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 of 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 post judicial 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]
- 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.

[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.

    - 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

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.

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[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 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.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 233 by Rep. Michael
Family and Household Members of Homicide Victims and Deceased Minors

AMENDMENT SUMMARY
February 23, 2023

Amendment 1 by Rep. Michael (line 60):

- Clarifies when an employee does not need to give their employer advanced notice of using their leave.
- Removes recourse for a person who is denied leave.
- Expands the list of investigative information required to be given to parents or guardians of deceased children to include contact information for any secondary law enforcement agencies.
- Makes clarifying and conforming changes.

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 Michael offered the following:

Amendment (with title amendment)

Remove lines 60-136 and insert:

leave, sick leave, and other compensatory time off, if applicable, that is available to the employee before receiving leave under this subsection unless the employer waives this requirement.

(4) 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, unless such advanced notice is not feasible due to the nature of the homicide. An employee must provide his or her employer with

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 this section.

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

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, and if more than one law enforcement agency is involved in the investigation, the

contact information for at least one of the secondary law enforcement agencies 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. This paragraph does not require a law enforcement agency to provide any of the

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

Remove lines 13-14 and insert:

rights; providing construction; amending s. 960.001, F.S.;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 331 Liens and Bonds
SPONSOR(S): Civil Justice Subcommittee, Overdorf
TIED BILLS: **IDEN./SIM. BILLS:** SB 624

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N, As CS	Mawn	Jones
2) Regulatory Reform & Economic Development Subcommittee		Wright	Anstead
3) Judiciary Committee			

SUMMARY ANALYSIS

Persons who provide services, labor, or materials for improving, repairing, or maintaining real property (except public property) may place a construction lien on the property if they are not paid for their services in certain situations and if they follow certain procedures set forth in ch. 713, F.S., Florida's construction lien law.

CS/HB 331:

- Modifies the notice of commencement, notice of termination, and notice of nonpayment forms.
- Allows licensed general or building contractors providing construction or program management services to claim construction liens for such services.
- Changes when a notice of termination must be recorded and served, and when such notice is effective.
- Modifies service requirements for documents required by the construction lien law.
- Modifies the available alternative forms of security that may be filed in lieu of a payment bond for public projects.
- Authorizes a person intending to make a claim against a payment bond to serve the surety with a copy of the notice of nonpayment, instead of an original document.
- Specifies that the methods for discharging a lien may also be used to release a lien, in whole or in part, and modifies the requirements for recording a satisfaction or release of lien with the clerk's office.
- Increases the bond amount and documentation necessary to deposit or file with the clerk's office to transfer a lien to a security.
- Entitles the prevailing party in an action to enforce a lien transferred to a security to recover reasonable attorney fees.
- Specifies that after a clerk's office records a notice of contest of claim against a payment bond or a notice of contest of lien and a certificate of service for such notice, the clerk must serve a copy of the recorded notice on the lienor and on the owner or the owner's attorney.
- Authorizes a building permit applicant to provide the issuing authority with the clerk's office official records identifying information in lieu of a certified copy of the notice or a notarized statement of filing.
- Increases the contract amount which excuses a building permit applicant from filing a copy of the notice of commencement or an authorized alternative with the issuing authority, from $2,500 to $7,500.
- Provides a method for computing time periods for recording a document or filing an action under the construction lien law and tolls such time periods in emergency circumstances.
- Repeals s. 713.25, F.S., an outdated provision relating to the applicability of ch. 65-456, L.O.F.
- Modifies the definition of "clerk's office" and defines "finance charge."

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida law seeks to ensure that people working on construction projects are paid for their work. Any person who provides services, labor, or materials for improving, repairing, or maintaining real property (except public property) may place a construction lien[1] on the property, provided the person complies with statutory procedures.[2] These procedures require the filing or serving of various documents, including a:

- Notice of Commencement;[3]
- Notice to Owner;[4]
- Claim of Lien;[5]
- Notice of Termination;[6]
- Waiver or Release of Lien;[7]
- Notice of Contest of Lien;[8]
- Contractor's Final Payment Affidavit;[9] and
- Demands of Written Statement of Account.[10]

To record a construction lien on real property, the lienor must record a claim of lien with the clerk's office in the county where the property is located and serve the owner with the claim of lien within 15 days of recording the lien.[11] If a claim of lien is not recorded, the lien is void to the extent that the failure to record the claim prejudices any person entitled to rely on service of the claim of lien.[12]

A person may file a claim of lien at any time during the progress of the work but may not file a claim of lien later than 90 days after the person's final furnishing of labor or materials.[13] A person may record a single claim of lien for multiple services or materials provided to different properties as long as such services or materials were provided under the same contract, the person is in privity with the owner, and the properties have the same owner.[14] However, a person may not record a single claim of lien for multiple services or materials if there is more than one contract, even if the contracts for services and materials are with the same owner.[15]

A construction lien extends to the right, title, and interest of the person who contracts for the improvement to the extent such right, title, and interest exists at the improvement's commencement or

[1] A lien is a claim against property that evidences a debt, obligation, or duty. Fla. Jur. 2d Liens s. 37:1.
[2] Ch. 713, F.S.
[3] S. 713.13, F.S.
[4] To secure construction lien rights, a person working on a construction project who is not in direct contract ("privity") with the owner must serve a notice to owner in the statutory form provided; laborers are exempt from this requirement. The notice informs the owner that someone with whom he or she is not in privity is providing services or materials on the property and that such person expects the owner to ensure he or she is paid. The notice must be served no later than 45 days after the person begins furnishing services or materials and before the date the owner disburses the final payment after the contractor has furnished his or her final payment affidavit. After receiving a notice to owner, the owner must obtain a waiver or release of lien from the notice's sender before paying the contractor, unless a payment bond applies, or risk payments to the contractor constituting improper payments that leave the owner liable to the notice sender if the contractor does not pay such person. *Stocking Bldg. Supply of Florida, Inc. v. Soares Da Costa Construction Services, LLC*, 76 So. 3d 313 (Fla 3d DCA 2011); S. 713.06, F.S.
[5] S. 713.08, F.S.
[6] S. 713.132, F.S.
[7] S. 713.20, F.S.
[8] S. 713.22(2), F.S.
[9] S. 713.06(3), F.S.
[10] S. 713.16, F.S.
[11] S. 713.08, F.S.
[12] S. 713.08(4), F.S.
[13] S. 713.08(5), F.S.
[14] S. 713.09, F.S.
[15] *Id.*; *see also Lee v. All Florida Construction Co.*, 662 So. 2d 365, 366-67 (Fla. 5th DCA 1995).

is acquired in the real property.[16] However, when a lessee makes an improvement under an agreement between the lessee and his or her lessor, the lien also extends to the lessor's interest unless:[17]

- The lease is recorded in the official records of the county where the property is located before the recording of a notice of commencement for improvements to the property and the lease's terms expressly prohibit such liability;
- The lease's terms expressly prohibit such liability, and a notice advising that leases for the rental of premises on a property prohibit such liability has been recorded in the official records of the county in which the property is located before the recording of a notice of commencement for improvements to the premises and the notice includes specified information; or
- The lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park.[18]

If a lease expressly provides that the lessor's interest will not be subject to the construction liens relating to improvements made by the lessee, the lessee must notify the contractor making any such improvements of the provision, and the knowing and willful failure of the lessee to provide such notice renders the contract voidable at the contractor's option.[19]

Notice of Commencement

Before construction begins, a private property owner or the owner's authorized agent must generally file a notice of commencement with the clerk's office[20] and post a copy of the notice on the property to be improved.[21] The notice of commencement determines the priority of construction liens, provides details needed to complete a notice to owner, establishes the date on which the statute of limitations begins to run, and protects owners from double payments.[22]

A notice of commencement must be substantially similar to the statutorily-authorized form and contain:

- Descriptions of the real property to be improved and the improvements;
- The name and address of the:
  - Owner, fee simple title holder (if not the owner),[23] contractor, and any person lending money for the project, along with a description of the owner's interest in the property;[24]
  - Surety[25] on a payment bond, if any, and the bond amount;
  - Persons, designated by the owner, upon whom notices may be served or who may receive a claim of lien;
- The notice's expiration date; and
- A warning in uppercase type that the notice must be recorded, and that payments made after the notice expires could be improper and lead to the owner paying twice.[26]

Further, a building permit applicant must generally file with the issuing authority, before the first inspection, either a certified copy of the recorded notice of commencement or a notarized statement that the notice was filed for recording, along with a copy of the notice; however, the applicant is excused from filing such a copy or statement with the issuing authority where the direct contract is for

[16] S. 713.10(1), F.S.
[17] *Id.*
[18] S. 713.10(2)(b), F.S.
[19] S. 713.10(2)(a), F.S.
[20] "Clerk's office" means the office of the clerk of the circuit court of the county in which the real property is located. S. 713.01(4), F.S.
[21] A notice of commencement is not required for direct contracts for $2500 or less or for air conditioning or heating system rep air or replacement for less than $7500. A notice of commencement is also not required for public construction projects because public property is not lienable. Ss. 713.01(26), 713.02(5), 713.13, and 713.135(1)(d), F.S.
[22] *Stocking Bldg. Supply,* So. 3d at 319; The Florida Senate Committee on Regulated Industries, *Review of the Florida Construction Lien Law*, November 2007, http://archive.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-149ri.pdf (last visited Feb. 14, 2023); Fred Dudley, William A. Buzzett, & Deborah Kaveney Kearney, *Construction Lien Law Reform: The Equilibrium of Change*, 18 Fla. St. U. L. Rev., 278 (1991).
[23] Fee simple title is an interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs. Black's Law Dictionary (11th ed. 2019).
[24] A lessee may contract for improvements as an owner but must be listed as the owner in the notice of commencement. S. 713.13(1)(a)3., F.S.
[25] A surety guarantees the performance or obligations of a second party (the principal) to a third party (the obligee) under a three-party contract. National Association of Security Bond Providers, *What are Surety Bonds*, https://www.nasbp.org/getabond/about-surety#:~:text=A%20surety%20bond%20is%20a,third%20party%20(the%20obligee) (last visited Feb. 14, 2023).
[26] S. 713.13(1)(a)-(d), F.S.

an amount less than $2,500.[27] If a certified copy of the notice of commencement is not filed with the issuing authority as required, the issuing authority may not perform or approve subsequent inspections until the applicant files the certified copy; however, the issuing authority is not liable in any civil action for failing to verify that the building permit applicant submitted a certified copy of the notice of commencement.[28]

Payment Bonds and Related Notices

A payment bond is a type of surety bond that generally guarantees that all subcontractors, laborers, and material suppliers will be paid for their work on or materials contributed to a construction project.[29] It forms a three-part contract between the owner, the contractor, and the surety to ensure that liens are not filed on the property, serving as the security for payment in lieu of the typical right to claim a lien. The payment bond must be furnished in at least the amount of the original contract price before beginning the construction project, and a copy of the bond must be attached to the recorded notice of commencement.[30]

For a private project, contractors are not obligated to obtain a payment bond, but current law requires contractors to obtain a payment bond for public projects over $100,000.[31] However, in lieu of the payment bond, a contractor working on a public project may file with the state, county, city, or other political authority an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit, or a security of a type listed in part II of chapter 625, F.S., dealing with investments.[32]

Before paying a subcontractor, laborer, or material supplier, a contractor may request that such person provide a waiver of right to claim against the payment bond. Such a waiver serves as a receipt acknowledging payment for services performed or materials provided and waives the ability to seek payment from the surety.[33] Current law provides a statutory form for a waiver of right to claim against a payment bond and prohibits a contractor from requiring anyone to sign a waiver that is substantially different from the form.[34]

If the general contractor fails to pay a subcontractor, laborer, or material supplier, such person may seek payment directly from the surety. In order to receive protection under a payment bond for a project, a subcontractor or material supplier[35] not in privity with the contractor must serve the contractor with a written notice of intent to seek protection under the bond.[36] Such notice must be served no later than 45 days after the first furnishing of services or materials for the project.[37]

An action to enforce a claim against the payment bond must be instituted against the contractor or the surety within one year after the performance of the labor or completion of delivery of the materials or supplies.[38] However, if a claimant is no longer furnishing labor, services, or materials on a project, a contractor may elect to shorten the time within which such an action must be commenced by serving a notice of contest of claim against the payment bond on the claimant and recording the notice in the clerk's office along with a certificate of service.[39] The claim of any claimant who is served with such notice and who fails to file a lawsuit to enforce his or her claim against the payment bond within 60 days of service is automatically extinguished.[40]

[27] S. 713.135(1)(d), F.S.
[28] S. 713.135(1)(d) and (3), F.S.
[29] S. 713.23, F.S.
[30] S. 713.23(1)(a), F.S.
[31] S. 255.05(1)(d), F.S.
[32] S. 255.05(7), F.S.
[33] Ss. 255.05(2), and 713.235, F.S.
[34] *Id.*
[35] Laborers are exempt from this requirement. Ss. 255.05(2)(a)2., 337.18(1)(c), and 713.23(1)(c), F.S.
[36] *Id.*
[37] Ss. 255.05(2)(a)2. and 713.23(1)(c), F.S.
[38] Ss. 255.05(10) and 713.23(1)(e), F.S.
[39] S. 255.05(2)(a)1. and 713.23(1)(e), F.S.
[40] *Id.*

Transfer of Liens to Security

Any construction lien claimed may be transferred from the real property to a security by a person with an interest in the real property or the contract under which the lien is claimed by either depositing money or filing a bond with the clerk's office.[41] Cash deposited or a bond filed to transfer a lien must be in an amount equal to the amount demanded in the lien, plus interest thereon at the legal rate for three years, plus $1,000 or 25 percent of the demanded amount, whichever is greater.[42] Once such a deposit is made, the clerk must record a certificate showing the transfer of the lien from the real property to the security, and upon the recording of such certificate, the real property is released from the lien, which is transferred to the security.[43]

However, any person having an interest in such security or the property from which the lien was transferred may file a complaint in the circuit court of the county where such security is deposited, or file a motion in a pending action to enforce a lien, for an order to require additional security, the reduction of security, a change or substitution of securities, the payment of discharge thereof, or any other matter affecting the security.[44]

Licensed General and Building Contractors

Licensed construction contractors are either certified by or registered with the Construction Industry Licensing Board ("CILB") within the Department of Business and Professional Regulation ("DBPR"). "Certified contractors" are persons who pass the state competency examination and obtain a certificate of competency issued by DBPR.[45] A certified contractor may perform contracting in any jurisdiction in the state without fulfilling the local jurisdiction's competency requirements.[46] "Registered contractors" are persons who have taken and passed a competency examination administered by a local government and who have then registered with DBPR.[47] A registered contractor may perform contracting only in the local jurisdiction where his or her license is issued.[48]

Contractors, whether certified or registered, may be "general contractors" or "building contractors." A general contractor is a person who may contract for and perform any type of construction service unless the work must be subcontracted to a licensed subcontractor.[49] A building contractor is a person who may contract for and perform construction services for commercial and residential buildings not exceeding three stories in height, or for any size building if the construction does not affect the building's structural frame, unless such work must be subcontracted to a licensed subcontractor.[50]

Current law allows a local government to hire a construction manager[51] and program manager[52] for its construction projects, and allows the state to hire a construction manager for state construction projects.[53] A construction or program manager hired by a local government is not required to be a licensed contractor, engineer, or architect, but if such person is not licensed, he or she must hire a licensed professional to perform any job requiring a license.[54] However, a construction manager hired by the state must be a licensed general or building contractor.[55]

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[41] S. 713.24(1), F.S.
[42] *Id.*
[43] *Id.*
[44] S. 713.24(3), F.S.
[45] S. 489.105(8), F.S.
[46] *Id.*
[47] S. 489.105(10), F.S.
[48] S. 489.103, F.S.
[49] Ss. 489.105(3), and 489.113, F.S.
[50] *Id.*
[51] A construction manager is responsible for the overall management of a construction project. DBPR does not regulate construction managers. The Florida Bar, *Florida Construction Law Practice*, Chapter 4: Rights and Liabilities of Construction Managers (9th ed. 2018).
[52] A program manager is "responsible for schedule control, cost control, and coordination in providing or procuring planning, design, and construction services." DBPR does not regulate program managers. S. 255.103(3), F.S.
[53] S. 255.32(2), F.S.
[54] *Id.*
[55] S. 255.32(1), F.S.

Though the construction lien law allows any person who provides services, labor, or materials for improving real property (except public property) to place a construction lien on the property,[56] it is unclear under Florida law if construction or program managers may do so because they do not necessarily provide labor, services, or materials that improves real property.[57]

Further, the lien law provides that a contractor may file a lien for any money owed to him or her for labor, services, or materials[58] but defines a "contractor" as any person other than a materialman or laborer who contracts with an owner to improve the owner's real property.[59] The definition also includes a licensed architect or engineer who improve real property through a design-build contract[60] but does not include a licensed general or building contractor providing construction or program manager services.[61] Some courts have determined that persons serving as construction or program managers may not file construction liens, even where such persons are licensed contractors.[62]

Notice of Termination

An owner may terminate a notice of commencement before it expires by recording a notice of termination that includes:

- All the information in the notice of commencement;
- The notice of commencement's reference numbers from the official records of the clerk's office and effective date;
- The date the notice of commencement is terminated, which may not be earlier than 30 days after the notice of termination is recorded;
- A statement that all persons who worked on the property have been paid in full; and
- A statement that the owner has served a copy of the notice of termination to the contractor and every person in privity with the owner who timely served a notice to owner.[63]

An owner may record a notice of termination after:

- Completion of the construction project; or
- Work stops on the project and every person who worked on the property has been paid.[64]

If the owner serves a copy of the notice of termination on every person in privity with the owner and who served a notice to owner before the recording of the notice of termination, a notice of commencement terminates 30 days after the notice of termination is recorded or on the termination date stated in the notice, whichever is later.[65]

Manner of Serving Documents

Documents authorized or required under the construction lien law, and notices to contractors for payment bonds for public construction projects, must be served by:

- Actual delivery to the person being served; if a partnership, to one partner; if a corporation, to an officer, director, managing agent, or business agent; or if a limited liability company, to a member or manager; or

[56] *See generally* ch. 713, F.S.
[57] Scott Wolfe, Jr., *Can Construction Managers File Mechanics Liens?*, https://www.levelset.com/blog/can-construction-managers-file-mechanics-liens/ (last visited Feb. 14, 2023).
[58] S. 713.05, F.S.
[59] S. 713.01(8), F.S.
[60] S. 713.01(8), F.S.
[61] *Id.*
[62] *See, e.g., O'Kon and Company, Inc. v. Riedel*, 540 So. 2d 836, 839-40 (Fla. 1st DCA 1988) ("Chapter 713, which provides for professionals offering services to file a lien for services, does not include 'project managers.'"); *see also, e.g., Medellin v. MLA Consulting, Inc.*, 69 So. 3d 372 (Fla. 5th DCA 2011) (A person cannot file a construction lien for home construction consulting services because it does not improve real property.); *See also* The Florida Bar, *supra* note 51.
[63] S. 713.132(1), F.S.
[64] S. 713.132(3), F.S.
[65] S. 713.132(4), F.S.

- Common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, to the person being served with postage or shipping paid by the sender and with evidence of delivery; or
- Posting on the construction site if service cannot be performed by the other two methods.[66]

Service of a document by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail is effective on the day the document is mailed, if it is:

- Sent to the last address shown in the notice of commencement or, in the absence of such a notice, to the last address shown in the building permit application or to the last known address of the person to be served; and
- Returned as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the item.[67]

However, for construction projects where there is a payment bond, a notice to contractor is effective on the date of mailing if:

- The notice is mailed by registered, Global Express Guaranteed, or certified mail, with postage prepaid, to the person to be served at the last address shown in the notice of commencement, the last address shown in the building permit application, or the last known address of the person being served;
- The notice is mailed within 40 days after the date the person first furnishes labor, services, or materials; and
- The person who served the notice maintains:
    - A registered or certified mail log that shows the mail number issued by the United States Postal Service ("USPS"), the name and address of the person served, and the date stamp of the USPS confirming the date of mailing; or
    - Electronic tracking records generated by the USPS containing the tracking number, the name and address of the person served, and verification of the date of receipt by the USPS.[68]

Current law also provides that service of a construction lien notice on one property owner or on one partner of a partnership that owns a property is deemed to provide notice to all owners or partners.[69]

Duration of Lien

An action to enforce a properly recorded construction lien must be brought within one year of recording or one year after the recording of an amended claim of lien showing a later final furnishing date, unless the owner of the subject property chooses to shorten the enforcement period by recording a notice of contest of lien in the clerk's office.[70] After a notice of contest of lien is filed, the clerk's office must serve a copy of the notice on the lienor at the address shown in the claim of lien, certify to such service and the date of service on the notice's face, and record the notice.[71] The lien of any lienor served with a notice of contest of lien who fails to sue to enforce the lien within 60 days of service of the notice is automatically extinguished.[72]

Discharge of Liens

A construction lien may be discharged by:

- Entering satisfaction of the lien on the margin of the lien document recorded with the clerk's office, if allowed by law;
- Filing satisfaction with the clerk's office;
- Failing to begin an action to enforce the lien within the statutorily-prescribed time frame;

[66] S. 713.18(1), F.S.
[67] S. 713.18(3), F.S.
[68] S. 713.18(2), F.S.
[69] S. 713.18, F.S.
[70] S. 713.22(1) and (2), F.S.
[71] S. 713.22(2), F.S.
[72] *Id.*

- Judicial order of the circuit court of the county where the property is located; or
- Recording in the clerk's office a court judgment or decree showing the action's final determination.[73]

Attorney Fees and Costs

The prevailing party in an action to enforce a lien or a claim against a payment bond is entitled to recover his or her reasonable attorney fees and costs.[74]

Computation of Time

Florida's construction lien law establishes many timeframes for filing or serving notices and other documents but does not specify a method for computing such time periods. However, Florida courts have noted that "the uniform rule in computing time periods is that the first day of the period is excluded from the computation, and the last day is included."[75] Further, where a statute does not specify a method for computing time, Rule 2.514 of the Florida Rules of Judicial Administration applies, providing that, when a time period is stated in days or a longer temporal unit, the parties should:

- Begin counting from the next day that is not a Saturday, Sunday, or legal holiday;
- Count every day, including intermediate Saturdays, Sundays, and legal holidays; and
- Include the last day of the period, unless that day is a Saturday, Sunday, or legal holiday, or falls within any time period extended through an order of the chief justice, in which case the time period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday and does not fall within any time period extended through an order of the chief justice.

Finance Charges

Chapter 713, F.S., does not define "finance charge," but uses the phrase "finance charges due under the lienor's contract" everywhere the phrase "finance charges" appears in the chapter. Thus, it can be inferred that the lienor's contract would define "finance charge" in the construction lien context.

Applicability of Ch. 65-456, Laws of Florida

Section 713.25, F.S., provides that ch. 65-456, Laws of Florida, takes effect on July 1, 1965, but does not apply to any act required to be done within a time period which is running on that date or to existing projects where its operation would impair vested rights.

[73] S. 713.21, F.S.
[74] S. 713.29, F.S.
[75] *Site-Prep, Inc. v. Tai*, 472 So. 2d 766 (Fla. 5th DCA 1985), *citing McMillen v. Hamilton*, 48 So. 2d 162 (Fla. 1950).

Effect of Proposed Changes

Notice of Commencement

CS/HB 331 modifies the statutorily-provided notice of commencement form to reflect that the person signing the notice may use an online notary.[76] Additionally, the bill:

- Authorizes a building permit applicant to submit the clerk's office[77] official records identifying information for the recorded notice of commencement, including the instrument number or the number and page of book, to the issuing authority in lieu of a certified copy of the notice or notarized statement of filing.
- Provides that the building permit issuing authority is not liable in any civil action for failing to verify that the building permit applicant submitted one of the acceptable forms of proof that the applicant filed a notice of commencement.
- Increases the contract amount which excuses a building permit applicant from filing a copy of the notice of commencement or an authorized alternative with the issuing authority, from $2,500 to $7,500.

Payment Bonds and Related Notices

The bill amends the service requirements for a notice of contest of claim against a payment bond to require that, after the contractor serves the notice on the person claiming against the payment bond ("the claimant") and records the notice with the clerk's office along with a certificate of service, the clerk must serve a copy of such recorded notice on the claimant and the contractor or his or her attorney.

The bill also:

- Modifies the notice of nonpayment form to reflect that the person signing the notice may use an online notary.
- Specifies that, while a lienor must still serve a notice of nonpayment on the general contractor to receive protection under a payment bond, he or she may serve a copy of the notice on the surety.
- For a construction project on a public building, if the payment bond is not recorded before the commencement of work or before the recommencement of work after a default or abandonment if applicable, the claimant may serve the notice to contractor up to 45 days after the date he or she is served with a copy of the bond.
- Modifies the available alternative forms of security that may be filed in lieu of a payment bond for public projects to remove an irrevocable letter of credit and a security of a type limited in Part II of Ch. 125, F.S., and to add a domestic corporate bond or debenture as authorize in s. 625.317, F.S.

Transfer of Liens to Security

The bill increases the amount of the bond required to be deposited or filed with the clerk's office to transfer a lien to a security. Specifically, the bill changes the amount required to the amount demanded in the lien, plus interest at the legal rate for three years, plus $5,000 or 25 percent of the amount demanded in the lien, whichever is greater. Further, the bill requires that the clerk include a copy of the deposit or bond used for the transfer with the certificate made and recorded to show the lien's transfer.

[76] In 2019, the Legislature authorized the use of online notaries. An online notary may perform an online notarization, regardless of the physical location of the principal at the time of the notarial act, if the notary is physically located in Florida and confirms that the principal desires for the notarial act to be performed by a Florida notary public under Florida law. Ch. 2019-71, Laws of Fla.; S. 117.265(3), F.S.

[77] The bill redefines "clerk's office" to mean the office of the clerk of the circuit court of the county, or another officer serving as the county recorder as provided by law, in which the real property is located.

Licensed General and Building Contractors

The bill amends the definition of "contractor" to include any licensed general or building contractor who provides construction or program management services.[78] This guarantees to such licensed general and building contractors the ability to claim construction liens if they are not paid for their work.

Notice of Termination

The bill requires that a notice of termination be served before recording on each lienor in privity with the owner and on each person who timely served a notice to owner before the recording of the notice of termination. Under the bill, if it is thus served, a notice of termination terminates the notice of commencement 30 days after it is recorded. However, the bill also requires an owner to serve a copy of the notice of termination on any lienor who began work under a notice of commencement before its termination, lacks a direct contract with the owner, and timely serves a notice to owner after the notice of termination is recorded. Under the bill, the notice of termination is effective as to such lienors 30 days after service.

The bill also:

- Specifies that a notice of termination must include a statement that the owner will serve a copy of the notice on all lienors who time serve a notice to owner after the notice of termination's recording.
- Deletes a provision specifying that an owner may only record a notice of termination after construction completion or when construction ceases before completion and all lienors have been paid, specifying instead that such notice may be recorded after all lienors have been paid.
- Clarifies that the notice of termination must include the official records reference numbers and recording date affixed to the recorded notice of commencement by the recording office.

Manner of Serving Documents

The bill:

- Specifies that all documents allowed or required under the construction lien law must be served as provided in s. 713.18, F.S., relating to manner of serving documents.
- Clarifies that "actual delivery" of a notice means "hand delivery."
- Provides that service by mail must be made to the person to be served.
- Clarifies that service of a notice sent through the mail is effective upon mailing or shipping.
- Specifies that service to a partnership, corporation, or limited liability company may be made on an employee or agent authorized by the business to receive service.

Further, the bill modifies the requirement that, for service to be effective on the date of mailing, the person serving a notice to contractor where a payment bond applies must maintain electronic tracking records generated by the USPS, deleting the requirement that the records be electronic and specifying that they may be either generated or approved by the USPS. The bill also deletes the requirements that such tracking records contain the name and address of the person served.

Duration of Lien

The bill specifies that after the property owner files a notice of contest of lien with the clerk's office and the clerk's office serves a copy of the notice on the lienor and records the notice with a certificate of service, the clerk's office must serve a copy of the recorded notice on the lienor and the owner or the owner's attorney.

Discharge of Liens

[78] The bill specifies that construction management services include scheduling and coordinating both preconstruction and construction phases for the construction project. The bill also specifies that program management services include schedule control, cost control, and coordination in providing or procuring planning, design, and construction.

The bill provides that the methods specified for discharging a lien may also be used to release a lien, in whole or in part. The bill also specifies that, if a satisfaction or release of lien is filed with the clerk's office, the satisfaction or release must include the lienor's notarized signature and the official reference number and recording date affixed by the recording office on the subject lien. Finally, the bill clarifies that, upon the filing of a complaint for satisfaction or release of lien, and the issuance of a summons to the lienor to show cause within 20 days, the 20-day deadline is tied to the lienor's receipt of the summons.

Attorney Fees and Costs

The bill provides that a prevailing party in an action to enforce a lien transferred to a security may recover his or her reasonable attorney fees in an amount to be determined by the court. The bill also clarifies that, where a prevailing party is entitled to recover his or her reasonable attorney fees in an arbitration action to enforce a claim against a payment bond, the amount or the attorney fees to be awarded may be determined by the arbitrator.

Computation of Time

The bill provides that, in computing any time period relating to the construction lien law, if the last day of the time period is a Saturday, Sunday, legal holiday, or any day observed as a holiday by the clerk's office or designated as such by the chief judge of the circuit, the time period is extended to the end of the next business day.

However, the bill also provides that, if the clerk's office is closed in response to an emergency[79] for one or more days, so that a person may not present a document for recording or an action for filing in person with the clerk's staff, the time period for recording a document or filing an action with the clerk's office relating to the construction lien law is tolled.[80] Under the bill, when the clerk's office reopens, the time period is extended by the number of days the clerk's office was closed.

Finance Charges

The bill defines "finance charge" as the contractually specified additional amount to be paid by the obligor on any balance that remains unpaid by the due date set forth in the credit agreement or other contract.

Applicability of Ch. 65-456, Laws of Florida

The bill repeals s. 713.25, F.S., as it is outdated and no longer applicable.

Miscellaneous Provisions

The bill:

- Makes technical, grammatical, and conforming changes.
- Provides an effective date of July 1, 2023.

[79] The bill does not define what constitutes "an emergency."

[80] Under the bill, the time periods are tolled even where the clerk's office is still accepting documents for filing or recordin g through its e-filing service.

B. SECTION DIRECTORY:

Section 1: Amends s. 255.05, F.S., relating to bond of contractor constructing public buildings; form; action by claimants.
Section 2: Amends s. 337.28, F.S., relating to surety bonds for construction or maintenance contracts; requirement with respect to contract awards; bond requirements; defaults; damage assessments.
Section 3: Amends s. 713.01, F.S., relating to definitions.
Section 4: Creates s. 713.011, F.S., relating to computation of time.
Section 5: Amends s. 713.10, F.S., relating to extent of lien.
Section 6: Amends s. 713.13, F.S., relating to notice of commencement.
Section 7: Amends s. 713.132, F.S., relating to notice of termination.
Section 8: Amends s. 713.135, F.S., relating to notice of commencement and applicability of lien.
Section 9: Amends s. 713.18, F.S., relating to manner of serving notice and other instruments.
Section 10: Amends s. 713.21, F.S., relating to discharge of lien.
Section 11: Amends s. 713.22, F.S., relating to duration of lien.
Section 12: Amends s. 713.23, F.S., relating to payment bond.
Section 13: Amends s. 713. 24, F.S., relating to transfer of liens to security.
Section 14: Repeals s. 713.25, F.S., relating to applicability of ch. 65-456, L.O.F.
Section 15: Amends s. 713.29, F.S., relating to attorney's fees.
Section 16: 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:

   The bill may increase expenditures for Clerks of the Circuit Court to the extent the Clerks cannot cover the costs associated with the bill's new service requirements with existing resources.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may cause more subcontractors, laborers, and material suppliers to receive compensation for the labor, services, or materials they supply for construction projects, which may have a positive indeterminate impact on the private sector. However, the bill may have a negative indeterminate impact on the private sector by making it costlier to transfer a lien to a payment bond, and an indeterminate impact on the private sector by eliminating and replacing certain alternative forms of security that a contractor working on public project may file in lieu of a payment bond.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires the Clerks of the Circuit Court to serve specified recorded notices; however, an exception may apply as the Clerks may be able to cover the costs associated with such service requirements with existing resources.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 14, 2023, the Civil Justice subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Increased the contract amount which excuses a building permit applicant from filing a copy of the recorded notice of commencement with the issuing authority from $2,500 to $7,500.
- Made technical, clarifying changes.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to liens and bonds; amending s. 255.05, F.S.; requiring the clerk to serve a copy of a notice of contest of claim on certain persons after it has been recorded; revising when a notice of contest of claim against a payment bond must be served; requiring that a copy of a notice of nonpayment be served on the surety; revising the process for notarizing a notice of nonpayment; revising authorized alternative forms of security; requiring service of documents to be made in a specified manner; conforming provisions to changes made by the act; making technical changes; amending s. 337.18, F.S.; requiring service of documents to be made in a specified manner; conforming provisions to changes made by the act; amending s. 713.01, F.S.; revising and providing definitions; creating s. 713.011, F.S.; providing for the computation of time when certain time periods fall on specified days or during an emergency; amending s. 713.10, F.S.; revising the extent of certain liens; amending s. 713.13, F.S.; conforming a cross-reference; revising the process for notarizing a notice of commencement; making technical changes; amending s. 713.132, F.S.; revising requirements for a notice of termination; revising when an owner may

record a notice of termination; specifying when a notice of termination terminates a notice of commencement; amending s. 713.135, F.S.; providing a definition; providing applicability; revising the dollar threshold of an exception; providing immunity; amending s. 713.18, F.S.; requiring service of documents relating to construction bonds to be made in a specified manner; authorizing employees or agents of specified entities to receive service of certain documents; making technical changes; amending s. 713.21, F.S.; authorizing the full or partial release of a lien under specified conditions; making technical changes; amending s. 713.22, F.S.; requiring the clerk to serve a copy of a notice of contest of lien on certain persons after it has been recorded; making technical changes; amending s. 713.23, F.S.; requiring that a copy of a notice of nonpayment be served on the surety; revising the process for notarizing a notice of nonpayment under a payment bond; requiring the clerk to serve a copy of a notice of contest of lien on certain persons after it has been recorded; amending s. 713.24, F.S.; revising the amount required in addition to the deposit or bond that applies toward attorney fees and court costs; requiring the clerk to make a copy of the deposit or bond used to transfer a

lien to other security and mail it to the lienor; making technical changes; repealing s. 713.25, F.S., relating to applicability of ch. 65-456, Laws of Florida; amending s. 713.29, F.S.; authorizing attorney fees in actions brought to enforce a lien that has been transferred to security; making technical changes; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) and subsection (7) of section 255.05, Florida Statutes, are amended, and subsection (12) is added to that section, to read:

255.05 Bond of contractor constructing public buildings; form; action by claimants.—

(2)(a)1. If a claimant is no longer furnishing labor, services, or materials on a project, a contractor or the contractor's agent or attorney may elect to shorten the time within which an action to enforce any claim against a payment bond must be commenced by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

To: ...(Name and address of claimant)...

You are notified that the undersigned contests your notice of nonpayment, dated ....., ..., and served on the undersigned on ....., ..., and that the time within which you may file suit to enforce your claim is limited to 60 days after the date of service of this notice.

DATED on ....., ...

Signed: ...(Contractor or Attorney)...

The claim of a claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice is extinguished automatically. The contractor or the contractor's attorney shall serve a copy of the notice of contest on ~~to~~ the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice. After the clerk records the notice with the certificate of service, the clerk shall serve, in accordance with s. 713.18, a copy of such recorded notice on the claimant and the contractor or the contractor's attorney.

2. A claimant, except a laborer, who is not in privity

with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, services, or materials for the prosecution of the work, serve the contractor with a written notice that he or she intends to look to the bond for protection. If the payment bond is not recorded before the commencement of work or before the recommencement of work after a default or abandonment as required by subsection (1), the claimant may serve the contractor with such written notice up to 45 days after the date that the claimant is served with a copy of the bond. A claimant who is not in privity with the contractor and who has not received payment for furnishing his or her labor, services, or materials shall serve a written notice of nonpayment on the contractor and a copy of the notice of nonpayment on the surety. The notice of nonpayment must ~~shall~~ be under oath and served during the progress of the work or thereafter but may not be served earlier than 45 days after the first furnishing of labor, services, or materials by the claimant or later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, later than 90 days after the date that the rental equipment was last on the ~~job~~ site of the improvement and available for use. Any notice of nonpayment served by a claimant who is not in privity with the contractor which includes sums for retainage must specify the portion of the amount claimed for retainage. An action for the labor, services, or materials may

not be instituted against the contractor or the surety unless the notice to the contractor and notice of nonpayment have been served, if required by this section. Notices required or permitted under this section must be served in accordance with s. 713.18. A claimant may not waive in advance his or her right to bring an action under the bond against the surety. In any action brought to enforce a claim against a payment bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court or arbitrator, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions. The time periods for service of a notice of nonpayment or for bringing an action against a contractor or a surety are ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the claimant and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A claimant who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the claimant has willfully exaggerated the amount unpaid, willfully included a

claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the claimant's claim against the bond. The notice of nonpayment under this subparagraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

To: ...(name of contractor and address)...

...(name of surety and address)...

The undersigned claimant notifies you that:

1. Claimant has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is $...., of which $.... is unpaid retainage.

2. Claimant has been paid to date the amount of $.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. Claimant expects to furnish ...(describe labor, services, or materials)... for this improvement in the future (if known), and the corresponding amount expected to become due is $.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on ....., ...

...(signature and address of claimant)...

STATE OF FLORIDA
COUNTY OF .....

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or sworn to (or affirmed) by ☐ online notarization this .... day of ...., ...(year)..., by ...(name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known ..... OR Produced Identification .....

Type of Identification Produced

(7) In lieu of the bond required by this section, a contractor may file with the state, county, city, or other political authority an alternative form of security in the form of cash~~,~~ a money order~~,~~ a certified check~~,~~ a cashier's check~~, an irrevocable letter of credit,~~ or a domestic corporate bond, note, or debenture as authorized in s. 625.317 ~~security of a type listed in part II of chapter 625~~. Any such alternative form of security is ~~shall be~~ for the same purpose and ~~be~~ subject to the same conditions as those applicable to the bond required by this section. The ~~determination of the value of an alternative form of security shall be made by the~~ appropriate state, county, city, or other political subdivision shall determine the required value of an alternative form of security.

(12) Unless otherwise provided in this section, service of any document must be made in accordance with s. 713.18.

Section 2. Paragraph (c) of subsection (1) of section 337.18, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

337.18 Surety bonds for construction or maintenance

contracts; requirement with respect to contract award; bond requirements; defaults; damage assessments.—

(1)

(c) A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 90 days after commencing to furnish labor, materials, or supplies for the prosecution of the work, furnish the contractor with a notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his or her labor, materials, or supplies shall deliver to the contractor and to the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The notice of nonpayment may be served at any time during the progress of the work or thereafter but not before 45 days after the first furnishing of labor, services, or materials, and not later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, not later than 90 days after the date that the rental equipment was last on the ~~job~~ site of the improvement and available for use. An action by a claimant, except a laborer, who is not in privity with the contractor for the labor, materials, or supplies may not be instituted against the contractor or the surety unless both notices have been given. Written notices required or permitted under this section must

~~may~~ be served in accordance with ~~any manner provided in~~ s. 713.18.

(6) Unless otherwise provided in this section, service of any document must be made in accordance with s. 713.18.

Section 3. Subsections (13) through (29) of section 713.01, Florida Statutes, are renumbered as subsections (14) through (30), respectively, subsections (4), (8), and (12) are amended, and a new subsection (13) is added to that section, to read:

713.01 Definitions.—As used in this part, the term:

(4) "Clerk's office" means the office of the clerk of the circuit court of the county, or another office serving as the county recorder as provided by law, in which the real property is located.

(8) "Contractor" means a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it~~,~~ or who takes over from a contractor as so defined the entire remaining work under such contract. The term "contractor" includes an architect, landscape architect, or engineer who improves real property pursuant to a design-build contract authorized by s. 489.103(16). The term also includes a licensed general contractor or building contractor, as those terms are defined in s. 489.105(3)(a) and (b), respectively, who provides construction management services, which include scheduling and coordinating preconstruction and construction

phases for the construction project, or who provides program management services, which include schedule control, cost control, and coordinating the provision or procurement of planning, design, and construction for the construction project.

(12) "Final furnishing" means the last date that the lienor furnishes labor, services, or materials. Such date may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of final completion, and does not include the correction of deficiencies in the lienor's previously performed work or materials supplied. With respect to rental equipment, the term means the date that the rental equipment was last on the ~~job~~ site of the improvement and available for use.

(13) "Finance charge" means a contractually specified additional amount to be paid by the obligor on any balance that remains unpaid by the due date set forth in the credit agreement or other contract.

Section 4. Section 713.011, Florida Statutes, is created to read:

713.011 Computation of time.—

(1) In computing any time period under this part, if the last day of the time period is a Saturday, Sunday, or holiday specified in s. 110.117(1), or any day observed as a holiday by the clerk's office or designated as a holiday by the chief judge of the circuit, the time period is extended to the end of the

next business day.

(2) If the clerk's office is closed in response to an emergency for 1 or more days so that a person may not present a document for recording or an action for filing in person to the clerk's staff, the time period for recording a document or filing an action with the clerk's office under this part is tolled. When the clerk's office reopens, the time period is extended by the number of days the clerk's office was closed.

Section 5. Paragraph (b) of subsection (2) of section 713.10, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

713.10 Extent of liens.—

(2)

(b) The interest of the lessor is not subject to liens for improvements made by the lessee when:

1. The lease, or a short form or a memorandum of the lease that contains the specific language in the lease prohibiting such liability, is recorded in the official records of the county where the premises are located before the recording of a notice of commencement for improvements to the premises and the terms of the lease expressly prohibit such liability; or

2. The terms of the lease expressly prohibit such liability, and a notice advising that leases for the rental of premises on a parcel of land prohibit such liability has been recorded in the official records of the county in which the

parcel of land is located before the recording of a notice of commencement for improvements to the premises, and the notice includes the following:

a. The name of the lessor.

b. The legal description of the parcel of land to which the notice applies.

c. The specific language contained in the various leases prohibiting such liability.

d. A statement that all or a majority of the leases entered into for premises on the parcel of land expressly prohibit such liability.

~~3. The lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.~~

A notice that is consistent with subparagraph 2. effectively prohibits liens for improvements made by a lessee even if other leases for premises on the parcel do not expressly prohibit liens or if provisions of each lease restricting the application of liens are not identical.

(4) The interest of the lessor is not subject to liens for improvements made by the lessee when the lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.

Section 6. Paragraphs (a) and (d) of subsection (1) of section 713.13, Florida Statutes, are amended to read:

713.13 Notice of commencement.—

(1)(a) Except for an improvement that is exempt under ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond complying with s. 713.23, shall record a notice of commencement in the clerk's office and ~~forthwith~~ post either a certified copy thereof or a notarized statement that the notice of commencement has been filed for recording along with a copy thereof. The notice of commencement must ~~shall~~ contain all of the following information:

1. A description sufficient for identification of the real property to be improved. The description must ~~should~~ include the legal description of the property and ~~also should include~~ the street address and tax folio number of the property if available or, if the ~~there is no~~ street address is not available, such additional information as will describe the physical location of the real property to be improved.

2. A general description of the improvement.

3. The name and address of the owner, the owner's interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than such owner. A lessee who contracts for the improvements is an owner as defined in s. 713.01 ~~under s. 713.01(23)~~ and must be listed as the owner

together with a statement that the ownership interest is a leasehold interest.

4. The name and address of the contractor.

5. The name and address of the surety on the payment bond under s. 713.23, if any, and the amount of such bond.

6. The name and address of any person making a loan for the construction of the improvements.

7. The name and address within the state of a person other than himself or herself who may be designated by the owner as the person upon whom notices or other documents may be served under this part; and service upon the person so designated constitutes service upon the owner.

(d) A notice of commencement must be in substantially the following form:

Permit No..... Tax Folio No.....

NOTICE OF COMMENCEMENT

State of....

County of....

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property: ...(legal description of the

property, and street address if available)....

2. General description of improvement:.....

3. Owner information or Lessee information if the Lessee contracted for the improvement:

a. Name and address:.....

b. Interest in property:.....

c. Name and address of fee simple titleholder (if different from Owner listed above):.....

4.a. Contractor: ...(name and address)....

b. Contractor's phone number:.....

5. Surety (if applicable, a copy of the payment bond is attached):

a. Name and address:.....

b. Phone number:.....

c. Amount of bond: $.....

6.a. Lender: ...(name and address)....

b. Lender's phone number:.....

7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes:

a. Name and address:.....

b. Phone numbers of designated persons:.....

8.a. In addition to himself or herself, Owner designates ..... of ..... to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.

b. Phone number of person or entity designated by owner:.....

9. Expiration date of notice of commencement (the expiration date will be 1 year after ~~from~~ the date of recording unless a different date is specified).....

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE ~~JOB~~ SITE OF THE IMPROVEMENT BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

...(Signature of Owner or Lessee, or Owner's or Lessee's Authorized Officer/Director/Partner/Manager)...

...(Signatory's Title/Office)...

The foregoing instrument was acknowledged before me by means of ☐ physical presence or sworn to (or affirmed) by ☐ online notarization this .... day of ...., ...(year)..., by ...(name of person)... as ...(type of authority, . . . e.g. officer,

trustee, attorney in fact)... for ...(name of party on behalf of whom instrument was executed)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known .... OR Produced Identification ....

Type of Identification Produced.....

Section 7. Subsections (1), (3), and (4) of section 713.132, Florida Statutes, are amended to read:

713.132 Notice of termination.—

(1) An owner may terminate the period of effectiveness of a notice of commencement by executing, swearing to, and recording a notice of termination that contains all of the following:

(a) The same information that is in ~~as~~ the notice of commencement.~~;~~

(b) The official records' ~~recording office document book and page~~ reference numbers and recording date affixed by the recording office on ~~of~~ the recorded notice of commencement.~~;~~

(c) A statement of the date as of which the notice of commencement is terminated, which date may not be earlier than 30 days after the notice of termination is recorded.~~;~~

(d) A statement specifying that the notice applies to all the real property subject to the notice of commencement or specifying the portion of such real property to which it applies.~~;~~

(e) A statement that all lienors have been paid in full.~~;~~ ~~and~~

(f) A statement that the owner has, before recording the notice of termination, served a copy of the notice of termination ~~on the contractor and~~ on each lienor who has a direct contract with the owner or who has timely served a notice to owner, and a statement that the owner will serve a copy of the notice of termination on each lienor who timely serves a notice to owner after the notice of termination has been recorded. The owner is not required to serve a copy of the notice of termination on any lienor who has executed a waiver and release of lien upon final payment in accordance with s. 713.20.

(3) An owner may ~~not~~ record a notice of termination at any time after ~~except after completion of construction, or after construction ceases before completion and~~ all lienors have been paid in full or pro rata in accordance with s. 713.06(4).

(4) If an owner or a contractor, by fraud or collusion, knowingly makes any fraudulent statement or affidavit in a notice of termination or any accompanying affidavit, the owner and the contractor, or either of them, ~~as the case may be,~~ is

liable to any lienor who suffers damages as a result of the filing of the fraudulent notice of termination,~~;~~ and any such lienor has a right of action for damages ~~occasioned thereby~~.

(5)~~(4)~~ A notice of termination must be served before recording on each lienor who has a direct contract with the owner and on each lienor who has timely and properly served a notice to owner in accordance with this part before the recording of the notice of termination. A notice of termination must be recorded in the official records of the county in which the improvement is located. If properly served before recording in accordance with this subsection, the notice of termination terminates the period of effectiveness of the notice of commencement 30 days after the notice of termination is recorded in the official records ~~is effective to terminate the notice of commencement at the later of 30 days after recording of the notice of termination~~ or a later ~~the~~ date stated in the notice of termination as the date on which the notice of commencement is terminated. However, if a lienor who began work under the notice of commencement before its termination lacks a direct contract with the owner and timely serves his or her notice to owner after the notice of termination has been recorded, the owner must serve a copy of the notice of termination upon such lienor, and the termination of the notice of commencement as to that lienor is effective 30 days after service of the notice of termination~~, if the notice of termination has been served~~

~~pursuant to paragraph (1)(f) on the contractor and on each lienor who has a direct contract with the owner or who has served a notice to owner~~.

Section 8. Subsections (1) and (3) of section 713.135, Florida Statutes, are amended to read:

713.135 Notice of commencement and applicability of lien.—

(1) When a ~~any~~ person applies for a building permit, the authority issuing such permit shall:

(a) Print on the face of each permit card in no less than 14-point, capitalized, boldfaced type: "WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE ~~JOB~~ SITE OF THE IMPROVEMENT BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT."

(b) Provide the applicant and the owner of the real property upon which improvements are to be constructed with a printed statement stating that the right, title, and interest of the person who has contracted for the improvement may be subject to attachment under the Construction Lien Law. The Department of Business and Professional Regulation shall furnish, for distribution, the statement described in this paragraph, and the statement must be a summary of the Construction Lien Law and must include an explanation of the provisions of the

Construction Lien Law relating to the recording, and the posting of copies, of notices of commencement and a statement encouraging the owner to record a notice of commencement and post a copy of the notice of commencement in accordance with s. 713.13. The statement must also contain an explanation of the owner's rights if a lienor fails to furnish the owner with a notice as provided in s. 713.06(2) and an explanation of the owner's rights as provided in s. 713.22. The authority that issues the building permit must obtain from the Department of Business and Professional Regulation the statement required by this paragraph and must mail, deliver by electronic mail or other electronic format or facsimile, or personally deliver that statement to the owner or, in a case in which the owner is required to personally appear to obtain the permit, provide that statement to any owner making improvements to real property consisting of a single or multiple family dwelling up to and including four units. However, the failure by the authorities to provide the summary does not subject the issuing authority to liability.

(c) In addition to providing the owner with the statement as required by paragraph (b), inform each applicant who is not the person whose right, title, and interest is subject to attachment that, as a condition to the issuance of a building permit, the applicant must promise in good faith that the statement will be delivered to the person whose property is

subject to attachment.

(d) Furnish to the applicant two or more copies of a form of notice of commencement conforming with s. 713.13.

(e) Require ~~If the direct contract is greater than $2,500,~~ the applicant to ~~shall~~ file with the issuing authority before ~~prior to~~ the first inspection ~~either~~ a ~~certified~~ copy of the ~~recorded~~ notice of commencement if the direct contract is greater than $7,500. For purposes of this paragraph, the term "copy of the notice of commencement" means a certified copy of the recorded notice of commencement, ~~or~~ a notarized statement that the notice of commencement has been filed for recording~~,~~ along with a copy thereof, or the clerk's office's official records identifying information that includes the instrument number for the notice of commencement or the number and page of book where the notice of commencement is recorded, as identified by the clerk.

1. In the absence of the filing of a ~~certified~~ copy of the ~~recorded~~ notice of commencement, the issuing authority or a private provider performing inspection services may not perform or approve subsequent inspections until the applicant files by mail, facsimile, hand delivery, or any other means such ~~certified~~ copy with the issuing authority.

2. The ~~certified~~ copy of the notice of commencement must contain the name and address of the owner, the name and address of the contractor, and the location or address of the property

being improved. The issuing authority shall verify that the name and address of the owner, the name of the contractor, and the location or address of the property being improved which is contained in the ~~certified~~ copy of the notice of commencement is consistent with the information in the building permit application.

3. The issuing authority shall provide the recording information on the ~~certified~~ copy of the ~~recorded~~ notice of commencement to any person upon request.

4. This paragraph ~~subsection~~ does not require the recording of a notice of commencement before ~~prior to~~ the issuance of a building permit. If a local government requires a separate permit or inspection for installation of temporary electrical service or other temporary utility service, land clearing, or other preliminary site work, such permits may be issued and such inspections may be conducted without providing the issuing authority with a ~~certified~~ copy of the ~~a recorded~~ notice of commencement ~~or a notarized statement regarding a recorded notice of commencement~~. ~~This subsection does not apply to a direct contract to repair or replace an existing heating or air-conditioning system in an amount less than $15,000.~~

(f) ~~(e)~~ Not require that a notice of commencement be recorded as a condition of the application for, or processing or issuance of, a building permit. However, this paragraph does not modify or waive the inspection requirements set forth in this

subsection.

This subsection does not apply to a direct contract to repair or replace an existing heating or air-conditioning system in an amount less than $15,000.

(3) An issuing authority under subsection (1) is not liable in any civil action for the failure to verify that a certified copy of the recorded notice of commencement, a notarized statement that the notice of commencement has been filed for recording along with a copy thereof, or the clerk's office's official records identifying information that includes the instrument number for the notice of commencement or the number and page of book where the notice of commencement is recorded, as identified by the clerk, has been filed in accordance with this section.

Section 9. Section 713.18, Florida Statutes, is amended to read:

713.18 Manner of serving documents ~~notices and other instruments~~.—

(1) Unless otherwise specifically provided by law, service of any document ~~notices, claims of lien, affidavits, assignments, and other instruments~~ permitted or required under this part, s. 255.05, or s. 337.18, or copies thereof when so permitted or required, ~~unless otherwise specifically provided in this part,~~ must be made by one of the following methods:

(a) By hand ~~actual~~ delivery to the person to be served; if a partnership, to one of the partners; if a corporation, to an officer or~~,~~ director~~, managing agent, or business agent~~; ~~or,~~ if a limited liability company, to a member or manager; or to an employee or agent authorized by the partnership, corporation, or limited liability company to receive service of such document.

(b) By common carrier delivery service or by registered, Global Express Guaranteed, or certified mail to the person to be served, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(c) By posting on the site of the improvement if service as provided by paragraph (a) or paragraph (b) cannot be accomplished.

(2) Notwithstanding subsection (1), service of a notice to owner or a preliminary notice to contractor under this part, s. 255.05, or s. 337.18~~, or s. 713.23~~ is effective as of the date of mailing and the requirements for service under this section have been satisfied if all of the following requirements have been met:

(a) The notice is mailed by registered, Global Express Guaranteed, or certified mail, with postage prepaid, to the person to be served and addressed as prescribed ~~at any of the addresses set forth~~ in subsection (3).~~;~~

(b) The notice is mailed within 40 days after the date the lienor first furnishes labor, services, or materials.~~; and~~

(c)1. The person who served the notice maintains a ~~registered or certified~~ mail log that shows the registered or certified mail number issued by the United States Postal Service, the name and address of the person served, and the date stamp of the United States Postal Service confirming the date of mailing; or

2. The person who served the notice maintains ~~electronic~~ tracking records approved or generated by the United States Postal Service containing the postal tracking number~~, the name and address of the person served,~~ and verification of the date of receipt by the United States Postal Service.

(3)(a) Notwithstanding subsection (1), service of a document under ~~an instrument pursuant to~~ this section is effective on the date of mailing or shipping, and the requirements for service under this section have been satisfied, ~~the instrument~~ if the document meets both of the following requirements ~~it~~:

1. It is sent to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a notice of commencement, to the last address shown in the building permit application, or to the last known address of the person to be served.~~; and~~

2. It is returned as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the document

~~item~~.

(b) If the address shown in the notice of commencement or any amendment thereto ~~to the notice of commencement~~, or, in the absence of a notice of commencement, in the building permit application, is incomplete for purposes of mailing or delivery, the person serving the document ~~item~~ may complete the address and properly format it according to United States Postal Service addressing standards using information obtained from the property appraiser or another public record without affecting the validity of service under this section.

(4) A document ~~notice~~ served by a lienor on one owner or one partner of a partnership owning the real property is deemed served on ~~notice to~~ all owners and partners.

Section 10. Section 713.21, Florida Statutes, is amended to read:

713.21 Discharge of lien.—A lien properly perfected under this chapter may be discharged, or released in whole or in part, by any of the following methods:

(1) By entering satisfaction of the lien upon the margin of the record thereof in the clerk's office when not otherwise prohibited by law. This satisfaction must ~~shall~~ be signed by the lienor or~~,~~ the lienor's agent or attorney and attested by said clerk. Any person who executes a claim of lien has ~~shall have~~ authority to execute a satisfaction in the absence of actual notice of lack of authority to any person relying on the same.

(2) By the satisfaction or release of the lienor, duly acknowledged and recorded in the clerk's office. The satisfaction or release must include the lienor's notarized signature and set forth the official records' reference number and recording date affixed by the recording office on the subject lien. Any person who executes a claim of lien has ~~shall have~~ authority to execute a satisfaction or release in the absence of actual notice of lack of authority to any person relying on the same.

(3) By failure to begin an action to enforce the lien within the time prescribed in this part.

(4) By an order of the circuit court of the county where the property is located, as provided in this subsection. Upon filing a complaint ~~therefor~~ by any interested party the clerk shall issue a summons to the lienor to show cause within 20 days after service of the summons why his or her lien should not be enforced by action or vacated and canceled of record. Upon failure of the lienor to show cause why his or her lien should not be enforced or the lienor's failure to commence such action before the return date of the summons the court shall ~~forthwith~~ order cancellation of the lien.

(5) By recording in the clerk's office the original or a certified copy of a judgment or decree of a court of competent jurisdiction showing a final determination of the action.

Section 11. Subsection (2) of section 713.22, Florida

Statutes, is amended to read:

713.22 Duration of lien.—

(2) An owner or the owner's attorney may elect to shorten the time prescribed in subsection (1) within which to commence an action to enforce any claim of lien or claim against a bond or other security under s. 713.23 or s. 713.24 by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF LIEN

To: ...(Name and address of lienor)...

You are notified that the undersigned contests the claim of lien filed by you on ...., ...(year)..., and recorded in .... Book ...., Page ...., of the public records of .... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 60 days from the date of service of this notice. This .... day of ...., ...(year)....

Signed: ...(Owner or Attorney)...

The lien of any lienor upon whom such notice is served and who fails to institute a suit to enforce his or her lien within 60 days after service of such notice is ~~shall be~~ extinguished automatically. The clerk shall serve, in accordance with s. 713.18, a copy of the notice of contest on ~~to~~ the lienor ~~lien claimant~~ at the address shown in the claim of lien or most recent amendment thereto and shall certify to such service and the date of service on the face of the notice and record the notice. After the clerk records the notice with the certificate

of service, the clerk shall serve, in accordance with s. 713.18, a copy of such recorded notice on the lienor and the owner or the owner's attorney.

Section 12. Paragraphs (d) and (e) of subsection (1) of section 713.23, Florida Statutes, are amended to read:

713.23 Payment bond.—

(1)

(d) In addition, a lienor who has not received payment for furnishing his or her labor, services, or materials must, as a condition precedent to recovery under the bond, serve a written notice of nonpayment on ~~to~~ the contractor and a copy of the notice of nonpayment on the surety. The notice of nonpayment must be under oath and served during the progress of the work or thereafter, but may not be served later than 90 days after the final furnishing of labor, services, or materials by the lienor, or, with respect to rental equipment, later than 90 days after the date the rental equipment was on the ~~job~~ site of the improvement and available for use. A notice of nonpayment that includes sums for retainage must specify the portion of the amount claimed for retainage. The required notice satisfies this condition precedent with respect to the payment described in the notice of nonpayment, including unpaid finance charges due under the lienor's contract, and with respect to any other payments which become due to the lienor after the date of the notice of nonpayment. The time period for serving a notice of nonpayment

is ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the lienor and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The failure of a lienor to receive retainage sums not in excess of 10 percent of the value of labor, services, or materials furnished by the lienor is not considered a nonpayment requiring the service of the notice provided under this paragraph. If the payment bond is not recorded before commencement of construction, the time period for the lienor to serve a notice of nonpayment may, at the option of the lienor, be calculated from the date specified in this section or the date the lienor is served a copy of the bond. However, the limitation period for commencement of an action on the payment bond as established in paragraph (e) may not be expanded. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A lienor who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the lienor has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a

minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the lienor's claim against the bond. The notice under this paragraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

To ...(name of contractor and address)...

...(name of surety and address)...

The undersigned lienor notifies you that:

1. The lienor has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is $...., of which $.... is unpaid retainage.

2. The lienor has been paid to date the amount of $.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. The lienor expects to furnish ...(describe labor,

services, or materials)... for this improvement in the future (if known), and the corresponding amount expected to become due is $.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on ....., ...

...(signature and address of lienor)...

STATE OF FLORIDA
COUNTY OF.....

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or sworn to (or affirmed) by ☐ online notarization this .... day of ...., ...(year)..., by ...(name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known ..... OR Produced Identification .....

Type of Identification Produced

(e) An action for the labor, ~~or~~ materials, or supplies may not be instituted or prosecuted against the contractor or surety unless both notices have been given, if required by this section. An action must ~~may not~~ be instituted or prosecuted against the contractor or against the surety on the bond under this section within ~~after~~ 1 year after ~~from~~ the performance of the labor or completion of delivery of the materials and supplies. The time period for bringing an action against the contractor or surety on the bond is ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the lienor. The time period may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. A contractor or the contractor's attorney may elect to shorten the time within which an action to enforce any claim against a payment bond provided under this section or s. 713.245 must be commenced at any time after a notice of nonpayment, if required, has been served for the claim by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF CLAIM

AGAINST PAYMENT BOND

To: ...(Name and address of lienor)...

You are notified that the undersigned contests your notice of nonpayment, dated ...., ..., and served on the undersigned

on ...., ..., and that the time within which you may file suit to enforce your claim is limited to 60 days after ~~from~~ the date of service of this notice.

DATED on ...., ...

Signed: ...(Contractor or Attorney)...

The claim of any lienor upon whom the notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of the notice is ~~shall be~~ extinguished automatically. The contractor or the contractor's attorney shall serve, in accordance with s. 713.18, a copy of the notice of contest to the lienor at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice. After the clerk records the notice with the certificate of service, the clerk shall serve, in accordance with s. 713.18, a copy of such recorded notice on the lienor and the contractor or the contractor's attorney.

Section 13. Subsections (1) and (3) of section 713.24, Florida Statutes, are amended to read:

713.24 Transfer of liens to security.—

(1) Any lien claimed under this part may be transferred, by any person having an interest in the real property upon which the lien is imposed or the contract under which the lien is claimed, from such real property to other security by ~~either~~:

(a) Depositing in the clerk's office a sum of money; ~~,~~ or

(b) Filing in the clerk's office a bond executed as surety by a surety insurer licensed to do business in this state,

~~either to be~~ in an amount equal to the amount demanded in such claim of lien, plus interest thereon at the legal rate for 3 years, plus $5,000 ~~$1,000~~ or 25 percent of the amount demanded in the claim of lien, whichever is greater, to apply on any attorney ~~attorney's~~ fees and court costs that may be taxed in any proceeding to enforce said lien. Such deposit or bond must ~~shall~~ be conditioned to pay any judgment or decree which may be rendered for the satisfaction of the lien for which such claim of lien was recorded. Upon making such deposit or filing such bond, the clerk shall make and record a certificate, which must include a copy of the deposit or bond used to transfer, showing the transfer of the lien from the real property to the security and shall mail a copy thereof together with a copy of the deposit or bond used to transfer by registered or certified mail to the lienor named in the claim of lien so transferred, at the address stated therein. Upon filing the certificate of transfer, the real property is ~~shall thereupon be~~ released from the lien claimed, and such lien is ~~shall be~~ transferred to said security. In the absence of allegations of privity between the lienor and the owner, and subject to any order of the court increasing the amount required for the lien transfer deposit or bond, no other judgment or decree to pay money may be entered by the court

against the owner. The clerk is ~~shall be~~ entitled to a service charge for making and serving the certificate, in the amount of up to $20, from which the clerk shall remit $5 to the Department of Revenue for deposit into the General Revenue Fund. If the transaction involves the transfer of multiple liens, the clerk shall charge an additional service charge of up to $10 for each additional lien ~~shall be charged~~, from which the clerk shall remit $2.50 to the Department of Revenue for deposit into the General Revenue Fund. For recording the certificate and approving the bond, the clerk shall receive her or his usual statutory service charges as prescribed in s. 28.24. Any number of liens may be transferred to one such security.

(3) Any party having an interest in such security or the property from which the lien was transferred may at any time, and any number of times, file a complaint in chancery in the circuit court of the county where such security is deposited, or file a motion in a pending action to enforce a lien, for an order to require additional security, reduction of security, change or substitution of sureties, payment of discharge thereof, or any other matter affecting said security. If the court finds that the amount of the deposit or bond in excess of the amount claimed in the claim of lien is insufficient to pay the lienor's attorney ~~attorney's~~ fees and court costs incurred in the action to enforce the lien, the court must increase the amount of the cash deposit or lien transfer bond. ~~Nothing in~~

This section may not ~~shall~~ be construed to vest exclusive jurisdiction in the circuit courts over transfer bond claims for nonpayment of an amount within the monetary jurisdiction of the county courts.

Section 14. Section 713.25, Florida Statutes, is repealed.

Section 15. Section 713.29, Florida Statutes, is amended to read:

713.29 Attorney ~~Attorney's~~ fees.—In any action brought to enforce a lien, including a lien that has been transferred to security, or to enforce a claim against a bond under this part, the prevailing party is entitled to recover a reasonable fee for the services of her or his attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions.

Section 16. This act shall take effect July 1, 2023.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 331 by Rep. Overdorf
Liens and Bonds

AMENDMENT SUMMARY
March 9, 2023

Amendment 1 by Rep. Overdorf (line 991):

- Changes the effective date to October 1, 2023, to match the Senate companion bill.

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: Civil Justice Subcommittee
Representative Overdorf offered the following:

Amendment

Remove lines 97-740 and insert:

shall serve, in accordance with s. 713.18, a copy of such recorded notice on the claimant and the contractor or the contractor's attorney.

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, services, or materials for the prosecution of the work, serve the contractor with a written notice that he or she intends to look to the bond for protection. If the payment bond is not recorded before the commencement of work or before the recommencement of work after a default or abandonment as required by subsection (1), the

claimant may serve the contractor with such written notice up to 45 days after the date that the claimant is served with a copy of the bond. A claimant who is not in privity with the contractor and who has not received payment for furnishing his or her labor, services, or materials shall serve a written notice of nonpayment on the contractor and a copy of the notice of nonpayment on the surety. The notice of nonpayment must ~~shall~~ be under oath and served during the progress of the work or thereafter but may not be served earlier than 45 days after the first furnishing of labor, services, or materials by the claimant or later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, later than 90 days after the date that the rental equipment was last on the ~~job~~ site of the improvement and available for use. Any notice of nonpayment served by a claimant who is not in privity with the contractor which includes sums for retainage must specify the portion of the amount claimed for retainage. An action for the labor, services, or materials may not be instituted against the contractor or the surety unless the notice to the contractor and notice of nonpayment have been served, if required by this section. Notices required or permitted under this section must be served in accordance with s. 713.18. A claimant may not waive in advance his or her right to bring an action under the bond against the surety. In any action brought to enforce a claim against a payment bond under

this section, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court or arbitrator, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions. The time periods for service of a notice of nonpayment or for bringing an action against a contractor or a surety are ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the claimant and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A claimant who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the claimant has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a

fraudulent notice of nonpayment is a complete defense to the claimant's claim against the bond. The notice of nonpayment under this subparagraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

To: ...(name of contractor and address)...

...(name of surety and address)...

The undersigned claimant notifies you that:

1. Claimant has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is $...., of which $.... is unpaid retainage.

2. Claimant has been paid to date the amount of $.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. Claimant expects to furnish ...(describe labor, services, or materials)... for this improvement in the future (if known), and the corresponding amount expected to become due is $.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on ....., ...

...(signature and address of claimant)...

STATE OF FLORIDA
COUNTY OF .....

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or sworn to (or affirmed) by ☐ online notarization this .... day of ...., ...(year)..., by ...(name of signatory)....

...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known ..... OR Produced Identification .....

Type of Identification Produced

(7) In lieu of the bond required by this section, a contractor may file with the state, county, city, or other political authority an alternative form of security in the form of cash;~~,~~ a money order;~~,~~ a certified check;~~,~~ a cashier's check;~~, an irrevocable letter of credit,~~ or a domestic corporate bond, note, or debenture as authorized in s. 625.317 ~~security of a type listed in part II of chapter 625~~. Any such alternative form of security is ~~shall be~~ for the same purpose and ~~be~~ subject to the same conditions as those applicable to the bond required by this section. The ~~determination of the value of an alternative form of security shall be made by the~~ appropriate state, county, city, or other political subdivision shall determine the required value of an alternative form of security.

(12) Unless otherwise provided in this section, service of any document must be made in accordance with s. 713.18.

Section 2. Paragraph (c) of subsection (1) of section 337.18, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

337.18 Surety bonds for construction or maintenance contracts; requirement with respect to contract award; bond requirements; defaults; damage assessments.—

(1)

(c) A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 90 days after commencing to furnish labor, materials, or

supplies for the prosecution of the work, furnish the contractor with a notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his or her labor, materials, or supplies shall deliver to the contractor and to the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The notice of nonpayment may be served at any time during the progress of the work or thereafter but not before 45 days after the first furnishing of labor, services, or materials, and not later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, not later than 90 days after the date that the rental equipment was last on the ~~job~~ site of the improvement and available for use. An action by a claimant, except a laborer, who is not in privity with the contractor for the labor, materials, or supplies may not be instituted against the contractor or the surety unless both notices have been given. Written notices required or permitted under this section must ~~may~~ be served in accordance with ~~any manner provided in~~ s. 713.18.

(6) Unless otherwise provided in this section, service of any document must be made in accordance with s. 713.18.

Section 3. Subsections (13) through (29) of section 713.01, Florida Statutes, are renumbered as subsections (14)

through (30), respectively, subsections (4), (8), and (12) are amended, and a new subsection (13) is added to that section, to read:

713.01 Definitions.—As used in this part, the term:

(4) "Clerk's office" means the office of the clerk of the circuit court of the county, or another office serving as the county recorder as provided by law, in which the real property is located.

(8) "Contractor" means a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it, or who takes over from a contractor as so defined the entire remaining work under such contract. The term "contractor" includes an architect, landscape architect, or engineer who improves real property pursuant to a design-build contract authorized by s. 489.103(16). The term also includes a licensed general contractor or building contractor, as those terms are defined in s. 489.105(3)(a) and (b), respectively, who provides construction management services, which include scheduling and coordinating preconstruction and construction phases for the construction project, or who provides program management services, which include schedule control, cost control, and coordinating the provision or procurement of planning, design, and construction for the construction project.

(12) "Final furnishing" means the last date that the lienor furnishes labor, services, or materials. Such date may

not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of final completion, and does not include the correction of deficiencies in the lienor's previously performed work or materials supplied. With respect to rental equipment, the term means the date that the rental equipment was last on the ~~job~~ site of the improvement and available for use.

(13) "Finance charge" means a contractually specified additional amount to be paid by the obligor on any balance that remains unpaid by the due date set forth in the credit agreement or other contract.

Section 4. Section 713.011, Florida Statutes, is created to read:

713.011 Computation of time.—

(1) In computing any time period under this part, if the last day of the time period is a Saturday, Sunday, or holiday specified in s. 110.117(1), or any day observed as a holiday by the clerk's office or designated as a holiday by the chief judge of the circuit, the time period is extended to the end of the next business day.

(2) If the clerk's office is closed in response to an emergency for 1 or more days so that a person may not present a document for recording or an action for filing in person to the clerk's staff, the time period for recording a document or filing an action with the clerk's office under this part is

tolled. When the clerk's office reopens, the time period is extended by the number of days the clerk's office was closed.

Section 5. Paragraph (b) of subsection (2) of section 713.10, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

713.10 Extent of liens.—

(2)

(b) The interest of the lessor is not subject to liens for improvements made by the lessee when:

1. The lease, or a short form or a memorandum of the lease that contains the specific language in the lease prohibiting such liability, is recorded in the official records of the county where the premises are located before the recording of a notice of commencement for improvements to the premises and the terms of the lease expressly prohibit such liability; or

2. The terms of the lease expressly prohibit such liability, and a notice advising that leases for the rental of premises on a parcel of land prohibit such liability has been recorded in the official records of the county in which the parcel of land is located before the recording of a notice of commencement for improvements to the premises, and the notice includes the following:

a. The name of the lessor.

b. The legal description of the parcel of land to which the notice applies.

c. The specific language contained in the various leases prohibiting such liability.

d. A statement that all or a majority of the leases entered into for premises on the parcel of land expressly prohibit such liability.

~~3. The lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.~~

A notice that is consistent with subparagraph 2. effectively prohibits liens for improvements made by a lessee even if other leases for premises on the parcel do not expressly prohibit liens or if provisions of each lease restricting the application of liens are not identical.

(4) The interest of the lessor is not subject to liens for improvements made by the lessee when the lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.

Section 6. Paragraphs (a) and (d) of subsection (1) of section 713.13, Florida Statutes, are amended to read:

713.13 Notice of commencement.—

(1)(a) Except for an improvement that is exempt under ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond

complying with s. 713.23, shall record a notice of commencement in the clerk's office and ~~forthwith~~ post either a certified copy thereof or a notarized statement that the notice of commencement has been filed for recording along with a copy thereof. The notice of commencement must ~~shall~~ contain all of the following information:

1. A description sufficient for identification of the real property to be improved. The description must ~~should~~ include the legal description of the property and ~~also should include~~ the street address and tax folio number of the property if available or, if the ~~there is no~~ street address is not available, such additional information as will describe the physical location of the real property to be improved.

2. A general description of the improvement.

3. The name and address of the owner, the owner's interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than such owner. A lessee who contracts for the improvements is an owner as defined in s. 713.01 ~~under s. 713.01(23)~~ and must be listed as the owner together with a statement that the ownership interest is a leasehold interest.

4. The name and address of the contractor.

5. The name and address of the surety on the payment bond under s. 713.23, if any, and the amount of such bond.

6. The name and address of any person making a loan for the construction of the improvements.

7. The name and address within the state of a person other than himself or herself who may be designated by the owner as the person upon whom notices or other documents may be served under this part; and service upon the person so designated constitutes service upon the owner.

(d) A notice of commencement must be in substantially the following form:

Permit No..... Tax Folio No.....

NOTICE OF COMMENCEMENT

State of....
County of....

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property: ...(legal description of the property, and street address if available)....

2. General description of improvement:.....

3. Owner information or Lessee information if the Lessee contracted for the improvement:

a. Name and address:.....

b. Interest in property:.....

c. Name and address of fee simple titleholder (if different from Owner listed above):.....

4.a. Contractor: ...(name and address)....

b. Contractor's phone number:.....

5. Surety (if applicable, a copy of the payment bond is attached):

a. Name and address:.....

b. Phone number:.....

c. Amount of bond: $.....

6.a. Lender: ...(name and address)....

b. Lender's phone number:.....

7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes:

a. Name and address:.....

b. Phone numbers of designated persons:.....

8.a. In addition to himself or herself, Owner designates ..... of ..... to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.

b. Phone number of person or entity designated by owner:.....

9. Expiration date of notice of commencement (the expiration date will be 1 year <u>after</u> ~~from~~ the date of recording unless a different date is specified).....

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE ~~JOB~~ SITE OF THE IMPROVEMENT BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

...(Signature of Owner or Lessee, or Owner's or Lessee's Authorized Officer/Director/Partner/Manager)...

...(Signatory's Title/Office)...

The foregoing instrument was acknowledged before me by means of ☐ physical presence or sworn to (or affirmed) by ☐ online notarization this .... day of ...., ...(year)..., by ...(name of person)... as ...(type of authority, . . . e.g. officer, trustee, attorney in fact)... for ...(name of party on behalf of whom instrument was executed)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known .... OR Produced Identification ....

Type of Identification Produced.....

Section 7. Subsections (1), (3), and (4) of section 713.132, Florida Statutes, are amended to read:

713.132 Notice of termination.—

(1) An owner may terminate the period of effectiveness of a notice of commencement by executing, swearing to, and recording a notice of termination that contains all of the following:

(a) The same information that is in ~~as~~ the notice of commencement.~~;~~

(b) The official records' ~~recording office document book and page~~ reference numbers and recording date affixed by the recording office on ~~of~~ the recorded notice of commencement.~~;~~

(c) A statement of the date as of which the notice of commencement is terminated, which date may not be earlier than 30 days after the notice of termination is recorded.~~;~~

(d) A statement specifying that the notice applies to all the real property subject to the notice of commencement or specifying the portion of such real property to which it applies.~~;~~

(e) A statement that all lienors have been paid in full.~~;~~ ~~and~~

(f) A statement that the owner has, before recording the notice of termination, served a copy of the notice of termination ~~on the contractor and~~ on each lienor who has a direct contract with the owner or who has timely served a notice to owner, and a statement that the owner will serve a copy of the notice of termination on each lienor who timely serves a notice to owner after the notice of termination has been recorded. The owner is not required to serve a copy of the notice of termination on any lienor who has executed a waiver and release of lien upon final payment in accordance with s. 713.20.

(3) An owner may ~~not~~ record a notice of termination at any time after ~~except after completion of construction, or after construction ceases before completion and~~ all lienors have been paid in full or pro rata in accordance with s. 713.06(4).

(4) If an owner or a contractor, by fraud or collusion, knowingly makes any fraudulent statement or affidavit in a notice of termination or any accompanying affidavit, the owner and the contractor, or either of them, ~~as the case may be,~~ is liable to any lienor who suffers damages as a result of the filing of the fraudulent notice of termination,~~;~~ and any such lienor has a right of action for damages ~~occasioned thereby~~.

(5) ~~(4)~~ A notice of termination must be served before recording on each lienor who has a direct contract with the owner and on each lienor who has timely and properly served a notice to owner in accordance with this part before the recording of the notice of termination. A notice of termination must be recorded in the official records of the county in which the improvement is located. If properly served before recording in accordance with this subsection, the notice of termination terminates the period of effectiveness of the notice of commencement 30 days after the notice of termination is recorded in the official records ~~is effective to terminate the notice of commencement at the later of 30 days after recording of the notice of termination~~ or a later ~~the~~ date stated in the notice of termination as the date on which the notice of commencement is terminated. However, if a lienor who began work under the notice of commencement before its termination lacks a direct contract with the owner and timely serves his or her notice to owner after the notice of termination has been recorded, the owner must serve a copy of the notice of termination upon such lienor, and the termination of the notice of commencement as to that lienor is effective 30 days after service of the notice of termination~~, if the notice of termination has been served pursuant to paragraph (1)(f) on the contractor and on each lienor who has a direct contract with the owner or who has served a notice to owner~~.

Section 8. Subsections (1) and (3) of section 713.135, Florida Statutes, are amended to read:

713.135 Notice of commencement and applicability of lien.—

(1) When a ~~any~~ person applies for a building permit, the authority issuing such permit shall:

(a) Print on the face of each permit card in no less than 14-point, capitalized, boldfaced type: "WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE ~~JOB~~ SITE OF THE IMPROVEMENT BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT."

(b) Provide the applicant and the owner of the real property upon which improvements are to be constructed with a printed statement stating that the right, title, and interest of the person who has contracted for the improvement may be subject to attachment under the Construction Lien Law. The Department of Business and Professional Regulation shall furnish, for distribution, the statement described in this paragraph, and the statement must be a summary of the Construction Lien Law and must include an explanation of the provisions of the Construction Lien Law relating to the recording, and the posting of copies, of notices of commencement and a statement encouraging the owner to record a notice of commencement and

post a copy of the notice of commencement in accordance with s. 713.13. The statement must also contain an explanation of the owner's rights if a lienor fails to furnish the owner with a notice as provided in s. 713.06(2) and an explanation of the owner's rights as provided in s. 713.22. The authority that issues the building permit must obtain from the Department of Business and Professional Regulation the statement required by this paragraph and must mail, deliver by electronic mail or other electronic format or facsimile, or personally deliver that statement to the owner or, in a case in which the owner is required to personally appear to obtain the permit, provide that statement to any owner making improvements to real property consisting of a single or multiple family dwelling up to and including four units. However, the failure by the authorities to provide the summary does not subject the issuing authority to liability.

(c) In addition to providing the owner with the statement as required by paragraph (b), inform each applicant who is not the person whose right, title, and interest is subject to attachment that, as a condition to the issuance of a building permit, the applicant must promise in good faith that the statement will be delivered to the person whose property is subject to attachment.

(d) Furnish to the applicant two or more copies of a form of notice of commencement conforming with s. 713.13.

(e) Require ~~If the direct contract is greater than $2,500,~~ the applicant to ~~shall~~ file with the issuing authority before ~~prior to~~ the first inspection ~~either~~ a ~~certified~~ copy of the ~~recorded~~ notice of commencement if the direct contract is greater than $7,500. For purposes of this paragraph, the term "copy of the notice of commencement" means a certified copy of the recorded notice of commencement, ~~or~~ a notarized statement that the notice of commencement has been filed for recording~~,~~ along with a copy thereof, or the clerk's office's official records identifying information that includes the instrument number for the notice of commencement or the number and page of book where the notice of commencement is recorded, as identified by the clerk.

1. In the absence of the filing of a ~~certified~~ copy of the ~~recorded~~ notice of commencement, the issuing authority or a private provider performing inspection services may not perform or approve subsequent inspections until the applicant files by mail, facsimile, hand delivery, or any other means such ~~certified~~ copy with the issuing authority.

2. The ~~certified~~ copy of the notice of commencement must contain the name and address of the owner, the name and address of the contractor, and the location or address of the property being improved. The issuing authority shall verify that the name and address of the owner, the name of the contractor, and the location or address of the property being improved which is

contained in the ~~certified~~ copy of the notice of commencement is consistent with the information in the building permit application.

3. The issuing authority shall provide the recording information on the ~~certified~~ copy of the ~~recorded~~ notice of commencement to any person upon request.

4. This paragraph ~~subsection~~ does not require the recording of a notice of commencement before ~~prior to~~ the issuance of a building permit. If a local government requires a separate permit or inspection for installation of temporary electrical service or other temporary utility service, land clearing, or other preliminary site work, such permits may be issued and such inspections may be conducted without providing the issuing authority with a ~~certified~~ copy of the ~~a recorded~~ notice of commencement ~~or a notarized statement regarding a recorded notice of commencement~~. ~~This subsection does not apply to a direct contract to repair or replace an existing heating or air-conditioning system in an amount less than $15,000.~~

(f) ~~(e)~~ Not require that a notice of commencement be recorded as a condition of the application for, or processing or issuance of, a building permit. However, this paragraph does not modify or waive the inspection requirements set forth in this subsection.

This subsection does not apply to a direct contract to repair or replace an existing heating or air-conditioning system in an amount less than $15,000.

(3) An issuing authority under subsection (1) is not liable in any civil action for the failure to verify that a certified copy of the recorded notice of commencement, a notarized statement that the notice of commencement has been filed for recording along with a copy thereof, or the clerk's office's official records identifying information that includes the instrument number for the notice of commencement or the number and page of book where the notice of commencement is recorded, as identified by the clerk, has been filed in accordance with this section.

Section 9. Section 713.18, Florida Statutes, is amended to read:

713.18 Manner of serving documents ~~notices and other instruments~~.—

(1) Unless otherwise specifically provided by law, service of any document ~~notices, claims of lien, affidavits, assignments, and other instruments~~ permitted or required under this part, s. 255.05, or s. 337.18, or copies thereof when so permitted or required, ~~unless otherwise specifically provided in this part,~~ must be made by one of the following methods:

(a) By hand ~~actual~~ delivery to the person to be served; if a partnership, to one of the partners; if a corporation, to an

officer or~~,~~ director~~, managing agent, or business agent~~; ~~or,~~ if a limited liability company, to a member or manager; or to an employee or agent authorized by the partnership, corporation, or limited liability company to receive service of such document.

(b) By common carrier delivery service or by registered, Global Express Guaranteed, or certified mail to the person to be served, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(c) By posting on the site of the improvement if service as provided by paragraph (a) or paragraph (b) cannot be accomplished.

(2) Notwithstanding subsection (1), service of a notice to owner or a preliminary notice to contractor under this part, s. 255.05, or s. 337.18~~, or s. 713.23~~ is effective as of the date of mailing and the requirements for service under this section have been satisfied if all of the following requirements have been met:

(a) The notice is mailed by registered, Global Express Guaranteed, or certified mail, with postage prepaid, to the person to be served and addressed as prescribed ~~at any of the addresses set forth~~ in subsection (3).~~;~~

(b) The notice is mailed within 40 days after the date the lienor first furnishes labor, services, or materials.~~; and~~

(c)1. The person who served the notice maintains a ~~registered or certified~~ mail log that shows the registered or

certified mail number issued by the United States Postal Service, the name and address of the person served, and the date stamp of the United States Postal Service confirming the date of mailing; or

2. The person who served the notice maintains ~~electronic~~ tracking records approved or generated by the United States Postal Service containing the postal tracking number~~, the name and address of the person served,~~ and verification of the date of receipt by the United States Postal Service.

(3)(a) Notwithstanding subsection (1), service of a document under ~~an instrument pursuant to~~ this section is effective on the date of mailing or shipping, and the requirements for service under this section have been satisfied, ~~the instrument~~ if the document meets both of the following requirements ~~it~~:

1. It is sent to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a notice of commencement, to the last address shown in the building permit application, or to the last known address of the person to be served.~~; and~~

2. It is returned as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the document ~~item~~.

(b) If the address shown in the notice of commencement or any amendment thereto ~~to the notice of commencement~~, or, in the absence of a notice of commencement, in the building permit application, is incomplete for purposes of mailing or delivery, the person serving the document ~~item~~ may complete the address and properly format it according to United States Postal Service addressing standards using information obtained from the property appraiser or another public record without affecting the validity of service under this section.

(4) A document ~~notice~~ served by a lienor on one owner or one partner of a partnership owning the real property is deemed served on ~~notice to~~ all owners and partners.

Section 10. Section 713.21, Florida Statutes, is amended to read:

713.21 Discharge of lien.—A lien properly perfected under this chapter may be discharged, or released in whole or in part, by any of the following methods:

(1) By entering satisfaction of the lien upon the margin of the record thereof in the clerk's office when not otherwise prohibited by law. This satisfaction must ~~shall~~ be signed by the lienor or~~,~~ the lienor's agent or attorney and attested by said clerk. Any person who executes a claim of lien has ~~shall have~~ authority to execute a satisfaction in the absence of actual notice of lack of authority to any person relying on the same.

(2) By the satisfaction or release of the lienor, duly acknowledged and recorded in the clerk's office. The satisfaction or release must include the lienor's notarized signature and set forth the official records' reference number and recording date affixed by the recording office on the subject lien. Any person who executes a claim of lien has ~~shall have~~ authority to execute a satisfaction or release in the absence of actual notice of lack of authority to any person relying on the same.

(3) By failure to begin an action to enforce the lien within the time prescribed in this part.

(4) By an order of the circuit court of the county where the property is located, as provided in this subsection. Upon filing a complaint ~~therefor~~ by any interested party the clerk shall issue a summons to the lienor to show cause within 20 days after service of the summons why his or her lien should not be

HB 591

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 591 Social Media Protection for Minors
SPONSOR(S): Rayner-Goolsby and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 792

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

SUMMARY ANALYSIS

Social media platforms are a computer-based technology that facilitates the sharing of ideas, thoughts, and information through virtual networks and communities gives users quick electronic communication of content, such as personal information, videos, and photos. Social media use by children can have positive and negative influences, and providing them with information and external controls can help prevent harmful effects.

The bill requires social media platforms to meet the following operating requirements:

- Disclose:
  - Content moderation policies.
  - Manipulation of photographs or digital images.
  - Methodology used to consider the best interests of minors when providing services.
  - User policies related to harmful behaviors, such as bullying and harassment.
- Provide:
  - Local resources for law enforcement, suicide prevention, and domestic violence prevention.
  - Protective measures such as screen time, usage data, and other parental settings.
- Require minors at the time of log in to read and accept a disclaimer on social media harms.

Social media platforms that fail to meet such operating requirements are prohibited from registering, enrolling, or otherwise accepting new accounts from minors.

Subject to appropriation by the Legislature, the Department of Agriculture and Consumer Services must:

- Enforce the operating requirements and provide for adequate staffing and investigative resources.
- Implement measures to screen and evaluate social media platforms for compliance with the operating requirements, including the minimum age requirement for registration or enrollment.

The bill provides that a social media platform is subject to a fine of $10,000 for each occurrence in which a minor is registered or enrolled in a platform that fails to meet the operating requirements. Proceeds from such fines must be directed to resources serving the mental health needs of children.

The bill requires all schools operating in the state that accept state funding are prohibited from requiring students, regardless of age, to register, enroll, or participate in social media platforms as a means to access information, materials, or resources related to school-sponsored educational activities.

The bill will have an indeterminate, negative fiscal impact on state government and no fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Social Media Platforms

Generally, a social media platform is a computer-based technology that facilitates the sharing of ideas, thoughts, and information through virtual networks and communities. Social media is internet-based and gives users quick electronic communication of content, such as personal information, videos, and photos. Users engage with social media via a computer, tablet, or smartphone via web-based software or applications.[1]

Effects of Social Media on Children

Generally, social media use by children can have both positive and negative effects on their health.[2] Some potential safety risks of social media use include:[3]

- Exposure to harmful or inappropriate content.
- Exposure to dangerous people.
- Cyberbullying.
- Oversharing personal information.
- Exposure to excessive advertisements.
- Privacy concerns, including the collection of data about minors.
- Identity theft or being hacked.
- Interference with sleep, exercise, homework, or family activities.

While children generally become more attuned to social interactions as they enter adolescence, those who are frequent, early social media users become particularly sensitive to anticipating social risks and rewards from their peers, according to a study published in JAMA Pediatrics.[4]

The researchers found that "habitual" social media users, or those who checked their social feeds 15 times a day or more, responded quicker and more intensely to perceived good or bad emotions from peers, compared to students who checked once a day or less. The areas of the brain associated with motivation and cognitive control became more active among the habitual students when expecting social rewards and punishments. The students who used little social media reacted less strongly to social cues over the same time period.[5]

Another study in the Journal of Adolescent Health found that 9- and 10-year-olds who spent hours a day playing video games or watching online algorithm-based videos had a higher risk of developing obsessive-compulsive disorders.[6]

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[1] Maya Dollarhide, *Social Media: Definition, Effects, and List of Top Apps*, Investopedia.com, https://www.investopedia.com/terms/s/social-media.asp (last visited Mar. 1, 2023).
[2] Mayo Clinic Staff, *Teens and social media use: What's the impact?*, Mayo Foundation for Medical Education and Research, https://www.mayoclinic.org/healthy-lifestyle/tween-and-teen-health/in-depth/teens-and-social-media-use/art-20474437 (last visited Mar. 2, 2023).
[3] Loyola Medicine, *Social Media Safety for Kids and Teens*, https://www.loyolamedicine.org/about-us/blog/social-media-safety-kids-teens, (last visited Mar. 2, 2023)
[4] Sarah D. Sparks, *Preteens" Social Media Habits Could Be Changing Their Brains*, Education Week, Jan. 6, 2023, https://www.edweek.org/leadership/preteens-social-media-habits-could-be-changing-their-brains/2023/01 (last visited Mar. 1, 2023); Maria T. Maza, BS; Kara A. Fox, MA; Seh-Joo Kwon, BS; et al, *Association of Habitual Checking Behaviors on Social Media With Longitudinal Functional Brain Development*, JAMA Pediatrics, Jan. 3, 2023, https://jamanetwork.com/journals/jamapediatrics/article-abstract/2799812 (last visited Mar. 1, 2023).
[5] Maria T. Maza, *supra* note 4.
[6] *Id*; Jason M. Nagata, M.D., M.Sc.; Jonathan Chu; Gabriel Zamora; Caitlin R. Costello, M.D.; Stuart B. Murray, D.Clin.Psych., Ph.D.; Fiona C. Baker, Ph.D.; *Screen Time and Obsessive-Compulsive Disorder Among Children 9–10 Years Old: A Prospective Cohort*

In 2021, the Wall Street Journal reported internal research showing that Instagram conducted online surveys, diary studies, focus groups and large-scale questionnaires, which showed that 32% of teenage girls reported that Instagram made them have a worse body image. Of research participants who experienced suicidal thoughts, 13% of British teens and 6% of American teens directly linked their interest in suicide to Instagram.[7]

Recently, U.S. Surgeon General Vivek Murthy remarked that 13 years old is "too early" for children to use social media, despite most social media companies allowing 13 year olds to use their platforms. In early adolescence, kids are still "developing their identity, their sense of self," Murthy said on CNN's "Newsroom" on Jan. 29. He stated that "the skewed, and often distorted, environment of social media often does a disservice to many of those children."[8]

However, social media can allow teens to create online identities, communicate with others, and build social networks, which can provide teens with valuable support, especially helping those who experience exclusion. Social media can expose teens to current events, allow them to interact across geographic barriers, and teach them about a variety of subjects, including healthy behaviors. Also, social media that is humorous or provides a meaningful connection to peers may help teens avoid depression.[9]

In 2022, the Pew Research Center conducted a survey asking teens of their views on social media. Generally, they credit social media for helping to build stronger friendships and exposing them to a more diverse world, but they express concern that these sites lead to drama and social pressure.[10]

Safety Measures and Parental Controls

Providing children with information on ways to more safely use social media may decrease the harm they experience. Having conversations about social media, its benefits, and its risks, may help promote positive social media usage.[11]

Also, parental controls can help protect children from inappropriate content, cyberbullying and other online safety issues. Generally, parental controls are a group of settings that put a parent in control of what content a child can see.[12] Many websites, games, software, devices, and user interfaces offer the optional use of parental controls. Examples of parental controls include blocking websites, filtering content, imposing limits on screen time, allowing parents to monitor online activity, location tracking, and disabling Wi-Fi.[13]

Laws Protecting Children Online

Children's Online Privacy Protection Act (COPPA)

The Children's Online Privacy Protection Act (COPPA)[14] and its related rules, is a federal law that regulates websites' collection and use of children's information. The operator of a website or online service that is directed to children, or that has actual knowledge that it collects children's personal

Study; Journal of Adolescent Health, Dec. 12, 2022; https://www.jahonline.org/article/S1054-139X(22)00722-4/fulltext (last visited Mar. 1, 2023).
[7] Taylor Hatmaker, *Facebook knows Instagram harms teens. Now, its plan to open the app to kids looks worse than ever*, TechCrunch.com, https://techcrunch.com/2021/09/16/facebook-instagram-for-kids-mosseri-wsj-teen-girls/ (last visited Mar. 1, 2023).
[8] Lauraine Langreo, EducationWeek, *Surgeon General: Kids Under 14 Should Not Use Social Media,* Feb. 2, 2023, https://www.edweek.org/leadership/surgeon-general-kids-under-14-should-not-use-social-media/2023/02 (last visited Mar. 1, 2023).
[9] Mayo Clinic, *supra* note 2.
[10] Pew Research Center, *Teens' Social Media Habits and Experiences,* https://www.pewresearch.org/internet/2018/11/28/teens-social-media-habits-and-experiences/, (last visited Mar. 2, 2023).
[11] WebMD Editorial Contributors, *How to Talk to Your Kids About Social Media*, WebMD.com, https://www.webmd.com/parenting/how-to-talk-to-kids-about-social-media (last visited Mar. 1, 2023).
[12] Internetmatters.org, *Parental Controls*, https://www.internetmatters.org/parental-controls/ (last visited Mar. 1, 2023).
[13] Caroline Knorr, Commonsensemedia.org, *Parents' Ultimate Guide to Parental Controls*, https://www.commonsensemedia.org/articles/parents-ultimate-guide-to-parental-controls (last visited Mar. 1, 2023).
[14] 16 C.F.R. pt. 312.

information (covered entities), must comply with requirements regarding data collection and use, privacy policy notifications, and data security.

A covered entity may not collect personal information from a child under the age of 13 without the prior, verifiable consent of his or her parent.[15]

COPPA requires covered entities to:[16]

- Give parents direct notice of their privacy policies, including a description of their data collection and sharing practices;
- Post a clear link to their privacy policies on their home page and at each area of their website where they collect personal information from children;
- Institute procedures to protect the personal information that they hold;
- Ensure that any third party with which they share collected personal information implements the same protection procedures; and
- Delete children's personal information after the purpose for its retention has been fulfilled.

Violations of COPPA are deemed an unfair or deceptive act or practice and may therefore be prosecuted by the FTC. COPPA also authorizes state attorneys general to enforce violations that affect residents of their states. There is no criminal prosecution or private right of action provided for under COPPA.[17]

California Age-Appropriate Design Code Act

In 2022, California adopted the California Age-Appropriate Design Code Act (CAADCA),[18] legislation modelled on the United Kingdom's Age Appropriate Design Code,[19] which requires online platforms to adhere to strict default privacy and safety settings that protect the best interest of children.[20] CAADCA covers children under 18 years of age and will be effective July 1, 2024.[21]

CAADCA requires certain businesses that provide an online service, product, or feature that is likely to be accessed by children to comply with several new requirements and restrictions, including:[22]

- Prohibitions on using any personal information that it knows or should know is materially detrimental to a child's physical or mental health and/or wellbeing; and
- Prohibitions on obscuring user interface features to deliberately defeat consent or manipulate children into providing unnecessary personal information, otherwise called "dark patterns."

Such businesses must complete a Data Protection Impact Assessment for any new feature they wish to offer to the public if it is likely to be accessed by children, which will determine if any dark patterns are employed, if there is an asymmetrical reward, or if targeted advertisements are deployed in a way that could harm or exploit children.[23]

Social Media Use in Florida Schools

[15] 15 U.S.C. ss. 6502(a)-(b).
[16] *See*, Federal Trade Commission, *General Questions About the COPPA Rule: What is the Children's Online Privacy Protection Rule?*, https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0 (last visited Mar. 1, 2023).
[17] *Id*.
[18] Cal. Civil Code § 1798.99.28-.35
[19] 5Rights Foundation, *California follows UK lead as child data protection law is passed*, https://5rightsfoundation.com/in-action/california-follows-uk-lead-as-child-data-protection-law-is-passed.html (last visited Mar. 2, 2023).
[20] Office of Governor Gavin Newsome, *Governor Newsom Signs First-in-Nation Bill Protecting Children's Online Data and Privacy*, https://www.gov.ca.gov/2022/09/15/governor-newsom-signs-first-in-nation-bill-protecting-childrens-online-data-and-privacy/ (last visited Mar. 2, 2023).
[21] Cal. Civil Code § 1798.99.28-.35
[22] Briana Kelly, Nelson Mullins Riley & Scarborough LLP, *State of California Passes Bill to Protect Children Online*, Jan. 26, 2023, https://www.nelsonmullins.com/idea_exchange/alerts/privacy_and_data_security_alert/all/state-of-california-passes-bill-to-protect-children-online (last visited Mar. 2, 2023).
[23] *Id*.

Students in Florida are not required to receive instruction on social media. However, an instructional model for a social media course[24] is available in CPALMS.[25] The purpose of this social media course is to enable students to develop fundamental skills in the use of social media across print, multimedia, web, and broadcast platforms, including ethical and legal uses. The content of this course should include, but not be limited to, the following:[26]

- Demonstrating entry-level skills in digital communication and packaging them across the platforms/mediums of print, multimedia, online, and broadcast;
- Demonstrating fundamental skills in social media platforms and their uses; expressing social connections with maturity and complexity appropriate to writer, audience, purpose, and context;
- Using fundamental research skills and networking formats;
- Collaborating amongst peers; and
- Using effective listening, speaking, and viewing strategies with an emphasis on the use of evidence to support or refute a claim in multimedia presentations, class discussions, and extended text discussions.

Department of Agriculture and Consumer Services

In addition to regulating agriculture in Florida, the Department of Agriculture and Consumer Services (DACS) also protects consumers from unfair and deceptive business practices and provides consumer information.[27]

DACS achieves this, in part, through licensing and registering various professionals, including:

- Professional Surveyors and Mappers (ch. 472, F.S.);
- Private Investigative, Private Security, and Repossession Services (ch. 493, F.S.);
- Solicitation of Funds (ch. 496, F.S.);
- Health Studios (ch. 501, pt. I, F.S.);
- Telemarketing Services (ch. 501, pt. IV, F.S.);
- Intrastate Movers and Brokers (ch. 507, F.S.);
- Sellers of Liquefied Petroleum Gas (ch. 527, F.S.);
- Pawnbroking (ch. 539, F.S.);
- Motor Vehicle Repair Shops (ch. 559, pt. IX, F.S.); and
- Sellers of Travel (ch. 559, pt. XI, F.S.).

Generally, DACS can discipline a licensee for violations of their professional license laws, as provided in their applicable practice act, including fines and revocation.

Also, DACS acts as the state's clearinghouse for consumer complaints, information and protection. DACS protects consumers and businesses from unfair and unsafe business practices across a wide range of market sectors, including gasoline, brake fluid, antifreeze, liquefied petroleum gas, amusement rides, and weighing and measuring devices. DACS provides consumer education and information on these issues on their website.[28]

Effect of the Bill

Beginning January 1, 2024, a social media platform operating in the state must meet the following operating requirements:

- Disclose the following:

[24] CPALMS, Course, *Social Media 1 (#1006375)*, https://www.cpalms.org/PreviewCourse/Preview/17758, (last visited Mar. 2, 2023).
[25] CPALMS is the State of Florida's official source for standards information and course descriptions. It provides access to thousands of standards-aligned, free, and high-quality instructional/educational resources that have been developed specifically for the standards and vetted through a rigorous review process. CPALMS, *About CPALMS*, http://www.cpalms.org/CPALMS/about_us.aspx, (last visited Mar. 2, 2023).
[26] *Id.*
[27] s. 20.14(2), F.S.
[28] Department of Agriculture and Consumer Services, *Division of Consumer Services*, https://www.fdacs.gov/Divisions-Offices/Consumer-Services (last visited Mar. 7, 2023).

- Content moderation policies, including the use of addictive design features such as autoplay or infinite scroll.
- Manipulation of photographs or digital images.
- Methodology used to consider the best interests of minors when designing, developing, and providing services.
- Clear and concise user policies, protections, and reporting mechanisms related to harmful behaviors such as bullying, harassment, and threats of violence or self-harm.

- Provide the following:
  - Zip code-based references to local resources for law enforcement, suicide prevention, and domestic violence prevention services.
  - Protective measures such as screen time, usage data, and other parental settings.
- At the time of log in, require minors to read and accept a disclaimer which must be in substantially the following form:

> This application may be harmful to your mental health and may use design features that have addictive qualities or present unverified information or that may be manipulated by [insert platform name] for your viewing. This application may also collect your personal data to further manipulate your viewable content and may share your personal data with others.

Social media platforms that fail to meet such operating requirements are prohibited from registering, enrolling, or otherwise accepting new accounts from minors.

Subject to appropriation by the Legislature, DACS must:

- Enforce the operating requirements and provide for adequate staffing and investigative resources.
- Implement measures to screen and evaluate social media platforms for compliance with the operating requirements, including the minimum age requirement for registration or enrollment.

The bill provides that a social media platform is subject to a fine of $10,000 for each occurrence in which a minor is registered or enrolled in a platform that fails to meet the operating requirements. Proceeds from such fines must be directed to resources serving the mental health needs of children.

The bill requires all schools operating in the state that accept state funding are prohibited from requiring students, regardless of age, to register, enroll, or participate in social media platforms as a means to access information, materials, or resources related to school-sponsored educational activities.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 501.174, F.S.; providing operating requirements for social media platforms.
Section 2: Provides requirements for schools operating in Florida.
Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may increase revenues due to increased fines levied to social media platforms that violate the operating requirements.

2. Expenditures:

   The bill will increase state expenditures due to increased regulatory costs for DACS to enforce the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will require social media platforms to expend resources to develop standards and mechanisms to comply with the bill.

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:

The bill does not provide a definition for “social media platform,” or indicate whether the requirements are only applicable to platforms used by children, which may cause confusion of the applicability of the bill. The sponsor has indicated that these issues will be addressed on an amendment to the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to social media protection for minors; creating s. 501.174, F.S.; requiring social media platforms to disclose specified information and provide specified resources, measures, and disclaimers; prohibiting social media platforms that fail to meet certain requirements from accepting new accounts from minors; requiring the Department of Agriculture and Consumer Services, subject to legislative appropriation, to enforce specified provisions and implement specified measures; providing a fine for violations; requiring fine proceeds to be used for specified purposes; prohibiting certain schools from requiring students to register, enroll, or participate in social media platforms for educational purposes; providing an effective date.

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

Section 1. Section 501.174, Florida Statutes, is created to read:

501.174 Social media protection for minors.-

(1) Beginning January 1, 2024, a social media platform operating in the state must:

(a) Disclose the following:

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

1. Content moderation policies, including the use of addictive design features such as autoplay or infinite scroll.

2. Manipulation of photographs or digital images.

3. Methodology used to consider the best interests of minors when designing, developing, and providing services.

4. Clear and concise user policies, protections, and reporting mechanisms related to harmful behaviors such as bullying, harassment, and threats of violence or self-harm.

(b) Provide the following:

1. Zip code-based references to local resources for law enforcement, suicide prevention, and domestic violence prevention services.

2. Protective measures such as screen time, usage data, and other parental settings.

(c) At the time of log in, require minors to read and accept a disclaimer which must be in substantially the following form:

This application may be harmful to your mental health and may use design features that have addictive qualities or present unverified information or that may be manipulated by [insert platform name] for your viewing. This application may also collect your personal data to further manipulate your viewable content and may share your personal data with others.

(2) Social media platforms that fail to meet the requirements of subsection (1) are prohibited from registering, enrolling, or otherwise accepting new accounts from minors.

(3) Subject to appropriation by the Legislature, the Department of Agriculture and Consumer Services shall:

(a) Enforce this section and provide for adequate staffing and investigative resources.

(b) Implement measures to screen and evaluate social media platforms for compliance with subsection (1), including the minimum age requirement for registration or enrollment.

(4) A social media platform is subject to a fine of $10,000 for each occurrence in which a minor is registered or enrolled in a platform that fails to meet the requirements of subsection (1). Proceeds from the fines collected must be directed to resources serving the mental health needs of children.

Section 2. All schools operating in the state that accept state funding are prohibited from requiring students, regardless of age, to register, enroll, or participate in social media platforms as a means to access information, materials, or resources related to school-sponsored educational activities.

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

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 591 by Rep. Rayner-Goolsby
Social Media Protection for Minors

AMENDMENT SUMMARY
March 9, 2023

Amendment 1 by Rep. Rayner-Goolsby (strike-all):

- Defines "social media platform" as an online platform with users that are predominantly children.
- Requires social media platforms to clearly post on their website certain user and moderation policies related to actions that may cause harms to children.
- Requires social media platforms to provide access to resources and content controls to help prevent harm to children.
- Allows social media platforms to post a statement on their website confirming that it has complied with the operating requirements.
- Prohibits certain K-12 schools from having social media accounts on platforms that do not contain a statement confirming compliance.
- Prohibits certain K-12 schools from requiring students to use social media as a part of their curriculum.

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 Rayner-Goolsby offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 501.174, Florida Statutes, is created to read:

501.174 Social media protection for minors.-

(1) As used in this section, the term "social media platform" or "platform" means a digital platform operating in the state predominantly accessed by platform users who are under the age of 18 that offers forms of electronic communication through which such platform users are permitted to create online communities to share information, ideas, personal messages, and other content.

(2) Beginning January 1, 2024, a social media platform must, on their Internet homepage or platform user login page or in a clearly labeled, conspicuous, and readily accessible link contained on such page:

(a) Disclose the following social media platform policies, in a way that is clearly, concisely, prominently, and understandably written, using clear language suited to the age of children likely to routinely access the platform with no unrelated, confusing, or contradictory materials:

1. The content moderation policies used by the social media platform for content on the platform.

2. Whether the social media platform uses or allows the use of addictive design or deceptive pattern features including autoplay or infinite scroll.

3. Whether the social media platform allows manipulated photographs or digital images to be shared on the platform.

4. Whether the social media platform considers the best interests of minors when designing, developing, and providing services.

5. The methodology the social media platform uses to consider the best interests of minors when designing, developing, and providing services.

6. The policies and protections used by the social media platform to protect against harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.

7. Whether the platform collects or sells personal information of platform users who are under the age of 18, including personal identifiers, biometrics, and geolocation data. If such personal information is collected, the platform must disclose what kind of personal information is collected and for purposes, and if such personal information is sold, the platform must disclose to whom the personal information is sold.

(b) Provide clear access to the following:

1. Zip code-based references to local resources for law enforcement, suicide prevention, and domestic violence prevention services.

2. Protective measures such as screen time limitations, data usage limitations, content filters, and other parental settings.

3. Reporting mechanisms related to harmful behaviors, such as bullying, harassment, and threats of violence or self-harm

(3) At the time of log in, and prior to obtaining access to the platform, a social media platform must require platform users who are under the age of 18 to read and accept a disclaimer which must be in substantially the following form:

This application may be harmful to your mental health and may use design features that have addictive qualities, present unverified information, or may be manipulated by [insert platform name] or others for

your viewing. This platform may also collect your personal data to further manipulate your viewable content and may share your personal data with others.

(4) When a social media platform complies with subsections (2) and (3), the social media platform may place a statement confirming such on their Internet homepage or platform user login page.

(5) If a social media platform does not have a statement described in subsection (4) on their Internet homepage or platform user login page, then all K-12 schools operating in the state that accept state funding may not use or have an account on such social media platform.

Section 2. All K-12 schools operating in the state that accept state funding are prohibited from requiring students, regardless of age, to register, enroll, or participate in social media platforms as a means to access information, materials, or resources related to school-sponsored educational activities. This does not apply to portal, email, and message board accounts used for official business with the school.

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 lines 8-13 and insert:

92 accounts from minors; prohibiting certain

HB 719

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 719 Practice of Veterinary Medicine
SPONSOR(S): Killebrew
TIED BILLS: **IDEN./SIM. BILLS:** SB 722

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

SUMMARY ANALYSIS

In Florida, the practice of "veterinary medicine" means the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease. Veterinarians are regulated by the Board of Veterinary Medicine (Board) in the Department of Business and Professional Regulation (DBPR) pursuant to ch. 474, F.S., relating to veterinary medical practice (practice act).

The purpose of the practice act is to ensure that every veterinarian practicing in this state meets minimum requirements for safe practice to protect public health and safety. The practice act provides requirements for licensure by examination, licensure of qualified out-of-state veterinarians by endorsement, premises permitting, prohibitions and penalties, and grounds for disciplinary action by the Board.

According to reports, a recent increase in household pet ownership has contributed to a shortage of veterinarians in the U.S.

The bill allows out-of-state veterinarians to perform dog or cat sterilization services, and routine preventative health services at the time of sterilization, under the certain circumstances. Specifically, the bill exempts from the practice act veterinarians who:

- Hold an active license to practice veterinary medicine in another jurisdiction in the U.S.;
- Are in good standing in such jurisdiction; and
- Perform dog or cat sterilization services or routine preventative health services at the time of sterilization as an unpaid volunteer under responsible supervision of a veterinarian licensed in this state.

The bill specifies that the supervising licensed veterinarian is responsible for all acts performed under this provision by an out-of-state veterinarian acting under her or his responsible supervision.

The bill provides that an out-of-state veterinarian practicing pursuant to this provision is not eligible to apply for a premises permit.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Practice of Veterinary Medicine

The practice of veterinary medicine is regulated by the Department of Business and Professional Regulation (DBPR) Board of Veterinary Medicine (Board).[1] The Board administers and enforces the provisions of ch. 474, F.S., relating to veterinary medical practice (practice act). The purpose of the practice act is to ensure that every veterinarian practicing in this state meets minimum requirements for safe practice to protect public health and safety.[2]

A veterinarian is a health practitioner licensed by the Board to engage in the practice of veterinary medicine in Florida,[3] which is the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease, or holding oneself out as performing any of these functions.[4]

Veterinary medicine includes, with respect to animals:[5]

- Surgery;
- Acupuncture;
- Obstetrics;
- Dentistry;
- Physical therapy;
- Radiology;
- Theriogenology (reproductive medicine);[6] and
- Other branches or specialties of veterinary medicine.

Licensure by Examination

To become a licensed veterinarian, an applicant must:

- Graduate from a college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education (AVMAE); **or** from a college of veterinary medicine listed in the American Veterinary Medical Association Roster of Veterinary Colleges of the World (AVMARVC) **and** obtain a certificate from the Education Commission for Foreign Veterinary Graduates (ECFVG) **or** the Program for the Assessment of Veterinary Education Equivalence (PAVE);
- Successfully complete the North American Veterinary Licensing Examination (NAVLE), or an examination determined by the board to be equivalent; and
- Successfully complete an examination of the laws and rules governing the practice of veterinary medicine in Florida.[7]

Licensure by Endorsement

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[1] *See* ss. 474.204 through 474.2125, F.S., concerning the powers and duties of the Board.
[2] S. 474.201, F.S.
[3] *See* s. 474.202(11), F.S.
[4] *See* s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy or fertility or infertility of animals.
[5] *See* s. 474.202(13), F.S. Section 474.202(1), F.S., which defines "animal" as "any mammal other than a human being or any bird, amphibian, fish, or reptile, wild or domestic, living or dead."
[6] The Society for Theriogenology, established in 1954, is composed of veterinarians dedicated to standards of excellence in animal reproduction. *See* https://www.therio.org/page/HistoryTheriogenolog (last visited Feb. 25, 2023).
[7] R. 61G18-11.002, F.A.C.

A person who is licensed in another state or country is eligible for a license by endorsement in Florida if they:[8]

- Successfully complete an examination of the laws and rules governing the practice of veterinary medicine in Florida; and
- Either:
    - hold a valid license to practice veterinary medicine in another jurisdiction of the United States for the three years immediately preceding the application for licensure, provided that the requirements for licensure are equivalent to or more stringent than a Florida license; or
    - have graduated from an AVMAE, or AVMARVC program with the required certificate, and have successfully completed an examination which is equivalent to or more stringent than the NAVLE.

DBPR may not issue a license by endorsement to any applicant who is under investigation in any state, territory, or the District of Columbia for an act which would constitute a violation of the practice act until the investigation is complete and disciplinary proceedings have been terminated.[9]

Exemptions

The following entities are exempt from the practice act:[10]

- Veterinary aides, nurses, laboratory technicians, preceptors,[11] or other employees of a licensed veterinarian, who administer medication or provide help or support under the responsible supervision[12] of a licensed veterinarian;
- Certain non-Florida licensed veterinarians who are consulting upon the request of a Florida-licensed veterinarian;
- Faculty veterinarians when they have assigned teaching duties at accredited[13] institutions;
- Certain graduate intern/resident veterinarians of accredited institutions;
- Certain students in a school or college of veterinary medicine who perform assigned duties by an instructor or work as preceptors;
- Certain doctors of veterinary medicine employed by a state agency or the U.S. Government;
- Persons or their employees caring for the persons' own animals, as well as certain part-time or temporary employees, or independent contractors, who are hired by an owner to help with herd management and animal husbandry tasks; and
- Certain entities or persons[14] that conduct experiments and scientific research on animals as part of the development of pharmaceuticals, biologicals, serums, or treatment methods or techniques to diagnose or treatment of human ailments, or in the study and development of methods and techniques applicable to the practice of veterinary medicine.

Premises Permit

Any permanent or mobile establishment where a licensed veterinarian practices must have a premises permit issued by DBPR.[15] Each person to whom a veterinary license or premises permit is issued must

[8] S. 474.217(1), F.S.
[9] S. 474.217(2), F.S.
[10] *See* s. 474.203, F.S.
[11] A preceptor is a skilled practitioner or faculty member who directs, teaches, supervises, and evaluates students in a clinical setting to allow practical experience with patients. *See also* https://www.merriam-webster.com/dictionary/preceptor#medicalDictionary (last visited Feb. 25, 2023).
[12] The term "responsible supervision" is defined in s. 474.202(10), F.S., as the "control, direction, and regulation by a licensed doctor of veterinary medicine of the duties involving veterinary services" delegated to unlicensed personnel.
[13] Ss. 474.203(1) and (2), F.S., provide that accreditation of a school or college must be granted by the American Veterinary Medical Association (AVMA) Council on Education, or the AVMA Commission for Foreign Veterinary Graduates.
[14] *See* s. 474.203(6), F.S., which states that the exemption applies to "[s]tate agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof. . . ."
[15] S. 474.215(1), F.S.

conspicuously display such document in her or his office, place of business, or place of employment in a permanent or mobile veterinary establishment or clinic.[16]

Prohibitions and Penalties

The following licensure related activities are prohibited:[17]

- Leading the public to believe that a person is licensed to practice veterinary medicine, without holding a valid, active license.
- Using the name or title "veterinarian" when the person has not been licensed.
- Using the license of another veterinarian.
- Giving false or forged evidence to the Board to obtain a license.
- Using or attempting to use a veterinarian's license which has been suspended or revoked.
- **Knowingly employing unlicensed persons in the practice of veterinary medicine.**
- Knowingly concealing information relative to violations of the practice act.
- Obtaining a license to practice veterinary medicine by fraudulent representation.
- **Practicing veterinary medicine without a license.**
- Selling or offering to sell fake veterinary diplomas and licenses.
- **Knowingly operating a veterinary establishment or premises without having a premises permit.**

Violations are a third degree felony, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.[18]

Grounds for Disciplinary Action by the Board

The following acts are some of the grounds for which the Board may take disciplinary action:

- Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of veterinary medicine, including animal cruelty and state or federal drug laws.
- Violating any provision of the practice act or chapter 455, F.S., related to DBPR, a rule of the Board or department, or a lawful order of the Board or department or subpoena of the department.
- Being unable to practice safely due to illness, drunkenness, use of drugs, narcotics, chemicals, or any other material or substance or as a result of any mental or physical condition.
- Judicially determined mental incompetency.
- Knowingly maintaining a professional connection or association with persons in violation.
- Performing or prescribing unnecessary or unauthorized treatment.
- Attempting to restrict competition.
- Fraud, deceit, negligence, incompetency, or misconduct.
- Permitting or allowing another to use a veterinarian's license to treat animals.
- Fraudulently issuing or using any false health certificate, vaccination certificate, test chart, or other blank form used in the practice of veterinary medicine relating to the presence or absence of animal disease or transporting animals or issuing any false certificate relating to the sale of products of animal origin for human consumption.
- Practicing at a location for which a valid premises permit has not been issued.
- Refusing to allow department inspections during regular business hours.
- Ordering, prescribing, or making available medicinal drugs or drugs[19] or controlled substances[20] for use other than for the specific treatment of animal patients for which there is a documented veterinary client patient relationship (VCPR) and without:
    - Having sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal, which means that the veterinarian is

[16] S. 474.216, F.S.
[17] S. 474.213, F.S.
[18] *Id*.
[19] S. 465.003(8), F.S.
[20] S. 893.02(4), F.S.

personally acquainted with the keeping and caring of the animal and has recently seen the animal or has made medically appropriate and timely visits to the premises where the animal is kept;
    - Being available to provide for follow-up care and treatment in case of adverse reactions or failure of the regimen of therapy; and
    - Maintaining records which document patient visits, diagnosis, treatment, and other relevant information required under the practice act.[21]
- Providing, prescribing, ordering, or making available for human use medicinal drugs or drugs as defined in chapter 465, controlled substances as defined in chapter 893, or any material, chemical, or substance used exclusively for animal treatment.
- Failing to report to the department any person the licensee knows to be in violation of the practice act.
- Violating any of the requirements of chapter 499, the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq., the Comprehensive Drug Abuse Prevention and Control Act of 1970, more commonly known as the Comprehensive Drug Abuse Prevention and Control Act; or chapter 893, F.S.
- Prescribing or dispensing a legend drug as defined in chapter 499, F.S., including any controlled substance, inappropriately or in excessive or inappropriate quantities.
- Practicing or offering to practice beyond the scope permitted by law.
- Knowingly delegating professional responsibilities to a person who is not qualified by training, experience, or licensure to perform them.
- Presigning blank prescription forms.
- Failing to give the owner of a patient, before dispensing any drug, a written prescription when requested.

When the board finds any applicant or veterinarian guilty of the grounds, it may enter an order imposing one or more of the following penalties:[22]

- Denial of certification for examination or licensure.
- Revocation or suspension of a license.
- Administrative fine up to $5,000 for each offense.
- Issuance of a reprimand.
- Probation, including continuing education or work under the supervision of another veterinarian.
- Restricting the authorized scope of practice.
- Imposition of costs of the investigation and prosecution.
- Remedial education.

Limited Service Practice

A “limited-service veterinary medical practice” means offering or providing limited types of veterinary services for a limited time at any location that has a primary purpose other than providing veterinary medical service at a permanent or mobile establishment. Such practice must provide veterinary medical services for privately owned animals that do not reside at that location.[23] Such practice must obtain a permit and must register each location where a limited service clinic is held. A licensed veterinarian must supervise the limited practice.[24]

The board establishes minimum standards for the operation of limited service veterinary medical practices.[25] The board has authorized by rule such practices to perform microchipping,[26] vaccinations, immunizations, and parasitic control.[27]

[21] S. 474.214(1)(y)., F.S.
[22] S. 474.214(2), F.S.
[23] S. 474.202(6), F.S.
[24] S. 474.215(7)-(8), F.S.
[25] S. 474.215(7), F.S.
[26] A microchip is a small, electronic chip enclosed in a glass cylinder which is injected under the skin of a pet. When a chip is scanned, it transmits the pet’s identification number, which is used in the manufacturer’s microchip registry to find the owner. American

Medical Records

Veterinarians are prohibited from discussing a patient's medical condition with anyone except the client, except for a few exceptions, such as upon the issuance of a subpoena and for research. Section 474.2165(4), F.S., prohibits veterinary patient medical records from being furnished to any person other than the client, the client's legal representative or other veterinarians involved in the care or treatment of the patient, except in certain circumstances. This also applies to discussing the medical condition of a patient, which may include information from a microchip implant.[28]

Immediate Supervision

The practice act defines "immediate supervision" to mean that a "licensed doctor of veterinary medicine is on the premises whenever veterinary services are being provided."[29]

Veterinary tasks requiring immediate supervision include:[30]

- Administering anesthesia and tranquilization by a veterinary aide, nurse, laboratory technician, intern, or other employee of a licensed veterinarian.
- Administering certain vaccinations by a veterinary aide, nurse, technician, intern or other employee of a licensed veterinarian which is not specifically prohibited.

The following tasks may be performed without the licensed veterinarian on the premises:[31]

- Administering medication and treatment, excluding vaccinations, as directed by the licensed veterinarian; and
- Obtaining samples and the performance of those diagnostic tests, including radiographs, directed by the licensed veterinarian.

Current law provides that only a veterinarian may immunize or treat an animal for diseases that are communicable to humans and that are of public health significance.[32] The Board recognizes that the following diseases are communicable to humans and are of public health significance, and that only a veterinarian may immunize or treat an animal for these diseases:[33]

- Brucellosis.
- Tuberculosis.
- Rabies.
- Equine Encephalomyelitis.

Sterilization of Dogs and Cats

According to the Humane Society of the United States, the average lifespan of sterilized dogs and cats is longer than the lifespan of those not. A University of Georgia study,[34] based on the medical records of more than 70,000 animal patients, found that the life expectancy of neutered male dogs was almost 14 percent longer and that of spayed female dogs was 26 percent longer. The average age of death of intact dogs was eight years versus a significantly older nine years for altered dogs.[35]

Veterinary Medical Association, *Microchipping of Animals FAQ*, https://www.avma.org/microchipping-animals-faq (last visited Dec. 19, 2019).

[27] R. 61G18-15.007(1), F.A.C.

[28] S. 474.2165, F.S.

[29] S. 4764.202(5), F.S.

[30] R. 61G18-17.005, F.A.C.

[31] *Id*.

[32] S. 474.203(5)(a), F.S.

[33] R. 61G18-17.006, F.A.C.

[34] Jessica Hoffman, Kate Creevy, Daniel Promislow, Repro*ductive Capability Is Associated with Lifespan and Cause of Death in Companion Dogs,* (Apr. 17, 2013), Plos One, https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0061082 (last visited Feb. 25, 2023).

[35] Humane Society of the United States, *Why you should spay/neuter your pet*, https://www.humanesociety.org/resources/why-you-should-spayneuter-your-pet (last visited Feb. 25, 2023).

According to the American Society for the Prevention of Cruelty to Animals (ASPCA), six million companion animals enter U.S. animal shelters nationwide every year. Of those, approximately half are dogs and the other half are cats. The ASPCA estimates that the number of dogs and cats entering U.S. shelters annually has declined from approximately seven million in 2011. The biggest decline was in dogs (from 3.9 million to 3.1 million).[36]

According to the American Veterinary Medical Association (AVMA), dogs and cats that are not intended for breeding are routinely neutered via elective gonadectomy (spay or spaying for females; castration for males; and neuter or neutering for males or for both sexes).[37]

Gonadectomy achieves sterilization, thereby preventing reproduction, and removes the production source of sexual hormones that may cause undesired mating behaviors in dogs and cats. This benefits society by reducing overpopulation through non-lethal means and mitigating behaviors that may damage the human-animal bond and contribute to abandonment and relinquishment to shelters and other humane organizations.[38]

The Legislature has declared it to be the public policy of the state that every feasible means be used to reduce the incidence of birth of unneeded and unwanted puppies and kittens. In furtherance of this policy, employees, agents, or contractors of animal shelters, humane organizations, or animal control agencies operated by a humane organization or by a county, municipality, or other incorporated political subdivision are required to either:[39]

- Have all dogs and cats sterilized by a licensed veterinarian before relinquishing custody of the animal; or
- Enter into a written agreement with the adopter or purchaser guaranteeing that sterilization will be performed within 30 days or prior to sexual maturity.

Employees, agents, or contractors of animal shelters, humane organizations, or animal control agencies operated by a humane organization or by a county, municipality, or other incorporated political subdivision, may not perform microchipping procedures on cats and dogs unless they are a veterinarian or a veterinarian is supervising the procedure.[40]

Veterinarian Shortage

According to a survey conducted by the American Pet Products Association (APPA), 70 percent of U.S. households, or about 90.5 million families, own a pet. This is an increase from 56 percent of U.S. households in 1988, and 67 percent in 2019.[41] As a result, experts say there's a shortage of veterinarians in the U.S., one that's expected to result in the need for around 15,000 by the year 2030.[42]

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[36] American Society for the Prevention of Cruelty to Animals, *Pet Statistics*, https://www.aspca.org/helping-people-pets/shelter-intake-and-surrender/pet-statistics (last visited Feb. 25, 2023).
[37] American Veterinary Medical Association, *Elective spaying and neutering of pets*, https://www.avma.org/resources-tools/animal-health-and-welfare/elective-spaying-and-neutering-pets (last visited Feb. 25, 2023).
[38] *Id*.
[39] S. 823.15, F.S.
[40] Ss. 474.202(5), 823.15, F.S.
[41] Insurance Information Institute, *Facts + Statistics: Pet Ownership and Insurance*, https://www.iii.org/fact-statistic/facts-statistics-pet-ownership-and-insurance#:~:text=Seventy%20percent%20of%20U.S.%20households,and%2067%20percent%20in%202019. (last visited Feb. 25, 2023).
[42] Spectrum News 13, *Mobile 'ElleVet' clinic helps relieve veterinarian shortage*, https://www.mynews13.com/fl/orlando/news/2023/02/03/the-ellevet-project-#:~:text=%E2%80%94%20Experts%20say%20there's%20a%20shortage,States%20may%20not%20get%20care. (last visited Feb. 25, 2023).

A study from Banfield Pet Hospital reveals an estimated 75 million pets in the U.S. may not have access to the veterinary care they need by 2030, with an important factor being a critical shortage of veterinarians.[43]

According to the Association of Veterinary Technician Educators, there also appears to be a shortage of veterinary **technicians**. Despite only requiring two years of schooling or less in some states, half of them leave the profession within five years.[44]

For Fiscal Year 2021-2022, there were 12,360 actively licensed veterinarians in Florida.[45]

Effect of Proposed Changes

The bill provides that the practice act does not apply to a veterinarian who holds an active license to practice veterinary medicine in another jurisdiction in the United States and is in good standing in such jurisdiction and who performs dog or cat sterilization services or routine preventative health services at the time of sterilization as an unpaid volunteer under responsible supervision of a veterinarian licensed in this state.

The bill specifies that the supervising licensed veterinarian is responsible for all acts performed under this provision by an out-of-state veterinarian acting under her or his responsible supervision.

The bill provides that an out-of-state veterinarian practicing pursuant to this provision is not eligible to apply for a premises permit.

B. SECTION DIRECTORY:

Section 1: amends s. 474.203, F.S.; exempting certain out-of-state veterinarians who provide specified services under the responsible supervision of a veterinarian licensed in this state from certain regulations governing veterinary medical practice; providing that the supervising licensed veterinarian is responsible for such services; specifying that such out-of-state veterinarians are ineligible for a premises permit.

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:

[43] Banfield Pet Hospital, *75 million pets may not have access to veterinary care by 2030, New Banfield® study finds*, https://www.banfield.com/en/about-banfield/newsroom/press-releases/2020/75-million-pets-may-not-have-access-to-veterinary (last visited Feb. 25, 2023).
[44] CNN, *Covid-19 pandemic magnifies workforce crisis in veterinary field*, https://www.cnn.com/2021/06/20/us/vet-tech-shortage-burnout/index.html (last visited Feb. 25, 2023).
[45] Department of Business and Professional Regulation, *Division of Professions Annual Report Fiscal Year 2021-2022*, http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2021-22.pdf (last visited Feb. 25, 2023).

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may curtail the uncontrolled breeding of dogs and cats in the state and help alleviate the associated risks to the health of humans and animals, and the expense to the community as a public nuisance and public health hazard.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the practice of veterinary medicine; amending s. 474.203, F.S.; exempting certain out-of-state veterinarians who provide specified services under the responsible supervision of a veterinarian licensed in this state from certain regulations governing veterinary medical practice; providing that the supervising licensed veterinarian is responsible for such services; specifying that such out-of-state veterinarians are ineligible for a premises permit; providing an effective date.

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

Section 1. Subsection (11) is added to section 474.203, Florida Statutes, to read:

474.203 Exemptions.—This chapter does not apply to:

(11) A veterinarian who holds an active license to practice veterinary medicine in another jurisdiction in the United States and is in good standing in such jurisdiction and who performs dog or cat sterilization services or routine preventative health services at the time of sterilization as an unpaid volunteer under the responsible supervision, as defined in s. 474.202, of a veterinarian licensed in this state. The supervising licensed veterinarian is responsible for all acts

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

performed under this subsection by an out-of-state veterinarian acting under her or his responsible supervision. An out-of-state veterinarian practicing pursuant to this subsection is not eligible to apply for a premises permit under s. 474.215.

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

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

HB 761

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 761 Telephone Solicitation
SPONSOR(S): Fabricio
TIED BILLS: **IDEN./SIM. BILLS:**

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

Chapter 501, part IV, the Florida Telemarketing Act (FTA), regulates telemarketers and requires non-exempt businesses engaged in telemarketing and their salespeople to be licensed by the Florida Department of Agriculture and Consumer Services (DACS) before operating in Florida. Florida law also prohibits telephonic sales calls that use an automated system for the selection **or** dialing of telephone numbers or the playing of recorded messages (robocall) without the prior express written consent of the called party, with some exceptions. Unsolicited telephonic sales calls and text messages from telemarketers are prohibited. Residents who do not wish to receive such calls may have their residential, mobile, or paging device telephone number included on Florida's Do Not Call List.

The bill:

- Revises the prohibition on telephonic sales calls that use an **automated system** to specifically include unsolicited calls using an **automatic telephone dialing system** for the selection **and** dialing of telephone numbers.
- Clarifies clear and conspicuous disclosure requirements.
- Defines an automatic telephone dialing system as "equipment using a random or sequential number generator that stores or produces telephone numbers, and dials the stored or produced telephone numbers."
- Authorizes certain acts to qualify as a signature used to provide prior express written consent.

The bill states that the changes to the statutory sections are remedial in nature and apply retroactively to July 1, 2021, and to any proceeding pending or commenced on or after July 1, 2021.

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

Florida Telemarketing Act

Chapter 501, part IV, the Florida Telemarketing Act (FTA), requires non-exempt businesses engaged in telemarketing and their salespeople to be licensed by the Florida Department of Agriculture and Consumer Services (DACS) before operating in Florida. Certain exempt entities must have a valid affidavit of exemption on file prior to operating in Florida. There are approximately 28 exemptions, including: soliciting for religious, charitable, political or educational purposes; research companies; newspapers; book and video clubs; cable television; and persons or companies with whom the consumer has a prior business relationship.[1]

The FTA generally requires businesses that solicit the sale of consumer goods or services to:

- Be licensed;[2]
- Post a form of security;[3]
- License all of their salespeople;[4] and
- Provide DACS with a list of all telephone numbers used to make sales calls.[5]

An application for licensure as a telemarketer must include several pieces of information, including the applicant's identifying information, prior experience in the field, criminal and administrative history (especially relating to fraud, theft, or unfair and deceptive trade practices), phone numbers from which the telemarketer will make sales calls, and any parent or affiliate entities under which it will transact business, if applicable.[6]

Additionally, an applicant for licensure as a telemarketer must submit:

- A script that will be used by its salespersons during calls, or other related literature;
- The identity, address, date of birth, and alias of each of the applicant's principal officers, directors, trustees, shareholders, owners, partners, office managers, and salespersons who are employed by or affiliated with the applicant; and
- A $1,500 licensing fee.[7]

In Florida, it is unlawful for telemarketers to:[8]

- Make calls before 8 a.m. or after 8 p.m. local time at the called person's time zone.
- Fail to provide the call recipient with their name and telephone number.
- Accept novelty payments.[9]
- Employ or be affiliated with an unlicensed salesperson.
- Be employed by or affiliated with an unlicensed commercial telephone seller.
- Operate without a license.

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[1] S. 501.604, F.S.
[2] S. 501.605, F.S.
[3] S. 501.611, F.S., requires a $50,000 bond, irrevocable letter of credit issued for the applicant, or a certificate of deposit in favor of the Department for payment on findings of fraud, misrepresentation, breach of contract, or other violation by the applicant.
[4] S. 501.607, F.S.
[5] S. 501.605, F.S.
[6] S. 501.605(2), F.S.
[7] S. 501.605(5)(b), F.S.
[8] S. 501.616, F.S.
[9] S. 501.603(8), F.S., defines a "novelty payment" as a payment method that does not have systematic monitoring and includes remotely created checks, remotely created payment orders, cash-to-cash money transfers (such as Western Union) and cash reload mechanisms (such as MoneyPak or ReloadIt). Novelty payment methods are not systematically monitored, have little to no consumer protection in the case of fraud or theft, and are used frequently in scams and other fraudulent activity.

Florida Telemarketing Act - Violations

Violations of the FTA are punishable by a civil fine of up to $10,000 per violation,[10] the imposition of criminal penalties, including conviction of up to a felony.[11] DACS and the office of the state attorney have investigative authority, including the power to subpoena witnesses if a violation occurs.[12] Reasonable attorney fees and costs may be awarded to the prevailing party in a civil action as part of a judgment or administrative order.[13]

Do Not Call

Section 501.059, F.S., governs telephone solicitations. The law includes the Florida Do Not Call Act, also known as the "Do Not Call" list (DNC list), which prohibits unsolicited telephonic sales calls and text messages from telemarketers.[14] Residents who do not wish to receive unsolicited telephonic sales calls may have their residential, mobile, or paging device telephone number included on the DNC list. DACS maintains the DNC list, it is free to register, and a registered number remains on the DNC list indefinitely.[15]

An "unsolicited telephonic sales call" does not include calls made, as follows:

- In response to an express request of the person called;
- Primarily in connection with an existing debt or contract, if payment or performance of such debt or contract has not been completed at the time of such call;
- To a person with whom the telephone solicitor has a prior or existing business relationship; or
- By a newspaper publisher or his or her agent or employee in connection with his or her business.[16]

Telephone solicitors[17] are prohibited from making telephonic sales calls[18] to consumers who register for the DNC list. A "telephonic sales call" means a telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.[19]

In addition to those consumers who are registered for the DNC list, a telephone solicitor may not call or text a consumer who previously communicated to the telephone solicitor that he or she does not wish to be contacted. Businesses and charities are required to maintain a list of consumers who have made a do-not-call registration request. It is a violation of the Florida Do Not Call Act to call a consumer who has requested placement on the company's do-not-call list.[20]

When a telephone number is made available through a caller ID service during a telephonic sales call, the solicitor must ensure that the number is capable of receiving phone calls, and that the dialing of the

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[10] S. 501.619, F.S.
[11] S. 501.623, F.S.
[12] S. 501.617, F.S.
[13] S. 501.621, F.S.
[14] *See* s. 501.059, F.S.
[15] Department of Agriculture and Consumer Services, *Florida Do Not Call*, https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call (last visited Feb. 24, 2023).
[16] S. 501.059(1)(k), F.S.
[17] S. 501.059(1)(i), F.S., defines "telephone solicitor" as "a natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices."
[18] S. 501.059(1)(j), F.S., defines "telephonic sales call" as a telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.
[19] S. 501.059(1)(j), F.S.
[20] S. 501.059(5), F.S.

number will connect the call recipient with the telephone solicitor or the seller on behalf of which the phone call was placed.[21]

Anyone who receives an unsolicited sales call can report the call to DACS using the online Do Not Call Complaint Form.[22]

Do Not Call - Consent

The law governing telephone solicitations also prohibits automated telephonic sales calls without the prior express written consent of the called party. Specifically, the law provides that:

> A person may not make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.[23]

"Prior express written consent" is defined as a written agreement that:

- Bears the signature of the called party;
- Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection or dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail; and
- Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered.[24]

Prior express written consent must include a clear and conspicuous disclosure informing the called party that:

- By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales call to deliver or cause to be delivered a telephonic sales call to the called party using an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called; and
- He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.[25]

There is a rebuttable presumption that a telephonic sales call made to any Florida area code is a call made to a Florida resident or to a person in Florida at the time of the call.[26]

Do Not Call - Violations

A telephone solicitor who violates the DNC provisions is subject to an injunction and a civil penalty[27] with a maximum fine of $10,000 per violation, or an administrative fine[28] of up to $1,000 per violation. Additionally, a telephone solicitor may be subject to responsibility for the consumer's attorney fees and costs.[29]

A party who was called in violation of the Do Not Call Act may bring an action for an injunction and actual damages or $500, whichever is greater.[30]

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[21] S. 501.059(8)(b), F.S.
[22] DACS, *Florida Do Not Call*, https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call (last visited Feb. 24, 2023).
[23] S. 501.059(8)(a), F.S.
[24] S. 501.059(1)(g), F.S.
[25] S. 501.059(1)(g)4., F.S.
[26] S. 501.059(8)(d), F.S.
[27] S. 501.059(9)(a), F.S.
[28] S. 501.059(9)(b), F.S.
[29] S. 501.059(11), F.S.
[30] S. 501.059(10)(a), F.S.

Courts that find that a defendant willfully or knowingly violated these provisions are authorized to, increase the amount of the award to not more than three times the amount of damages.[31]

Federal Telephone Consumer Protection Act (TCPA) History

In an effort to address a growing number of telephone marketing calls, Congress enacted the Telephone Consumer Protection Act (TCPA) in 1991. The TCPA restricts the making of telemarketing calls and the use of automatic telephone dialing systems and artificial or prerecorded voice messages. The rules apply to common carriers as well as to other marketers. In 1992, the Commission adopted rules to implement the TCPA, including the requirement that entities making telephone solicitations institute procedures for maintaining company-specific do-not-call lists.[32]

In July 2015, the Federal Communications Commission (FCC) established rules indicating that telephone carriers can block unwanted calls at the request of consumers.[33] Currently there are a number of call-blocking applications that provide some relief from unwanted calls and spam calls.[34]

On November 16, 2017, the FCC adopted new rules to allow voice service providers to proactively block certain types of robocalls that are likely to be fraudulent because they come from certain types of phone numbers, including those that do not or cannot make outgoing calls.[35] For example, perpetrators have used IRS phone numbers that do not dial out to impersonate the tax agency, informing the people who answer that they are calling to collect money owed to the U.S. government. Such calls appear legitimate to the person who receives them and may often result in fraud or identity theft. Service providers can now block such calls, as well as calls from invalid or illegitimate numbers.[36]

The FCC requires telemarketers to transmit caller identification information, including the number and name of the caller. The telephone number provided must permit any individual to make a do-not-call request during regular business hours. It also provides that any person or entity that engages in telemarketing is prohibited from blocking the transmission of caller identification information. However, tax-exempt nonprofit organizations are exempt from compliance with these rules.[37]

With regard to telephone carriers, the FCC allows carriers to offer their customers external call-blocking applications on their landlines and allows carriers to directly block certain illegal robocalls. In December 2019, Congress enacted the "TRACED Act" to aid enforcement efforts between law enforcement agencies and the private sector on traceback issues, and required the FCC to issue rules "for the registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls."[38] In July of 2020, the FCC designated the US Telecom-led Industry Traceback Group (ITG) as the Official Consortium for coordinating industry-led efforts to trace back the origin of suspected unlawful robocalls.[39]

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[31] S. 501.059(10)(b), F.S.
[32] Federal Communications Commission, *FCC Actions on Robocalls, Telemarketing*, https://www.fcc.gov/general/telemarketing-and-robocalls (last visited Feb. 24, 2023).
[33] Declaratory Ruling and Order, In the Matter of Rules and Regulations Implementing the Telecommunications Consumer Protection Act of 1991, 30 FCC Rcd. 7961 (July 10, 2015).
[34] CTIA, *The Wireless Association, How to Stop Robocalls*, https://www.ctia.org/consumer-tips/robocalls (last visited Feb. 24, 2023).
[35] 32 FCC Rcd 9706 (11).
[36] Federal Communications Commission, *Stop Unwanted Calls and Texts*, https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts (last visited Feb. 24, 2023).
[37] 47 C.F.R. s. 64.1601.
[38] Pallone-Thune Telephone Robocall Abuse *Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019)*.
[39] USTelecom The Broadband Association, *FCC Names USTelecom's Industry Traceback Group as Official Robocall Traceback Consortium*, https://www.ustelecom.org/fcc-names-ustelecoms-industry-traceback-group-as-official-robocall-traceback-consortium/ (last visited Feb. 24, 2023).

According to the ITG's first annual report, over 100 companies participated in over 1,000 ITG traceback investigations in 2019, identifying more than 10 million illegal robocalls and resulting in more than 20 subpoenas and/or civil investigative demands from federal and state enforcement agencies.[40]

The ITG reported in a letter to the FCC on November 13, 2020, that about 100 providers had failed to cooperate with the ITG, including approximately 30 based in the United States.[41] The ITG encouraged the FCC to bring aggressive enforcement against robocallers and voice service providers that routinely refuse to participate in the traceback process.[42]

In its Fourth Report and Order on Advanced Methods to Target and Eliminate Unlawful Robocalls released on December 30, 2020, the FCC required "all voice service providers to respond to traceback requests from the FCC, civil and criminal law enforcement and the Consortium."[43]

The TRACED Act requires the FCC to issue an annual public notice seeking applicants to serve as the registered consortium.[44] On August 22, 2022, the FCC selected the Traceback Group to continue as the registered consortium.[45]

On September 12, 2022, the FCC announced the signing of an updated Memorandum of Understanding (MOU) with the Body of European Regulators for Electronic Communications (BEREC) that expands their current partnership, with a new focus on combatting unwanted robocalls and the promotion of 5G, 6G and beyond. One of the major topics of mutual interest includes robocall and other automated calls' mitigation and prevention.[46]

National Do Not Call Registry

Although individual states were first to address consumers' requests to stop unwanted telemarketing calls,[47] the federal government soon followed with a National Do Not Call Registry in 2003.[48] In July 2003, the federal government issued a report and order establishing the National Do Not Call registry. The national registry covers all telemarketers (with the exception of certain nonprofit organizations), and applies to both interstate and intrastate calls. The registry is administered by the FTC. To reduce the number of hang-up and dead air calls consumers experience, the Commission's telemarketing rules also contain restrictions on the use of autodialers and requirements for transmitting caller ID information.

As the National Do Not Call Registry has gained popularity, some states have decided to forgo the expense of maintaining their own lists. Currently, only 12 states maintain their own Do Not Call lists: Colorado, Florida, Indiana, Louisiana, Massachusetts, Mississippi, Missouri, Oklahoma, Pennsylvania, Tennessee, Texas and Wyoming.[49]

Constitutionality of Do Not Call Registries

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[40] InsideArm, *The Latest Developments in the World of Call Delivery*, https://www.insidearm.com/news/00047073-latest-developments-world-call-delivery/ (last visited Feb. 7, 2022).
[41] USTelecom, Enforcement Bureau Requests Information on the Status of Private-Led Traceback Efforts of Suspected Unlawful Robocalls, EB Docket No. 20-195, Nov. 13, 2020, https://docs.fcc.gov/public/attachments/DOC-368957A2.pdf (last visited Feb. 24, 2023).
[42] InsideArm, *The Latest Developments in the World of Call Delivery*, https://www.insidearm.com/news/00047073-latest-developments-world-call-delivery/ (last visited Feb. 7, 2022).
[43] Federal Communications Commission, *Report and Order (*Aug. 22, 2022) https://tcpaworld.com/wp-content/uploads/2022/08/RENEWAL-OF-UST-TRACEBACK-GROUP.pdf (last visited Feb. 24, 2023).
[44] TRACED Act, s. 13(d)(2).
[45] Federal Communications Commission, *Report and Order DA 21-1047* (Aug. 25, 2021) https://www.fcc.gov/document/fcc-retains-industry-traceback-group-robocall-consortium (last visited Feb. 7, 2022).
[46] Federal Communications Commission, Press Release, *FCC RENEWS AND EXPANDS PARTNERSHIP WITH EUROPEAN COUNTERPARTS*, Sep. 12, 2022).
[47] At least 28 states, starting with Florida in 1987, have implemented Do Not Call registries.
[48] Federal Trade Commission, *National Do Not Call Registry*, https://www.donotcall.gov/ (last visited Feb. 24, 2023).
[49] Contact Compliance Center Corporation, *State Do Not Call Lists*, https://www.dnc.com/faq/state-do-not-call-lists?page=1 (last visited Feb. 7, 2022).

Do Not Call registries have been subject to numerous state and federal lawsuits challenging their constitutionality. Such lawsuits have been unsuccessful, and the National Registry has been upheld as constitutional. The courts have found the Do Not Call Registry is a reasonable restriction on commercial speech and that the FTC is authorized to promulgate rules for the registry. The Tenth Circuit Court of Appeals stated, "the do-not-call registry prohibits only telemarketing calls aimed at consumers who have affirmatively indicated that they do not want to receive such calls and for whom such calls would constitute and invasion of privacy." Thus, the government has a role in restricting the ability of a telemarketer to reach a household via telephone, and because the government has left the ultimate decision of whether or not to be placed on the registry up to the individual, the government has not restricted the First Amendment rights of the solicitor.[50]

Claims of preemption have also been unsuccessful. The TCPA's non-preemption clause,[51] often referred to as the savings clause, has been relied upon by courts to uphold states' Do Not Call Registries. The clause states that "[n]othing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulation." The clause indicates specific types of actions that a state may prohibit or place more restrictive regulations on, such as sending unsolicited advertisements via fax, using of automatic dialing systems and prerecorded messages, and making telephone solicitations.[52]

The TPCA is silent on a state's ability to place regulations that are more stringent than the TCPA requirements for interstate calls.[53] However, at least one federal court of appeals has held that state regulations and prohibitions of telemarketing that cross state boundaries are valid.[54]

Caller ID and "Spoofing"

"Spoofing" is the practice of altering or manipulating the caller ID information that is received in conjunction with an incoming telephone call. In the past, caller ID services were not common and spoofing required special equipment or a relatively high degree of technical sophistication. However, advances in technology, such as the proliferation of cellular phones, cell phone applications, and the widespread availability of Voice over Internet Protocol (VoIP) allows anyone to inexpensively spoof his or her caller ID using the services of a third-party spoofing provider.[55] For example, one such spoofing provider allows a consumer to download an app on his or her smartphone, purchase credits towards call time, and simply input the number that he or she wants displayed on the receiving end in order to place an untraceable, spoofed call.[56]

In response to the growing practice of spoofing, Congress amended the TCPA to add the Truth in Caller ID Act of 2009. Under the Act and FCC rules, a person or entity is prohibited from transmitting false or misleading caller ID information "with the intent to defraud, cause harm, or wrongly obtain anything of value," with a penalty of up to $10,000 for each violation.[57] However, spoofing is not illegal when no harm is intended or caused, or if the caller has legitimate reasons to hide his or her information. Examples may include law enforcement agencies working on a case, a victim of domestic abuse, or a doctor who wishes to discuss private medical matters with a patient.[58]

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[50] *Mainstream Marketing Services Inc v. Federal Trade Commission*, 358 F.3d 1228 (10th Cir. 2004).
[51] 47 U.S.C. s. 227(f)(1).
[52] National Association of Attorneys General, *Do Not Call: The History of Do Not Call and How Telemarketing Has Evolved*, NAGTRI Journal, Vol. 1 No. 4.
[53] 47 U.S.C. s. 227 (f)(1).
[54] *See Patriotic Veterans, Inc. v. Indiana*, 736 F.3d 1041 at 1044-45 (7th Cir. 2013) and *Patriotic Veterans, Inc. v. State of Indiana*, No. 16-2059 (7th Cir. 2017)("Preventing automated messages to persons who don't want their peace and quiet disturbed is a valid time, place, and manner restriction.").
[55] *See* FCC 11-100, *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, (June 22, 2011), at 9116, https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-100A1_Rcd.pdf (last visited Feb. 24, 2023).
[56] Business Insider, *It's Surprisingly Easy for a Hacker to Call Anyone From Your Personal Phone Number* (March 1, 2016), http://www.businessinsider.com/phone-number-spoofing-2016-2 (last visited Feb. 24, 2023).
[57] 47 U.S.C. s. 227(e).
[58] FCC, *Caller ID Spoofing*, https://www.fcc.gov/consumers/guides/spoofing-and-caller-id (last visited Feb. 24, 2023).

In 2008, Florida passed its own anti-spoofing legislation, The Florida Caller ID Anti-Spoofing Act (2008).[59] The Act prohibits **any person** from:

- Making a call with knowledge that false information was entered into a telephone caller ID system with the intent to deceive, defraud, or mislead the call's recipient; and
- Entering false information into a telephone caller ID system "with the intent to deceive, defraud, or mislead" the call's recipient.

However, a U.S. District Court in Miami found that Florida's Caller ID Anti-Spoofing Act (2008) violated the Commerce Clause of the United State Constitution because it had the effect of controlling spoofing practices that took place entirely outside the state.[60] Similarly, in 2011, a federal court in Mississippi struck down Mississippi's anti-spoofing law, which was substantially similar to Florida's.[61]

Spam Robocalls

US consumers received over 50.3 billion robocalls in 2022, only slightly less than the 50.5 billion total robocalls received in 2021 despite widespread enforcement efforts by government regulators and state officials.[62]

Scammers often use caller ID spoofing to mask their true location and make it appear the call is from a legitimate or local number to raise the odds of getting an answer. What follows is a robotic voice on the other end claiming to represent a utility, a name-brand company, or a government agency (such as the Social Security Administration or the Internal Revenue Service). It might offer a free cruise, inexpensive health insurance, or a low-interest loan. Answering or engaging with the call may lead to a live scammer, who realizes he or she has found a "live" number, and thus may call repeatedly.[63]

Many robocalls are legal. The FCC allows such robocalls for informational or noncommercial purposes, such as polling, political campaigning and outreach by nonprofit groups.

Advances in technology have magnified fundamental flaws in the American phone system, enabling unrelenting robocalls from untraceable origins. As a result, it is incredibly profitable to use spam calls to drive business regardless of whether the caller is perpetuating a scam or is a legitimate business using telemarketing to increase sales.[64]

Consent and Revocation

The TCPA prohibits a telemarketer from using an automatic telephone dialing system (ATDS) to place a call or send a text message to a cell phone without the recipient's "**prior express consent**."[65] The type of consent depends on the nature of the call or text. Consent generally can be revoked by any reasonable method. However, some courts recently have considered whether revocation may be restricted in circumstances where the consent is included on a bilateral agreement.[66]

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[59] S. 817.487, F.S. (2008).
[60] *TelTech Systems, Inc. v. McCollum*, No. 08-61664-CIV-MARTINEZ-BROWN (S.D. Fla. Filed Oct. 16, 2008).
[61] *TelTech Systems, Inc. v. Barbour*, 866 F. Supp. 2d 571 (S.D. Miss. 2011), *aff'd sub nom Teltech Systems, Inc. v. Bryant*, 702 F.2d 232 (5th Cir. 2012).
[62] PR Newswire, Robocalls Top 50.3 Billion in 2022, Matching 2021 Call Volumes Despite Enforcement Efforts, https://www.prnewswire.com/news-releases/robocalls-top-50-3-billion-in-2022--matching-2021-call-volumes-despite-enforcement-efforts-301714297.html#:~:text=IRVINE%2C%20Calif.%2C%20Jan.,government%20regulators%20and%20state%20officials (last visited Feb. 24, 2023).
[63] AARP, *Robocalls*, https://www.aarp.org/money/scams-fraud/info-2019/robocalls.html?CMP=KNC-DSO-Adobe-Google-FRD-Ongoing-Robocalls-NonBrand-Exact-Robocalls&gclid=EAIaIQobChMIlvmq_4Sr7wIVFYvICh2RAwjqEAAYAiAAEgJD4vD_BwE&gclsrc=aw.ds (last visited Feb. 7, 2022).
[64] AARP, *supra* note 63.
[65] 47 U.S.C. s. 227(b)(1)(A)(iii).
[66] The National Law Review, *Consent and Revocation Under the TCPA*, https://www.natlawreview.com/print/article/consent-and-revocation-under-tcpa (last visited Feb. 24, 2023).

There are two types of prior consent provided for under the TCPA:

- Prior express consent is required to place autodialed, non-solicitation calls or texts to a cell phone.
- Prior express written consent is a heightened form of consent, must be evidenced by a written agreement signed by the call recipient, and is required to place autodialed telemarketing or advertising calls or texts to a cell phone. The written agreement must include a clear and conspicuous disclosure informing the consumer signing that:
    - By signing the agreement, the consumer is authorizing autodialed telemarketing or advertising calls or texts; and
    - The consumer is not required to sign the agreement as a condition of purchasing any property, goods, or services.[67]

Prior express consent can be written or verbal. Voluntarily providing one's cellular number also constitutes prior express consent where:

- The individual gives "prior express consent" to be called or texted at the number provided;
- The individual has provided his or her number to the party calling or texting; and
- There is some relation between the communications and the reason for which an individual provided his or her number.[68]

Prior express written consent is required for calls or texts to cell phones that introduce an advertisement,[69] or constitute "telemarketing"[70] and are sent using an ATDS. The TCPA's advertising prong merely requires introducing, at the most basic level, the commercial availability of a service. In similar fashion, telemarketing occurs when the context of a text or call indicates that it was initiated and transmitted to a person for promoting property, goods, or services. Neither the TCPA nor its implementing regulations requires an explicit mention of a good, product, or service where the implication of an improper purpose is clear from the context.[71]

Revocation of consent is controlled by the consenting party, and may be communicated orally or in writing by any reasonable means. However, where consent is contractually provided, as is the case in credit agreements, the parties can bargain to require mutuality or particular revocation methods. Recently, a number of courts have addressed whether a consumer may unilaterally revoke consent when it is a term in a bargained-for contract.[72]

In 2017, the federal Second Circuit Court of Appeal held that a consumer may not unilaterally revoke consent in a bargained-for, bilateral contract.[73] The court based its decision on "black-letter" contract law, referring to a fundamental aspect of contractual relationships that one party may not alter or revoke a term of a bilateral agreement without the other party's consent. The court found that a consumer, having consented to be contacted via an auto-dialer, could not unilaterally revoke consent without the caller's permission. Notably, the court distinguished case law from the Third and Eleventh Circuit Courts of Appeal, where consumers retained their ability to revoke consent because it was given in credit applications, rather than as part of a bilateral contract.[74]

In 2018, a United States District Court in Florida also held that consent provided by contract cannot be unilaterally revoked.[75] The court noted that no provision in the TCPA indicates that contractually-granted consent can be unilaterally revoked where it would contradict black-letter contract law. The

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[67] *Id.*

[68] Federal Communications Commission, Rules & Regulations Implementing the TCP Act of 1991 et al., 30 FCC Rcd at 7991–92.

[69] 47 C.F.R. s. 64.1200(f)(1), defines an "advertisement" as "any material advertising the commercial availability or quality of any property, goods, or services," and "telemarketing" is defined as "the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person."

[70] 47 C.F.R. s. 64.1200(f)(12).

[71] The National Law Review, *supra* note 66.

[72] *Id.*

[73] *Reyes v. Lincoln Auto. Fin. Servs.*, 861 F.3d 51, 53 (2d Cir. 2017).

[74] The National Law Review, *supra* note 67.

[75] *Medley v. Dish Network, LLC*, Case No. 8:16-cv-2534-T-36TBM, 2018 WL 4092120, at *10 (M.D. Fla. Aug. 27, 2018).

court held that a consumer who has consented to auto-dialed communication in a contract for services cannot later revoke such consent.[76]

However, other courts have disagreed, rejecting the argument that consent is irrevocable. In 2018, a United States District Court in Tennessee adopted the general rule that consumer consent may be revoked at any time by "any reasonable means."[77] The court held that consumers retain the ability to revoke their prior consent despite having a bilateral agreement with the caller. Other courts have also allowed for revocation of consent by any means in the absence of a contractual restriction on the means by which a consumer may revoke consent.[78]

In December 2020, the U.S. Supreme Court heard oral arguments in a landmark case regarding whether consumers can sue a company for using an ATDS to text or call the consumers at a phone number saved in the company's system. At issue was the meaning of the TCPA's prohibition on using an ATDS to transmit communications to cell phones. The question before the Supreme Court was "whether the definition of ATDS in the TCPA encompasses any device that can 'store' and 'automatically dial' telephone numbers, even if the device does not use a random or sequential number generator."[79]

On April 1, 2021, the Court ruled that to qualify as an ATDS under the TCPA, a device must have the capacity to either store a telephone number using a random or sequential number generator or produce a telephone number using a random or sequential number generator. The Court concluded that merely having the capacity to store numbers and dial them automatically is not enough to make a device qualify as an ATDS.[80]

Specifically, related to consent, the TCPA rules require telemarketers to:

- Obtain prior express written consent from consumers before robocalling them;
- No longer be able to use an "established business relationship" to bypass the consent requirement; and
- Require an automated, interactive "opt-out" mechanism to be used during each robocall so consumers can immediately tell the telemarketer to stop calling.[81]

The TCPA includes a private right of action.[82] A caller who places a call to a cell phone without consent using an ATDS is subject to $500 in damages per call. The damages amount is $1,500 per call if the court finds that the defendant willfully or knowingly committed the violation.[83]

Specifically, related to consent, the Florida telephone solicitation law:[84]

- Prohibits robocalls without the prior express written consent of the called party.
- When the called party has given such consent, only allows robocalls in certain circumstances through the use of an "automated system for the selection **or** dialing of telephone numbers or the playing of a recorded message" when a connection is completed to a number called.

Effect of Proposed Changes

The bill clarifies the definition of automatic telephone dialing system. The bill prohibits unsolicited telephonic sales calls using an automatic telephone dialing system for the selection **and** dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.

[76] The National Law Review, *supra* note 67.
[77] *Ammons v. Ally Fin., Inc*., Case No. 3:17-cv-00505, 2018 WL 3134619, at *15 (M.D. Tenn. June 27, 2018).
[78] *Few v. Receivables Performance Mgmt*., Case No. 1:17-CV-2038-KOB, 2018 WL 5923765 at *1 (N.D. Ala. Nov. 13, 2018).
[79] *Facebook, Inc., Petitioner vs. Noah Duguid*, et al., U.S., No. 19-511.
[80] *Id*.
[81] FCC, *supra* note 32.
[82] 47 U.S.C. s. 227(b)(3).
[83] *Id*. at s. 227(b)(3)(B)-(C).
[84] S. 501.059(8), F.S.

The bill also clarifies notice requirements prior to obtaining consent for telephone calls, text messages, or the transmission of prerecorded voicemails.

The bill revises the definition of "prior express written consent" to:

- Replace references to "automated system" with "automatic telephone dialing system."
- Replace references to "signatory" with "called party."

The bill revises what qualifies as a "signature" in a written agreement where a called party provides prior express written consent to include "an act" that demonstrates express consent under applicable federal law or state contract law.

B. SECTION DIRECTORY:

Section 1: amends s. 501.059, F.S.; providing and revising definitions; prohibiting certain telephonic sales calls; providing retroactive applicability.

Section 2: provides the amendments made by the act are remedial in nature and apply retroactively to July 1, 2021, and to any proceeding pending or commenced on or after July 1, 2021.

Section 3: 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 may have an indeterminate negative fiscal impact on legitimate telemarketers to the extent they do not currently engage in business practices consistent with the requirements in the bill.

The bill may protect consumers from unwanted and fraudulent telephone solicitations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to telephone solicitation; amending s. 501.059, F.S.; providing and revising definitions; prohibiting certain telephonic sales calls; providing retroactive applicability; providing an effective date.

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

Section 1. Paragraphs (a) through (l) of subsection (1) of section 501.059, Florida Statutes, are redesignated as paragraphs (b) through (m), respectively, a new paragraph (a) is added to that subsection, present paragraphs (g) and (h) of that subsection are amended, and paragraph (a) of subsection (8) of that section is amended to read:

501.059 Telephone solicitation.—

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

(a) "Automatic telephone dialing system" means equipment using a random or sequential number generator that:

1. Stores or produces telephone numbers; and

2. Dials the stored or produced telephone numbers.

(h) ~~(g)~~ "Prior express written consent" means a written agreement that:

1. Bears the signature of the called party;

2. Clearly authorizes the person making or allowing the

placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automatic telephone dialing ~~automated~~ system for the selection and ~~or~~ dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail;

3. Includes the telephone number to which the called party ~~signatory~~ authorizes a telephonic sales call to be delivered; and

4. Includes a clear and conspicuous disclosure informing the called party that:

a. By executing the agreement, the called party authorizes the person making or allowing ~~the placement of~~ a telephonic sales call to be made by telephone call, text message, or voicemail transmission to deliver or cause to be delivered ~~a telephonic sales call~~ to the called party a telephonic sales call using an automatic telephone dialing ~~automated~~ system for the selection and ~~or~~ dialing of telephone numbers, if applicable, ~~or~~ the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail; and

b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or

services.

(i)~~(h)~~ "Signature" includes an act or electronic or digital signature, to the extent that the act demonstrates express consent or the ~~such form of~~ signature is recognized as a valid signature under applicable federal law or state contract law.

(8)(a) A person may not make or knowingly allow to be made an unsolicited ~~a~~ telephonic sales call using ~~to be made if such call involves~~ an automatic telephone dialing ~~automated~~ system for the selection and ~~or~~ dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.

Section 2. The amendments made by this act are remedial in nature and apply retroactively to July 1, 2021, and to any proceeding pending or commenced on or after July 1, 2021.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 789 Pub. Rec./Employment Accommodations for Family or Household Members of Homicide Victims
SPONSOR(S): Michael
TIED BILLS: HB 233 **IDEN./SIM. BILLS:** SB 492

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Mortellaro	Anstead
2) Ethics, Elections & Open Government Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

In the immediate aftermath of a homicide a family member may need to attend funerals, ceremonies, court proceedings, and deal with safety concerns. Currently, the Florida law does not have employment leave laws that cover such activities for family and household members of homicide victims.

HB 233, to which this bill is linked, requires certain employers with over 50 employees to grant 3 days of unpaid 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 must be used to:

- Make funeral or burial arrangements or attend a funeral or memorial service for a family or household member who is a homicide victim;
- Secure his or her home from the perpetrator, or his or her associates, 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.

This bill, which is linked to the passage of HB 233, provides a public record exemption for information pertaining to family or household members of homicide victims if they are employees of an agency. The information that falls under this exemption is as follows:

- Personal identifying information of an employee contained in the records documenting a homicide that the employee provides the employer; and
- An employee's written request for leave under the section and the time sheet that reflects the requested leave for at least 1 year after taking the leave.

This public record exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and will be repealed on October 2nd of the fifth year after enactment, unless reviewed and saved from repealing.

The bill takes effect on the same date that HB 233 is adopted and becomes law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Record Exemptions

Article I, s. 24(a) of the Florida Constitution establishes the state's public policy for accessing government records. This section guarantees that every person has the right to inspect or copy any public record from the legislative, executive, and judicial branches of government. Authority to grant exemptions from public records is vested solely to the Legislature. The Legislature, may provide an exemption of records, from the requirements of art. I, s. 24(a) of the Florida Constitution.[1] A proposed exemption must pass by a two-thirds vote of each chamber, state with specificity the public necessity to justify the exemption,[2] and be no broader than necessary to accomplish the public purpose.[3]

Public policy regarding access to government records is addressed further in s. 119.07(1), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Public exemptions are subject to the Open Government Sunset Review Act (Act)[4] which provides that a public record or public meeting exemption may be created[5] or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[6]

The Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact an exemption, it will automatically repeal on October 2nd of the fifth year after enactment.

HB 233

HB 233, to which this bill is linked, requires certain employers with over 50 employees to grant 3 days of unpaid 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 must be used to:

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

[1] Article I, s. 24(c), FLA. CONST.
[2] This portion of a public record exemption is commonly referred to as a "public necessity statement."
[3] Article I, s. 24(c), FLA. CONST.
[4] S. 119.15, F.S.
[5] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.
[6] S. 119.15(6)(b), F.S.

HB 233 defines "family or household member" as 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.[7]

Before using this type of leave, all other leaves must be exhausted, and proper notice must be given unless in imminent danger. All information given to a private employer is to remain confidential, and public employers are under current public exemption laws.

Effect of Proposed Bill

The bill provides a public record exemption for information pertaining to family or household members of homicide victims who are employees of a Florida agency[8] for the following information:

- Personal identifying information of an employee contained in the records documenting a homicide that the employee provides the employer; and
- An employee's written request for leave under the section and the time sheet that reflects the requested leave for at least 1 year after taking the leave.

The bill provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that it is a public necessity that the personal identifying information, timesheet, and written request for leave held by employers for employees who are requesting leave after a family or household member is the victim of a homicide be confidential and exempt[9] from public records requirements. Such employees are at a heightened risk of physical and emotional harm from perpetrators of the homicide and the harm that may result from the release of the employee's personal identifying information, timesheet, and written request for leave outweighs any public benefit that may be derived from the disclosure of such information.

As with all public exemptions, this exemption is subject to the Act in accordance with s. 119.15 and will be repealed on October 2nd of the fifth year unless reviewed and saved from repeal.

The bill takes effect on the same date that HB 233 is adopted and becomes law.

B. SECTION DIRECTORY:

Section 1: Creates a public records exemption for information of certain agency employees.
Section 2: Provides a public necessity statement.
Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[7] S. 741.28, F.S.

[8] S. 741.313(7)(a),(b), F.S.

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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 and municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties and municipalities.

3. Other:

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article 1, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for sensitive investigative materials and personal information, which does not appear to be broader than necessary to accomplish its purpose.

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 public records; amending s. 448.046, F.S.; providing an exemption from public records requirements for certain information relating to certain leave requested by an employee who has a family or household member who is a homicide victim; providing for future legislative review and repeal; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (8) is added to section 448.046, Florida Statutes, as created by HB 233, 2023 Regular Session, to read:

448.046 Employment accommodations for family or household members of homicide victims.—

(8)(a) The following information held by an employer that qualifies as an agency, as defined in s. 119.011, is confidential and exempt from s. 119.07(1) and s. 24(a) of Art. I of the State Constitution:

1. Any personal identifying information of an employee that is contained in the records documenting a homicide which the employee provides to the employer.

2. An employee's written request for leave under this

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

section and the employee's time sheet if it reflects the requested leave, for at least 1 year after the leave is taken.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the personal identifying information, timesheet, and written request for leave by held by employers for employees who are requesting leave after a family or household member is the victim of a homicide be exempt from public records requirements. Such employees are at a heightened risk of physical and emotional harm from perpetrators of the homicide and the harm that may result from the release of the employee's personal identifying information, timesheet, and written request for leave outweighs any public benefit that may be derived from the disclosure of such information.

Section 3. This act shall take effect on the same date that HB 233 or other similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 807 License or Permit to Operate Vehicle for Hire
SPONSOR(S): Borrero
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Larkin	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Motor vehicles used for transporting persons or goods for compensation are called “vehicles for-hire” or “transportation for-hire.” The transport of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is also considered transportation “for hire.”

Some counties and municipalities require persons to obtain a permit or license to operate a vehicle for-hire within its jurisdiction. Counties are authorized by general law to license and regulate taxis, jitneys, limousines, rental cars, and other passenger vehicles for-hire that operate in the unincorporated areas of the county. Some municipalities currently license and regulate vehicles for-hire under their broad general powers because they are not currently prohibited from doing so in general law. Similarly, county airports and airport authorities are not restricted from licensing and regulating vehicles for-hire.

The bill:

- Prohibits a county or municipality from requiring a person to obtain an additional license from such county or municipality when that person holds a valid, active license or permit to operate a vehicle for-hire in any other county or municipality if the person:
  - Holds a valid, active license or permit to operate a vehicle for-hire in the county or municipality in which the person permanently resides.
  - Has not had a license or permit to operate a vehicle for hire suspended or revoked within the preceding 5 years.
- Prohibits an airport from requiring a person to obtain an additional license from such airport when a person holds a valid, active license or permit issued by another airport to operate a vehicle for-hire.
- Defines airport in this section as a commercial service airport.

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

The bill may have an insignificant fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

License or Permit to Operate a Vehicle for-Hire- Current Situation

Background

With certain exceptions[1], offering for lease or rent any motor vehicle or offering passengers transportation in exchange for compensation in the State of Florida qualifies the vehicle as a "for-hire vehicle." A "for-hire vehicle" is a motor vehicle used for transporting persons or goods for compensation. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported for compensation in a motor vehicle not owned by the person owning the goods, such transportation is considered "for hire." In addition, the carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire."[2]

Florida law establishes specific financial responsibility requirements applicable to for-hire vehicles. For-hire vehicles, such as taxis and limousines, must maintain a motor vehicle liability policy with minimum limits of $125,000 per person for bodily injury, $250,000 per incident for bodily injury, and $50,000 for property damage.[3] The owner or operator of a for-hire vehicle may also prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy issued by an insurance carrier, which is a member of the Florida Insurance Guaranty Association, or by providing a certificate of self-insurance.[4]

Vehicles for-hire are not the same as transportation network companies or TNC's, like Uber or Lyft. The regulation and licensing of TNC's are expressly preempted to the state and are regulated by the Department of Financial Services.

The State imposes an annual license taxes on certain types of motor vehicles for-hire upon registration or renewal, including locally operated motor vehicles for-hire. These taxes range from: $17 flat plus $1.50 per cwt to $3.50 flat plus $1.50 per cwt.[5] However, the state does not require special licenses for drivers for vehicles for-hire.

Counties

Counties are specifically authorized by general law to license and regulate taxis, jitneys, limousines, rental cars, and other passenger vehicles for-hire that operate in the unincorporated areas of the county.[6] The county may impose licensing fees in order to license these vehicles for-hire.

Municipalities

Municipalities have broad home rule powers authorizing them to enact legislation concerning any subject matter upon which the Legislature may act, except:

- The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;
- Any subject expressly prohibited by the constitution;

[1] S. 320.01(15)(b), F.S.
[2] S. 320.01(15)(a), F.S.
[3] S. 324.032(1), F.S.
[4] S. 324.031, F.S.
[5] S 320.08(6) and (14), F.S.
[6] S. 125.01(1)(n), F.S.; an incorporated area of the county means that the area is not located within the boundaries of an incorporated municipality.

- Any subject expressly preempted to state or county government by the constitution or by general law; or
- Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.[7]

A municipality is allowed to impose reasonable regulatory fees, proportionate with the cost of the regulatory activity.[8]

Currently, counties and municipalities differ on whether they require vehicles for-hire to be licensed and regulated. Some counties require licensure and some do not. Some cities require licensure for vehicles for-hire within the city and also at the airport, while others only require the license for the city but not the airport and vis-a-versa. Here are some examples of local requirements:[9]

- Miami-Dade County's Passenger Transportation Regulatory Division regulates for-hire chauffeurs and vehicles such as taxicabs, limousines, passenger motor carriers, including jitneys and tour vans. The county charges $70 for an initial inspection fee, quarterly, semi-annual and annual inspection fees of $38, depending on the type of service; $35 for re-inspection; and $20 for a replacement decal. The For-Hire application fees are non-refundable, and are separate from the annual license fee, inspection fees and Local Business Tax Receipt.[10]
- Hillsborough County requires any person engaged in the business of operating vehicles for-hire in the County to obtain a "public vehicle driver's license" (PVDL) from the Hillsborough County Tax Collector, in addition to a valid certificate for the operator and a valid permit for the vehicle after passing a safety and mechanical inspection. Vehicles 10 years of age or older must have additional inspections.[11] A PVDL initial application and renewal fee is $65 and requires fingerprinting.
- The City of Orlando's police department has a vehicle for-hire unit that requires applicants to show proof of payment of the business tax, to pass a vehicle inspection, to pass a national background check, and to obtain a vehicle permit and a driver permit. The application fee for the Vehicle For-hire permit is $250 and each permit is $200.[12]

Some cities and counties have made the decision to end their practice of specifically licensing vehicles for-hire.

- For example, Sarasota, Naples and Collier County made the decision in 2015 to stop licensing vehicles for-hire. "The decision will deregulate the industry once the county's ordinance is officially taken off the books in the coming weeks. Taxi companies will no longer have to buy commercial insurance and their drivers won't have to pass criminal background checks. Collier County will no longer issue licenses to taxi or limo companies. Essentially, anyone with a driver's license will be able to operate a car-for-hire in Collier County."[13]

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[7] S. 166.021(3), F.S.

[8] S. 166.221, F.S; *see also* s. 205.042, F.S. (municipalities may levy, by appropriate resolution or ordinance, business tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction).

[9] Examples of other cities with vehicle for-hire requirements include: the City of Fort Lauderdale, and Town of Palm Beach. *See Vehicle For Hire*, City of Fort Lauderdale, https://www.fortlauderdale.gov/government/departments-i-z/transportation-and-mobility/vehicle-for-hire (last visited March 2, 2023); *see also*, The Town of Palm Beach requires taxicabs and limousines to obtain a vehicle for hire permit. *Vehicle for Hire Permits*, Town of Palm Beach, https://www.townofpalmbeach.com/610/Taxi-Permits (last visited March 2, 2023); *see also*, Palm Beach Ordinance Code 130-32 ("It is a requirement that all vehicles for hire are permitted in the Town of Palm Beach").

[10] Miami-Dade County, Transportation and Public Work, *For-Hire Transportation,* https://www.miamidade.gov/global/service.page?Mduid_service=ser1498077559199786 (last visited March 4, 2023.)

[11] Hillsborough County Tax Collectors Office, https://www.hillstax.org/other-services/vehicle-for-hire/ordinance-information/ (Last visited March 4, 2023).

[12] *Vehicle for Hire Permit Application*, City of Orlando Police Department, http://beta.orlando.gov/files/sharedassets/public/departments/edv/permitting-services-division/bld/vfhren-transferapplication.pdf (last visited March 2, 2023).

[13] Naples Daily News, Greg Stanley, *Collier tosses out regulations for cabs and ride-sharing, helping Uber and similar businesses*, https://archive.naplesnews.com/business/local/collier-tosses-out-regulations-for-cabs-and-ride-sharing-helping-uber-and-similar-businesses-2319126-

Special Districts

A special district is a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by

- general law,
- special act,
- local ordinance, or
- rule of the Governor and Cabinet.[14]

A "dependent special district" is a special district meeting at least one of the following criteria:

- The membership of the district's governing body is identical to the governing body of a single county or municipality;
- All members of the district's governing body are appointed by the governing body of a single county or municipality;
- Members of the district's governing body are removable at will by the governing body of a single county or municipality; or
- The district's budget is subject to approval by the governing body of a single county or municipality.[15]

An "independent special district" is any district that is not a dependent special district or one that includes more than one county unless the district lies wholly within a single municipality.[16] Special districts do not possess "home rule" powers. The county or municipality who created the special district defines the powers of a special district.[17]

Special districts vary on their ability to issue licenses or permits to operate a vehicle for hire. Due to the fact that the county or municipality which created the special district defines its powers.

Preemption[18]

Generally, local governments are preempted from issuing occupational licenses that are not specifically authorized in general law. Local governments include counties, municipalities, and special districts.

In 2021, the Governor signed HB 735, Preemption of Local Occupational Licensing, which preempts occupational licensing to the state unless the local government has specific authority to license and regulate set out in general law. Because counties have specific authority in general law to license and regulate vehicles for-hire, HB 735 does not appear to affect a counties' ability to license vehicles for-hire. However, HB 735 may prevent municipalities from licensing and regulating vehicles for-hire after July 1, 2023, because they do not have specific authority to regulate. [19]

Commercial Service Airports

An airport is classified as a commercial service airport when the Secretary of U.S. Transportation determines that it has more than 10,000 passenger boardings each year.[20]

337701871.html/#:~:text=Collier%20County%20will%20no%20longer,for%2Dhire%20in%20Collier%20County. (Last visited March 4, 2023.)

[14] S. 189.012(6), F.S.

[15] Section 189.012(2), F.S.

[16] Section 189.012(3), F.S. Independent special districts are created by the Legislature, unless another mechanism is authorized by general law. *See, e.g.* s. 190.005, F.S. (community development districts may be created by a county, municipality, or the Florida Land and Water Adjudicatory Commission, depending on the size and location of the district).

[17] "Administrative agencies, such as the airport authority, are creatures of statute and derive only the power specified therein." Fla. Att'y Gen. Op. 2012-24 (2012).

[18] S.163.211, F.S.

[19] *See* s. 163.211, F.S.; This may be preempted on July 1, 2023.

[20] 49 U.S.C.A. § 47102 (2018); *see also*, s. 332.0075 (1)(a), F.S.

In Florida, the Department of Transportation (DOT) is responsible for planning airport systems and overseeing the public airport system.[21] The owner or lessee of a proposed public airport[22] must receive DOT approval before site acquisition, construction, or establishment of a public airport facility.[23] DOT is also responsible for licensing public airport facilities prior to the operation of aircraft to or from the facility and must inspect such facilities prior to licensing or renewal.[24] Current law authorizes local governments to establish and operate airports.[25] Neither state law nor federal law establish requirements for airport governance or ownership. As such, Florida airports operate under either a government department model (where the airport operates as a department of the local government) or an airport authority model (where the airport authority is created as either an independent or a dependent special district). Because airports are generally governed and subsumed as part of local governments, state law provides for very little oversight and accountability.

With respect to county owned or operated airports, the board of county commissioners has the right, power, and authority to enter into contracts with one or more motor carriers for the transportation of passengers for-hire between airports and points within such county.[26] These contracts define the period of authorization to transport passengers.[27] The county is required to use the competitive bidding process[28] to grant an exclusive right to use certain parking areas at the county owned airport for motor carriers for the transportation of passengers such as a taxicab and limousine stand.[29] A county-owned airport, which is located within the jurisdictional boundaries of a municipality, is under the county's exclusive authority and the municipality does not have authority over such airport.[30]

Some airport authorities require vehicles for-hire to obtain a permit to operate from the local government and the airport. For example, Orlando International Airport requires vehicles for hire to have:[31]

- a valid, current driver's license issued by the City of Orlando,
- a vehicle permit (V-Permit) decal issued by the Orlando International Airport displayed on the vehicle at all times, and
- a vehicle for hire permit decal issued by the City of Orlando displayed on the vehicle at all times.

The Fort Lauderdale-Hollywood International Airport requires persons that operate a vehicle for hire to first register with and obtain a permit from the Environmental and Consumer Protection Division of Broward County. Then, persons with a permit to operate a vehicle for hire must apply for a decal permit from the Broward County Aviation Department.[32] The Jacksonville International Airport has a similar arrangement.[33]

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[21] S. 332.001, F.S.
[22] S. 330.27(6), F.S. For purposes of DOT approval and licensure, the term "public airport" means a publicly or privately-owned airport for public use.
[23] S. 330.30(1), F.S.
[24] S. 330.30(2), F.S.
[25] *See* ch.332, F.S.
[26] This does not apply to counties who own or operate an airport which is located on land that is separated from the mainland of the state by a body of water or the county has a population between 150,000 and 200,000. S. 331.15(2), F.S.
[27] S. 331.15(2), F.S.
[28] "Competitive bidding is a process of issuing a public bid with the intent that companies will put together their best proposal and compete for a specific project." *"Competitive Bidding: What Is Competitive Bidding?*, FindRFP Inc. https://www.findrfp.com/Government-Contracting/competitive-bidding.aspx (last visited Feb. 28, 2023); A county is required to use a competitive bidding procedure to lease county-owned property. *See* 1988 Op. Att'y Gen. Fla. 110 (1988).
[29] *Randall Indus., Inc. v. Lee Cnty*., 307 So. 2d 499, 501 (Fla. 2d DCA 1975).
[30] Fla. Att'y Gen. Op. 2009-46 (2009); s. 125.015, F.S.; *see also City of Dania v. Hertz Corp.*, 518 So. 2d 1387, 1388 (Fla. 4th DCA 1988).
[31] Greater Orlando Aviation Authority, Vehicle-For-Hire (VFH): V-Permit Holders and Drivers Handbook p. 5, Orlando International Airport, https://orlandoairports.net/site/uploads/VFH-Handbook.pdf (last visited March 1, 2023).
[32] *Operational Guidelines for Ground Transportation at Fort Lauderdale-Hollywood International Airport,* p. 5, Broward County Board of County Commissioners (Aug. 17, 2021), https://www.broward.org/Airport/passengers/Transportation/Documents/Operationalguidelines_081721.pdf?csf=1&e=LD1d5c (last visited March 2, 2023).
[33] First a person must obtain a vehicle for hire permit issued from the City of Jacksonville. Then, the person must obtain an annual permit from the Jacksonville Aviation Authority. *Commercial Ground Transportation Policy* p. 7, Jacksonville International Airport, Jacksonville Aviation Authority, (Jan. 28, 2013), https://flyjacksonville.com/PDFs/AppndxG.pdf (last visited March 2, 2023).

On the other hand, some airport authorities issue a separate permit for vehicles for-hire for transporting passengers at the airport. For example, the Orlando Sanford International Airport requires a vehicle for hire to obtain a ground transportation prearranged permit which is issued by the airport.[34] This includes a ground transportation agreement which excludes taxicabs.[35]

License or Permit to Operate a Vehicle for-Hire- Effect of Bill

Counties and Municipalities

The bill provides an exception from certain local licensing requirements to a person who holds a valid, active license or permit issued by a county or municipality to operate a vehicle for-hire. Such person may operate a vehicle-for hire without being subject to additional licensing or permitting requirements and without paying additional fees if the person:

- Holds a valid, active license or permit to operate a vehicle for hire in the county or municipality in which the person is domiciled[36].
- Has not had a license or permit to operate a vehicle for hire suspended or revoked within the preceding 5 years.

A county may still license and regulate taxis, jitneys, limousines, rental cars, and other passenger vehicles for-hire that operate in the unincorporated areas of the county. However, if the person is already licensed or permitted by the area[37] where they live and have a license or permit in good standing, the county will not be able to enforce additional licensing or permitting requirements or impose additional fees upon that person.

As for municipalities, if a person is licensed or permitted by the area where they live and has a license or permit in good standing, the municipality will not be able to enforce additional licensing or permitting requirements or impose additional fees upon that person.

A person who is an unlicensed or does not fall within the exception may be able to obtain a license or permit to operate a vehicle for hire in another county or municipality despite where he or she currently lives.

Overall, the bill allows persons who possess a license or permit in one jurisdiction to operate a vehicle for-hire in other jurisdictions without being subject to obtaining another license or permit.

Commercial Service Airports

The bill provides that a person who holds a valid, active license or permit issued by an airport to operate a vehicle for-hire may operate a vehicle for hire at any other airport without being subject to additional airport licensing or permitting requirements and without paying additional license or permit fees. Airport includes an airport, airport authority, aviation authority, or other entity that operates a commercial service airport.

The bill limits the airport's ability to issue permits or licenses to operate a for-hire vehicle if another airport has already issued a person a permit or license.

This potentially would affect county owned or operated airports.[38] The board of county commissioners could still enter contracts with motor carriers for the transportation of passengers for hire between such airport or airports and points within such county. However, persons who already obtained a permit or

[34] The fees to obtain a permit to operate vehicle for hire depend on the weight and length of the vehicle.
[35] *2023 Ground Transportation Pre-Arranged Permit,* Orlando Sanford International Airport, https://web1.osaa.net/GTX/docs/GT-Permit-2023-for-Website.pdf (last visited March 1, 2023).
[36] Domicile means someone's permanent residence or principal home. *Domicile Definition and Meaning*, Merriam-Webster (last visited March 1, 2023), https://www.merriam-webster.com/dictionary/domicile.
[37] Municipality or county.
[38] This would not apply to counties who own or operate an airport which is located on land that is separated from the mainland of the state by a body of water or the county has a population between 150,000 and 200,000.

license to operate a vehicle for hire would not be required to enter into a contract with the board of county commissioners to operate a vehicle for hire at the county owned or operated airport.

B. SECTION DIRECTORY:

Section 1. Creating s. 320.0603, F.S.; providing that a person who holds a license issued by a county, municipality, or airport to operate a vehicle for hire may operate a vehicle for hire in any other county, municipality, or airport without being subject to certain requirements or fees under certain circumstances; defining the term "airport".

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:

The bill may potentially impact the revenues of municipalities who raise revenue from the licenses that they issue if such fees are not in proportion to the regulatory activity. However, municipalities are required to only impose regulatory fees that are proportionate to the cost of regulation in accordance with section 166.221, F.S. Since municipalities will no longer be issuing as many licenses or inspecting as many vehicles for hire, this loss of revenue should be offset by a decrease in expenditures.

As for counties, the impact on revenues is indeterminate.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a positive economic impact on the vehicles for-hire industry. There would be a positive economic impact for persons who:

- hold a valid, active license or permit to operate a for hire vehicle in the municipality or county where they live and
- maintain their license or permit to operate in good standing for the preceding 5 years.

Such persons will not be subject to additional licensing or permitting requirements or fees in other municipalities, counties, or airports.

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:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to a license or permit to operate a vehicle for hire; creating s. 320.0603, F.S.; providing that a person who holds a license issued by a county, municipality, or airport to operate a vehicle for hire may operate a vehicle for hire in any other county, municipality, or airport without being subject to certain requirements or fees under certain circumstances; defining the term "airport"; providing an effective date.

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

Section 1. Section 320.0603, Florida Statutes, is created to read:

320.0603 Vehicle-for-hire license or permit; reciprocity.—

(1) A person who holds a valid, active license or permit issued by a county or municipality to operate a vehicle for hire may operate a vehicle for hire in any other county or municipality without being subject to additional licensing or permitting requirements and without paying additional license or permit fees if the person:

(a) Holds a valid, active license or permit to operate a vehicle for hire in the county or municipality in which the person is domiciled.

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

(b) Has not had a license or permit to operate a vehicle for hire suspended or revoked within the preceding 5 years.

(2) A person who holds a valid, active license or permit issued by an airport to operate a vehicle for hire may operate a vehicle for hire at any other airport without being subject to additional airport licensing or permitting requirements and without paying additional license or permit fees. For purposes of this subsection, the term "airport" includes an airport, airport authority, aviation authority, or other entity that operates a commercial service airport as defined in s. 332.0075(1).

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

REGULATORY REFORM & ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 807 by Rep. Borrero
License or Permit to Operate Vehicle for Hire

AMENDMENT SUMMARY
March 9, 2023

Amendment 1 by Rep. Borrero (between lines 25-36):

- Clarifies language.
- Clarifies that the bill does not grant specific authority to municipalities or special districts to regulate or license vehicles for hire that is required by section 163.211, F.S.

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 Borrero offered the following:

Amendment

Remove lines 25-36 and insert:

person is domiciled; and

(b) Has not had a license or permit to operate a vehicle for hire suspended or revoked within the preceding 5 years.

(2) A person who holds a valid, active license or permit issued by an airport to operate a vehicle for hire may operate a vehicle for hire at any other airport without being subject to additional airport licensing or permitting requirements and without paying additional license or permit fees. For purposes of this subsection, the term "airport" includes an airport, airport authority, aviation authority, or other entity that

operates a commercial service airport as defined in s. 332.0075(1).

(3) This section does not grant specific authority to municipalities or special districts to regulate or license vehicles for hire that is required by s. 163.211, F.S.

HB 861

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 861 Residential Real Estate Listing Agreements
SPONSOR(S): Robinson, W.
TIED BILLS: **IDEN./SIM. BILLS:** SB 770

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

SUMMARY ANALYSIS

A listing agreement forms a legally binding agreement with a real estate agent to sell property on behalf of the owner. All listing agreements in Florida are required to have a definitive termination date and a real estate agent may be disciplined by the Florida Real Estate Commission (FREC) for failing to include such. Generally, an agent and the seller choose a mutually agreeable termination date, which they can modify or extend by mutual assent.

Generally, a real estate agent is entitled to a commission when that person is the procuring cause of a sale. Recently, some real estate brokers have offered homeowners cash in exchange for the exclusive right to list an owners' property in the future. Some of the owners who entered into these agreements did not realize the listing contract lasted up to 40 years and were later sued by the real estate broker for commission even though the broker was not involved in the sale of the property.

The bill:

- Limits the option to enter into a listing agreement for the sale of residential real property to no more than six months.
- Prohibits certain options to enter into listing agreements from becoming a lien, encumbrance, or security interest on the property.
- Prohibits courts from enforcing certain agreements, by lien or constructive trust.
- Requires specific notice and the written agreement of the homeowner before certain listing agreements may be assigned to another real estate agent or broker.
- Defines "disposition" as a transfer or voluntary conveyance of the title or other ownership interest in residential real property.
- Defines "option to enter into a listing agreement" as a signed writing wherein the broker pays valuable consideration to a person granting the broker an exclusive right to enter into a listing agreement with the person at a future date during the term of the signed writing.
- Defines "residential real property" as an improved residential property of four units or fewer or unimproved residential real property intended for four units or fewer.
- Provides that a listing agreement or an option to enter into a listing agreement that does not meet certain requirements is unenforceable in law or equity and may not be recorded by the clerk of the circuit court.
- Makes violations of certain provisions an unfair or deceptive trade practice within the meaning of Florida Deceptive and Unfair Trade Practices Act.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background on Real Estate Brokers

The Florida Real Estate Commission (FREC), within the Division of Real Estate (Division), at the Department of Business and Professional Regulation (Department), administers and enforces real estate licensing laws.[1] The FREC is also empowered to adopt rules that enable it to implement its statutorily authorized duties and responsibilities.[2]

FREC may discipline real estate brokers by denying, refusing to renew, suspending, or revoking their permit or imposing administrative fines if FREC has found that the broker has violated the practice act, including:[3]

- engaging in dishonest, fraudulent transactions;
- advertising property or services in a manner which is fraudulent, false, deceptive, or misleading in form or content;
- making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession;
- failing to include in any written listing agreement a definite expiration date, description of the property, price and terms, fee or commission, and a proper signature of the principal, or
- failing to perform any statutory or legal obligation placed upon a licensee.

A real estate broker or sales associate may be convicted for a second degree misdemeanor for recording a contract, or other writing which purports to affect the title of, or encumber, any real property if the same is known to her or him to be false, void, or not authorized to be placed of record, for the purpose of collecting a commission, or to coerce the payment of money to the broker or sales associate or other person.[4] This does not prohibit a broker or a sales associate from[5] recording a judgment rendered by the court, placing a lien on a property where expressly permitted by contractual agreement, or otherwise allowed by law.

A person who operates as a broker or sales associate without being the holder of a valid and current active license commits a felony of the third degree.[6]

Broker-Property Owner Relationship

A broker is a person or agency who arranges transactions between a buyer and a seller for a commission.[7] "In the absence of a special contract, a broker is entitled to a commission when that person is the procuring cause of a sale."[8]

Real Estate Listing Agreements[9]

[1] Ch. 475, Part I, F.S.
[2] These rules are contained in ch. 61J2, F.A.C.
[3] Ss. 475.25 and s. 455.227, F.S.
[4] S. 475.42(1)(i) and (2), F.S.
[5] S. 475.42(1)(i), F.S.
[6] S. 475.42(1)(a), F.S.
[7] S. 475.01(1)(a), F.S.
[8] *Esslinger-Wooten-Maxwell, Inc. v. Lones Family Ltd. P'ship*, 298 So. 3d 1176, 1180 (Fla. 3d DCA 2020).
[9] Jessica Cody. *Understanding the Listing Agreement When Selling Your Home*, Home Light (Feb. 10, 2023), https://www.homelight.com/blog/listing-agreement/.

A listing agreement is a legally binding contract that establishes the duties of the seller and the real estate agent. The time period for these agreements must be defined in the contract.[10] Typically, the contract terms may be negotiated. For example, the expiration date, commission, and duties.[11] There are three types of listing agreements:

Types of Listing Agreements	Description
Exclusive Right-to-Sell Agreement	• Gives only one agent the right to find a buyer. • Real estate broker receives commission when the property is sold regardless of who finds the buyer.
Exclusive Agency Listing Agreement	• Any agent that is part of the real estate agency may sell the property and collect commission. • Seller is allowed to sell property without assistance from the agent. • If the seller sells the property without assistance of the agent, the agent is not entitled to commission.
Open Listing Agreement	• The seller pays commission to the agent only if the house sells through the efforts of that agent.

Recording Documents Related to Real Estate Agreements With the Clerk of the Court

The Clerk of the Court is required to record certain instruments presented to them, upon payment of service charges. A document submitted to the clerk of court is deemed validly recorded and acts as notice to other persons for certain purposes. Clerks record documents such as agreements, notices or claims of lien, and other instruments relating to the ownership, transfer, or encumbrance[12] of or claims against real or personal property or any interest in it.[13]

An encumbrance, such as a recorded lien, creates a cloud on the property's title.[14] This affects the marketability of the property and the ability for a homeowner to sell or refinance their home. Currently, a broker may place a lien on a property where expressly permitted by contractual agreement or authorized by law.[15]

Recent Events

Certain Florida licensed real estate brokerage firms have been offering homeowners cash, advertised as an alternative loan, in exchange for exclusive rights to list a homeowners' property when they decide to sell.

Some homeowners enter into these listing contracts without recognizing that they may last up to 40 years. Years later when a homeowner sells their property, without the brokerage firm, the brokerage firm files a lien against the property for 3% of its value even though the brokerage firm never performed the listing services.[16]

[10] S. 475.25(1)(r), F.S.
[11] Jamie Johnson, *What Is a Listing Agreement?*, Rocket Mortgage (Feb. 19, 2023), https://www.rocketmortgage.com/learn/listing-agreement (visited March 2, 2023).
[12] "An encumbrance is a claim against an asset by an entity that is not the owner. Common types of encumbrances against real property include liens, easements, leases, mortgages, or restrictive covenants. Encumbrances impact the transferability and/or use of subjected properties." *Encumbrance*, Legal Information Institute (last visited Feb. 28, 2023),
[13] S. 28.222(3)(a), F.S.
[14] A cloud on title means a claim that affects the ownership of a property. *Cloud on Title*, Legal Information Institute, https://www.law.cornell.edu/wex/cloud_on_title (visited March 2, 2023).
[15] S. 475.42(1)(i), F.S.; *see also*, S. 702.01, F.S. If the debt is not paid to the creditor, the creditor can file a foreclosure action to have the court enforce the lien
[16] Rebecca Liebson, *Florida Company Pays Quick Cash to List Your Home. the Catch? A 40-Year Contract*, Tampa Bay Times (Sept. 6, 2022), https://www.tampabay.com/news/real-estate/2022/09/06/florida-company-pays-quick-cash-to-list-your-home-the-catch-a-40-year-contract/.

One of these companies is MV Realty, which operates in 33 states. It has acknowledged that more than 30,000 people have signed similar types of contracts.[17]

Recently, the Florida[18], Massachusetts[19], Pennsylvania[20], and Ohio, Attorney Generals[21] have filed lawsuits against MV Realty for its misleading contractual terms related to these types of "listing agreements".

Florida Deceptive and Unfair Trade Practices Act (FDUTPA or Act)

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA or Act) declares unlawful any unfair or deceptive acts or practices committed in the conduct of any trade or commerce.[22] The Act is a separate cause of action intended to be an additional remedy to other civil remedies at law, and it is aimed toward making consumers whole for losses caused by fraudulent consumer practices. The Act protects consumers from deceptive acts, and protects the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce. It applies to private causes of action arising from single unfair or deceptive acts in the conduct of any trade or commerce, even if it involves only a single party, a single transaction, or a single contract.

Effect of the Bill

The bill:

- Limits the option to enter into a listing agreement for the sale of residential real property to no more than six months.
- Prohibits certain options to enter into listing agreements from becoming a lien, encumbrance, or security interest on the property.
- Prohibits courts from enforcing an option to enter into a listing agreement, by lien or constructive trust.
- Requires specific notice and the written agreement of the homeowner before an option to enter into a listing agreement may be assigned to another real estate agent or broker.
- Defines "disposition" as a transfer or voluntary conveyance of the title or other ownership interest in residential real property.
- Defines "option to enter into a listing agreement" as a signed writing wherein the broker pays valuable consideration to a person granting the broker an exclusive right to enter into a listing agreement with the person at a future date during the term of the signed writing.
- Defines "residential real property" as an improved residential property of four units or fewer or unimproved residential real property intended for four units or fewer.
- Provides that a listing agreement or an option to enter into a listing agreement that does not meet certain requirements is unenforceable in law or equity and may not be recorded by the clerk of the circuit court.
- Makes a violation of this section an unfair or deceptive trade practice within the meaning of Florida Deceptive and Unfair Trade Practices Act.

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[17] Angie Moreschi, *MV Realty Facing Congressional Scrutiny Following Channel 11 Investigation*, WPXI, (Dec. 21, 2022), https://www.wpxi.com/news/local/mv-realty-facing-congressional-scrutiny-following-channel-11-investigation/Y4HNN2X24NEQRFMTNVLB2QNHNQ/.

[18] *Attorney General Moody Takes Legal Action against MV Realty for Swindling Florida Homeowners*, Office of the Attorney General (Nov. 29,2022), http://www.myfloridalegal.com/newsrel.nsf/newsreleases/E9E4A2F7281415CE85258909007259EC.

[19] Cheryl Fiandaca, Massachusetts Attorney General Sues MV Realty Company after I-Team Investigation, CBS News. (December 14, 2022), https://www.cbsnews.com/boston/news/mv-realty-attorney-general-lawsuit-massachusetts-iteam-investigation/.

[20] *AG Shapiro Sues Real Estate Brokerage Firm MV Realty over Misleading Homeowner Benefit Program*, Pennsylvania Office of Attorney General (Dec. 14, 2022), https://www.attorneygeneral.gov/taking-action/ag-shapiro-sues-real-estate-brokerage-firm-mv-realty-over-misleading-homeowner-benefit-program/#:~:text=Homeowner%20Benefit%20Program-,AG%20Shapiro%20Sues%20Real%20Estate%20Brokerage%20Firm,Over%20Misleading%20Homeowner%20Benefit%20Program&text=HARRISBURG%20%E2%80%94%20Attorney%20General%20Josh%20Shapiro,and%20its%20founder%2C%20Amanda%20Zachman.

[21] "*AG Yost Sues MV Realty, Founder and Broker for Illegal Practices*, Ohio Attorney General Dave Yost (Feb. 15, 2023), https://www.ohioattorneygeneral.gov/Media/News-Releases/February-2023/AG-Yost-Sues-MV-Realty-Founder-and-Broker-for-Ille.

[22] ss. 501.201-213, F.S.

B. SECTION DIRECTORY:

Section 1: Creates s. 475.279, F.S.; defines terms; specifies limitation on length of certain contract terms related to residential real property; prohibits the court from enforcing option to enter into listing agreement by certain means; requires notice and written agreement in certain circumstances; provides penalties for violations.

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.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on homeowners selling their property.

As for real estate brokerage firms, the bill may have a negative economic impact if they use this type of listing agreement practice.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Clerks of court will have to train their employees to recognize these types of listing agreements related to the provisions in the bill that prohibit recording such agreements.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to residential real estate listing agreements; creating s. 475.279, F.S.; defining terms; specifying a limitation on the term of an option to enter into a listing agreement for the disposition of residential real property; prohibiting a court from enforcing an option to enter into a listing agreement by certain means; requiring notice and a written agreement of the residential property owner before a broker may assign the option to enter into a listing agreement to another broker; providing construction; providing penalties for violations; providing an effective date.

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

Section 1. Section 475.279, Florida Statutes, is created to read:

475.279 Option to enter into a listing agreement for the disposition of residential real property.—

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

(a) "Disposition" means a transfer or voluntary conveyance of the title or other ownership interest in residential real estate.

(b) "Option to enter into a listing agreement" means a

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

signed writing wherein a broker pays valuable consideration to a person granting the broker an exclusive right to enter into a listing agreement with the person at a future date during the term of the signed writing.

(c) "Residential real property" means improved residential property of four units or fewer or unimproved residential real property intended for four units or fewer.

(2) An option to enter into a listing agreement for the disposition of residential real property may not exceed a term of 6 months.

(3) An option to enter into a listing agreement may not constitute a lien, encumbrance, or security interest in the residential real property. A court may not enforce an option to enter into a listing agreement by a lien or constructive trust in the residential real property or upon the proceeds of the disposition of the residential real property.

(4) An option to enter into a listing agreement must require notice and written agreement of the residential property owner before the broker may assign the option to enter into a listing agreement to another broker.

(5) As a matter of public policy, a listing agreement or an option to enter into a listing agreement that does not meet the requirements of this section is unenforceable in law or equity and may not be recorded by the clerk of the circuit court.

(6) A violation of this section is deemed an unfair or deceptive trade practice within the meaning of part II of chapter 501, and a person who violates this section is subject to the penalties and remedies provided therein.

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

REGULATORY REFORM & ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 861 by Rep. Robinson, W.
Residential Listing Agreements

AMENDMENT SUMMARY
March 9, 2023

Amendment 1 by Rep. Robinson, W. (lines 19-50):

- Renames the act "Residential Loan Alternative Agreements"
- Replaces "option to enter into a listing agreement" with "residential loan alternative agreement" throughout the bill.
- Replaces "broker" with "person" throughout the majority of the bill.
- Defines "residential loan alternative agreement" as a signed writing between a broker and seller or owner of residential real property that:
    - grants an exclusive right to a person to act as a broker for the disposition of the property,
    - has an effective duration of more than two years, and
    - includes the payment of compensation from the person to the seller or owner.
- Provides that a residential loan alternative agreement may not be renewed.
- Provides that a residential loan alternative agreement may not authorize a broker to place a lien or otherwise encumber any residential real property.
- Provides that a residential loan alternative agreement that does not meet certain requirements is unenforceable.

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 Robinson, W. offered the following:

Amendment (with title amendment)

Remove lines 19-50 and insert:

475.279 Residential loan alternative agreements for the disposition of residential real property.—

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

(a) "Disposition" means a transfer or voluntary conveyance of the title or other ownership interest in residential real estate.

(b) "Residential loan alternative agreement" means a signed writing between a person and seller or owner of residential real property that:

1. Grants an exclusive right to a person to act as a broker for the disposition of the property.

2. Has an effective duration of more than two years.

3. Provides the person pay compensation to the seller or owner.

(c) "Residential real property" means improved residential property of four units or fewer or unimproved residential real property intended for four units or fewer.

(2) A residential loan alternative agreement for the disposition of residential real property may not exceed a term of 6 months and may not be renewed.

(3) A residential loan alternative agreement may not authorize a person to place a lien or otherwise encumber any residential real property. A residential loan alternative agreement may not constitute a lien, encumbrance, or security interest in the residential real property. A court may not enforce a residential loan alternative agreement by a lien or constructive trust in the residential real property or upon the proceeds of the disposition of the residential real property.

(4) A residential loan alternative agreement must require notice to and written consent of the seller or owner before the person may assign the residential loan alternative agreement to another person.

(5) As a matter of public policy, a residential loan alternative agreement that does not meet the requirements of

this section is unenforceable in law or equity. In addition, a residential loan alternative agreement may not be recorded by the clerk of the circuit court.

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

Remove lines 2-11 and insert:

An act relating to residential loan alternative agreements; creating s. 475.279, F.S.; defining terms; specifying a limitation on the term of a residential loan alternative agreement for the disposition of residential real property; prohibiting a court from enforcing a residential loan alternative agreement by certain means; requiring notice to and consent of the residential property owner before a residential loan alternative agreement may be assigned; providing construction

HB 869

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 869 Department of Business and Professional Regulation Licensing
SPONSOR(S): McClain
TIED BILLS: **IDEN./SIM. BILLS:** SB 782

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

SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating various businesses and professions throughout the state, including asbestos professionals, mold-related professionals, electrical contractors, public lodging establishments, and public food service establishments.

Related to mold-related and asbestos professional licensing regulations, the bill provides a pathway for a person who holds a license in another state to obtain a Florida license.

Related to electrical contractors licensing regulations, the bill allows certain local electrical and alarm contractors to be licensed statewide.

Related to pugilistic exhibitions, the bill removes the maximum participant weight differential requirement for all exhibition matches. This will allow any exhibition to include participants who are not in the same weight category.

Related to public lodging establishments and public food service establishments, the bill:

- requires licensees to submit certain documents, fees, and communications online;
- requires licensees to provide an email address for primary communication with DBPR;
- allows notices to be served to the operator of a licensed establishment via email, in addition to in-person service and by mail;
- allows the guest registry at a transient public lodging establishment to be kept online, and guests are no longer required to sign the registry;
- allows 2-year renewals on licenses, instead of only 1-year renewals; and
- removes the requirement for a staggered initial license fee schedule.

The bill has an indeterminate, negative fiscal impact on state government revenues. There is an indeterminate, but likely minimal fiscal impact on local governments and a significant positive fiscal impact on the private sector. *See* Fiscal Analysis & Economic Impact Statement.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation (DBPR) regulates and licenses various businesses and professionals in Florida through the following divisions:

- The Division of Administration,
- The Division of Alcoholic Beverages and Tobacco,
- The Division of Certified Public Accounting,
- The Division of Drugs, Devices, and Cosmetics,
- The Division of Florida Condominiums, Timeshares, and Mobile Homes,
- The Division of Hotels and Restaurants,
- The Division of Pari-mutuel Wagering,
- The Division of Professions,
- The Division of Real Estate,
- The Division of Regulation,
- The Division of Technology, and
- The Division of Service Operations.[1]

The Division of Professions licenses and regulates various professions through 12 professional boards, five programs, and one council, including the: [2]

- Asbestos Licensing Unit,
- Electrical Contractors' Licensing Board (ECLB), and
- Mold-Related Services Program.

The Division of Regulation is the enforcement authority for Labor Organizations and Business Agents, the Florida Athletic Commission (FAC), Farm Labor Program, Child Labor Program, and any professional boards and programs housed within the Division of Professions.[3]

The Division of Hotels and Restaurants (H&R) licenses, inspects, and regulates public lodging and food service establishments in Florida.[4]

Mold-Related Services

Background

Mold assessors and mold remediators are regulated by ch. 468, part XVI, F.S., and licensed by the Mold-Related Services Licensing Program[5] in DBPR.

"Mold assessment" means a process performed by a mold assessor that includes the physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location, and extent of amplification of mold growth of greater than ten square feet.[6]

[1] S. 20.165, F.S.
[2] Florida Department of Business and Professional Regulation, *Division of Professions*, http://www.myfloridalicense.com/DBPR/division-of-professions/ (last visited Feb. 24, 2023).
[3] Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers. Florida Department of Business and Professional Regulation, *Division of Regulation*, http://www.myfloridalicense.com/DBPR/division-of-regulation/ (last visited Feb. 24, 2023).
[4] Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, http://www.myfloridalicense.com/DBPR/hotels-restaurants/ (last visited Feb. 24, 2023).
[5] S. 468.84, F.S.
[6] S. 468.8411(3), F.S.

"Mold remediation" means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter of greater than ten square feet that was not purposely grown at that location; however, it may not include work that requires a contractor license under ch. 489, F.S.[7]

In order to be licensed as a mold assessor or mold remediator, an applicant must:

- be of good moral character,
- pass the required DBPR-approved examination offered by a nationally recognized organization that certifies persons in the specialty of mold assessment or mold remediation,
- have required liability insurance, and
- complete either:
  - at least a two-year associate of arts degree with certain course requirements and a minimum of one year of experience; or
  - a high school diploma or the equivalent with a minimum of four years of experience.[8]

A person who is licensed in another state is eligible for a license by endorsement in Florida if they:[9]

- are of good moral character;
- hold required general liability insurance;
- hold a valid license to practice as a mold assessor or mold remediator in another state or territory of the United States whose educational requirements are substantially equivalent to Florida; and
- have passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the required Florida examination.

Applicants for a mold-related license pay an initial licensure fee of $230. There are currently 3,252 licensed mold assessors and 3,208 licensed mold remediators in the state. In the most recent fiscal year, there were 25 applicants for a license by endorsement.[10]

Effect of the Bill

The bill allows applicants who hold a mold-related license in another state to obtain a license by endorsement in Florida, if they have held a valid license to practice in another state or territory of the United States for at least ten years before the date of application, without needing to take a Florida-specific examination or training.

Such applications for a Florida license by endorsement must be made either when the applicant's license in another state or territory is active or within two years of when such license was last active.

The bill clarifies the provision relating to licensure examination requirements.

Asbestos Consultants and Contractors

Background

Asbestos consultants and contractors are regulated by ch. 469, F.S., and licensed by the Asbestos Licensing Unit in DBPR. Florida licensing standards must also comply with the U.S. Environmental Protection Agency's Asbestos Model Accreditation Plan for States(MAP), which includes mandatory nationwide standards for testing and education.[11]

"Asbestos abatement" means the removal, encapsulation, enclosure, or disposal of asbestos.[12]

[7] S. 468.8411(5), F.S.
[8] S. 468.8413(2), F.S.
[9] S. 468.8414(3), (4), F.S.
[10] Email from Jonas Marquez, Legislative Affairs Director, Department of Business and Professional Regulation, RE: HB 869 (Feb. 28, 2023).
[11] 40 C.F.R. § 763 Appendix C to Subpart E.
[12] S. 469.001(1), F.S.

An asbestos consultant may:

- conduct an asbestos survey,
- develop an operation and maintenance plan,
- monitor and evaluate asbestos abatement, and
- prepare asbestos abatement specifications.[13]

An asbestos contractor may perform the work of an asbestos consultant and conduct asbestos abatement work.[14]

In order to be eligible to be licensed as an asbestos consultant or contractor, an applicant must meet one of the following criteria:[15]

- hold a current, valid, active license as an architect issued under ch. 481, F.S.;
- hold a current, valid, active license as a professional engineer issued under ch. 471, F.S.,
- hold a current, valid, active license as a professional geologist under ch. 492, F.S.;
- be a diplomat of the American Board of Industrial Hygiene; or
- have been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.

An applicant for licensure as either an asbestos consultant or contractor must also:[16]

- if applying for an asbestos consultant license, complete DBPR-approved courses in the following topics:
  - building asbestos surveys and mechanical systems,
  - asbestos management planning,
  - respiratory protection, and
  - project designer.
- if applying for an asbestos contractor license, complete courses in the following topics:
  - asbestos contractor/supervisor, and
  - respiratory protection.
- provide evidence of satisfactory work on ten asbestos projects within the last five years,
- provide evidence of financial stability, and
- pass the DBPR-approved examination.

There is no provision which specifically allows or addresses licenses by endorsement for asbestos licensees of other states.

Applicants for an asbestos license pay an initial licensure fee of $555, and an examination fee of $316. There are currently 136 licensed asbestos contractors and 111 licensed asbestos consultants in the state. DBPR has received an average of 33 asbestos applications per year over the last three fiscal years. In the most recent fiscal year, there were 57 applicants for an asbestos professional license.[17]

Effect of the Bill

The bill allows applicants who hold an asbestos license in another state license to obtain a license by endorsement in Florida if they have:

- passed a written examination in any state that meets the requirements of MAP,
- held a license as an asbestos consultant or asbestos contractor issued by another state or territory of the United States for at least ten years,
- demonstrated financial stability, and
- completed the required DBPR-approved courses.

[13] S. 469.003, F.S.
[14] S. 469.003(3), F.S.
[15] S. 469.004(1), F.S.
[16] S. 469.005, F.S.
[17] DBPR, *supra* note 10.

Such applicants must apply while they hold an active license in another state or territory or within 2 years after such license was last active.

Electrical Contractors

Background

Statewide electrical, alarm system, and specialty contractors are regulated by of ch. 489, part II, F.S., and licensed and regulated by the ECLB within DBPR.[18] An electrical contractor engages in business as a contractor or performs electrical or alarm work for compensation.[19]

Electrical contractors may work on electrical wiring, fixtures, appliances, apparatus, raceways, and conduits which generate, transmit, transform, or utilize electrical energy in any form. The scope of an electrical contractor's license includes alarm system work.[20]

Alarm system contractors may lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service burglary, fire, robbery, or medical emergency alarm systems.[21]

In order to become a certified electrical, alarm system, or specialty contractor, an applicant must:[22]

- be at least 18 years of age;
- be of good moral character;
- pass the certification examination;
- have workers' compensation insurance or an exemption, and public liability and property damage insurance; and
- meet certain training and education criteria.

A registered contractor is an individual that has taken and passed a local competency examination and can practice the specific category of contracting for which they are approved, only in the local jurisdiction for which the license is issued.[23] Locally registered contractors that are required to hold a contracting license to practice their profession in accordance with state law must register with DBPR after obtaining a local license.[24]

Section 489.514, F.S., created a pathway that allowed registered local electrical and alarm contractors who met certain criteria to have their local registration converted into a certified statewide license by the ECLB. The provision required applicants to apply by November 1, 2021, and is thus is no longer available for use by local registered contractors. This provision is commonly referred to as the "grandfathering provision."

Any registered contractor wishing to have their license "grandfathered" into a certified license had to submit a completed application to the ECLB, pay an appropriate fee, and show evidence of the following criteria:

- currently holds a valid registered local license in the certification of electrical contractor, alarm system contractor, or electrical specialty contractor sought;
- has, for the certification category sought, passed a written, proctored examination that the ECLB finds to be substantially similar to the examination required to be licensed as a certified contractor;
- has at least five years of experience as a contractor in the certification category sought, or as an inspector or building administrator with oversight over that category. For contractors, only time periods in which the contractor license is active and the contractor is not on probation shall count toward the required five years;

[18] S. 489.507, F.S.
[19] S. 489.505(9), F.S.
[20] Ss. 489.505(12) & 489.537(7), F.S.
[21] S. 489.505(1)-(2), F.S.
[22] S. 489.511(1) & (4), F.S.
[23] S. 489.505(21)-(23), F.S.
[24] S. 489.513, F.S.

- has not had the contractor's license revoked at any time, suspended in the last five years, or assessed a fine in excess of $500 in the last five years; and
- has the required workers' compensation insurance or an exemption, and public liability and property damage insurance.[25]

DBPR received 766 applications from local electrical and alarm contractors for a statewide license during the last period of grandfathering, from July 1, 2019, through November 1, 2021.[26]

Effect of the Bill

The bill reopens the grandfathering provision for locally registered electrical, alarm system, and specialty contractors to obtain licensure as statewide certified contractors without an expiration date.

Pugilistic Exhibitions

Background

Chapter 548, F.S., governs the FAC under DBPR. The function of the FAC is to license and regulate pugilistic events and matches, including professional boxing, kickboxing, and mixed martial arts. The FAC ensures that all matches are conducted in accordance with provisions of state laws and rules.

A match participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician,[27] matchmaker, or promoter must be licensed by FAC before directly or indirectly acting in such capacity in connection with any match. In order to obtain a license, an applicant must:[28]

- complete an application in a form prescribed by the FAC;
- be at least 18 years of age; and
- pay an application fee.

An "exhibition" is a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using strikes and blows to the head or other full-contact maneuvers.[29] Participants in an exhibition, except one held solely for training purposes, must weigh within 12 pounds of each other.[30]

Effect of the Bill

The bill removes the maximum participant weight differential requirement for all exhibition matches. This will allow any exhibition to include participants that weigh more or less than 12 pounds from their opponent.

Hotels and Restaurants

"Public lodging establishment" includes:[31]

- "Transient public lodging establishments," which means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days, or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests; and
- "Nontransient public lodging establishments," which means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for

[25] S. 489.514, F.S.
[26] DBPR, *supra* note 10.
[27] A physician must be licensed pursuant to chapter 458 or chapter 459, must maintain a license in good standing, and must demonstrate satisfactory medical training or experience in boxing. S. 548.017, F.S.
[28] S. 548.021, F.S.
[29] S. 548.002(8), F.S.
[30] S. 548.043(2), F.S.
[31] S. 509.013(4), F.S.

periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Classifications of public lodging establishments include hotels, motels, vacation rentals, apartments, bed and breakfast inns, and timeshare projects.[32]

"Public food service establishments" means any building, vehicle, place, or structure, or any room or division thereof, 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, with certain exceptions.[33]

Classifications of public food service establishments include permanent food service restaurants, catering services, mobile food dispensing vehicles, vending machines, theme park carts, culinary education programs, and temporary food service events.[34]

Electronic Communications - Background

While H&R has rulemaking authority to adopt rules to implement ch. 509, F.S., H&R does not have authority to adopt rules to require electronic submissions for any required document or fee from a licensee or for H&R to require online communications with a licensee.[35] There is also no statutory requirement that such documents, fees, or communications be transmitted online or for licensees to provide an email address to H&R.[36]

Notices that are served by H&R must be delivered to the operator of a licensed establishment by an H&R agent or by registered mail. If H&R is unable to effect service, the notice may be conspicuously posted at the licensee's establishment.[37] Inspection reports may be served via electronic means.

Each transient public lodging establishment is required to maintain a register of guests who occupy rental units in the establishment. The guests must also sign the registry. There is not a specific allowance that the registry may be kept in an electronic format.

Electronic Communications – Effect of the Bill

The bill requires all H&R licensees to provide an email address to function as the primary method of communication with H&R.

The bill allows H&R to serve notices or inspection reports to the operator of licensed establishments via email, in addition to in-person service and mail.

The bill requires each public lodging establishment or a public food service establishment, and any person who plans to open a licensed establishment, to create and maintain an online account and provide an e-mail address to function as the primary contact for all communication from H&R. Licensed establishments are responsible for maintaining accurate contact information on file.

Each vacation rental or timeshare project must submit any change in the street or unit address or number of houses or units included under the license within 30 days of the change. All changes must be filed through the H&R's online system

[32] S. 509.242, F.S.
[33] S. 509.013(5), F.S.
[34] R. 61C-1.002, F.A.C.; Florida Department of Business and Professional Regulation, *Hotels and Restaurants – Licensing Guides*, http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/licensing-guides/ (last visited Feb. 24, 2023).
[35] S. 509.032, F.S.
[36] S. 509.091, F.S.
[37] S. 509.091(1), F.S.

The bill allows the guest registry at a transient public lodging establishment to be kept online, and will no longer require guests to sign the registry.

Licensure Fees – Background

Each public lodging establishment and public food service establishment must obtain a license from H&R. Licenses are renewed annually, and H&R must adopt a rule establishing a staggered schedule for license renewals.[38]

The staggered initial license fee schedules require such establishments applying for an initial license to pay the full license fee if the application is made during the annual renewal period or more than six months before the next such renewal period, and one-half of the fee if the application is made six months or less before the next renewal period.[39] For example: if an applicant is applying for a hotel license with between 26 and 50 rental units, the initial license fee is $215, but if such applicant is applying for the license less than six months before the beginning of the next renewal period, the initial license fee is $112.50. Such applicant will need to pay the full annual fee when the next renewal period begins.[40]

H&R adopts, by rule, a schedule of fees to be paid by each public lodging establishment and public food service establishment for the issuance or renewal of a license. Such fees are based on the number of rental units in the public lodging establishment and based on seating capacity and services offered for public food service establishments. Licenses must be renewed annually.[41] License fees generally range from $91 for a temporary food vendor to $370 for a hotel with 501 or more rental units.[42]

Licensure Fees – Effect of the Bill

The bill removes the requirement for a staggered initial license fee schedule for public lodging establishments and public food service establishments, and instead provides for an initial license that may be renewed for one or two years. Applications for licensure must be made on forms provided by H&R, and H&R must adopt a rule for license issuance and renewal procedures.

The bill provides that license renewal fees for public lodging establishments must be based on the number of rental units in the establishment and whether the renewal is for one or two years. License renewal fees for public food service establishments must be based on the classification of the license and whether the renewal is for one or two years.

The bill provides that the statutory maximum fee for a public lodging establishment for a two-year renewal is set at $2,000, which is double the currently allowed maximum for annual renewals. The statutory maximum fee for a public food service establishment for a two-year renewal is set at $800, which is double the currently allowed maximum for annual renewals.

The bill clarifies that all fees be must be paid by the applicant when the license application is submitted to H&R.

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

B. SECTION DIRECTORY:

[38] S. 509.241(1), F.S.
[39] S. 509.251(1), (2), F.S.
[40] S. 509.251(1), (2), F.S.; Department of Business and Professional Regulation, *Hotel and Restaurants – Hotel-Motel Guide*, http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/ (last visited Feb. 24, 2023).
[41] S. 509.251(1), (2), F.S.
[42] R. 61C-1.008, F.A.C.

Section 1: Amends s. 468.8414, F.S., revising licensure requirements for mold assessors and remediators.
Section 2: Amends s. 469.006, F.S., revising licensure requirements for asbestos consultants and contractors.
Section 3: Amends s. 489.514, F.S., removing a deadline for an electrical contractor licensing provision.
Section 4: Amends s. 509.091, F.S, revising requirements for hotel and restaurant inspection reports.
Section 5: Amends s. 509.101, F.S., revising requirements for hotel guest registries.
Section 6: Amends s. 509.241, F.S., revising license provisions for public lodging establishments and public food service establishments.
Section 7: Amends s. 509.251, F.S., revising fee schedules for public lodging establishments and public food service establishments.
Section 8: Amends s. 548.043, F.S., revising participant weight differentials for certain pugilistic exhibitions.
Section 9: Reenacts s. 509.102, F.S., relating to mobile food dispensing vehicles.
Section 10: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DBPR expects the following fiscal impacts on revenues:[43]

Division of Professions

Indeterminate; $399,056 maximum potential grandfathering fee revenue over the next three years (*see* Fiscal Comments).

Division of Hotels and Restaurants:

Based on internal projections for FY 23-24, the bill would reduce the division's revenue by approximately 3.3%.

Under the current license fee structure, about 58% of new applicants pay an initial license fee for some fraction of time and then pay the Division again to renew their license within the same fiscal year. Under the initiative, the division will collect a slightly larger initial license fee and a lower amount of renewal fees during the first year of licensure for each new license. The initiative would eliminate half year prorating of license fees, replacing it with a full year which slightly increases division revenue but results in a true "annual license" from the start with no same fiscal year renewals. Overall, based on internal projections for FY 2023-24, the initiative would reduce the Division's revenue by $1,413,484, or roughly 3.3%. The figures are derived from a projected 3.05% growth rate in Division Revenue and a projected 2.85% growth rate in H&R license fees.

	FY23-24	FY24-25	FY25-26
Total Div. Revenue	$42,647,797	$43,947,207	$45,286,207
Bill Difference	($1,413,484)	($1,453,723)	($1,495,108)
Revenue with bill implemented	$41,234,314	$42,493,484	$43,791,100
% Change	-3.31%	-3.31%	-3.30%

[43] Department of Business and Professional Regulation (DBPR), Agency Analysis of 2023 Senate Bill 782, p. 6 (Mar. 2, 2023)

The anticipated decrease in division revenue resulting from 2 year license renewals is unknown, as it would depend on how many operators opted for a 2 year renewal and the amount of the renewal fee.

2. Expenditures:

   DBPR does not anticipate a change in state expenditures as a result of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Local governments could see an insignificant decrease in revenues associated with renewal and reciprocity fees if eligible registered contractors choose to apply for the grandfathering provision created in the bill for ECLB licensees.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a positive impact on the private sector by expanding the geographical scope of practice for those registered electrical contractors that choose to take advantage of the grandfathering provision. Thus, making more electrical contractors available to work across the state.

The bill will generally reduce license fees paid by H&R licensees during their first 12 months of licensure. The division estimates licensees will save about $1.4 million in FY 2023-24. The decrease comes from eliminating the staggered schedule and outdated prorating system which in turn provides new licensees with a full year of licensure. Under the current license fee structure, new applicants often pay for a new license and pay to renew their license within the same fiscal year. Under the bill this would not happen.[44]

D. FISCAL COMMENTS:

Grandfathering Provision:[45]
Revenue from an electrical contractor grandfathering fee is indeterminate because it is unknown how many eligible registered ECLB licensees will apply for grandfathering. The total fee (application fee, initial licensing fee, and unlicensed activity fee) during the end of the previous grandfathering period was $196. There are 2,036 Registered Current Active/Inactive ECLB licensees who may be able to take advantage of the grandfathering provision. However, the department received only 766 applications during the last period of grandfathering, which was from July 1, 2019 to November 1, 2021.

Assuming total application/license fees of $196, the grandfathering fees received by DBPR over the next three fiscal years could range from $150,136.00 (if the department receives the same number of applications as the last grandfathering period) to a maximum of $399,056.00 if all 2,036 Registered Current Active/Inactive licensees apply over the next three fiscal years.

H&R Provisions:[46]
Because there is a reduction in H&R revenue, there will also be a reduction in the amount transferred to General Revenue. The estimated reduction to the 8% service charge to General Revenue would be $113,079 in FY 2023-24, $116,262 in FY 2024-25, and $119,609 in FY 2025-26.

The new schedule of licensing could impact expenditures. Because of the reduction in renewals there may be a $3,444 savings in postage and a reduction of annual bank fees of as much as $18,584.

[44] *Id*. at 7.
[45] *Id*. at 10.
[46] *Id*.

	FY 2023-24	FY 2024-25	FY 2025-26
Estimated H&R License Fee Revenue Under Current Licensing System	$28,166,605	$28,968,456	$29,793,133
Estimated H&R License Fee Revenue Under Proposed Change	$26,753,122	$27,514,733	$28,298,026
Reduction in Revenue	($1,413,484)	($1,453,723)	($1,495,108)
Reduction in 8% Service Charge to General Revenue	($113,079)	($116,262)	($119,609)
Estimated Postage and Bank Fee Savings	$22,028	$22,028	$22,028

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 will require DBPR to amend rules related to:

- Mold-related professional licensing standards,
- Asbestos professional licensing standards,
- Pugilistic exhibition requirements,
- Licensed establishment electronic communications, and
- Licensed establishment license issuance and renewal.

DBPR has current authority to do so.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Department of Business and Professional Regulation; amending s. 468.8414, F.S.; requiring the department to certify for licensure qualified individuals who practice mold assessment or mold remediation and hold certain licenses issued by other states or territories; amending s. 469.004, F.S.; revising requirements for the issuance of an asbestos consultant's license; requiring the department to certify for licensure by endorsement asbestos consultants and asbestos contractors who meet certain exam and other state licensure requirements; requiring asbestos consultants and asbestos contractors to complete certain courses; amending s. 489.514, F.S.; removing a time limitation for applying for certain contracting licenses under certain provisions; amending s. 509.091, F.S.; requiring licensees and licensed agents to provide the department's Division of Hotels and Restaurants with e-mail addresses at which they can be contacted; authorizing the division to deliver notices and inspection reports by e-mail; amending s. 509.101, F.S.; revising the guest register maintenance requirements that an operator of a transient establishment must meet; amending s. 509.241, F.S.;

providing for the expiration of public lodging establishment and public food service establishment licenses; authorizing the licenses to be renewed for specified timeframes; requiring the division to provide forms for license renewals and license applications; requiring licensees and licensed agents to maintain a division online account and provide the division with specified information; amending s. 509.251, F.S.; revising the public lodging establishment and public food service establishment license fees to include an option for 2-year renewals; limiting the fees the division may charge for a 2-year license renewal; requiring license fees to be paid in full at the time of application; amending s. 548.043, F.S.; deleting a requirement limiting the types of boxing exhibitions which require a specified maximum difference in participant weights; reenacting s. 509.102(2), F.S., relating to mobile food dispensing vehicles, to incorporate the amendment made to s. 509.251, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (3) of section 468.8414, Florida

Statutes, is amended to read:

468.8414 Licensure.—

(3) The department shall certify as qualified for a license by endorsement an applicant who is of good moral character, who has the insurance coverage required under s. 468.8421, and who meets at least one of the following requirements:

(a) Is qualified to take the examination as set forth in s. 468.8413 and has passed a certification examination offered by a nationally recognized organization that certifies persons in the specialty of mold assessment or mold remediation and that has been approved by the department as substantially equivalent to the requirements of this part and s. 455.217.~~; or~~

(b) Holds a valid license to practice mold assessment or mold remediation issued by another state or territory of the United States if the criteria for issuance of the license were substantially the same as the licensure criteria ~~that is~~ established by this part as determined by the department.

(c) Has held a valid license to practice mold assessment or mold remediation issued by another state or territory of the United States for at least 10 years before the date of application. The application for licensure must be made either when the license in the other state or territory is active or within 2 years after such license was last active.

Section 2. Present subsection (3) of section 469.004,

Florida Statutes, is redesignated as subsection (4), a new subsection (3) is added to that section, and subsection (1) of that section is amended, to read:

469.004 License; asbestos consultant; asbestos contractor.—

(1) All asbestos consultants must be licensed by the department. Except for an asbestos consultant's license issued by endorsement as provided under subsection (3) or otherwise expressly provided by law, an asbestos consultant's license may be issued only to an applicant who holds a current, valid, active license as an architect issued under chapter 481; holds a current, valid, active license as a professional engineer issued under chapter 471; holds a current, valid, active license as a professional geologist issued under chapter 492; is a diplomat of the American Board of Industrial Hygiene; or has been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.

(3) The department shall certify as qualified for licensure by endorsement any individual applying for licensure who has passed a written examination that meets the requirements of the United States Environmental Protection Agency Asbestos Model Accreditation Plan, has held a valid license to practice as an asbestos consultant or asbestos contractor issued by another state or territory of the United States for at least 10 years before the date of application, and is applying for the

same or similar license in this state, subject to ss. 469.005(5) and 469.006. The application for licensure must be made either when the license in the other state or territory is active or within 2 years after such license was last active. To qualify for licensure by endorsement, an asbestos consultant must complete the courses required by s. 469.005(2) and an asbestos contractor must complete the courses required by s. 469.005(3).

Section 3. Subsection (3) of section 489.514, Florida Statutes, is amended to read:

489.514 Certification for registered contractors; grandfathering provisions.—

~~(3) An applicant must make application by November 1, 2021, to be licensed pursuant to this section.~~

Section 4. Section 509.091, Florida Statutes, is amended to read:

509.091 Notices; form and service.—

(1) All licensees and licensed agents must provide an e-mail address to the division to function as the primary method of contact for all communication with the division.

(2) Each notice or inspection report served by the division pursuant to this chapter must be in writing and must be delivered personally by an agent of the division, sent by e-mail, or mailed ~~by registered letter~~ to the operator of the public lodging establishment or public food service establishment. If the operator refuses to accept service or

evades service or the agent is otherwise unable to effect service after due diligence, the division may post such notice or inspection report in a conspicuous place at the establishment.

~~(2) Notwithstanding subsection (1), the division may deliver lodging inspection reports and food service inspection reports to the operator of the public lodging establishment or public food service establishment by electronic means.~~

Section 5. Subsection (2) 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.—

(2) It is the duty of each operator of a transient establishment to maintain at all times a register of~~, signed by or for~~ guests who occupy rental units within the establishment, showing the dates upon which the rental units were occupied by such guests and the rates charged for their occupancy. Each operator shall maintain this register ~~shall be maintained~~ in chronological order, shall make the register ~~and~~ available for inspection by the division at any time, and may keep the register in an electronic format. Operators need not make available registers that ~~which~~ are more than 2 years old.

Section 6. Section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(1) LICENSES; ~~ANNUAL~~ RENEWALS.—Each public lodging establishment and public food service establishment shall obtain a license from the division. Such license may not be transferred from one place or individual to another. It is ~~shall be~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for such an establishment to operate without a license. Local law enforcement shall provide immediate assistance in pursuing an illegally operating establishment. The division may refuse a license, or a renewal thereof, to any establishment ~~that is~~ not constructed and maintained in accordance with law and with the rules of the division. The division may refuse to issue a license, or a renewal thereof, to any establishment an operator of which, within the preceding 5 years, has been adjudicated guilty of, or has forfeited a bond when charged with, any crime reflecting on professional character, including soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or illegally dealing in controlled substances as defined in chapter 893, whether in this state or in any other jurisdiction within the United States, or has had a license denied, revoked, or suspended pursuant to s. 429.14. Licenses expire if not renewed before the expiration date and may be renewed for 1 or 2 years. Licenses must ~~shall~~ be renewed using forms provided by ~~annually, and~~ the division. The division shall adopt a rule

establishing procedures ~~a staggered schedule~~ for license issuance and renewals. If any license expires while administrative charges are pending against the license, the proceedings against the license must ~~shall~~ continue to conclusion as if the license were still in effect.

(2) APPLICATION FOR LICENSE.—Each person who plans to open a public lodging establishment or a public food service establishment must ~~shall~~ apply for and receive a license from the division using forms provided by the division before commencing ~~prior to the commencement of~~ operation. A condominium association, as defined in s. 718.103, which does not own any units classified as vacation rentals or timeshare projects under s. 509.242(1)(c) or (g) is not required to apply for or receive a public lodging establishment license.

(3) DISPLAY OF LICENSE.—Any license issued by the division shall be conspicuously displayed in the office or lobby of the licensed establishment. Public food service establishments that ~~which~~ offer catering services shall display their license number on all advertising for catering services.

(4) ONLINE ACCOUNT AND TRANSACTIONS.—Each person who plans to open a public lodging establishment or a public food service establishment and each licensee or licensed agent must create and maintain a division online account and provide an e-mail address to the division to function as the primary contact for all communication from the division.

(a) Licensees and licensed agents are responsible for maintaining accurate contact information on file with the division.

(b) Each licensee issued a license or licensed agent managing a license classified as a vacation rental or timeshare project, as those terms are defined in s. 509.242(1)(c) and (g), respectively, must submit any change in the street or unit address or number of houses or units included under the license within 30 days of the change. All changes must be filed with the division through the division's online system.

Section 7. Subsections (1) and (2) of section 509.251, Florida Statutes, are amended to read:

509.251 License fees.—

(1) The division shall adopt~~,~~ by rule~~,~~ a schedule of fees to be paid by each public lodging establishment as a prerequisite to issuance or renewal of a license. Initial license ~~Such~~ fees must ~~shall~~ be based on the number of rental units in the establishment. License renewal fees must be based on the number of rental units in the establishment and whether the renewal is for 1 or 2 years. The aggregate fee per establishment charged any public lodging establishment may not exceed $1,000 for a 1-year license or $2,000 for a 2-year license; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. Vacation rental units or timeshare projects within separate

buildings or at separate locations but managed by one licensed agent may be combined in a single license application, and the division must ~~shall~~ charge a license fee as if all units in the application are in a single licensed establishment. ~~The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months before the next such renewal period and one-half of the fee if application is made 6 months or less before such period.~~ The fee schedule must ~~shall~~ include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302. All fees~~, which~~ are payable in full for each application at the time ~~regardless of when~~ the application is submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed $50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law.

(2) The division shall adopt~~,~~ by rule~~,~~ a schedule of fees to be paid by each public food service establishment as a

prerequisite to issuance or renewal of a license. Initial license fees must be based on the classification of the license. License renewal fees must be based on the classification of the license and whether a renewal is for 1 or 2 years. The fee schedule must ~~shall~~ prescribe a base ~~basic~~ fee and additional fees based on seating capacity and services offered. The aggregate fee per establishment charged any public food service establishment may not exceed $400 for a 1-year license or $800 for a 2-year license; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. ~~The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months before the next such renewal period and one-half of the fee if application is made 6 months or less before such period.~~ The fee schedule must ~~shall~~ include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302. All fees~~,~~ ~~which~~ are payable in full for each application at the time ~~regardless of when~~ the application is submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed $50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law.

Section 8. Subsection (2) of section 548.043, Florida Statutes, is amended to read:

548.043 Weights and classes, limitations; gloves.—

(2) The commission shall establish by rule the acceptable difference in weight between participants; however, the maximum difference in weight in boxing matches shall not exceed 12 pounds, except matches in the cruiserweight and heavyweight classes and exhibitions ~~held solely for training purposes~~.

Section 9. For the purpose of incorporating the amendment made by this act to section 509.251, Florida Statutes, in a reference thereto, subsection (2) of section 509.102, Florida Statutes, is reenacted to read:

509.102 Mobile food dispensing vehicles; preemption.—

(2) Regulation of mobile food dispensing vehicles 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

within the entity's jurisdiction. A municipality, county, or other local governmental entity may not prohibit mobile food dispensing vehicles from operating within the entirety of the entity's jurisdiction.

Section 10. This act shall take effect July 1, 2023.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 869 by Rep. McClain
Department of Business and Professional Regulation Licensing

AMENDMENT SUMMARY
March 9, 2023

Amendment 1 by Rep. McFarland (line 287):

- Allows package stores to sell nicotine 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 McFarland offered the following:

Amendment (with title amendment)

Between lines 287 and 288, insert:

Section 9. Subsection (1) of section 565.04, Florida Statutes, is amended to read:

565.04 Package store restrictions.—

(1) Vendors licensed under s. 565.02(1)(a) shall not in said place of business sell, offer, or expose for sale any merchandise other than such beverages, and such places of business shall be devoted exclusively to such sales; provided, however, that such vendors shall be permitted to sell bitters, grenadine, nonalcoholic mixer-type beverages (not to include fruit juices produced outside this state), fruit juices produced

in this state, home bar, and party supplies and equipment (including but not limited to glassware and party-type foods), miniatures of no alcoholic content, nicotine products, and tobacco products. Such places of business shall have no openings permitting direct access to any other building or room, except to a private office or storage room of the place of business from which patrons are excluded.

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

Remove line 42 and insert:

difference in participant weights; amending s. 565.04, F.S.; allowing package stores to sell nicotine products; reenacting s.